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37 CR 24

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Introduction

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

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

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

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

Notice of Rulemaking Hearing

Tracking number

2014-01214

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-10

Rule title

TITLES AND REGISTRATIONS

Rulemaking Hearing

Date

01/14/2015

Time

02:00 PM

Location

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

Subjects and issues involved

The following rule and regulation is promulgated to establish the fee to be collected upon the issuance of the Persons with Disabilities Parking Privileges Placard.

Statutory authority

This regulation is promulgated under the authority of 42-1-204, 42-3-204 (2) (e) C.R.S.

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DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Section

1 CCR 204-10

RULE 24. PERSONS WITH DISABILITIES PARKING PRIVILEGES PLACARD FEE

Basis: This regulation is promulgated under the authority of 42-1-204, 42-3-204 (2) (e) C.R.S.

Purpose: The following rule and regulation is promulgated to establish the fee to be collected upon the issuance of the Persons with Disabilities Parking Privileges Placard.

1.0 Requirements

1.1 The fee established by the Department for issuance of the Persons with Disabilities Parking Privileges Placard shall be zero.

Notice of Rulemaking Hearing

Tracking number

2014-01251

Department

400 - Department of Natural Resources

Agency

407 - Division of Reclamation, Mining and Safety

CCR number

2 CCR 407-1

Rule title

HARD ROCK/METAL MINING

Rulemaking Hearing

Date

01/28/2015

Time

09:00 AM

Location

Department of Natural Resources, 1313 Sherman Street, Room 313, Denver, CO 80203

Subjects and issues involved

The Board will promulgate the new rules to implement amendments to Section 34-32-110, C.R.S., enacted by the passage of Senate Bill 14-076 creating a new category of Limited Impact Permits for mining operations that impact 5 acres or less of surface area. The 110(1) rules will also be promulgated to make certain Board rules are more consistent, effective, and efficient pursuant to Executive Order D 2012-002.

Statutory authority

C.R.S. § 34-32-106(1)(c); § 34-32-108(1); § 34-32-110

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APPENDIX A

Mined Land Reclamation Board

Proposed Draft Regulations Implementing Senate Bill 2014-076

December 15, 2014

1313 Sherman Street, Room 318
Denver, Colorado

RULE 1: GENERAL PROVISIONS AND REQUIREMENTS - PERMIT PROCESS

1.1 DEFINITIONS

110(1)(a)(III) and (2)

(27) "110 Limited Impact Operation" ~~applies to~~ means any mining operation which:

(a) affects five (5) acres or less ~~than~~ and requires a permit issued under section 34-32-110(1)(a)(III), C.R.S. ~~ten acres~~ for the life of the mine (referred herein as 110(1) permit); and is not an in situ leach mining operation or a designated mining operation; or

(b) affects less than ten (10) acres and requires a permit issued under section 34-32-110(2), C.R.S. for the life of the mine (referred herein as 110(2) permit), extracts less than seventy thousand (70,000) tons of mineral, overburden, or combination thereof per calendar year; and is not an in situ leach mining operation or a designated mining operation.

~~(c) is not an in situ leach mining operation.~~

110

(28) "110 Limited Impact Permit" shall mean a permit issued to a Limited Impact Operation pursuant to section 34-32-110(1)(a)(III) or (2), C.R.S.

110(1)(a)(I)

(55) "Two Acre Limited Impact Operation" means any mining operation, other than a Designated Mining Operation pursuant to a permit issued under section 34-32-110(1)(a)(I), C.R.S., which:

(a) the permit application for such operation was filed prior to July 1, 1993;

(b) affects less than two (2) acres for the life of the mine; and

(c) extracts less than seventy thousand (70,000) tons of mineral, overburden, or combination thereof per calendar year;

~~(c) does not extract sand, gravel, or quarry aggregate for sale;~~

~~(d) is not located in or adjacent to a stream channel;~~

~~(e) does not use designated chemicals, cause acid mine drainage,~~

~~or does not have toxic or acid-forming materials within the Permit area; and~~

~~(f) the permit application for such operation was filed prior to July 1, 1993.~~

(55.1) By July 1, 2015 an Operator issued a two acre limited impact permit pursuant to section 34-32-110(1)(a)(I), C.R.S. shall file with the Office:

a) evidence of the source of the person's legal right to enter and initiate a mining operation on affected land; and

b) a financial warranty that complies with sections 34-32-110(3) and 34-32-117(4), C.R.S.

1.4 APPLICATION REVIEW AND CONSIDERATION PROCESS

1.4.1 Applications -General Provisions

112(1) and 110

(1) Application forms, attachments, maps and fees shall be submitted in accordance with the specific requirements for each permit type, except that Designated Mining Operations shall also submit an Environmental Protection Plan as outlined in Subsection 6.4.21 of these Rules and in addition, all In Situ Leach Mining Operations shall also submit Exhibits set forth in Subsections 6.4.21 (unless exempt), 6.4.22, 6.4.23, 6.4.24, and 6.4.25.

(5) All application forms shall contain the following information:

112(2), 110(1)(a)(III) and (2)(a)

(b) the name, address, and telephone number of the Owner of the surface of the affected land and the source of the Applicant's legal right to enter and initiate a mining operation on the affected land;

110(1)(a)(III)(D) and (2)(a)(IV)

(e) a statement that the operations will be conducted in accordance with the terms and conditions listed in the application, as well as with the provisions of the Act and these Rules, as amended, in effect at the time the Permit is approved or amended; and

1.4.2 Specific Application Requirements – 110(1), 110(2), 110 ISL and

Non-In Situ Leach 110d Limited Impact Permit Applications

112(2), 110(1)(a)(III) and (2)(a)

112.5(3)(d) and 103(3.5)(a)(III)

(1) All general application requirements outlined in Subsection 1.4.1, shall be required for 110(1), 110(2) and 110d Limited Impact Operations; except that any application for a 110 in situ leach mining operation must be filed and shall be considered as a 112d-3 permit application pursuant to section 34-32-112.5(3)(d), C.R.S. and Rule 1.4.4; however, if such in situ leach mining applicant is granted an exemption from designated mining operation status, the application shall be labeled a "110 ISL" operation and the applicant need not comply with the designated mining operation requirements but must still comply with all in situ leach mining application requirements in Rule 1.4.4. The process for Office and Board consideration of 110 ISL shall follow those set forth in Rule 1.4.8, and the two hundred and forty (240) day deadline for a decision shall apply.

1.4.6 Office Consideration – 110(1), 110(2), 110 ISL and 110d Limited Impact Operation Permit Applications

110(6)

(1) Except as to 110 ISL applications, the Office shall approve or deny a 110(1), 110(2), or 110d Limited Impact application within thirty (30) days of the date the application is considered filed. Applications for 110 ISL mining operations shall be approved or denied within two hundred and forty (240) days from the date the application is considered filed. The date set for consideration by the Office for any 110 application may be extended pursuant to provisions of Rule 1.8 (unless the submitted materials satisfy Rule 1.8.1(4)) or of Rules 1.4.1(7), (9) or (13). Except as to 110 ISL applications, the time for consideration shall not be extended beyond thirty (30) days after the last such change submitted under Rule 1.8. unless requested by the Applicant. For 110 ISL applications, the time for consideration shall not be extended beyond one hundred twenty (120) days unless requested by the Applicant.

115(2)

(2) In the event that an objection to a 110(1), 110(2), or 110d Limited Impact permit application, submitted in the form of a protest or petition for a hearing, is received by the Office pursuant to the provisions of Rule 1.7, the Office shall proceed to issue its decision by the date set for consideration in Paragraphs 1.4.6(1), 1.4.1(9), 1.4.1(13) or 1.8. However, the Office may set the matter for a hearing before the Board, pursuant to the provisions of Section 1.4.11. As to 110 ISL applications,

if an objection is filed, the Office shall set the matter for hearing before the Board, in which case the Office shall make a recommended decision on the application.

1.11.3 Repealed ~~Conversion of a Two Acre Limited Operation~~

~~110(7)~~

~~Any Operator conducting an operation under a Permit issued as a Two Acre Limited Impact Operation who has held the permit for two (2) consecutive years or more and who subsequently desires to expand it to a size in excess of the two (2) acre limitation, may request the conversion of the permit by filing an application for a permit pursuant to Subsections 1.4.1, 1.4.2 or 1.4.5, except that the Applicant need not supply information, materials, and additional materials provided to the Office during the course of the current operation, or resulting from the Office's inspections thereof.~~

RULE 2: BOARD MEETINGS - PERMIT APPLICATION HEARINGS, DECISIONS AND APPEALS

2.5 DECLARATORY ORDERS (Section 24-4-105, C.R.S.)

2.5.2 Petition Submission

(1) The petition must be submitted, at a minimum, ten ~~seven~~ (10~~7~~) days prior to the Board meeting at which it is to be considered.

(a) At the regularly scheduled Board meeting, the Board will determine in its discretion and without notice to Petitioner, whether to rule upon any such petition.

(b) If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the Petitioner of its action and state the reasons for such action.

RULE 4: PERFORMANCE WARRANTIES AND FINANCIAL WARRANTIES

4.2 FINANCIAL WARRANTY LIABILITY AMOUNT

4.2.2 Specific Provisions – 110(1), 110(2) and Non-In Situ Leach Mining 110d Limited Impact Operations

~~(1) This Paragraph shall be applicable to Financial Warranties provided for Permits applied for pursuant to Section 34-32-110(1), C.R.S., as of July 1, 1993. The Financial Warranty for a Limited Impact Permit shall be in an amount to be determined by the Office.~~

110(3) (~~1~~2) Except for in situ leach mining permits, the Financial Warranty for any 110 Limited Impact Permit which is filed pursuant to ~~S~~section 34-32-110(1)(a)(III) or (2), C.R.S., including those which are automatically issued as a result of Office inaction within thirty (30) days pursuant to ~~the Act (S~~section 34-32-110(~~6~~7), C.R.S.,~~)~~ shall be in an amount determined by the Office pursuant to section 34-32-117(4), C.R.S. to be equal to the estimated cost of reclamation. By July 1, 2015, any Operator issued a two-acre limited impact permit must comply with the financial warranty requirements set forth in section 34-32-117(4), C.R.S. and Rule 4.

(~~2~~3) Divisions of state government and units of municipal and county government are exempt from submitting Financial Warranties and are not required to provide reclamation costs.

4.2.5 Specific Provisions – 112, 112d, 110 ISL and 112 ISL Reclamation ~~Error! Bookmark not defined~~ Permit Operations

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.3 SPECIFIC PERMIT APPLICATION EXHIBIT REQUIREMENTS – 110(1), 110(2), AND NON IN SITU LEACH MINING OPERATIONS 110d LIMITED IMPACT OPERATIONS

110 The following exhibits may~~shall~~ be required for 110(1) Limited Impact Permits and shall be required for 110(2), and Non In Situ Leach Mining 110d Limited Impact Operations; 110 in situ leach mining permit applications shall comply with 112d permit applications including complying with the requirements of Rule 6.4. If an

in situ leach mining operation has been exempted from designated mining operation status, it still must comply with all exhibits required for in situ leach mining operations.

6.3.2 EXHIBIT B - Site Description

(a) a description of the vegetation and soil characteristics in the area of the proposed operation. The local office of the Natural Resources Conservation Service (NRCS) ~~Soil Conservation Service (SCS)~~ may provide you with this information as well as recommendations for Exhibit D - Reclamation Plan;

APPENDIX B

Statement of Basis, Specific Statutory Authority, and Purpose for New Rules and Amendments to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations, 2 CCR 407-1

Limited Impact Mining Operations
110(1) Rulemaking

Consistent with Section 24-4-103(4), C.R.S., of the Administrative Procedure Act, this statement sets forth the basis, specific statutory authority, and purpose for new rules and amendments ("110(1) Rules") to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations, 2 CCR 407-1 ("Rules"). The 110(1) Rules implement new statutory requirements and authority as well as update existing regulations. The 110(1) Rules are intended to protect the public health, safety and welfare as required by the Mined Land Reclamation Act, Sections 34-32-101 through 34-32-127, C.R.S. ("Act"). They also are intended to foster and encourage the development of the State's natural resources and the development of a sound and stable mining and minerals industry, and require mining operators to reclaim land affected by such operations so that the affected land can be put to a use beneficial to the people of this State. *See* § 34-32-102, C.R.S.

The Mined Land Reclamation Board ("Board") promulgated the 110(1) Rules to implement amendments to Section 34-32-110, C.R.S., enacted by the passage of Senate Bill 14-076 ("SB 076"). The 110(1) Rules are also promulgated to make certain Board Rules more consistent, effective, and efficient pursuant to Executive Order D 2012-002. In adopting the 110(1) Rules, the Board relied upon the entire administrative record for this rulemaking proceeding, which informally began on September 24, 2014.

Stakeholder Participation

The Colorado Division of Reclamation, Mining and Safety ("Division"), as staff to the Board, held a stakeholder meeting regarding the proposed 110(1) Rules on November 20, 2014. The Division invited and accepted written and verbal comments from stakeholders regarding the proposed 110(1) Rules during the stakeholder process. The Division amended the draft proposed rules based on comments received during the stakeholder process.

The Board issued a Notice of Rulemaking Hearing concerning the 110(1) Rules on December 15, 2014. Pursuant to the Notice of Rulemaking, any person or organization was invited to participate in the rulemaking and submit prehearing statements, written comments, or alternate proposed rules.

Statutory Authority

The Board is authorized to promulgate the 110(1) Rules under the following sections of the Act:

- Section 34-32-106(1)(c), C.R.S. (Board has the duty to develop and promulgate standards for land reclamation plans);
- Section 34-32-108(1), C.R.S. (Board has the authority to adopt and promulgate reasonable rules and regulations regarding administration of the Act); and
- Newly amended Section 34-32-110, C.R.S. (Board has authority to issue limited-impact mining permits for mining operations conducted on five acres or less).

Identification of Amended Rules

The Board adopted amendments to Rules 1.1, 1.4, 1.11, 2.5, 4.2, and 6.3.

Overview of Purpose and Intent

The primary reason for adopting the 110(1) Rules is to implement legislation the General Assembly passed in 2014. The proposed rules update the existing rules to correspond to the changes required for the implementation of the legislation and also amend areas of the existing rules that need clarification, correction, or reflect new information or current practice or procedure.

The Board's revisions to the Rules are to implement the new class of Limited Impact Permit created by SB 076. This new class of permit allows small miners to legally proceed with mining operations under the appropriate level of technical review and scrutiny. The five-acre Limited Impact Permit will require: public notice and opportunity for public involvement, proof of legal right of entry, annual reports and progress of reclamation, and a sufficient financial warranty. This new permit creates an opportunity for small scale operators, who presently consider the larger 110(2) permit impractical for small-scale mining operations, to legally conduct mining operations as that term is defined in the Act.

SB 076 did not modify Section 34-32-113, C.R.S., and did not authorize the Board to reconsider the manner in which it reviews, authorizes, and regulates prospecting

activities, but rather created a new category of permit to address small impact mining operations. Therefore, prospecting as defined in the Act, will continue to be regulated under Section 34-32-113 of the Act and existing Board Rules and is outside the scope of this rulemaking.

Amendments and Additions to Rules

Rule 1.1(27) The definition of Limited Impact Operation is amended to incorporate changes enacted in SB 076 creating the 5 acres or less permit category referred to as 110(1) permits. The definition is also amended to clarify the existing regulatory language regarding 110(2) permits to make the definition more consistent and easier to understand in accordance with Executive Order D 2012-002.

Rule 1.1(28) The definition of "110 Limited Impact Permit" is amended to clearly include permits issued pursuant to either Section 34-32-110(1)(a)(III), C.R.S., (five acres or less of mining related disturbance) or Section 34-32-110(2), C.R.S., (less than ten acres of mining related disturbance) pursuant to SB 076 and to make the Rule easier to understand in accordance with Executive Order D 2012-002.

Rule 1.1(55) The definition of "Two Acre Limited Impact Operation" is revised to conform to the statutory requirements applicable to the mining operation and to clarify the definition in accordance with Executive Order D 2012-002.

Rule 1.1(55.1) The Subpart is added to incorporate the requirements of Section 34-32-110(1)(a), C.R.S., which now requires operators that have a permit to conduct Two Acre Limited Impact Operation bring those permits into compliance with the regulatory requirements of 110 permits.

Rule 1.4.1. The Rule is amended to conform the regulatory language regarding the requirement to demonstrate legal right of access in a permit application to the language enacted by the General Assembly in SB 076.

Rule 1.4.2. and Rule 1.4.6. These two Rules are amended to clarify that the existing requirements apply to both 110(1) and 110(2) permits.

Rule 1.11.3. The Subpart is repealed because the Board no longer issues permits for Two Acre Limited Impact Operations referenced in the subpart and there is no longer an ability to convert a Two Acre limited Impact Permit. Operators that currently operate under a Two Acre Limited Impact Permit must bring themselves into compliance as set forth in SB 076 and new Rule 1.1(55.1).

Rule 2.5.2. Rule 2.5.2. is amended to require a petitioner to submit its petition for declaratory order ten (10) days prior to the Board meeting at which the petitioner requests the Board hear its petition. Previously, the Rule required the petition for declaratory order to be submitted seven (7) days prior to the meeting. The change conforms the declaratory order requirements to the Board's meeting notice

requirements, which makes the Board's hearing notice requirements more consistent and easier to understand in accordance with Executive Order D 2012-002.

Rule 4.2.2. The Board's amendment of Rule 4.2.2. incorporates requirements adopted by the General Assembly in SB 076 for the financial warranties required for 110(1) permits. As well, the amended rule describes the process by which operators holding a Two Acre Limited Impact Permit can come into compliance with the newly adopted financial warranty requirements adopted in the General Assembly's enactment of SB 076.

Rule 4.2.5. The Rule is amended to delete a typographical error.

Rule 6.3. The primary purpose of Rule 6.3 is to set forth requirements an operator must include as exhibits with its application for a 110(1) or 110(2) permit. The Rule is amended to state that for 110(1) permits the Division and Board *may* require, on a site-specific basis, any or all of the exhibits listed in Rule 6.3. The Rule requires the exhibits listed to be included with an operator's application for a 110(2) permit.

The Board recognizes the intent of the General Assembly to create a simplified process for operators to secure a Limited Impact 110(1) permit and to that end the Board confirms its delegation of authority to the Division to determine, based on the Division's expert opinion, whether each exhibit listed in Rule 6.3 is required for a the operator's 110(1) permit application. To further simplify the 110(1) permit application process, the Board authorizes the Division to create expedited or simplified forms related to 110(1) permit applications. Such forms will allow for a more efficient and expedited 110(1) application submittal and review process.

Effective Date

The Board adopted the 110(1) Rules, which amend and clarify the Board's Rules, on January 15, 2015 and are effective twenty days after publication of the adopted 110(1) Rules in the Colorado Register.

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

NOTICE OF PUBLIC RULEMAKING HEARING

IN THE MATTER OF Amendments to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations, 2 CCR 407-1, regarding Limited Impact Mining Operations

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TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

The Colorado Mined Land Reclamation Board ("Board") will consider promulgation of new rules and amendments proposed by the Division of Reclamation, Mining and Safety ("Division") to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal and Designated Mining Operations, 2 CCR 407-1. Draft proposed new and amended rules are attached hereto as **Appendix A**. The Division seeks amendment to Rules 1.1, 1.4, 1.11, 2.5, 4.2, and 6.3, as outlined in the draft proposed rules and the draft Statement of Basis and Purpose attached hereto as **Appendix B.**

The Board will promulgate the new rules to implement amendments to Section 34-32-110, C.R.S., enacted by the passage of Senate Bill 14-076 creating a new category of Limited Impact Permits for mining operations that impact five (5) acres or less of surface area ("110(1) rules"). The 110(1) rules will also be promulgated to make certain Board rules are more consistent, effective, and efficient pursuant to Executive Order D 2012-002. The Board may also amend areas of the existing rules that need clarification, correction, or to reflect new information or current practice or procedure.

The Board's authority to promulgate the 110(1) rules is derived from Section 34-32-106(1)(c), C.R.S. (Board has the duty to develop and promulgate standards for land reclamation plans), Section 34-32-108(1), C.R.S. (Board has the authority to adopt and promulgate reasonable rules and regulations regarding administration of the Mined Land Reclamation Act) and Section 34-32-110(1), C.R.S (Board has authority to issue limited-impact mining permits for mining operations conducted on five acres or less).

NOTICE IS HEREBY GIVEN that the Board has scheduled the above entitled matter for a rulemaking hearing as follows:

Date:	Wednesday/Thursday, January 28-29, 2015.
Time:	Wednesday 9:00 a.m. or as soon thereafter as practical
Place:	Department of Natural Resources 1313 Sherman Street, Room 313 Denver, CO 80203

Public Participation. The Board encourages the public to participate in the rulemaking hearing by commenting on the proposed regulations. To participate in this rulemaking as a party, a person or organization must file a written request for party status with the Board that shall include the following information: (1) name of the applicant and their representative (if different); (2) the street address, electronic mail address, and telephone and facsimile numbers of the applicant or their representative; and (3) a brief summary of any policy, factual, or legal issues the applicant has with the proposed regulations.

Persons who do not desire party status, but would like to participate in the rulemaking process, will be able to make their views known to the Board either by submitting comments in writing in advance of the rulemaking hearing, or by speaking during the public comment period allotted during the hearing. Depending on the number of people seeking to make oral comments at the hearing, the Board may limit such comments. 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. The Board will consider all submissions. Persons or groups who would like to address the Board during the Rulemaking Hearing should notify the Board Secretary via e-mail at johnie.a.abad@state.co.us by January 14, 2015. An estimate of the time needed for comments must be included in the e-mail notice.

Written Comments, Prehearing Statements, Alternate Proposed Rules, Party Status. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Board for review prior to the hearing. Comments, prehearing statements, or alternate proposed rules shall be limited to five (5) pages, excluding exhibits, and shall succinctly summarize the factual and legal issues that arise from the rulemaking proposal and the submitting person's position on each issue.

Alternate proposed rules may only be considered by the Board if the subject matter of the alternate proposed rules is consistent with and fits within the subject matter and scope of the rulemaking hearing. Any alternate proposed rule must include the following information: (1) a clear statement of the alternate proposed rule; (2) a statement of the Board's authority to promulgate the alternate proposed rule; (3) a statement describing how the alternate proposed rule is consistent with and fits within the subject matter and scope of the proposed rulemaking and (4) a clear and concise statement of the basis and purpose for the alternate proposed rule.

Request for Party status and all comments, prehearing statements, or alternate proposed language must be received by January 14, 2015.

Filings by parties and interested persons must be submitted to the Board in hard copy and electronic copy as follows:

(1) the original and fifteen (15) hard copies delivered via first-class mail to Johnie Abad, Board Secretary, 1313 Sherman Street, Room 215, Denver, Colorado, 80203; and

(2) an electronic copy emailed, in portable document format (*.pdf*), to *johnie.a.abad@state.co.us* for posting to the Division website.

The Board may take actions, including without limitation, modifying or amending the existing rules described or proposed herein and making conforming modifications to other rules, which it determines are reasonably necessary.

In accordance with the Americans with Disabilities Act, if any party requires special accommodations as a result of a disability for this hearing, please contact Johnie Abad at (303) 888-3567 ext. 8136, prior to the hearing and arrangements will be made. Copies of the current and proposed Rules are available on the Division internet homepage at *http://mining.state.co.us* or available upon request at the Division Office.

MINED LAND RECLAMATION BOARD
OF THE STATE OF COLORADO

Johnie Abad, Board Secretary

Notice of Rulemaking Hearing

Tracking number

2014-01252

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-2

Rule title

CORPORATE ISSUES

Rulemaking Hearing

Date

01/15/2015

Time

01:30 PM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

2-5-1 CONSUMER GOODS SERVICE CONTRACT PROVIDER REGISTRATION

Statutory authority

10-1-109 and 10-4-1609(5)

Contact information

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance
3 CCR 702-2

CORPORATE ISSUES

Proposed New Regulation 2-5-1

CONSUMER GOODS SERVICE CONTRACT PROVIDER REGISTRATION

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109 and 10-4-1609(5), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish the requirements for the registration of providers of service contracts pursuant to the requirements of § 10-4-1604, C.R.S.

Section 3 Applicability

This regulation shall apply to all providers of service contracts sold in the state of Colorado, except those specifically excluded in § 10-4-1602, C.R.S.

Section 4 Definitions

A. "Provider", for the purposes of this regulation, shall have the same meaning as found at § 10-4-1601(9), C.R.S.

B. "Service contract", for the purposes of this regulation, shall have the same meaning as found at § 10-4-1601(14), C.R.S.

Section 5 Registration Requirements

A. Providers of service contracts shall register with the Commissioner in accordance with the requirements of § 10-4-1603(9)(b), C.R.S.

B. The requirement to register shall be fulfilled by a provider of service contracts by:

1. Submitting the Consumer Goods Service Contract Provider Registration Form found at Appendix A of this regulation to the Division; and

2. Submitting a complete copy of:

a. The reimbursement insurance policy issued by a licensed insurer insuring all service contracts; OR

b. Submitting the a copy of the provider's or provider's parent company's most recent Form 10-K or Form 20-F that has been filed with the federal securities and exchange commission, or, if the company does not file with the federal securities and exchange commission, a copy of the company's audited financial statements showing the provider or its parent company has a net worth of at least one hundred million dollars; and

3. One original fully executed Uniform Consent to Service of Process form (NAIC form 12).

C. If there is any change to the information contained in the Consumer Goods Services Contract Provider Registration form, the provider must update its registration information within thirty (30) days of the change. The update shall include all information provided in subsection B. above.

D. Providers of service contracts registering with the Commissioner shall pay a fee in the amount of $500 upon registration, and annually thereafter, to defray the cost for processing and maintaining the registration information, pursuant to the requirements found at § 10-4-1603(9)(b)(II), C.R.S.

E. Registration must be renewed annually by March 31 of each subsequent year after initial registration.

Section 6 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected

Section 7 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 Effective Date

This regulation shall become effective March 15, 2015.

Section 9 History

New regulation effective March 15, 2015.

Appendix A: Consumer Goods Service Contract Provider Registration Form (§10-4-1603 C.R.S)

Due March 31, Annually Year _____

Legal Name of Service Contract Provider:
D.B.A. (if applicable):
FEIN #:

Applicant's state of domicile and date of incorporation:
Corporate Address:

Contact Person:
Title:
Telephone number:
Email Address:

Service of Process Agent Name: (Submit a completed Service of Process form as an attachment to this Application)

Administrator Name and Contact Person (if applicable):
Administrator Telephone number and email address:

The Provider must meet one of the following requirements in order to qualify as a Service Contract Provider:

1) Does the Provider have a reimbursement insurance policy issued by a licensed insurer insuring all service contracts? Yes _____ No _____ If yes, please provide the following:

   a.) Name of Insurer and NAIC#:
   b.) Insurance Policy Number and Policy Period:
   c.) Attach a copy of the complete policy.

   Or

2) Does the Provider maintain, or together with its parent maintain, a net worth or stockholders' equity of at least one hundred million ($100,000,000) dollars? Yes _____ No _____ If yes, provide either:

   a.) A copy of Applicant's most recent Form 10-K, Form 20-F, **or**
   b.) A copy of the Applicant's most recent audited financial statements, **or**
   c.) A copy of the parent company's most recent Form 10-K or Form 20-F or parent company's audited financial statements, **and**
   d.) A guarantee agreement from the parent company which guarantees the obligation of the provider relating to service contracts sold by the provider in this state.

I hereby certify that all of the information contained in this application and its attachments is true and complete. I acknowledge that providing false and misleading information in the application, or omitting pertinent or material information in connection with this registration application is sufficient grounds for administrative action by the commissioner and potentially, applicable civil penalties.

Signature: Title:
Printed Name: Date:
Note: If any of the information provided on this form changes, the applicant must provide a written notice to the Commissioner within 30 days after the change.

Please send the $500.00 check payable to:
Colorado Division of Insurance
Attn: Cash Management
1560 Broadway, Suite 850
Denver, CO 80202

Email inquiries to: **DORA_INS_CORPORATEAFFAIRS@STATE.CO.US**

Uniform Consent to Service of Process NAIC Form 12 can be found at:
http://www.naic.org/documents/industry_ucaa_form12.pdf

Notice of Rulemaking Hearing

Tracking number

2014-01253

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

01/15/2015

Time

01:30 PM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

4-2-42 CONCERNING ESSENTIAL HEALTH BENEFITS

Statutory authority

10-1-109, 10-16-103.4 and 10-16-109

Contact information

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

~~New~~ ~~Proposed~~ Amended Regulation 4-2-42

CONCERNING ESSENTIAL HEALTH BENEFITS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-16-103.4 and 10-16-109, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish rules for the required inclusion of the essential health benefits in individual and small group health benefit plans in accordance with Article 16 of Title 10 of the Colorado Revised Statutes, and the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010) and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010), together referred to as the "Affordable Care Act" (ACA). ~~This regulation replaces emergency regulation E-13-06 in its entirety.~~

Section 3 Applicability

This regulation shall apply to all carriers offering individual and small group health benefit plans subject to the individual and group laws of Colorado and the requirements of the ACA. The requirements of this regulation do not apply to grandfathered health benefit plans.

Section 4 Definitions

A. "Actuarial value" and "AV" means, for the purposes of this regulation, the percentage of total average costs for covered benefits that a plan will cover, with calculations based on the provision of essential health benefits to a standard population.

B. "AV calculator" means, for the purposes of this regulation, the publicly available actuarial value (AV) calculator developed by the U.S. Department of Health and Human Services (HHS) and available electronically on the Center for Consumer Information & Insurance Oversight (CCIIO) website.

C. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.

D. “Catastrophic plan” shall have the same meaning as found at § 10-16-102(10), C.R.S.

E. “Essential health benefits” and “EHB” shall have the same meaning as found at § 10-16-102(22), C.R.S.

F. “Essential health benefits package” shall have the same meaning as found at § 10-16-102(23), C.R.S.

G. “Exchange” shall have the same meaning as found at § 10-16-102(26), C.R.S.

H. “Federal law” shall have the same meaning as found at § 10-16-102(29), C.R.S.

I. “Grandfathered health benefit plan” shall have the same meaning as found at § 10-16-102(31), C.R.S.

J. “Habilitative services” means, for the purposes of this regulation, services that help a person retain, learn or improve skills and functioning for daily living that are offered in parity with, and in addition to, any rehabilitative services offered in Colorado’s EHB benchmark plan.

K. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.

L. “Premium adjustment percentage” means, for purposes of this regulation, the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance, as published in the annual HHS “Notice of benefits and payment parameters.”

Section 5 Essential Health Benefits

A. Carriers offering non-grandfathered individual and small group health benefit plans inside or outside of the Exchange must include the essential health benefits package.

1. Carriers must provide benefits that are substantially equal to Colorado’s EHB-benchmark plan in the following ten (10) categories:

a. Ambulatory patient services, which must include, at a minimum:

(1) Primary care to treat an illness or injury;

(2) Specialist visits;

(3) Outpatient surgery;

(4) Chemotherapy services;

(5) Radiation therapy;

(6) Home infusion therapy;

(7) Home health care;

(8) Outpatient diagnostic laboratory, x-ray, and pathology services;

(9) Sterilization;

(10) Treatment of cleft palate and cleft lip conditions; and

(11) Oral anti-cancer medications.

b. Emergency services, which must include, at a minimum:

(1) Emergency room – facility and professional services;

(2) Ambulance services; and

(3) Urgent care treatment services.

c. Hospitalization services, which must include:

(1) Inpatient medical and surgical care;

(2) Organ and tissue transplants (transplants may be limited to specified organs);

(3) Chemotherapy services;

(4) Radiation services;

(5) Anesthesia services; and

(6) Hospice care.

d. Laboratory and radiology services, which must include:

(1) Laboratory tests, x-ray, and pathology services; and

(2) Imaging and diagnostics, such as MRIs, CT scans, and PET scans.

e. Maternity and newborn care services, including state and federally required benefits for hospital stays in connection with childbirth, which must include:

(1) Pre-natal and postnatal care;

(2) Delivery and inpatient maternity services; and

(3) Newborn well child care.

f. Mental health, substance abuse disorders, and behavioral health treatment services rendered on an inpatient or outpatient basis, which must include:

(1) Benefits for treating alcoholism and drug dependency;

(2) Benefits for mental health services;

(3) Behavioral health treatment;

(4) Benefits for biologically based mental illness and mental disorder treatment that are no less extensive than the coverage provided for a physical illness, pursuant to § 10-16-104(5.5), C.R.S.; and

(5) Outpatient hospital and physician services.

g. Pediatric services, which must include:

(1) Preventive care services;

(2) Immunizations;

(3) One (1) comprehensive routine eye exam per year, to age nineteen (19);

(4) Routine hearing exams to age nineteen (19);

(5) Hearing aids to age eighteen (18), pursuant to § 10-16-104(19), C.R.S.; and

(6) Children's dental anesthesia, pursuant to § 10-16-104(12), C.R.S.

h. Prescription drugs, which must include:

(1) Retail services;

(2) Mail services (home delivery);

(3) Contraceptive services; and

(4) To meet the EHB requirement for prescription drug benefits, carriers must offer coverage that includes at least the greater of:

(a) One (1) drug in every United States Pharmacopeia (USP) category and class; or

(b) The same number of prescription drugs in each category and class as the EHB-benchmark plan.

i. Preventive services~~, listed in Attachment 1,~~ required by state and/or federal mandate, including age-appropriate immunizations and vaccines in accordance with the recommendations of the Advisory Committee on Immunization Practices (ACIP), which are not subject to deductibles, copayments, or coinsurance.

j. Rehabilitative and habilitative services and devices, which must include:

(1) No ~~more~~ less than twenty (20) visits per calendar year, per therapy, for physical, speech, and occupational therapy for:

(a) ~~h~~Habilitative services; and

(b) ~~r~~Rehabilitative services.

Habilitative and rehabilitative service visits are cumulative, such that a carrier must provide, at a minimum, no less than sixty (60) visits for habilitative services, and no less than sixty (60) visits for rehabilitative services per calendar year.

(2) Cardiac rehabilitation services;

(3) Pulmonary rehabilitation services;

(4) Durable medical equipment;

(5) Arm and leg prosthetics;

(6) Inpatient and outpatient habilitative services;

(7) ~~Up to~~ No less than one hundred (100) days of skilled nursing services annually;

(8) No less than ~~Up to~~ two (2) months of inpatient rehabilitation annually, and no less than sixty (60) days for plans issued or renewed on or after January 1, 2016;

(9) Autism spectrum disorder services; and

(10) Physical, occupational, and speech therapy for congenital defects for children up to age six (6), as required by § 10-16-104(1.7), C.R.S.

2. Carriers seeking to include pediatric dental EHB coverage within a health benefit plan, or carriers offering a stand-alone pediatric dental plan that meets EHB requirements, must include the following eligible services, subject to plan benefit limitations, in order to meet the EHB requirements for pediatric dental coverage:

a. Diagnostic and preventive procedures, which must include:

(1) Oral exams and evaluations;

(2) Full mouth, intra-oral, and panoramic x-rays;

(3) Bitewing x-rays;

(4) Routine cleanings;

(5) Fluoride treatments;

(6) Space maintainers;

(7) Sealants; and

(8) Palliative treatment.

b. Basic restorative services, which must include:

(1) Amalgam fillings;

(2) Resin and composite filings;

(3) Crowns;

(4) Pin retention; and

(5) Sedative fillings.

c. Oral surgery, consisting of extractions.

d. Endodontics, consisting of:

(1) Surgical ~~periodontal~~ services; and

(2) Root canal therapy.

e. Medically necessary orthodontia and medically necessary prosthodontics for the treatment of cleft lip and cleft palate.

f. Implants, denture repair and realignment, dentures and bridges, non-medically necessary orthodontia, and periodontics are not considered a part of the pediatric dental EHB.

3. Carriers must limit cost-sharing for EHB coverage in accordance with state and federal law.

a. ~~Annual deductibles in the small group market for plans covering single individuals are limited to $2,000, and $4,000 in the case of family plans.~~

~~(1) Carriers may exceed the annual deductible limit only if the plan cannot reasonably reach an actuarial value for a given level of coverage; and~~

~~(2) Carriers must provide a justification for the reasons the annual limit was exceeded, signed by an actuary.~~

~~(3) For plan years after 2015, the annual deductible limit may only be increased to the extent it matches the annual premium adjustment percentage for individuals, and no more than twice the individual amount for family plans. Increases in annual deductibles must be in multiples of fifty (50) dollars, and if not, must be rounded to the next lowest multiple of fifty (50) dollars.~~

~~b.~~ Cost-sharing (or maximum out-of-pocket limits) for individual and small group plans must not exceed the annual out-of-pocket limit set by federal law. ~~For the 2014~~5 plan year, this limit is ~~$6,350~~600 for self-only coverage, and ~~$12,700~~13,200 ~~for family coverage.~~ For managed care plans, out-of-network deductibles and out-of-pocket maximums do not count toward these cost sharing limits.

~~c.~~b. For plan years after ~~2014~~2015, cost sharing limits for individual and small group plans may not be increased beyond the annual premium adjustment percentage for individuals, and no more than twice the individual amount for family plans. Increases in annual deductibles must be in multiples of fifty (50) dollars, and if not, must be rounded to the next lowest multiple of fifty (50) dollars.

~~d~~c. Cost-sharing (or maximum out-of-pocket limits) for stand-alone pediatric dental plans must not exceed the annual out-of-pocket limit set by federal law. ~~For the 2014~~5 plan year, this limit is ~~$700~~350 for a single-child plan, and ~~$1,400~~700 for a plan that covers two or more children. ~~For managed care plans, out-of-network deductibles and out-of-pocket maximums do not count toward these cost sharing limits.

ed. The Division will annually publish the federally established annual premium adjustment percentages and annual out-of-pocket limits for medical and dental plans, as determined by HHS, ~~including guidance as to how it will be applied to stand-alone pediatric dental plans~~.

~~f. For plan years after 2014, the Division will determine what, if any, increase to the 2014 annual cost-sharing limitation for stand-alone pediatric dental plans will be considered reasonable.~~

4. Carriers must offer health benefit plans that meet state and federally defined levels of coverage.

   a. Carriers must offer plans that meet at least one (1) of the following metal tiers of coverage:

      (1) Bronze level: benefits actuarially equivalent to sixty percent (60%) of the full actuarial value of the benefits provided under the plan;

      (2) Silver level: benefits actuarially equivalent to seventy percent (70%) of the full actuarial value of the benefits provided under the plan;

      (3) Gold level: benefits actuarially equivalent to eighty percent (80%) of the full actuarial value of the benefits provided under the plan; or

      (4) Platinum level: benefits actuarially equivalent to ninety (90%) of the full actuarial value of the benefits provided under the plan.

   b. Carriers are allowed a de minimis range of +/- two percentage (2%) points for each metal tier.

   c. Carriers offering health benefit plans at any of the levels of coverage listed in Section 5.A.4.a. of this regulation must offer child-only plans at that same level.

   d. Carriers may offer a catastrophic ~~individual health benefit~~ plan that does not provide a bronze, silver, gold, or platinum level of coverage to certain qualified individuals.

5. Benefits that are excluded from EHB, even though they may be covered by the EHB-benchmark plan, include:

   a. Routine non-pediatric dental services;

   b. Routine non-pediatric eye exam services;

   c. Long-term/custodial nursing home care benefits; and

   d. Non-medically necessary orthodontia.

6. Although the EHB-benchmark plan provides coverage for abortion services, no health benefit plan must cover such services as part of the requirement to cover EHB.

7. Carriers offering stand-alone non-pediatric dental plans that are offered in conjunction with a health benefit plan, or are offered as a stand-alone policy, need not comply with the requirements of Section 5.A.2. of this regulation.

B. Carriers must use actuarial value (AV) to determine the level of coverage of a health benefit plan. The AV is the percentage of total average costs for covered benefits that a plan will cover, and must be calculated based on the provision of EHB to a standard population.

1. For standard plan designs, carriers must use the AV calculator developed by the HHS to determine AV.

2. Carriers offering plans with benefit designs that cannot be accommodated by the AV calculator may alternatively:

a. Decide how to adjust the plan's benefit design (for calculation purposes only) to fit the parameters of the calculator, and have a member of the American Academy of Actuaries certify that the methodology to fit the parameters of the AV calculator was in accordance with generally accepted actuarial principles and methodologies; or

b. Use the AV calculator for the plan design provisions that correspond to the parameters of the calculator, and have a member of the American Academy of Actuaries calculate appropriate adjustments to the AV as determined by the AV calculator for the plan design features that deviate substantially, in accordance with generally accepted actuarial principles and methodologies.

C. Substitution of Benefits

1. Carriers are permitted to substitute EHB if the following conditions are met:

a. The substituted benefit must be actuarially equivalent to the benefit that is being replaced. Carriers must submit evidence of actuarial equivalence that is:

(1). Certified by a member of the American Academy of Actuaries;

(2). Based on an analysis performed in accordance with generally accepted actuarial principles and methodologies;

(3). Based on a standardized population; and

(4). Determined regardless of cost-sharing.

b. A benefit substitution may be made only within the same EHB category (substitutions across categories are not permitted); and

c. Prescription drug benefits cannot be substituted.

D. Prohibition on Discrimination

1. Carriers may not offer benefit plans that, either through their design or implementation, discriminate based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other medical conditions.

2. Carriers may not discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation.

3. Carriers may not offer plans with benefit designs that have the effect of discouraging the enrollment of individuals with significant health needs.

E. Drug/Formulary Review

Carriers must submit their formulary~~y~~ies to the Division annually, by June 30 of each year. If the formulary changes by more than five percent (5%) in a calendar year, the carrier must submit a filing to the Division ~~of Insurance~~ supporting it has the required number of drugs in each category to comply with the EHB requirement.

F. A carrier offering individual or small group health benefit plans that provide EHBs shall not impose annual and lifetime dollar limits on those benefits.

Section 6 ~~Incorporation by Reference~~ Preventive Services Requirements

~~The United States Preventative Services Task Force "USPSTF A and B Recommendations," published by the United States Preventative Services Task Force shall mean "USPSTF A and B Recommendations" as published on the effective date of this regulation and does not include later amendments to or editions of the "USPSTF A and B Recommendations." The United States Preventative Services Task Force "USPSTF A and B Recommendations" may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the United States Preventative Services Task Force Website at http://www.uspreventiveservicestaskforce.org/uspstf/uspsabrecs.htm. Certified copies of the United States Preventative Services Task Force "USPSTF A and B Recommendations" are available from the Colorado Division of Insurance for a fee.~~

A. The Division shall publish, by bulletin, the list of covered preventive services in accordance with:

1. The "USPSTF A and B Recommendations," published by the United States Preventive Services Task Force (USPSTF);

2. The preventive services mandated by Colorado statute;

3. The women's preventive service guidelines published by the Health Resources and Services Administration (HRSA) in the U.S. Department of Health and Human Services; and;

B. Carriers must provide coverage for any new preventive service receiving a USPSTF A or B recommendation no later than the plan year that begins on or after one (1) year after the date the recommendation is issued

C. The Division shall review this bulletin no less frequently than annually to determine if amendments are required. If it is determined that amendments are required, any changes made to the list of covered preventive services will be incorporated to include:

1. New preventive services added to Colorado statute;

2. New A or B recommendations or changes to existing preventive service recommendations adopted by the USPSTF; and/or

3. New guidelines or changes to existing guidelines published by HRSA.

Section 7 ~~Severability~~ Incorporation by Reference

The age-appropriate immunization and vaccine schedules as recommended by the Advisory Committee on Immunization Practices, as published by the Advisory Committee on Immunization Practices shall mean age-appropriate immunization and vaccine schedules as published on the effective date of this regulation and does not include later amendments to or editions of the age-appropriate immunization and vaccine schedules The age-appropriate immunization and vaccine schedules as recommended by the Advisory Committee on Immunization Practices may be examined

during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the Advisory Committee on Immunization Practices Website at http://www.cdc.gov/vaccines/schedules/hcp/index.html. Certified copies of the age-appropriate immunization and vaccine schedules as recommended by the Advisory Committee on Immunization Practices are available from the Colorado Division of Insurance for a fee.

Section ~~7~~8 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section ~~8~~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 ~~9~~10 Effective Date

This regulation shall become effective on ~~October 1, 2013~~ March 15, 2015.

Section ~~10~~11 History

~~Original~~ ~~r~~Regulation effective October 1, 2013.
Amended regulation effective March 15, 2015.

Attachment 1

Covered Preventive Services [1]	
All Persons	Chicken pox vaccination for all persons who have not had chicken pox.
	Colorectal screening for all high risk individuals, regardless of age. [1a]
	Immunizations in accordance with the Immunization Schedules of the Advisory Committee on Immunization Practices that have been adopted by the Director of the Centers for Disease Control and Prevention: for children age 0 to 6 years, for children age 7 to 18 years, a "catch-up" schedule for children and for adults. [4]
	Syphilis screening for all adults at increased risk. [4]
Females	Full cost of cervical cancer vaccine. [1b]
	Screening for chlamydial infection: all sexually active women aged 24 and younger and for older females who are at an increased risk. [4]
	Screening for chlamydial infection: all pregnant women aged 24 and younger and for older pregnant females who are at an increased risk. [4]
	Cervical cancer screening for all sexually active females with a cervix. [4]
	Screening for iron deficiency anemia in asymptomatic pregnant females. [4]
	Screening for asymptomatic bacteriuria with urine culture for pregnant females at 12 to 16 weeks gestation or at first prenatal visit, if later. [4]
	Screening for hepatitis B virus (HBV) for pregnant females at first prenatal visit. [4]
	Rh(D) blood typing and antibody testing for all pregnant females during first prenatal visit and repeated Rh(D) antibody testing for all unsensitized Rh(D) negative females at 24 28 weeks' gestation. [4]
	Syphilis screening for all pregnant females. [4]
	Pregnant females: Augmented, pregnancy tailored tobacco counseling. [4]
	Annual well woman visits. [4, 5]
	Screening for gestational diabetes for pregnant women between 24 and 28 weeks of gestation and at first prenatal visit for pregnant women identified to be at high risk for diabetes. [4]
	Breastfeeding support, supplies, and counseling. [4, 6]
	Annual counseling for sexually transmitted infections for all sexually active women. [4]
	Annual counseling and screening for human immune deficiency virus infection for all sexually active women. [4]

	High risk human papillomavirus testing DNA testing in women with normal cytology results: screening to begin at age 30 and occur no more frequently than every 3 years.[4]
	Annual screening and counseling for interpersonal and domestic violence.[4]

All Children (Age 0-18 years)	Immunizations, including the influenza and pneumococcal vaccinations pursuant to the schedule established by the ACIP.[1c, 4] Immunization deficient children are not bound by "recommended ages".
	Ages 12 to 18 years: screening for major depressive disorder.[4]
	Under age 5: Screening to detect amblyopia, strabismus, and visual acuity defects.[4]
	Oral fluoride supplementation for preschool children older than 6 months of age whose primary water source is deficient in fluoride.[4]
Age 0-12 months	1 newborn home visit during first week of life if newborn released from hospital less than 48 hours after delivery.
	Newborns: Screening for hearing loss.[4]
	Newborns: Screening for sickle cell disease.[4]
	Newborns: Screening for phenylketonuiria (PKU).[4]
	Newborns: Prophylactic ocular topical medication against gonococcal ophthalmia neonatorum.[4]
	Newborns: Screening for congenital hypothyroidism (CH).[4]
	6 well-child visits.[2]
	Ages 6 to 12 months: Routine iron supplementation for asymptomatic children who are at increased risk for iron deficiency anemia.[4]
Age 13-35 months	3 well-child visits.
Age 3-6	4 well-child visits.
	Age 6: Obesity screening and comprehensive, intensive behavioral interventions.[4]
Age 7-12	4 well-child visits.
	Obesity screening and comprehensive, intensive behavioral interventions.[4]
Age 13-18	1 age appropriate health maintenance visit [3] every year.
	1 Td[4]
	Females: screening pap smears not to exceed 1 per year.

	1 hepatitis B vaccination if not given previously.[4]
	Obesity screening and comprehensive, intensive behavioral interventions.[4]
	Sexually Transmitted Infection (STI) prevention counseling for all sexually active adolescents.[4]
	HIV screening for all adolescents at increased risk and all pregnant females.[4]
	Females: Screening for gonorrhea infection for all sexually active females, including pregnant females, at increased risk.[4]
Age 18 and older	Tobacco use screening and tobacco cessation interventions by any provider furnishing primary care services to the patient in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
	Alcohol misuse screening and behavioral counseling interventions by any provider furnishing primary care services to the patient in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
	Obesity screening and intensive counseling and behavioral interventions.[4]
	Females: HIV screening for all pregnant females.[4]
	Sexually Transmitted Infection (STI) prevention counseling for adults at higher risk.[4]
	Blood pressure screening.[4]
	Depression screening.[4]
	Type 2 diabetes screening in asymptomatic adults with sustained with blood pressure (either treated or untreated) greater than 135/80 mm Hg.[4]
	Diet counseling for adults with hyperlipidemia and at higher risk for cardiovascular and diet-related chronic disease. Intensive counseling can be delivered by primary care providers or by referrals to other specialists, such as dieticians or nutritionists.[4]
	HIV screening for all adults at increased risk and all pregnant females.[4]
	Females: Screening for gonorrhea infection for all sexually active females, including pregnant females, at increased risk.[4]
	Females: Referral for genetic counseling and evaluation for BRCA testing for females whose family history is associated with an increased risk for deleterious mutations in *BRCA1* or *BRCA2* genes.[4]
	Females: Breast cancer chemoprevention counseling.[4]
	Females: Folic acid supplements for all females planning or capable of pregnancy.[4]

Age 19-39	1 Td every ten years.[4]
	1 age appropriate health maintenance visit every three years.
	Influenza and pneumococcal vaccinations pursuant to the schedule established by the ACIP.[1c, 4]
	Females: screening pap smears not to exceed 1 per year.[7]
	Males ages 20-34: Screening for lipid disorders if at an increased risk for coronary heart disease in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
	Males ages 35-39: Screening for lipid disorders in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
	Females ages 20-39: Screening for lipid disorders if at an increased risk for coronary heart disease in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
Age 40-64	1 Td every ten years.[4]
	Influenza and pneumococcal vaccinations pursuant to the schedule established by the ACIP.[1c, 4]
	Adults ages 50-64: Colorectal screening in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
	1 age appropriate health maintenance visit every 24 months.
	Females ages 40-64: 1 screening mammogram, with or without clinical breast exam, every 1 to 2 years (annually, if high risk).[4]
	Females: screening pap smears not to exceed 1 per year.[7]
	Males: Screening for lipid disorders in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
	Females: Screening for lipid disorders if at an increased risk for coronary heart disease in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
	Females ages 55-64: Aspirin therapy.[4]
	Females ages 60-64: Routine osteoporosis screening for females at increased risk for osteoporotic fractures.[4]
	Males: Prostate screening as specified in state law.
	Males ages 45-64: Aspirin therapy.[4]
Age 65 and older	Influenza and pneumococcal vaccinations pursuant to the schedule established by the ACIP.[1c, 4]
	Females: screening pap smears not to exceed 1 per year.
	1 Td every ten years.[4]

	1 age appropriate health maintenance visit every year.
	Males: Screening for lipid disorders in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
	Females: Screening for lipid disorders if at an increased risk for coronary heart disease in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
	Females: 1 screening mammogram, with or without clinical breast exam, every 1 to 2 years (annually, if high risk).[4]
	Females ages 65-79: Aspirin therapy.[4]
	Females: Routine osteoporosis screening.[4]
	Adults ages 65-75: Colorectal screening in accordance with the "A" or "B" recommendations of the U.S. Preventive Services Task Force.[4]
	Males: Prostate screening as specified in state law.
	Males ages 65 to 75: One-time screening for abdominal aortic aneurysm (AAA) by ultrasonography for males who have ever smoked.[4]
	Males ages 65-79: Aspirin therapy.[4]

1 Not all preventive services and screenings are specifically listed, but the list is considered to include all services and screenings deemed to be preventive by the Federal Department of the Treasury for HSA (health savings account) compliant plans and coverage includes all preventive services as set forth in § 10-16-104(18), C.R.S., in accordance with "A" and "B" recommendations of the U.S. Preventive Services Task Force, or any successor organization, sponsored by the Agency for Healthcare Research and Quality, the health services research arm of the federal Department of Health and Human Services. That list of recommendations can be found at the United States Preventative Services Task Force Website at http://www.uspreventiveservicestaskforce.org/uspstf/uspsabrecs.htm

1a Colorectal screening shall be provided to all individuals who are at a high risk for colorectal cancer including covered persons who have a family medical history of colorectal cancer; a prior occurrence of cancer or precursor neoplastic polyps; a prior occurrence of a chronic digestive disease condition such as inflammatory bowel disease, Crohn's disease, or ulcerative colitis; or other predisposing factors as determined by the provider.

1b Age limitations as recommended by the U.S. Department of Health and Human Services' Advisory Committee on Immunization Practices.

1c "ACIP" means the Advisory Committee on Immunization Practices to the Centers for Disease Control and Prevention in the federal Department of Health and Human Services.

2 "Well-child visit" means a visit to a primary care provider that includes the following elements: age appropriate physical exam (but not a complete physical exam unless this is age appropriate), history, anticipatory guidance and education (e.g., examine family functioning and dynamics, injury prevention counseling, discuss dietary issues, review age appropriate behaviors, etc.), and growth and development assessment. For older children, this also includes safety and health education counseling. The schedule of these visits, through age 12, is based on the recommendations of the American Academy of Pediatrics.

3 "Age appropriate health maintenance visit" means an exam which includes the following components: age appropriate physical exam (but not a complete physical exam unless this is age appropriate), history, anticipatory guidance and education (e.g., examine family functioning and dynamics, discuss dietary issues, review health promotion activities of the

patient, etc.), and exercise and nutrition counseling (including folate counseling for women of child bearing age).

4 In-network providers: These services are not subject to any cost-sharing requirements (copay, deductible, or coinsurance). If the service or item is not billed separately from an office visit and the primary purpose of the office visit is the delivery of such item or service, then no office visit copay or other cost-sharing requirement can be imposed. If the service or item is not billed separately from the office visit and the primary purpose of the office visit is not the delivery of the service or item, then the office visit copay or cost-sharing requirement can be imposed on the office visit charge. If the service or item is billed separately from an office visit, then the office visit copay or other applicable cost-sharing requirement can be imposed with respect to the office visit charge.

Out-of-network providers: These services can be subject to the plan's out-of-network cost-sharing requirements.

5 Annual visits, though several visits may be needed to obtain all necessary recommended preventive services, depending on a woman's health status, health needs, and other risk factors.

6 Comprehensive lactation support and counseling, by a trained provider during pregnancy and/or in the postpartum period, and costs for renting breastfeeding equipment.

Notice of Rulemaking Hearing

Tracking number

2014-01247

Department

700 - Department of Regulatory Agencies

Agency

709 - Division of Professions and Occupations - Board of Dental Examiners

CCR number

3 CCR 709-1

Rule title

DENTISTS & DENTAL HYGIENISTS

Rulemaking Hearing

Date

01/22/2015

Time

09:30 AM

Location

1560 Broadway; Denver, CO 80202; Conference Room 1250 C

Subjects and issues involved

The Colorado Dental Board has drafted proposed amendments to its rules in order to implement House Bill 14-1227, which went into effect on July 1, 2014.

Statutory authority

Section 12-35-107(1)(b), C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

Colorado Dental Board ~~of Dental Examiners~~

DENTISTS & DENTAL HYGIENISTS

3 CCR 709-1

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

Rule I. Definitions

(Amended December 2, 2002; Amended and Re-numbered November 2, 2011, Effective December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

A. Unless otherwise noted, all statutory references are to the Colorado Revised Statutes (C.R.S.) ~~12~~ 12-~~35~~ 35-101, et seq., as amended.

B. The Board hereby incorporates by reference~~s~~ all definitions as contained in section ~~12~~ 12-~~35~~ 35-103, C.R.S., as amended.

C. "Regularly announced office location" as specified in ~~CRS~~ section 12-35-128(3)(d)(II), C.R.S., means those offices of which a dentist or a dental hygienist is the proprietor and in which he ~~or/~~ she regularly practices dentistry or dental hygiene. This may include the occasional practice in other health care facilities such as hospitals, nursing homes, and/or other facilities under the jurisdiction of the Colorado Department of Public Health and Environment.

D. "Regularly" means fixed intervals or periods ~~or as stated in Rule I.C~~as used in these rules.

E. "Certify or Certification" means to declare in writing on the patient's record.

F. "Doctor's Office Notes" as used in ~~C.R.S.~~section 25-1-802, C.R.S., and applied to dental and dental hygiene practice means a separate record within the patient's file that does not contain anything that relates to or constitutes diagnosis, treatment plan, radiograph interpretation, treatment progress or outcome. All such clinical information is considered the treatment record or progress notes.

G. "Local Therapeutic Agents" as used in these rules means any agent approved for use by the Food and Drug Administration (FDA) utilized in controlled drug delivery systems in the course of periodontal pocket treatment.

H. "Unprofessional Conduct" as used in section 12-35-129.2(5), C.R.S., means any cause that is considered grounds for disciplinary action pursuant to section 12-35-129(1), C.R.S., of the "Dental Practice Act" and the requirements of the "Healthcare Professions Profiling Program pursuant to section 24-34-110, C.R.S.

Rule II. Financial Responsibility Exemptions

(Amended December 2, 2002; Amended and Re-numbered November 2, 2011, Effective December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

Financial liability requirements pursuant to sections 13-64-301(1)(a)~~, C.R.S.~~ and 12-35-~~127(4)~~141, C.R.S., do not apply to dentists and dental hygienists who are public employees of the state of Colorado

under the Colorado Governmental Immunity Act, as well as the following:

A. A dentist or dental hygienist who performs dental services exclusively as an employee of the United States government.

B. A dentist or dental hygienist who holds an inactive license.

C. A dentist or dental hygienist who holds a retired license.

D. A dentist who holds an active license and does not engage in any patient care within Colorado or any of the acts as defined by ~~C.R.S.~~sections 12-35-103(5) and 12-35-113, C.R.S., including but not limited to the prescribing of medications, diagnosis, and development of a treatment plan, or a dental hygienist who holds an active license and does not engage in any patient care within Colorado or any of the acts as defined by ~~C.R.S.~~sections 12-35-103(4), 12-35-103(4.5), 12-35-124, 12-35-125, and 12-35-128, C.R.S.

E. A dentist or dental hygienist who provides uncompensated dental care and who does not otherwise engage in any compensated patient care whatsoever.

Rule III. Licensure of Dentists and Dental Hygienists

(Amended December 2, 2002; Amended on Emergency Basis July 7, 2004; Re-Promulgated August 11, 2004; Amended April 22, 2009; Amended October 21, 2009, Effective December 30, 2009; Amended November 2, 2011, Effective December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

A. General Requirements for ~~Dentists and Dental Hygienists~~Licensees and Applicants

1. Any person who practices or offers or attempts to practice dentistry or dental hygiene without an active license issued under the Dental Practice ~~Law of Colorado~~Act or Board ~~Rules~~ rules commits a class 2 misdemeanor for the first offense and a class 6 felony for the second or any subsequent offense.

2. Any notification by the Board to a licensee or applicant, required or permitted, under section 12-35-101, et seq., C.R.S., or the State Administrative Procedure Act, found at section 24-4-101, et seq., C.R.S., shall be served personally or by first class mail to the last address of record provided in writing to the Board. Service by mail shall be deemed sufficient and proper upon a licensee or applicant.

Licensees

3. Physical or mental illness requirements

a. If a dentist, including an academic dentist, or dental hygienist has a long-term (more than 90 days) physical illness/condition, or a debilitating mental illness/condition that renders the licensee unable to practice dentistry or dental hygiene with reasonable skill and safety to patients, the licensee shall notify the Board of the illness or condition within 30 days and submit, within 60 days, a letter from his/her treating medical or mental health provider describing:

i. The condition(s),

ii. The impact on his/her ability to practice safely, and

iii. Any applicable limitation(s) to such practice.

b. If a licensee has entered into a voluntary rehabilitation contract with the Board's peer health assistance program, then the licensee is not required to report the applicable condition as long as it is being managed and treated.

c. The Board may require the licensee to submit to an examination to evaluate the extent of the illness or condition and its impact on the licensee's ability to practice with reasonable skill and safety to patients, and the Board may enter into a non-disciplinary confidential agreement with the licensee in which he/she agrees to limit his/her practice based on any restriction(s) imposed by the illness or condition, as determined by the Board. A licensee found to be habitually abusing or excessively using alcohol, a habit-forming drug, or a controlled substance is not eligible to enter into a confidential agreement.

4. If a dentist, including an academic dentist, is arrested for a drug or alcohol related offense, the dentist shall refer himself/herself to the Board's peer health assistance program within 30 days after the arrest for an evaluation and referral for treatment as necessary. If the dentist self refers, the evaluation by the program is confidential and cannot be used as evidence in any proceedings other than before the Board.

~~2~~5. Change of name and address

a. A licensee shall inform the Board in clear, explicit, and unambiguous written statement of any name or business address change within 30 days of the change. The Board will not change the licensee's information without explicit written notification from the licensee. Notification by fax or email is acceptable.

i. The Division of ~~Registrations~~ Professions and Occupations maintains one contact address for each licensee, regardless of the number of different professional licenses the licensee may hold.

ii. All communication from the Board to a licensee will be to the contact address maintained with the Division of ~~Registrations~~Professions and Occupations.

b. The Board requires one of the following forms of documentation to change a licensee's name or social security number:

i. Marriage license;

ii. Divorce decree;

iii. Court order; or

iv. A driver's license or social security card with a second form of identification may be acceptable at the discretion of the ~~Director of Support Services~~Division of Professions and Occupations.

~~c. Any notification by the Board to a licensee or applicant, required or permitted, under section 12-35-101 et seq., C.R.S. or the State Administrative Procedure Act, found at section 24-4-101 et seq., C.R.S., shall be served personally or by first class mail to the last address of record provided in writing to the Board. Service by mail shall be deemed sufficient and proper upon a licensee or applicant.~~

6. A licensed dentist or dental hygienist or an academic dentist is required to renew his/her license every 2 years and submit the applicable fee. This includes renewing to an active,

inactive, or retired status. An academic dentist is not eligible for retired or inactive status.

7. A dentist or dental hygienist in retired status may provide dental services on a voluntary basis to the indigent, if such services are provided on a limited basis and no fee is charged by the dentist or dental hygienist.

8. A dentist or dental hygienist in inactive status shall not provide dental or dental hygiene services in this state while his/her license is inactive.

9. A dentist or dental hygienist with an expired license shall not provide dental or dental hygiene services in this state while his/her license is expired.

Applicants

~~3~~10. A foreign-trained dentist is required to complete a program in clinical dentistry and obtain~~ed~~ a doctorate of dental surgery or a doctorate of dental medicine at an accredited dental school in order to be eligible for licensure in this state. The only exception is if a foreign-trained dentist ~~is eligible to apply~~satisfies the requirements for an academic dentist license.

~~4. An academic dentist license shall authorize the licensee to practice dentistry only while engaged in the performance of his or her official duties as an employee of the accredited school or college of dentistry and only in connection with programs affiliated or endorsed by the school or college. An academic dentist may not use an academic license to practice dentistry outside of his or her academic responsibilities.~~

~~5. A licensed dentist or dental hygienist or an academic dentist is required to renew his or her license biennially and submit the applicable fee. This includes renewing to an active status or retired status. A dentist in inactive status will also be required to renew his or her license biennially and submit the applicable fee. An academic dentist is not eligible for retired or inactive status.~~

~~6. A dentist in retired status may provide dental services on a voluntary basis to the indigent, if such services are provided on a limited basis and no fee is charged by the dentist. A dental hygienist in retired status shall not provide dental hygiene services in this state while his or her license is retired.~~

~~7. A dentist in inactive status shall not provide dental services in this state while his or her license is inactive.~~

~~8. A dentist or dental hygienist with an expired license shall not provide dental services in this state while his or her license is expired.~~

~~9~~11. Any person whose license to practice is revoked will be ineligible to apply for any license under the Dental Practice ~~Law of Colorado~~Act for at least 2 years after the date of revocation or surrender of the license. Any subsequent application for licensure shall be treated as an application for an original license.

~~10~~12. It is unlawful for any person to file with the Board a forged document or credentials of another person as part of an application for licensure.

~~11~~13. All documents required as part of a licensure application, except for license renewal, must be received within 1 year of the date of receipt of application. An application is incomplete until the Board receives all additional information requested or required in order to determine whether to grant or deny the application. If all required information is not

submitted within the 1 year period, then the original application materials will be destroyed and the applicant will be required to submit a new application, fee, and all required documentation. ~~The only exception to this are examination results; they will be maintained for an additional 1 year if the application is not completed within 1 year of receipt of the application before they are also destroyed if a new application is not filed before that time.~~

~~12~~14. The Board may deny an application for licensure upon a finding that the applicant has violated any provisions of the Dental Practice ~~Law of Colorado~~Act and Board ~~Rules~~rules.

~~13~~15. An applicant for licensure may not begin practicing as a dentist or dental hygienist in this state until he ~~or~~ /she has been issued an active license number to do so, this includes an application to reinstate an expired license or reactivate an inactive license which will require that license number to be activated again before active practice may resume.

~~14. An applicant for original license, endorsement, and an academic dentist license will be required to take and pass a jurisprudence exam approved by the Board as part of the application process.~~

~~15. An applicant applying to reinstate/reactivate an expired, retired, or inactive license will also be required to take and pass a jurisprudence exam approved by the Board as part of the application process to return to active status only if the applicant's license has been expired, retired, or inactive for 2 or more years.~~

16. A dentist applying for a license is required to be at least 21 years of age.

17. Education, training, or service gained in military services outlined in ~~C.R.S.~~section 24-34-102(8.5), C.R.S., to be accepted and applied towards receiving a license, must be equivalent, as determined by the Board, to the qualifications otherwise applicable at the time of receipt of application. It is the applicant's responsibility to provide timely and complete evidence for review and consideration. Satisfactory evidence of such education, training, or service will be assessed on a ~~case~~ case-~~by~~ by-case basis.

18. Regulation of Military Spouses – this rule does not limit the requirements of Article 71 of Title 12

a. A person need not obtain authority to practice dentistry or dental hygiene during the person's first year of residence in Colorado if:

i. The person is a military spouse, as defined in section 12-71-101(3), C.R.S., and is authorized to practice that occupation or profession in another state;

ii. Other than the person's lack of licensure, registration, or certification in Colorado, there is no basis to disqualify the person under Title 12 of the Colorado Revised Statutes; and

ii. The person consents as a condition of practicing dentistry or dental hygiene in Colorado, to be subject to the jurisdiction and disciplinary authority of the Board.

b. To continue practicing dentistry or dental hygiene in Colorado after the person's first year of residence, the person must be issued a license in accordance with all licensing laws and requirements in effect at the time of the application, including, but not limited to, the Dental Practice Act, this Board Rule III, and current clinical

competency requirements.

B. Original Licensure for Dentists

1. Each applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify that he ~~or/~~ she:

   a. Graduated with a DDS or DMD degree from an accredited dental school or college, which at the time of the applicant's graduation was accredited by the ~~American Dental Association,~~ Commission on Dental Accreditation~~.~~

   ~~i. A~~ as evidenced by an official transcript of credits with the date of graduation and degree obtained ~~shall be deemed sufficient evidence~~.

   b. Successfully passed the examination administered by the Joint Commission on National Dental Examinations.

   c. Successfully passed an examination ~~designed to test the applicant's clinical skills and knowledge administered by a regional testing agency composed of at least four states or an examination of another state~~or other methodology, as determined by the Board, designed to test the applicant's clinical skills and knowledge, which may include residency and/or portfolio models.

      ~~i. An applicant may take a clinical examination 3 times before remedial training is required. If an applicant fails once, he or she can retake the examination 2 more times. These retakes must be completed within 16 months from the date of the first examination.~~

      ~~ii. After failing the examination for a 3rd time, and prior to the 4th attempt of the examination, an applicant must:~~

         ~~A. Submit to the Board for its pre-approval a detailed plan for remedial training by an American Dental Association, Commission on Dental Accreditation accredited dental institution. The proposed remediation program must be the equivalent of an additional year of study at the qualifying institution.~~

         ~~B. Successfully complete the Board-approved program and submit proof to the Board of passing the remediation program, within 24 months of its approval by the Board.~~

         ~~C. Based on its review of all documents submitted as proof of completion of the Board-approved remediation program, the Board may grant or deny a 4th attempt of the clinical examination. Any 4th attempt must occur within 12 months of the date of the Board's decision.~~

         ~~D. If an applicant fails any or all parts of the examination after remedial training, the Board must approve additional retake attempts.~~

2. Each applicant will also be required to verify that he ~~or/~~ she:

   a. Obtained or will obtain prior to practicing as a licensed dentist in this state commercial professional liability insurance coverage with an insurance company authorized to do business in Colorado pursuant to Article 5 of Title 10, C.R.S., in a minimum

indemnity amount of ~~five hundred thousand dollars~~$500,000 per incident and ~~one million five hundred thousand dollars~~$1,500,000 annual aggregate per year~~, unless the dentist is a public employee under the "Colorado Governmental Immunity Act", Article 10 of Title 24, C.R.S.~~, or if covered under a financial responsibility exemption listed in Rule II.

b. Accurately and completely listed any acts that would be grounds for disciplinary action under the Dental Practice ~~Law of Colorado~~Act and provided a written explanation of the circumstances of such act(s) and what steps have been taken to remediate the act(s), omission(s), or discipline, including supporting documentation ~~if required~~.

c. Accurately and completely provided any and all information pertaining to any final or pending disciplinary action by any state or jurisdiction in which the applicant is or has been previously licensed and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the action(s), omission(s), or discipline that led to the final disciplinary action(s), including supporting documentation.

d. Accurately and completely provided any and all information pertaining to any pending or final malpractice actions against the applicant, verified by the applicant's malpractice insurance carrier(s) and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the action(s) that led to the settlement(s), including supporting documentation. The applicant must request a verification of coverage history for the past 10 years from his/her current and all previous malpractice insurance carriers. Any settlement or final judgment during the applicant's practice history must be reported.

~~e. Disclosed the existence of any dental or other health care license previously held or currently held in any other state or jurisdiction, including dates and status.~~

3. Demonstrates current clinical competency and professional ability through at least ~~one~~ 1 of the following:

a. Graduated within the 12 months immediately preceding the date the application is received with a DDS or DMD degree from an accredited dental school or college, which at the time of the applicant's graduation was accredited by the ~~American Dental Association,~~ Commission on Dental Accreditation.

b. Engaged in the active clinical practice of dentistry for at least 1 year of the 5 years immediately preceding the date the application is received. Experience from postgraduate training, residency programs, internships, or research during this time will be evaluated on a case-by-case basis.

c. Engaged in teaching dentistry in an accredited program for at least 1 year of the 5 years immediately preceding the date the application is received.

d. Engaged in service as a dentist in the military for at least 1 year of the 5 years immediately preceding the date the application is received.

e. Passed a Board approved ~~regional or state~~ clinical examination within 1 year of the date the application is received.

f. Successfully completed a Board approved evaluation by ~~an American Dental~~

~~Association,~~a Commission on Dental Accreditation accredited institution or another Board approved entity within 1 year of the date the application is received, which demonstrates the applicant's proficiency as equivalent to the current school graduate. ~~An applicant must submit a proposed evaluation for pre-approval by the Board before it is begun~~Before undertaking such evaluation, an applicant must submit a proposed evaluation for pre-approval by the Board. The Board may reject an evaluation whose proposal it has not pre-approved or for other good cause.

g. If a dentist with a revoked license, a license suspended for 2 or more years, or any other disciplined license preventing him/her from actively practicing for 2 or more years in Colorado or another state or Canadian province is applying for a license, then the Board may require him/her to comply with more than 1 of the above competency requirements.

h. The Board may also consider applying 1 or more of the following towards demonstration of current clinical competency (cannot be considered in lieu of the requirements of subparagraph g above, but may be considered as an additional requirement by the Board):

i. Practice under a probationary or otherwise restricted license for a specified period of time;

ii. Successful completion of courses approved by the Board; or

iii. Any other professional standard or measure of continued competency as determined by the Board.

C. Endorsement for Dentists

1. In order to be qualified for licensure by endorsement, an applicant is required to demonstrate that he ~~or/~~ she does not currently possess a ~~revoked,~~ suspended, restricted, or conditional license to practice dentistry, or is currently pending disciplinary action against such license in another state or territory of the United States or Canada.

2. Each qualified applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify through the state in which he ~~or /~~she is seeking endorsement from that he ~~or/~~ she meets the requirements listed under section B.1 of this rule.

3. ~~Such a~~An applicant for endorsement will also be required to verify as part of his ~~or/~~ her application the requirements listed under section B.2 of this rule.

4. An applicant for endorsement will also be required to demonstrate current clinical competency and professional ability through at least ~~one~~ 1 of the following:

a. Engaged in the active practice of clinical dentistry in the U.S. or one of its territories or Canada for a minimum of 300 hours per year, for a minimum of 5 years out of the 7 seven years immediately preceding the date the application was received. Experience from postgraduate training, residency programs, internships, or research will be evaluated on a case-by-case basis.

b. Engaged in teaching dentistry, which involves personally providing care to patients for not less than 300 hours annually in an accredited dental school for a minimum of 5 years out of the 7 years immediately preceding the date the application was

received.

c. For the dentists practicing in the military, a report from a senior officer with a recommendation and verification of clinical experience comparable to the requirement in section C.4.a.

d. Passed a Board approved ~~regional or state~~ clinical examination within 1 year of the date the application is received.

e. Successfully completed a Board approved evaluation by ~~an American Dental Association,~~a Commission on Dental Accreditation accredited institution or another Board approved entity within 1 year of the date the application is received, which demonstrates the applicant's proficiency as equivalent to the current school graduate. Before undertaking such evaluation, an applicant must submit a proposed evaluation for pre-approval by the Board~~An applicant must submit a proposed evaluation for pre-approval by the Board before it is begun~~. The Board may reject an evaluation whose proposal it has not pre-approved or for other good cause.

f. The Board may also consider applying 1 or more of the following towards demonstration of current clinical competency:

i. Practice under a probationary or otherwise restricted license for a specified period of time;

ii. Successful completion of courses approved by the Board; or

iii. Any other professional standard or measure of continued competency as determined by the Board.

D. Academic Dentist

1. A dentist who is employed at an accredited school or college of dentistry in this state and who practices dentistry in the course of his ~~or~~/~~ her employment responsibilities and is applying for an academic dentist license shall submit with the application and fee the following credentials and qualifications for review and approval by the Board:

a. Proof of graduation with a DDS or DMD degree or equivalent from a school of dentistry located in the United States or another country.

b. Evidence of the applicant's employment by an accredited school or college of dentistry in this state; actual practice is to commence only once licensure has been granted.

2. An applicant for an academic dentist license shall satisfy the credentialing standards of the accredited school or college of dentistry that employs the applicant.

3. An academic dentist license shall authorize the licensee to practice dentistry only while engaged in the performance of his/her official duties as an employee of the accredited school or college of dentistry and only in connection with programs affiliated or endorsed by the school or college. An academic dentist may not use an academic license to practice dentistry outside of his/her academic responsibilities.

E. Original Licensure for Dental Hygienists

1. Each applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify that he ~~or/~~ she:

    a. Graduated from a school of dental hygiene that, at the time of the applicant's graduation, was accredited by the ~~American Dental Association,~~ Commission on Dental Accreditation, and proof that the program offered by the accredited school of dental hygiene was at least 2 academic years or the equivalent of 2 academic years. An official school transcript of credits with the date of graduation and degree obtained shall be deemed sufficient evidence.

    b. Successfully passed the examination administered by the Joint Commission on National Dental Examinations.

    c. Successfully completed an examination designed to test the applicant's clinical skills and knowledge administered by a regional testing agency composed of at least ~~four~~ 4 states or an examination of another state.

2. Each applicant will also be required to verify that he ~~or/~~ she:

    a. Obtained or will obtain prior to practicing as a licensed dental hygienist in this state professional liability insurance in the amount of not less than ~~fifty thousand dollars~~$50,000 per claim and an aggregate liability for all claims during a calendar year of not less than ~~three hundred thousand dollars~~$300,000, or is covered under a financial responsibility exemption listed in Rule II. Coverage may be maintained by the dental hygienist or through a supervising licensed dentist.

    b. Accurately and completely listed any acts that would be grounds for disciplinary action under the Dental Practice ~~Law of Colorado~~Act and provided a written explanation of the circumstances of such act(s) and what steps have been taken to remediate the act(s), omission(s), or discipline, including supporting documentation ~~if required~~.

    c. Accurately and completely provided any and all information pertaining to any final or pending disciplinary action by any state or jurisdiction in which the applicant is or has been previously licensed and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the action(s), omission(s), or discipline that led to the final disciplinary action(s), including supporting documentation.

    d. Accurately and completely provided any and all information pertaining to any pending or final malpractice actions against the applicant, verified by the applicant's malpractice insurance carrier(s) and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the practice that led to the settlement(s), including supporting documentation. The applicant must request a verification of coverage history for the past 10 years from his/her current and all previous malpractice insurance carriers. Any settlement or final judgment during the applicant's practice history must be reported.

    ~~e. Disclosed the existence of any dental hygiene or other health care license previously held or currently held in any other state or jurisdiction, including dates and status.~~

3. Demonstrates current clinical competency and professional ability through at least ~~one~~ 1 of the following:

a. Graduated within the 12 months immediately preceding the date the application was received from an academic program of dental hygiene that, at the time of the applicant's graduation, was accredited by the ~~American Dental Association,~~ Commission on Dental Accreditation and which was at least 2 academic years or the equivalent of 2 academic years.

b. Engaged in the active clinical practice of dental hygiene for at least 1 year of the 5 years immediately preceding the date the application is received.

c. Engaged in teaching dental hygiene or dentistry in an academic program that was accredited by the ~~American Dental Association,~~ Commission on Dental Accreditation for at least 1 year of the 5 years immediately preceding the date the application is received.

d. Engaged in service as a licensed dental hygienist in the military for at least 1 year of the 5 years immediately preceding the date the application is received.

e. Passed a Board approved regional or state clinical examination within 1 year of the date the application is received.

f. Successfully completed a Board approved evaluation by ~~an American Dental Association,~~a Commission on Dental Accreditation accredited institution or another Board approved entity within 1 year of the date the application is received, which demonstrates the applicant's proficiency as equivalent to the current school graduate. ~~An applicant must submit a proposed evaluation for pre-approval by the Board before it is begun~~Before undertaking such evaluation, an applicant must submit a proposed evaluation for pre-approval by the Board. The Board may reject an evaluation whose proposal it has not pre-approved or for other good cause.

g. If a dental hygienist with a revoked license, a license suspended for 2 or more years, or any other disciplined license preventing him/her from actively practicing for 2 or more years in Colorado or another state or Canadian province is applying for a license, then the Board may require him/her to comply with more than 1 of the above competency requirements.

h. The Board may also consider applying 1 or more of the following towards demonstration of current clinical competency (cannot be considered in lieu of the requirements of subparagraph g above, but may be considered as an additional requirement by the Board):

i. Practice under a probationary or otherwise restricted license for a specified period of time;

ii. Successful completion of courses approved by the Board; or

iii. Any other professional standard or measure of continued competency as determined by the Board.

F. Endorsement for Dental Hygienists

1. In order to be qualified for licensure by endorsement, an applicant is required to demonstrate that he/she does not currently possess a suspended, restricted, or conditional license to practice dental hygiene, or is currently pending disciplinary action against such license in another state or territory of the United States or Canada.

2. Each qualified applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify through the state in which he ~~or/~~ she is seeking endorsement from that he ~~or/~~ she meets the requirements listed under section E.1 of this rule.

~~2~~3. ~~Such a~~An applicant for endorsement will also be required to verify as part of his ~~or/~~ her application the requirements listed under section E.2 of this rule.

4. The applicant must also disclose the existence of any dental hygiene or other health care license previously held or currently held in any other state or jurisdiction, including dates and status.

~~3~~5. An applicant for endorsement will also be required to demonstrate current clinical competency and professional ability through at least ~~one~~ 1 of the following:

a. Engaged in the active practice of clinical dental hygiene in the U.S. or one of its territories or Canada for a minimum of 300 hours per year, for a minimum of 1 year out of 3 years immediately preceding the date the application was received.

b. Engaged in teaching dental hygiene or dentistry, which involves personally providing care to patients for not less than 300 hours annually in an accredited program for a minimum of 1 year out of the 3 years immediately preceding the date the application was received.

c. For the licensed dental hygienists practicing in the military, a report from a senior officer with a recommendation and verification of clinical experience comparable to the requirement in section F.~~4~~5.a.

d. Passed a Board approved regional or state clinical examination within 1 year of the date the application is received.

e. Successfully completed a Board approved evaluation by ~~an American Dental Association,~~a Commission on Dental Accreditation accredited institution or another Board approved entity within 1 year of the date the application is received, which demonstrates the applicant's proficiency as equivalent to the current school graduate. Before undertaking such evaluation, an applicant must submit a proposed evaluation for pre-approval by the Board~~An applicant must submit a proposed evaluation for pre-approval by the Board before it is begun~~. The Board may reject an evaluation whose proposal it has not pre-approved or for other good cause.

f. The Board may also consider applying 1 or more of the following towards demonstration of current clinical competency:

i. Practice under a probationary or otherwise restricted license for a specified period of time;

ii. Successful completion of courses approved by the Board; or

iii. Any other professional standard or measure of continued competency as determined by the Board.

G. Continuing Education Requirements for Dentists, Academic Dentists, and Dental Hygienists

1. Effective March 1, 2016, each licensee with an active license in Colorado is required to

complete 30 hours of Board approved continuing education during the 2 years preceding the next renewal period to ensure patient safety and professional competency, pursuant to section 12-35-139, C.R.S. Continuing education hours may only be applied to the renewal period in which they were completed.

2. This requirement does not apply to a licensee placing his/her license into inactive or retired status, or renewing such status. It only applies if renewing a license in active status, or reinstating or reactivating a license pursuant to paragraph 3 of this rule.

3. Effective March 1, 2018, a licensee with an expired license of less than 2 years or who has inactivated his/her license for less than 2 years is required to submit proof of having completed the required 30 hours of continuing education credit for the previous renewal period prior to reinstating/reactivating his/her license and may not apply those hours to the next renewal period.

4. If a license is issued within 1 year of a renewal date, no continuing education will be required for that first renewal period. If a license is issued outside of 1 year of a renewal date, then 15 hours of Board approved continuing education will be required for that first renewal period. The only exception being a license reinstated or reactivated as described in paragraph 3 above, which will require 30 hours of Board approved continuing education to be completed for that next renewal period.

5. For dentists and academic dentists, the Board automatically accepts any course or program recognized by the (or a successor organization):

   a. American Dental Association (ADA) Continuing Education Recognition Program (CERP),

   b. Academy of General Dentistry (AGD) Program Approval for Continuing Education (PACE),

   c. American Medical Association (AMA) Physician Recognition Award (PRA) and credit system as Category 1 Credit, or

   d. Commission on Dental Accreditation (CODA) accredited institutions.

6. For dental hygienists, the Board automatically accepts any course recognized in paragraph 5 above and sponsored or recognized by (or a successor organization):

   a. The American Dental Hygienists' Association (ADHA) and its constituents and component societies, or

   b. Local, state, regional, national, or international dental, dental hygiene, dental assisting, medical related professional organization, or study group that has a sound scientific basis, proven efficacy, and ensures public safety.

7. Current Basic Life Support (BLS) for healthcare providers is required of all licensees and all licensees will receive 2 hours continuing education credit for completing.

8. At least 16 of the required 30 hours must be clinical or science based.

9. At least 50% of the required 30 hours must be live and interactive.

10. A presenter of courses may submit course hours he/she presented, up to 6 total credits, towards his/her continuing education requirement. The course presented may only be

counted once.

11. A dentist renewing an anesthesia or sedation permit may apply continuing education credits specific to renewing his/her permit for anesthesia or sedation administration (17 hours every 5 years) to the 30 hours required to renew a license every 2 years. However, those anesthesia related hours may only be applied to the renewal period in which they were completed.

12. Licensees may be subject to an audit to verify compliance at the conclusion of each renewal period and shall assist the Board in its audit by providing timely and complete responses to the Board's inquiries.

13. A licensee must maintain copies of all completed Board approved coursework, including any certificates of completion, for at least 2 renewal periods after the continuing education was completed. The records shall document the licensee's course attendance and participation, and shall include at a minimum course sponsor, title, date(s), hours, and the course verification of completion certificate or form. Failure to meet this requirement may result in credit not being accepted for a course or courses, which may then be considered a failure to comply with the continuing education requirements of this Rule III.

14. Failure to comply with the requirements of this rule is grounds for discipline, pursuant to section 12-35-129(1)(i), C.R.S.

15. The Board may excuse a licensee from all or any part of the requirements of this rule or grant an extension because of an unusual circumstance, emergency, special hardship, or military service. The licensee may apply for a waiver or an extension by submitting a written request, including supporting documentation for Board consideration at least 45 days before the renewal date.

16. Continuing education required as a condition of a disciplinary action cannot be applied towards the renewal requirements of a license or anesthesia/sedation permit.

~~G~~H. Reinstatement/Reactivation Requirements for Dentists and Dental Hygienists with Expired, Inactive, or Retired Licenses~~, or Dentists in Inactive Status~~

1. In order to reinstate or reactivate a license back into active status, each applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify that he~~ or /~~she:

   a. Obtained or will obtain prior to active practice in this state ~~Financial Liability Requirements pursuant to the Health Care Availability Act as defined in section 13-64-301, C.R.S. for dentists and the~~ professional liability insurance ~~requirement as defined in~~as required pursuant to section 12-35-~~127(4)~~141, C.R.S.~~ for dental hygienists~~, or is covered under a financial responsibility exemption listed in Rule II.

   b. Accurately and completely listed any acts that would be grounds for disciplinary action under the Dental Practice ~~Law of Colorado~~Act and provided a written explanation of the circumstances of such act(s) and what steps have been taken to remediate the act(s), omission(s), or discipline, including supporting documentation ~~if required~~ since last renewing his~~ or /~~her license to an active, retired, or inactive status in this state.

   c. Accurately and completely provided any and all information pertaining to any final or pending disciplinary action by any state or jurisdiction in which the applicant is or

has been previously licensed since last renewing his ~~or/~~ her license to an active, retired, or inactive status in this state and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the action(s), omission(s), or discipline that led to the final disciplinary action(s), including supporting documentation.

d. Accurately and completely provided any and all information pertaining to any pending or final malpractice actions against the applicant, verified by the applicant's malpractice insurance carrier(s) since last renewing his ~~or/~~ her license to an active, retired, or inactive status in this state and provided a written explanation of the circumstances of such action(s) and what steps have been taken to remediate the practice that led to the settlement(s), including supporting documentation.

~~e. Disclosed the existence of any dental or other health care license previously held or currently held in any other state or jurisdiction, including dates and status.~~

2. If the license has been expired, retired, or inactive for 2 or more years, then an applicant is required to demonstrate continued clinical competency. A licensee who applies for an active license and has not practiced at least 300 hours in a 12-month period during the 5 years immediately preceding the application for reinstatement/reactivation to an active status must demonstrate to the Board how he ~~or/~~ she maintained his ~~or/~~ her professional ability, knowledge, and skills. The Board may request documentation of the 300 hours for a 12-month period or may accept the following qualifications as fulfillment of the practice requirement, which will be reviewed on a case-by-case basis:

a. Time spent in postgraduate training, residency programs, or an internship.

b. Time spent in research and in teaching in an accredited program.

c. Time spent practicing in the military or public health service. For licensed dentists and dental hygienists practicing in the military, a report from a senior officer with a recommendation and verification of clinical experience may be accepted.

d. Passed a Board approved ~~regional or state~~ clinical examination within 1 year of the date the application is received.

e. Successfully completed a Board approved evaluation by ~~an American Dental Association,~~a Commission on Dental Accreditation accredited institution or another Board approved entity within 1 year of the date the application is received, which demonstrates the applicant's proficiency as equivalent to the current school graduate. Before undertaking such evaluation, an applicant must submit a proposed evaluation for pre-approval by the Board~~An applicant must submit a proposed evaluation for pre-approval by the Board before it is begun~~. The Board may reject an evaluation whose proposal it has not pre-approved or for other good cause.

f. The Board may also consider applying 1 or more of the following towards demonstration of current clinical competency (cannot be considered in lieu of the competency requirements above if the licensee has not practiced in over 2 years due to a disciplinary action, but may be considered as an additional requirement by the Board):

i. Practice under a probationary or otherwise restricted license for a specified period of time;

ii. Successful completion of courses approved by the Board; or

iii. Any other professional standard or measure of continued competency as determined by the Board.

~~H~~I. Temporary Licenses

1. By invitation only:

a. A dentist or dental hygienist who lawfully practices dentistry or dental hygiene in another state or United States territory may be granted a temporary license to practice dentistry or dental hygiene in this state pursuant to section 12-35-107(1)(e), C.R.S., if:

i. Such dentist or dental hygienist has been invited by a program provided through a lawful agency of Colorado local, county, state, or federal government or a Colorado non-profit tax exempt organized under section 501 (c) (3) of the federal "Internal Revenue Code of 1986," as amended to provide dental or dental hygiene services to persons identified through such program;

ii. The governmental entity or nonprofit private foundation as defined in section H.1.a.i of this rule certifies the name of the applicant and the dates within which the applicant has been invited to provide dental or dental hygiene services in this state, the applicant's full dental or dental hygiene license history with verification of licensure in each state, and an active license in at least one state on a form provided by the Board; and

iii. Such applicant's practice in this state, if granted by the Board, is limited to that required by the entities specified in section H.1.a.i and ii of this rule and shall not exceed 120 consecutive days in a 12 month period, renewable once in a 1 year period for a maximum of 240 consecutive days in a 1 year period.

b. A temporary licensee shall provide dental or dental hygiene services only to persons identified through an entity as described in section H.1.a.i of this rule and will not accept any compensation above what he ~~or /~~she has agreed to be paid by the entity.

2. The Board may also issue a temporary license to an applicant for licensure to demonstrate clinical competency in compliance with sections B.3.f, C.4.e, E.3.f, ~~and~~ F.~~35~~.e, and H.2.e under direct supervision of a licensed dentist or dental hygienist.

3. A temporary licensee may be subject to discipline by the Board as defined in ~~section~~ 12-35-129, et. seq., C.R.S., and shall be subject to the ~~Financial Liability Requirements pursuant to the Health Care Availability Act as defined in section 13-64-301, C.R.S. for dentists and the~~ professional liability insurance requirement as defined in section 12-35-~~127(4)~~141, C.R.S. ~~for dental hygienists.~~

Rule IV. License Presentation

(Amended December 2, 2002; Re-numbered December 30, 2011)

A dentist's or dental hygienist's license, or a copy thereof, shall be available on the premises where the dentist or dental hygienist practices.

Rule V. Practice in Education and Research Programs

(Promulgated as Emergency Rule XXVIII on July 7, 2004; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. Pursuant to §12-35-115(1)(f), the names of individuals engaging in practice while appearing in programs of dental education or research must be submitted to the Board on the Board-approved form.

B. Information provided to the Board by any group of Colorado licensed dentists or dental hygienists inviting dentists and/or dental hygienists to practice while appearing in a program of dental education shall include the following.

1. Name of program

2. Goals or objectives of program

3. Instructors in program

4. Syllabus of content

5. Method of program evaluation

C. Information provided to the Board by any group of Colorado licensed dentists or dental hygienists inviting dentists and/or dental hygienists to practice while appearing in a program of dental research shall include the following

1. Name of Program

2. Research goal or objectives

3. Research design

4. Evidence of approval of research by a Review Board for Human Subject Research which meets the requirements of the Office of Human Subjects Research, National Institutes of Health

D. The dentists and/or dental hygienists invited to participate in the educational or research program who are not licensed in Colorado shall submit evidence to the Board that each participant understands the limitations in such practice as specified in to §12-35-115(1)(f).

E. The Board shall approve participation if, in the judgment of the Board, the information submitted indicates the program is in compliance with to §12-35-115(1)(f).

F. The Board may deny participation if, in the judgment of the Board, the information submitted indicates the program is not in compliance with to §12-35-115(1)(f).

Rule VI. Treatment Provider Identification

(Effective February 1, 1999; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

1. Patient records shall note at the time of the treatment or service the name of any dentist, dental hygienist, or dental assistant who performs any treatment or service upon a patient.

2. When patient treatment or service is performed which requires supervision, the patient record must also note the name of the supervising dentist or dental hygienist for the treatment or service performed on the patient.

Rule VII. Patient Records Retention

(Effective February 1, 1999; Amended December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. Records for minors shall be kept for a minimum of seven (7) years after the patient reaches the age of majority (age 18).

B. Records for adult patients shall be kept for a minimum of seven (7) years after the last date of dental treatment or examination, whichever occurs at the latest date.

C. This Rule does not apply to records kept by educational, not-for-profit, and/or public health programs.

D. When the destruction cycle is imminent, written notice to the patient's last known address, or notice by publication, must be made sixty (60) days prior to destruction. Destruction cannot take place until a 30 day period has elapsed wherein the patient may claim the records.

E. Notice by publication may be accomplished by publishing in a major newspaper or a newspaper broadly circulated in the local community one day per week for four (4) consecutive weeks.

F. When the destruction cycle is imminent, records will be provided to the patient or legal guardian at no charge; however appropriate postage and handling costs are permitted.

G. Records may not be withheld for past due fees relating to dental treatment

H. Destruction shall be accomplished by a means which renders the records unable to be identified or read such as by fire or shredding.

Rule VIII. Patient Records in the Custody of a Dentist or Dental Hygienist

(Effective December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. Every patient's record in the custody of a dentist or dental hygienist shall be available to a patient or the patient's designated representative at reasonable times and upon reasonable notice.

B. A patient or designated representative (representative) may inspect or obtain a copy of his/her patient record after submitting a signed and dated request to the custodian of the patient record. The provider or the representative shall acknowledge in writing the patient's or representative's request. After inspection, the patient or representative shall sign and date the record to acknowledge inspection.

C. The custodian of the record shall make a copy of the record available or make the record available for inspection within a reasonable time from the date of the signed request, normally not to exceed five days, excluding weekends and holidays.

D. Patient or representative may not be charged for inspection of records.

E. The patient or representative shall pay for the reasonable cost of obtaining a copy of the patient record, not to exceed $12.00 for the first ten or fewer pages and $0.25 per page for every additional page. Actual postage costs may also be charged.

F. If the patient or representative so approves, the custodian may supply a written interpretation by the attending provider or representative of patient records, such as radiographs, diagnostic casts, or non-written records which cannot be reproduced without special equipment. If the requestor prefers to obtain a copy of such patient records, the patient must pay the actual cost of such reproduction.

G. If changes, corrections, deletions, or other modifications are made to any portion of a patient record, the person must note in the record date, time, nature, reason, correction, deletion, or other modification, and his/her name.

H. Nothing in this rule shall be construed as to limit a right to inspect patient records that is otherwise granted by state statute to the patient or representative.

I. Nothing in this rule shall be construed to waive the responsibility of a custodian of records to maintain confidentiality of those records the possession of the custodian.

Rule IX. Controlled Substance Record Keeping Requirements

(Amended December 2, 2002; Re-numbered December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

A dentist or academic dentist with a current registration issued by the Drug Enforcement Administration (DEA) is required to register and maintain a user account with the Prescription Drug Monitoring Program (PDMP) pursuant to section 12-42.5-403(1.5)(a), C.R.S. If he/she fails to register and maintain a PDMP user account, then such failure constitutes a violation of section 12-35-129(1)(j), C.R.S.

Every dentist shall maintain records in his/her office regarding such dentist's ordering, prescribing, dispensing, administration, and inventory of drugs or controlled substances for a period of two years as follows:

A. The dentist shall keep a complete and accurate inventory of all stocks of controlled substances on hand in his/her office. Every two (2) years, in accordance with the Drug Enforcement Administration inventory requirements, the dentist shall conduct a new inventory of all such controlled substances.

B. When the dentist prescribes, dispenses, and/or administers any controlled substance, the following shall be recorded on the patient's record:

1. Name and address of patient.

2. Diagnosis being treated or services performed.

3. Name and strength of drug(s) prescribed, dispensed, and/or administered.

4. Quantity of drug(s) prescribed, dispensed, and/or administered.

5. Date of prescribing, dispensing, and/or administration of such drugs.

6. Name of authorized practitioner-dispensing drug.

C. With respect to drugs listed in Schedule II, III, IV, and V of the Federal Controlled Substance Act and the Rules and Regulations adopted pursuant thereto, the dentist shall maintain a record of dispensing or administration which shall be separate from the individual patient's record. This separate record shall include the following information:

1. Name of the patient.

2. Name and strength of the drug.

3. Quantity of the drug dispensed or administered.

4. Date such drug was administered or dispensed.

5. Name of the authorized practitioner dispensing drug.

D. The dentist shall maintain a record of any controlled substance(s) lost, destroyed, or stolen, and the record shall include the kind and quantity of such controlled substance(s) and the date of such loss, destruction or theft. In addition, the dentist must report such loss or theft to the Drug Enforcement Administration District Office.

E. Prescription orders must include original signatures from the prescribing dentist. All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address, and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he/she would sign a check or legal document (e. g., J. H. Smith or John H. Smith). When an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewritten and shall be manually signed by the practitioner. The prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. The use of rubber-stamped, pre-printed, or pre-signed signatures on prescription pads is not acceptable.

Rule X. Minimum Standards for Qualifications, Training and Education for Unlicensed Personnel Exposing Patients to Ionizing Radiation

The Board deems that the requirements for all dental work settings are met by these standards as of July 1, 1993.

A. All unlicensed dental personnel who expose patients to ionizing radiation must:

1. Be a minimum of 18 years of age.

2. Successfully complete minimum safety education and training for operating machine sources of ionizing radiation and administering such radiation to patients.

B. Such education and training shall include at least 8 hours in the following areas, but not limited to:

1. Dental nomenclature - .5 hours;

2. Machine operation exposure factors - 1.5 hours;

3. Operator and patient safety - 1 hour.

4. Practical or clinical experience in:

a. Intra/extra - oral techniques for exposing radiographs - 4 hours;

b. Appropriate film handling and storage - .25 hour;

c. Appropriate processing procedures - .5 hours;

d. Appropriate patient record documentation for radiographs - .25 hour.

C. Written verification of education and training shall be provided by the sponsoring agency, educational institution or licensee to each participant upon completion. This written verification shall be cosigned signed by the unlicensed person; one copy shall be kept in each unlicensed person's employment record located at the employment site, the other kept by the unlicensed person. Written verification of completion of education and training must include:

1. Name of agency, educational institution or licensee who provided such education and training;

2. Verification of hours;

3. Date of completion;

4. Exposure techniques for which education and training have been provided, i.e., bitewings, periapicals, occlusals, and panoramic.

Education and training shall be obtained by complying with subsection D, E, or F.

D. Education and training may be obtained through programs approved by the Colorado Commission on Higher Education, the State Board of Community Colleges and Occupational Education, the Private Occupational School Division, or the equivalent in any other state. Such programs shall include the education and training as specified in subsection B, above.

E. Education and training may be provided on the job by a licensed dentist or dental hygienist providing a Board approved educational module which complies with subsection B is used as the basis for such training.

F. Proof of successful completion of the Dental Assisting National Board Examination (DANB).

G. All Licensees must insure that newly hired untrained dental personnel comply with these rules within three months of becoming employed in a capacity in which they will be delegated the task of exposing radiographs.

H. It shall be the duty of each licensee to ensure that:

1. Tasks are assigned only to those individuals who have successfully completed the education and training and meet the qualifications for those tasks, which are being delegated;

2. The properly executed verification documentation of all unlicensed personnel who are operating machine sources of ionizing radiation and exposing such radiation be submitted to the Colorado State Board of Dental Examiners upon request.

Rule XI. Laboratory Work Order Forms

(Re-numbered December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

Laboratory work order forms, written or electronic, as defined in section ~~12~~ 12-~~35~~ 35-103(11), C.R.S., shall contain the following information pursuant to section ~~12~~ 12-~~35~~ 35-133, C.R.S.:

A. ~~Duplicate~~ Reproducible form ~~pursuant to 12 35 133~~ to be retained by the dentist and lab for 2 years.

B. Name of laboratory.

C. Name of dentist.

D. Address of dentist.

E License number of dentist.

F. Patient name or I.D. number.

G. Instructions to laboratory.

1. Include adequate space for instructions or directions.

2. Date of try in or delivery.

H. Personal signature of the authorizing dentist shall be written in ink or provided electronically and shall be manually ~~signed~~ entered by the ~~practitioner~~dentist for each order. The use of rubber stamped, pre-printed, or a pre-signed signature on work orders is not acceptable.

I. Date of directions.

Rule XII. Denture Construction by Assistants and Unlicensed Technicians

(Effective February 1, 1999; Amended October 1, 1999, December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

This rule relates to tasks authorized to be performed by dental assistants as defined in section 12-35-128(3)(d), C.R.S., and tasks authorized to be performed by unlicensed ~~persons~~ technicians as defined in section 12-35-133, C.R.S.

A. Dentures are defined as removable, full, or partial appliances designed to replace teeth.

B. Dental assistants ~~or any other unlicensed personnel~~ who render~~s~~ direct patient treatment as defined in section 12-35-128(3)(d), C.R.S., necessary for the construction of dentures, shall be employed by the dentist.

C. Unlicensed ~~persons~~ technicians who are not employees of the dentist shall only perform the services defined in section12-35-133, C.R.S. ~~and shall not render direct patient treatment as defined in 12-35-128(3)(d).~~

D. A dental assistant or unlicensed ~~person~~ technician shall not practice dentistry as defined in section 12-35-113, C.R.S.

E. All tasks authorized to be performed by a dental assistant ~~or any other unlicensed person~~ pursuant to section 12-35-128(3)(d~~))~~), C.R.S., shall be performed in the "regularly announced office location" of a dentist where the dentist is the proprietor and in which he ~~or /~~she regularly practices dentistry, unless that person is operating as an unlicensed technician pursuant to section 12-35-133(1)(b), C.R.S., which allows an unlicensed technician that possesses a valid laboratory work order to provide extraoral construction, manufacture, fabrication, supply, or repair of identified dental and orthodontic devices. Intraoral service in a human mouth by a dental assistant or unlicensed technician can only occur under the direct supervision of a dentist pursuant to section 12-35-128(3)(d), C.R.S.

F. Nothing in this rule shall prevent the filling of a valid work order pursuant to section 12-35-133, C.R.S., by any ~~person~~unlicensed technician, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth or for restoration of natural teeth.

Rule XIII. Application of Local Therapeutic Agents Into Periodontal Pockets with Limited Prescriptive Authority

(Effective June 30, 1996 as Rule XXIV; Amended December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011; Amended January 22, 2015, Effective March 30, 2015)

A. Pursuant to section 12-35-124(1)(g)(I), C.R.S., a dental hygienist without supervision of a dentist may prescribe, administer, and dispense fluoride, fluoride varnish, antimicrobial solutions for mouth rinsing, and other nonsystemic antimicrobial agents in collaboration with a licensed dentist and when issued a National Provider Identifier (NPI) number by the Centers for Medicare & Medicaid Services (CMS) under the U.S. Department of Health and Human Services. ~~"Local Therapeutic Agents" means any agent approved for use by the FDA utilized in controlled drug delivery systems in the course of periodontal pocket treatment.~~

1. Collaboration with a dentist requires the dental hygienist to develop an articulated plan for safe prescribing which documents how the dental hygienist intends to maintain ongoing collaboration with a dentist in connection with the dental hygienist's practice of prescribing as allowed in section C of this rule.

2. The articulated plan shall guide the dental hygienist's prescriptive practice and shall include at least the following:

a. A mechanism for consultation and referral to a dentist when the dental hygienist detects a condition that requires care beyond the scope of practicing unsupervised dental hygiene;

b. A quality assurance plan;

c. Decision support tools; and

i. A decision support tool is an assistive tool commonly recognized by healthcare professionals as a valid resource for information on pharmaceutical agents or to aid the dental hygienist in making appropriate judgments regarding safe prescribing.

ii. Such tools may include, but are not limited to, electronic prescribing databases, evidence-based guidelines, antimicrobial reference guides, and professional journals and textbooks.

d. Emergency protocols and standing orders, including use of emergency drugs.

3. The dental hygienist shall:

a. Retain the written articulated plan with the collaborating dentist's signature on file;

b. Review the plan annually; and

c. Update the plan as necessary.

4. The articulated plan is subject to Board review and the dental hygienist shall provide the plan to the Board upon request.

B. A dental hygienist shall not prescribe, administer, or dispense the following:

1. Drugs whose primary effect is systemic, with the exception of fluoride supplements permitted under section 12-35-124(1)(g)(III)(A), C.R.S., and section C.1 of this rule below; and

2. Dangerous drugs or controlled substances.

C. A dental hygienist may prescribe the following:

1. Fluoride supplements as follows (all using sodium fluoride):

a. Tablets: 0.5 mg, 1.1 mg, or 2.2 mg;

b. Lozenges: 2.21 mg; and

c. Drops: 1.1 mL.

2. Topical anti-caries treatments as follows (all using sodium fluoride unless otherwise indicated):

a. Toothpastes: 1.1% or less (or stannous fluoride 0.4%);

b. Topical gels: 1.1% or less (or stannous fluoride 0.4%);

c. Oral rinses: 0.05%, 0.2%, 0.44%, or 0.5%;

d. Oral rinse concentrate used in periodontal disease: 0.63% stannous fluoride;

e. Fluoride varnish: 5%; and

f. Prophy pastes containing approximately 1.23% sodium fluoride and used for polishing procedures as part of professional dental prophylaxis treatment; and

3. Topical anti-infectives as follows:

a. Chlorhexidine gluconate rinses: 0.12%;

b. Chlorhexidine gluconate periodontal chips for insertion into the periodontal pocket;

c. Tetracycline impregnated fibers, inserted subgingivally into the periodontal sulcus (pocket);

d. Doxycycline hyclate periodontal gel, inserted subgingivally into the periodontal sulcus (pocket); and

e. Minocycline hydrochlorided periodontal paste, inserted subgingivally into the periodontal sulcus (pocket).

D. A dental hygienist shall maintain clear documentation in the patient record of the:

a. Agent prescribed, administered, or dispensed, including dose, amount, and refills;

b. Date of the action; and

c. Rationale for prescribing, administering, or dispensing the agent.

E. A prescriptive order shall include:

a. Name of the patient,

b. Date of action,

c. Agent prescribed including dose, amount and refills, and

d. Rationale for prescribing the agent.

F. If a dental hygienist prescribes, administers, or dispenses without supervision of a dentist but fails to develop the required articulated plan, or fails to maintain clear documentation in the patient record; or prescribes, administers, or dispenses outside of what is allowed pursuant to section 12-35-124(1)(g), C.R.S., or in this rule, then such conduct constitutes grounds for discipline pursuant to section 12-35-129(1)(i), C.R.S.

G. Any dental hygienist placing local therapeutic agents or prescribing as allowed in this rule shall have proof of current Basic Life Support (BLS) for healthcare providers.

H. The placement and removal of local therapeutic agents and limited prescriptive authority may not be delegated or assigned to a dental assistant.

~~B. The responsibility for diagnosis, treatment planning, or the prescription of therapeutic measures in the practice of dentistry shall remain with a licensed dentist and may not be assigned to any dental hygienist or dental assistant.~~

~~C. The placement and removal of local therapeutic agents for treatment of periodontal pockets may be assigned to a Colorado licensed dental hygienist. The placement of local therapeutic agents may not be assigned to a dental assistant.~~

~~D. The licensed dentist shall be responsible for obtaining appropriate training for him/herself and the dental hygienist prior to assigning the application of local therapeutic agents to a dental hygienist. Appropriate training must include: documentation, case selection, pharmacology, application and removal, follow-up treatment, and management of complications as they relate to local therapeutic agents.~~

~~E. Any dental hygienist placing local therapeutic agents shall have proof of current Basic Life Support (BLS) knowledge and skills, including Cardiopulmonary Resuscitation (CPR).~~

Rule XIV. Anesthesia

(Amended February 1, 1998, August 1, 2000; August 11, 2004; October 27, 2004; October 26, 2006; July 9, 2009, Effective December 31, 2006; Amended January 21, 2010, Effective March 30, 2010; Amended January 22, 2015, Effective March 30, 2015)

A. Introduction

1. This Rule XIV is authorized by the Dental Practice Law of Colorado including but not limited to sections 12-35-107(1)(b)(II) and (III), ~~(f),~~ (h) ~~and (i)~~, 12-35-113(1)(p) and (q), 12-35-114, 12-35-125(1)(f) ~~and~~ , 12-35-128(3)(~~ca~~)(V), 12-35-129(1)(cc) and (ll), and 12-35-140, C.R.S. ~~This Rule XIV replaces prior anesthesia related Board Rules XIV, XV, XVI, XVII, and XVIII.~~

2. The purpose of this Rule XIV is to provide dental patients in the state of Colorado open and safe access to anesthesia care by making the process for obtaining ~~privileges or~~ a permit well defined, transparent, and consistent for the dental professionals while at the same time, advocating for patient safety.

B. The Anesthesia Continuum

1. The anesthesia continuum represents a spectrum encompassing analgesia, local anesthesia, sedation, and general anesthesia along which no single part can be simply distinguished from neighboring parts. It is neither the route of administration nor the medication(s) used that determines or defines the level of anesthesia administered. The location on the continuum defines the level of anesthesia administered.

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2. The level of anesthesia on the continuum is determined by the definitions listed under section C of this Rule XIV. Elements used to determine the level of anesthesia include the level of consciousness and the likelihood of anesthesia provider intervention(s), based upon the following patient parameters:

    a. Responsiveness

    b. Airway

    c. Respiratory (breathing)

    d. Cardiovascular

C. Definitions Related to Anesthesia

1. Anesthesia - The art and science of managing anxiety, pain, and awareness. Includes analgesia, local anesthesia, minimal, moderate or deep sedation, or general anesthesia.

2. Analgesia - The diminution or elimination of pain.

3. Local Anesthesia - The elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

4. Minimal Sedation - A minimally depressed level of consciousness produced by a pharmacological method, that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected.

5. Moderate Sedation - A drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

6. Deep Sedation - A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

7. General Anesthesia - A drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function.

Cardiovascular function may be impaired.

8. Monitoring - Evaluation of patients to assess physical condition and level of anesthesia.

9. Peri-anesthesia Period - The time from the beginning of the pre-anesthesia assessment until the patient is discharged from anesthesia care.

10. Anesthesia Provider - The licensed and legally authorized individual responsible for administering medications that provide analgesia, local anesthesia, minimal, moderate or deep sedation, or general anesthesia.

11. Pediatric Designation – Required if administering minimal sedation, moderate sedation, or deep sedation/general anesthesia to a patient under 12 years old.

D. General Rules for the Safe Administration of Anesthesia

1. The anesthesia provider's education, training, experience, and current competence must correlate with the progression of a patient along the anesthesia continuum.

2. The anesthesia provider must be prepared to manage deeper than intended levels of anesthesia as it is not always possible to predict how a given patient will respond to anesthesia.

3. The anesthesia provider's ultimate responsibility is to protect the patient. This includes, but is not limited to, identification and management of any complication(s) occurring during the peri-anesthesia period.

4. No dentist shall administer or employ any agent(s) with a narrow margin for maintaining consciousness including, but not limited to, ultra-short acting barbiturates, propofol, parenteral ketamine, and similarly acting drugs, or quantity of agent(s), or technique(s), or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of the definition of minimal sedation or moderate sedation in section C of this Rule XIV, unless he/she holds a valid Deep Sedation/General Anesthesia Permit issued by the Colorado Dental Board.

E. Anesthesia Privileges Included in Colorado Dental Licensure

1. The following anesthesia privileges are included in Colorado dental licensure:

   a. Local Anesthesia;

   b. Analgesia;

   c. Medication prescribed/administered for the relief of anxiety or apprehension (limited to the maximum recommended dose of a single drug not including nitrous oxide, otherwise it will be considered minimal sedation); and

   d. Nitrous Oxide/Oxygen Inhalation Analgesia in compliance with section G of this Rule XIV.

2. A dentist who elects to engage the services of another anesthesia provider in order to provide anesthesia in his ~~or/~~ her dental office is responsible for ensuring that the facility meets the requirements outlined in this Rule XIV.

F. Anesthesia ~~Privileges and~~ Permits

1. Local Anesthesia ~~Privileges~~ Permit for dental hygienists -

    a. A dental hygienist may obtain a Local Anesthesia ~~Privileges~~ Permit and administer local anesthesia or a local anesthetic reversal agent under the indirect supervision of a dentist.

    b. A Local Anesthesia ~~Privileges~~ Permit will be issued once and will remain valid as long as the licensee maintains an active license to practice, except as otherwise provided in this Rule XIV.

    c. In order to initially apply for a Local Anesthesia Permit pursuant to this Rule XIV, an applicant must pay a fee established by the Director of the Division of Professions and Occupations pursuant to section 24-34-105, C.R.S.

2. ~~Temporary Privileges or~~Inspection Permit -

    a. A dentist will be issued ~~temporary privileges or a temporary~~an inspection permit upon meeting the educational and/or experience requirements for a Moderate Sedation ~~Privileges~~ Permit or for a Deep Sedation/General Anesthesia Permit as outlined in this Rule XIV prior to successfully completing his/her clinical onsite inspection.

    b. Unless otherwise authorized by the Board, the ~~temporary privileges or~~inspection permit will be issued once and will remain valid for a maximum of ~~ninety (~~90~~)~~ days.

    c. This permit can only be used to administer anesthesia for purposes of a Board authorized inspection.

3. Minimal Sedation ~~Privileges~~ Permit -

    a. To administer minimal sedation, a dentist shall have a Minimal Sedation ~~Privileges~~Permit, Moderate Sedation ~~Privileges~~ Permit, or a Deep Sedation/General Anesthesia Permit issued in accordance with this Rule XIV.

    b. A Minimal Sedation ~~Privileges~~ Permit shall be valid for a period of ~~five (~~5~~)~~ years, after which such ~~privileges~~ permit may be renewed upon reapplication.

    c. In order to initially apply for or renew a Minimal Sedation Permit pursuant to this Rule XIV, an applicant must pay a fee established by the Director of the Division of Professions and Occupations pursuant to section 24-34-105, C.R.S.

4. Moderate Sedation ~~Privileges~~ Permit -

    a. To administer ~~Moderate~~ moderate ~~Sedation~~sedation, a dentist shall have a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit issued in accordance with this Rule XIV.

    b. A Moderate Sedation ~~Privileges~~ Permit shall be valid for a period of ~~five (~~5~~)~~ years after which such ~~privileges~~ permit may be renewed upon reapplication.

    c. In order to initially apply for or renew a Moderate Sedation Permit pursuant to this Rule XIV, an applicant must pay a fee established by the Director of the Division of Professions and Occupations pursuant to section 24-34-105, C.R.S

5. Deep Sedation/General Anesthesia Permit -

   a. To administer deep sedation/and or general anesthesia, a dentist shall have a Deep Sedation/General Anesthesia Permit issued in accordance with this Rule XIV.

   b. A Deep Sedation/General Anesthesia Permit shall be valid for a period of ~~five (~~5~~)~~ years after which such permit may be renewed upon reapplication.

   c. In order to initially apply for or renew a Deep Sedation/General Anesthesia Permit pursuant to this Rule XIV, an applicant must pay a fee established by the Director of the Division of ~~Registrations~~ Professions and Occupations pursuant to section 24-34-105, C.R.S.

G. Nitrous Oxide/Oxygen Inhalation Requirements

1. A dentist may delegate under direct supervision the monitoring and administration of nitrous oxide/oxygen inhalation to appropriately trained dental personnel, pursuant to sections 12-35-113(1)(p) and (q), 12-35-128(3)(c), and 12-35-140(4), C.R.S.

2. The supervising dentist is responsible for determining and documenting the maximum percent-dosage of nitrous oxide administered to the patient. Documentation shall include the length of time nitrous oxide was ~~used~~ delivered~~and the length of time the patient was reoxygenated with 100% oxygen~~.

3. It is the responsibility of the supervising dentist to ensure that dental personnel who administer and/or monitor nitrous oxide/oxygen inhalation are appropriately trained.

4. If nitrous oxide is used in the practice of dentistry, then the supervising dentist shall provide and ensure the following:

   a. Fail safe mechanisms in the delivery system and an appropriate scavenging system;

   b. The inhalation equipment must be evaluated for proper operation and delivery of inhalation agents;

   c. Any administration or monitoring of nitrous oxide/oxygen inhalation to patients by dental personnel is performed in accordance with generally accepted standards of dental or dental hygiene practice.

H. Local Anesthesia ~~Privileges~~ Permit for Dental Hygienists

1. A dental hygienist may obtain a Local Anesthesia ~~Privileges~~ Permit after submitting a Board-approved application and upon successful completion of courses conducted by a school accredited by the ~~American Dental Association~~ Commission on Dental Accreditation.

2. Courses must meet the following requirements:

   a. ~~Twelve (~~12~~)~~ hours of didactic training, including but not limited to:

      - Anatomy;

      - Pharmacology;

      - Techniques;

- Physiology; and

- Medical Emergencies.

b. ~~Twelve (~~12~~)~~ hours of clinical training that includes the administration of at least ~~six (~~6~~)~~ infiltration and ~~six (~~6~~)~~ block injections.

I. Minimal Sedation ~~Privileges~~ Permit - A dentist may obtain a Minimal Sedation ~~Privileges~~ Permit after submitting a Board~~-~~ approved application and upon successful completion of the educational requirements set forth below:

1. A specialty residency or general practice residency recognized by the ~~American Dental Association~~ Commission on Dental Accreditation that includes comprehensive and appropriate training to administer and manage minimal sedation; or

2. Educational criteria for a Moderate Sedation ~~Privileges~~ Permit or for a Deep Sedation/General Anesthesia Permit; or

3. A minimum of ~~sixteen (~~16~~)~~ hours of Board-approved coursework completed within the past ~~five (~~5~~)~~ years that provides training in the administration and induction of minimal sedation techniques and management of complications and emergencies associated with sedation commensurate with the American Dental Association Guidelines for teaching the comprehensive control of anxiety and pain in dentistry.

   a. The coursework must contain an appropriate combination of didactic instruction and practical skills training.

   b. The applicant must submit for Board approval documentation of the training course(s) to include, but not be limited to, a syllabus or course outline of the program and a certificate or other documentation from course sponsors or instructors indicating the number of course hours, content of such courses and date of successful completion.

   c. Course content leading to current Basic Life Support and/or Advanced Cardiac Life Support and/or Pediatric Advanced Life Support cannot be considered as part of the ~~sixteen (~~16~~)~~ hours of classroom and clinical instruction.

4. The Board may consider qualifications accepted in another state or jurisdiction that resulted in a comparable permit to be issued by that state or jurisdiction which is substantially equivalent to the requirements for a Minimal Sedation Permit in Colorado, as long as the applicant has successfully administered minimal sedation in 20 cases for the last 2 years prior to applying, and has had no discipline, morbidity (significant), or mortality associated with the administration of sedation.

5. A dentist is only eligible for a Pediatric Designation on his/her Minimal Sedation Permit by successfully completing a pediatric residency pursuant to paragraph 1 above.

J. Moderate Sedation ~~Privileges~~ Permit - A dentist may obtain a Moderate Sedation ~~Privileges~~ Permit after submitting a Board~~-~~ approved application and upon successful completion of education only, or a combination of approved education and experience, or endorsement of authorized administration in another state or jurisdiction as set forth below:

1. Education Only Route - must submit proof of having successfully completed one of the following:

a. A specialty residency or general practice residency recognized by the ~~American Dental Association~~ Commission on Dental Accreditation that includes comprehensive and appropriate training to administer and manage moderate sedation; or

b. Educational criteria for a Deep Sedation/General Anesthesia Permit.

2. Education/Experience Route - must submit proof of successfully completing moderate sedation course(s) and acceptable sedation cases as set forth below.

a. Education -

~~I)~~i. ~~Sixty (~~60~~)~~ hours of Board~~-~~ approved coursework completed within the past ~~five (~~5~~)~~ years that provides training in the administration and induction of moderate sedation techniques and management of complications and emergencies associated with sedation commensurate with the American Dental Association Guidelines for teaching the comprehensive control of anxiety and pain in dentistry.

~~II)~~ii. Such coursework must include an appropriate combination of didactic instruction and practical skills training. Coursework must also include documented training in parenteral techniques in order to perform parenteral sedation once a Moderate Sedation Permit is issued.

~~III)~~iii. The applicant must submit for Board approval documentation of the training course(s) to include, but not be limited to, a syllabus or course outline of the program and a certificate or other documentation from course sponsors or instructors indicating the number of course hours, content of such courses and date of successful completion.

~~IV)~~iv. Course content leading to current Basic Life Support and/or Advanced Cardiac Life Support and/or Pediatric Advanced Life Support cannot be considered as part of the ~~sixty (~~60~~)~~ hours of classroom and clinical instruction.

b. Experience -

~~I)~~i. ~~Twenty (~~20~~)~~ sedation cases that were completed as part of or separate from the Board approved sedation training course.

~~II)~~ii. If completed separate from the course, then all cases must be completed during the ~~one (~~1~~)~~ year period immediately after completion of the approved training program.

~~III)~~iii. All of the cases must be performed and documented under the on-site instruction and supervision of a person qualified to administer anesthesia at a deep sedation/general anesthesia level.

~~IV)~~iv. ~~All of the cases must be performed and documented by the applicant.~~ The applicant must be the primary provider of the sedation AND directly provide dental care for all required casework pursuant to section 12-35-140(4)(b), C.R.S.

~~V)~~v. Cases may be performed on live patients or as part of a hands-on high-fidelity sedation simulation center or program; however, a maximum of 5

hands-on high fidelity simulation cases may be accepted as part of the required 20 sedation cases.

~~VI)~~vi. ~~All~~ The documentation of all ~~of the~~ cases performed on live patients must meet ~~generally accepted standards for the provision and documentation of~~ the requirements set forth in sections O and P of this Rule XIV, specific to moderate sedation.

3. Endorsement Route - the Board may consider qualifications accepted in another state or jurisdiction that resulted in a comparable permit to be issued by that state or jurisdiction which is substantially equivalent to the requirements for a Moderate Sedation Permit in Colorado, as long as the applicant has successfully administered moderate sedation in 20 cases for the last 2 years prior to applying, and has had no discipline, morbidity (significant), or mortality associated with the administration of sedation.

4. Pediatric Designation - a dentist is only eligible for a Pediatric Designation on his/her Moderate Sedation Permit by either successfully:

a. Completing a pediatric residency pursuant to subparagraph 1.a above,

b. Meeting the educational criteria pursuant to subparagraph 1.b above, or

c. Completing a minimum of 30 hours specific to pediatric patients in addition to or as part of the 60 hours of education pursuant to subparagraph 2.a above AND 10 pediatric cases in addition to or as part of the 20 cases of experience pursuant to subparagraph 2.b above.

K. Deep Sedation/General Anesthesia Permit - A dentist may obtain a Deep Sedation/General Anesthesia Permit after submitting a Board- approved application and upon successful completion of ~~one~~ 1 of the following educational requirements:

1. A residency program in general anesthesia that is approved by the ~~American Dental Association~~Commission on Dental Accreditation, the American Dental Society of Anesthesiology, the Accreditation Council for Graduate Medical Education, the American Osteopathic Association or any successor organization to any of the foregoing; or

2. An acceptable post-doctoral training program (e.g., oral and maxillofacial surgery or dental anesthesiology) that affords comprehensive and appropriate training necessary to administer and manage deep sedation and general anesthesia commensurate with the American Dental Association Guidelines for teaching the comprehensive control of anxiety and pain in dentistry.

3. A dentist issued a Deep Sedation/General Anesthesia Permit will automatically obtain a Pediatric Designation.

L. Clinical On-Site Inspection for Obtaining a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit

1. Any dentist applying for a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit will initially be issued ~~a temporary~~an inspection permit upon successfully meeting the ~~educational and/or experience~~ requirements of section J or K ~~as provided in~~of this Rule XIV. The dentist must then undergo a clinical on-site inspection. This temporary inspection permit may only be utilized for purposes of undergoing the Board approved clinical on-site inspection.

2. Unless otherwise authorized by the Board, a clinical on-site inspection must be successfully completed within ~~ninety (~~90~~)~~ days of ~~a temporary~~an inspection permit being issued in order to receive a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit.

3. ~~The Board may require re-~~A clinical on-site inspection ~~of a facility~~ as part of the process for renewal or reinstatement of the ~~privileges or~~ permit is required pursuant to section 12-35-140(5), C.R.S.

4. A clinical on-site inspection in order to reinstate an expired permit will require the applicant to first obtain a temporary inspection permit before proceeding and will require 1 case to be observed while the dentist administers anesthesia at the level for which he/she is reinstating. The inspector may require observation of additional cases at his/her discretion.

5. A clinical on-site inspection in order to renew an active permit must be completed within the 3 months before the expiration date of the permit or within a 3 month grace-period after the expiration date of the permit.

~~4~~6. A separate clinical on-site inspection is not required for dentists who receive a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit pursuant to this Rule XIV for ~~one~~ 1 office and travel to other dental office locations to administer anesthesia. However, it is the responsibility of the anesthesia provider to ensure that each ~~facility~~ office meets the requirements outlined in this rule. This responsibility also extends to a dentist without a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit who elects to engage the services of another anesthesia provider to provide such anesthesia in his/her dental office.

7. A clinical on-site inspection is not required for dentists administering only in a hospital setting.

8. In the case of a mobile or portable facility, a clinical on-site inspection shall be conducted in the office of a Colorado licensed dentist. A written list of all monitors, emergency equipment, and other materials which the mobile anesthesia provider agrees to have available at all times while administering in multiple locations shall be provided to the inspector, who in turn will provide it with his/her inspection report to the Board.

~~5~~9. The dentist requiring the anesthesia inspection is responsible for all fees associated with the inspection and must pay any fee incurred directly to the approved inspector. The inspector may request that actual travel expenses be covered for lodging, meals, and mileage at the current Internal Revenue Service (IRS) rate per mile, and charge an inspection fee of $500.

~~6~~10. The ~~anesthesia~~ clinical on-site inspection shall consist of four (4) parts:

a. Review of the office equipment, records, and emergency medications required in sections N, O, P.~~2~~ 3, and P.~~3~~ 4 of this Rule XIV.

b. Surgical/Anesthetic Techniques. ~~The inspector shall observe at least one (1) case while the dentist administers anesthesia at the level for which he/she is making application to the Board. The inspector may require additional cases to observe at his/her discretion.~~

i. The inspector shall observe at least 1 case while the dentist administers anesthesia at the level for which he/she is making application to the Board. The inspector may require additional cases to observe at his/her

discretion.

ii. Any dentist requesting a Pediatric Designation that is applying for, renewing, or reinstating a Moderate Sedation Permit and is eligible for the designation through completion of a pediatric specialty training program or a combination of acceptable pediatric education (30 hours) and experience (10 pediatric cases) is required to have at least 1 pediatric case observed as part of his/her inspection.

c. Simulated Emergencies. The dentist and his/her team must be able to demonstrate his/her expertise in managing a minimum of 8 emergencies as required in the application.

d. Discussion Period.

~~7~~11. The inspector shall be a Board approved Colorado licensed ~~anesthesiologist~~ physician or certified registered nurse anesthetist (CRNA) trained in dental outpatient deep sedation/general anesthesia and moderate sedation, or dentist with a Deep Sedation/General Anesthesia Permit pursuant to section 12-35-140(5)(a), C.R.S.

~~8~~12. The inspector shall not have an unethical agreement or conflict of interest with an applicant. ~~An inspector's receipt of payment from the applicant for services as an inspector is acceptable and does not constitute an unethical agreement or conflict of interest.~~

~~9~~13. Inspectors shall be considered consultants for the Board and shall be immune from liability in any civil action brought against him/her occurring while acting in this capacity as set forth in section 12-35-109(3), C.R.S.

~~10~~14. The documentation of the anesthesia inspection must be completed on forms approved by the Board and submitted for review along with the anesthesia record(s).

M. Office Facilities and Equipment for Provision of Minimal Sedation, Moderate Sedation, Deep Sedation and/or General Anesthesia -

1. Any dentist whose practice includes the administration of minimal sedation by any anesthesia provider must provide the following office facilities and equipment, which are required to be functional at all times:

a. Emergency equipment and facilities, including:

~~I)~~i. An appropriate size bag-valve-mask apparatus or equivalent with an oxygen hook-up;

~~II)~~ii. Oral and nasopharyngeal airways;

~~III)~~iii. Appropriate emergency medications; and

~~IV)~~iv. An external defibrillator - manual or automatic.

b. Equipment to monitor vital signs and oxygenation/ventilation, including:

~~I)~~i. A continuous pulse oximeter; and

~~II)~~ii. A blood pressure cuff of appropriate size and stethoscope, or equivalent blood pressure monitoring devices.

c. Oxygen, suction, and a pulse oximeter must be immediately available during the recovery period.

2. Any dentist whose practice includes the administration of moderate sedation by any anesthesia provider must provide the following office facilities and equipment, which are required to be functional at all times:

a. Emergency equipment and facilities, including:

~~I)~~i. An appropriate size bag-valve-mask apparatus or equivalent with an oxygen hook-up;

~~II)~~ii. Oral and nasopharyngeal airways;

~~III)~~iii. Appropriate emergency medications; and

~~IV)~~iv. An external defibrillator - manual or automatic.

b. Equipment to monitor vital signs and oxygenation/ventilation, including:

~~I)~~i. A continuous pulse oximeter; and

~~II)~~ii. A blood pressure cuff of appropriate size and stethoscope, or equivalent blood pressure monitoring devices.

c. Oxygen, suction, and a pulse oximeter must be immediately available during the recovery period.

d. Back-up suction equipment.

e. Back-up lighting system.

f. Parenteral access or the ability to gain parenteral access, if clinically indicated.

g. Electrocardiograph, if clinically indicated.

h. End-tidal carbon dioxide monitor (capnography) by April 1, 2016.

3. Any dentist whose practice includes the administration of deep sedation and/or general anesthesia by any anesthesia provider must provide the following office facilities and equipment, which are required to be functional at all times:

a. Emergency equipment and facilities, including:

~~I)~~i. An appropriate size bag-valve-mask apparatus or equivalent with an oxygen hook-up;

~~II)~~ii. Oral and nasopharyngeal airways;

~~III)~~iii. Appropriate emergency medications; and

~~IV)~~iv. An external defibrillator - manual or automatic.

b. Equipment to monitor vital signs and oxygenation/ventilation, including:

~~I)~~i. A continuous pulse oximeter; and

~~II)~~ii. A blood pressure cuff of appropriate size and stethoscope, or equivalent blood pressure monitoring devices.

c. Oxygen, suction, and a pulse oximeter must be immediately available during the recovery period.

d. Back-up suction equipment.

e. Back-up lighting system.

f. Parenteral access or the ability to gain parenteral access, if clinically indicated.

g. Electrocardiograph.

h. End-tidal carbon dioxide monitor ~~if using a laryngeal mask airway or endotracheal intubation~~(capnography) by April 1, 2016.

i. Additional emergency equipment and facilities, including:

~~I)~~i. Endotracheal tubes suitable for patients being treated;

~~II)~~ii. A laryngoscope with reserve batteries and bulbs,

~~III)~~iii. Endotracheal tube forceps (i.e. magill); and

~~IV)~~iv. At least one additional airway device.

N. ~~Volatile~~ Anesthesia Gas Delivery Systems - ~~if utilized,~~ shall include:

1. Capability to deliver oxygen to a patient under positive pressure, including a back-up oxygen system;

2. Gas outlets that meet generally accepted safety standards preventing accidental administration of inappropriate gases or gas mixture;

3. Fail-safe mechanisms for inhalation of nitrous oxide analgesia;

4. The inhalation equipment must have an appropriate scavenging system if volatile anesthetics are used; and

5. Gas storage facilities, which meet generally accepted safety standards.

O. Documentation - shall include, but is not limited to:

1. For administration of local anesthesia and analgesia -

   a. Pertinent medical history, including weight; and

   b. Medication(s) administered and dosage(s).

2. For administration of minimal sedation, moderate sedation, deep sedation or general anesthesia -

a. Medical History - current and comprehensive;

b. Weight;

c. Height for any patient over the age of 12;

d. American Society of Anesthesiology (ASA) Classification;

e. Dental Procedure(s);

f. Informed Consent;

g. Anesthesia Record, which includes:

~~I)~~i. Parenteral access site and method, if utilized;

~~II)~~ii. Medication(s) administered - medication (including oxygen), dosage, route, and time given;

~~III)~~iii. Vital signs before and after anesthesia is utilized;

~~IV)~~iv. Intravenous fluids, if utilized; and

~~V)~~v. Response to anesthesia - including any complications;

h. Condition of patient at discharge.

3. ~~For~~ In addition, for administration of moderate sedation, deep sedation or general anesthesia:

a. Physical examination - airway assessment; baseline heart rate, blood pressure, respiratory rate, and oxygen saturation;

b. Anesthesia record, which includes:

~~I)~~i. Time anesthesia commenced and ended;

~~II)~~ii. At least every 5 minutes - blood pressure, heart rate; and

~~III)~~iii. At least every 15 minutes - oxygen saturation (SAO2); respiratory rate; electrocardiograph (ECG), if clinically indicated by patient history, medical condition(s), or age; and ventilation status (spontaneous, assisted, or controlled).

P. Patient Monitoring - shall include, but is not limited to the following for the administration of:

1. Local Anesthesia and Analgesia -

~~a. General~~ general state of the patient.

2. Minimal Sedation -

a. Continuous heart rate and respiratory status;

b. Continuous oxygen saturation (SpO2)~~, if clinically indicated by patient history, medical condition(s), or age~~;

c. Pre and post procedure blood pressure; and

d. Level of anesthesia on the continuum.

~~e. Level of cooperation in the pediatric or special needs patient may not reasonably allow for full compliance with some monitoring requirements. In such instance, the supervising dentist shall use professional judgment and shall document available monitoring parameters to the best of his/her ability.~~

3. Moderate Sedation -

a. Continuous heart rate, respiratory status, and oxygen saturation;

b. Intermittent blood pressure every 5 minutes or more frequently;

c. Continuous electrocardiograph, if clinically indicated by patient history, medical condition(s), or age; ~~and~~

d. (Effective April 1, 2016) End-tidal carbon dioxide monitoring (capnography); and

~~d~~e. Level of anesthesia on the continuum.

4. Deep Sedation or General Anesthesia -

a. Continuous heart rate, respiratory status, and oxygen saturation;

b. Intermittent blood pressure every 5 minutes or more frequently;

c. Continuous electrocardiograph;

d. (Effective April 1, 2016) End-tidal carbon dioxide monitoring ~~if using a laryngeal mask airway or endotracheal intubation;~~ (capnography); and

e. Level of anesthesia on the continuum.

5. Level of cooperation in the pediatric or special needs patient may not reasonably allow for full compliance with some monitoring requirements. In such instance, the supervising dentist shall use professional judgment and shall document available monitoring parameters to the best of his/her ability.

Q. Miscellaneous Requirements

1. Certification(s) -

a. All dentists and dental personnel utilizing, administering or monitoring local anesthesia, analgesia (including nitrous oxide), minimal sedation, moderate sedation, deep sedation or general anesthesia shall have successfully completed current Basic Life Support (BLS) training for health care providers. This is also a requirement for all dental hygienists utilizing, administering, or monitoring local anesthesia.

b. Additionally, any dentist applying for or maintaining a Moderate Sedation ~~Privileges~~ Permit or a Deep Sedation/General Anesthesia Permit must have successfully completed current Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS), as appropriate for the dentist's practice. PALS is required for

a dentist that maintains a Pediatric Designation and obtained such designation through completion of a pediatric specialty training program or a combination of acceptable pediatric education (30 hours) and experience (10 pediatric cases).

2. Personnel -

   a. Minimal/Moderate Sedation - during the administration of minimal or moderate sedation, the supervising dentist and at least ~~one (~~1~~)~~ other individual who is experienced in patient monitoring and documentation must be present.

   b. Deep sedation/general anesthesia - during the administration of deep sedation or general anesthesia, the supervising dentist and at least ~~two (~~2~~)~~ other individuals must be present; one of whom is experienced in patient monitoring and documentation.

3. Monitoring and medication administration ~~–~~ the supervising dentist retains accountability, but delegation to trained dental personnel may occur under the: ~~may be delegated to trained dental personnel under the direct supervision of the dentist; however, the supervising dentist retains full accountability.~~

   a. Direct supervision by the dentist when a patient is being monitored, or

   b. Direct, continuous, and visual supervision by the dentist when medication, excluding local anesthetic, is being administered to a patient.

4. Discharge - patient discharge after sedation and/or general anesthesia must be specifically authorized by the anesthesia provider.

R. Additional Requirements for ~~Privileges or~~ Permits: Demonstration of Continued Competency and Reinstatement of Expired ~~Privileges or~~ Permits

1. An applicant for a Local Anesthesia ~~Privileges~~Permit, Minimal Sedation ~~Privileges~~Permit, Moderate Sedation ~~Privileges~~ Permit or ~~a~~ Deep Sedation/General Anesthesia Permit shall demonstrate to the Board that he/she has maintained the professional ability and knowledge required to perform anesthesia when the applicant has not completed a residency program or the coursework set forth in this Rule XIV within the past ~~five (~~5~~)~~ years immediately preceding the application. The applicant may demonstrate competency as follows:

   a. Submit proof satisfactory to the Board that he/she has engaged in the level of administration of anesthesia within generally accepted standards of dental or dental hygiene practice and in compliance with sections O and P of this Board Rule XIV at or above the level for which the applicant is pursuing ~~privileges or~~ a permit for at least ~~one (~~1~~)~~ of the ~~five (~~5~~)~~ years immediately preceding the application, or

   b. Submit proof satisfactory to the Board of an evaluation, completed within ~~one (~~1~~)~~ year preceding the application by a person or entity approved by the Board that certifies the applicant's ability to administer anesthesia within generally accepted standards of dental or dental hygiene practice and in compliance with sections O and P of this Board Rule XIV at or above the level for which he/she is requesting ~~privileges or~~ a permit. The proposed procedure for the evaluation and the proposed evaluating person or entity must be submitted and be pre-approved by the Board.

2. If a dentist allows his/her Colorado dental license to expire then his/her Minimal Sedation ~~Privileges~~Permit, Moderate Sedation ~~Privileges~~ Permit, or Deep Sedation/General Anesthesia Permit shall also expire. The dentist may apply for reinstatement of his/her Minimal Sedation ~~Privileges~~Permit, Moderate Sedation ~~Privileges~~ Permit, or Deep Sedation/General Anesthesia Permit simultaneously with or subsequent to application for reinstatement of licensure.

3. If a dental hygienist allows his/her Colorado dental hygienist license to expire then his/her Local Anesthesia ~~Privileges~~ Permit shall also expire. The dental hygienist may apply for reinstatement of his/her Local Anesthesia ~~Privileges~~ Permit simultaneously with or subsequent to application for reinstatement of licensure.

4. A dentist or dental hygienist who is submitting an application for reinstatement of his/her ~~privileges or~~ permit shall demonstrate to the Board the same competency requirements set forth in section R.1 if he/she has not had ~~privileges or~~ a permit within the ~~two (~~2~~)~~ years immediately preceding such reinstatement application.

5. A dentist renewing his/her permit is required to complete 17 hours of Board approved continuing education credits specific to anesthesia or sedation administration prior to renewing it every 5 years.

   a. These credits may also be applied to the 30 continuing education hours required every 2 years as part of licensure renewal. However, they may only apply to the license renewal period in which they were earned and cannot be re-applied towards a subsequent license renewal period.

   b. A dentist permitted to administer either minimal sedation, moderate sedation, or deep sedation/general anesthesia may not apply time spent maintaining current ACLS/PALS towards this requirement.

   c. Board approved continuing education credits in anesthesia or sedation administration are limited to any course or program recognized by the (or successor organization):

      i. American Dental Association (ADA) Continuing Education Recognition Program (CERP),

      ii. Academy of General Dentistry (AGD) Program Approval for Continuing Education (PACE),

      iii. American Medical Association (AMA), or

      iv. Commission on Dental Accreditation (CODA) accredited institution.

S. Anesthesia Morbidity/Mortality Reporting Requirements - a complete written report shall be submitted to the Board by the anesthetizing dentist or dental hygienist and his/her supervising dentist within ~~fifteen (~~15~~)~~ days of any anesthesia related incident resulting in ~~significant~~ patient morbidity (significant) or mortality.

1. A morbidity and mortality report shall include the complete anesthesia record with an associated narrative of all events.

2. All records related to the incident shall be submitted to the Board as part of the report.

T. Effect of ~~2009 Amendments on Currently Issued Permits~~Pediatric Designation Requirements

1. ~~Any dentist whose Board-issued permit to perform General Anesthesia and/or Deep Sedation is active on March 30, 2010 shall automatically obtain a Deep Sedation/General Anesthesia Permit pursuant to this Rule XIV. Such dentist's permit shall expire five (5) years from the date under which the prior General Anesthesia and/or Deep Sedation Permit was granted. Following such expiration, the dentist must comply with all applicable statutory and regulatory requirements in order to renew the Deep Sedation/General Anesthesia Permit.~~Any dentist whose Board issued permit to perform deep sedation/general anesthesia is active on March 30, 2015, shall automatically obtain a Pediatric Designation on his/her permit.

2. ~~Any dentist whose Board-issued permit to perform Parenteral Conscious Sedation is active on March 30, 2010 shall automatically obtain Moderate Sedation Privileges pursuant to this Rule XIV. Such dentist's privileges shall expire five (5) years from the date under which the prior Parenteral Conscious Sedation permit was granted. Following such expiration, the dentist must comply with all applicable statutory and regulatory requirements in order to renew the Moderate Sedation Privileges.~~Any dentist whose Board issued permit to perform moderate sedation is active on March 30, 2015, shall automatically obtain a Pediatric Designation on his/her permit for 1 year. In order to continue or regain that designation, he/she will be required to have successfully completed:

   a. Education requirements of section K of this Rule XIV,

   b. A pediatric residency pursuant to section J.1 of this Rule XIV, or

   c. A minimum of 30 hours of Board approved coursework that provides training in the administration and induction of moderate sedation techniques and management of complications and emergencies associated with sedation for the pediatric patient commensurate with the American Dental Association Guidelines for teaching the comprehensive control of anxiety and pain in dentistry,

   AND

   10 pediatric patient cases that were completed as part of or separate from the Board approved sedation training course that meet the requirements of section J.2.b of this Rule XIV.

3. ~~Any dentist whose Board-issued permit to perform Enteral Conscious Sedation is active on March 30, 2010 shall automatically obtain Minimal Sedation Privileges pursuant to this Rule XIV. Such dentist's privileges shall expire five (5) years from the date under which the prior Enteral Conscious Sedation permit was granted. Following such expiration, the dentist must comply with all applicable statutory and regulatory requirements in order to renew the Minimal Sedation Privileges.~~Any dentist whose Board issued permit to perform minimal sedation is active on March 30, 2015, shall automatically obtain a Pediatric Designation on his/her permit for 1 year. In order to continue or regain that designation, he/she will be required to have successfully completed a pediatric residency pursuant to section I.1 of this Board Rule XIV.

4. ~~Any dental hygienist whose Board-issued permit to perform Local Anesthesia is active on March 30, 2010 shall automatically obtain Local Anesthesia Privileges pursuant to this Rule XIV. Such hygienist's privileges shall remain valid for so long as the licensee maintains an active license to practice, except as otherwise provided in this Rule XIV.~~Effective April 1, 2016, there will be no Minimal Sedation Permit allowed for pediatric patients except for those who have successfully completed a pediatric residency. All other dentists must possess a Moderate Sedation Permit or Deep Sedation/General Anesthesia Permit in order to administer to pediatric patients.

U. Board Reserved Rights

1. Dentists or dental hygienists utilizing anesthesia that requires ~~privileges or~~ a permit shall be responsible for practicing within generally accepted standards of dental or dental hygiene practice in administering anesthesia and complying with the terms of this Rule XIV, pursuant to section 12-35-129(1), C.R.S.

2. Dentists or dental hygienists utilizing anesthesia that requires ~~privileges or~~ a permit, under this Rule XIV without first obtaining the required ~~privileges or~~ permit, or utilizing such anesthesia with ~~expired privileges or~~ an expired permit, may be disciplined pursuant to section 12-35-129(1)(cc) and (ll), C.R.S.

3. Upon a specific finding of a violation of this Rule XIV, and/or upon reasonable cause, the Board may require a supervising dentist to submit proof demonstrating that applicable staff have the appropriate education/training in order to administer nitrous oxide/oxygen and/or are otherwise acting in compliance with this Rule XIV.

4. The Board may discipline or deny a dentist or dental hygienist for a violation of this Rule XIV and/or any other grounds pursuant to section 12-35-129(1), C.R.S.

5. In addition to the remedies set forth above, nothing in this Rule XIV shall limit the authority of the Board, upon objective and reasonable grounds, to order summary suspension of an anesthesia ~~privileges or~~ permit pursuant to section 24-4-104(4), C.R.S.

6. In addition to the remedies set forth above, nothing in this Rule XIV shall limit the authority of the Board, upon objective and reasonable grounds, to order summary suspension of a license to practice dentistry or dental hygiene, pursuant to section 24-4-104(4), C.R.S.

7. Upon review of a morbidity/mortality report and/or upon reasonable concern regarding the use of anesthesia, the Board may require an on-site inspection of the dental ~~facility~~ office utilized by the anesthesia provider in administering anesthesia.

8. The Board reserves all other powers and authorities set forth in the Dental Practice ~~Law of Colorado~~Act, Article 35 of Title 12, C.R.S. and the Administrative Procedure Act, Article 4 of Title 24, C.R.S.

Rule XV. Pediatric Case Management; Medical Immobilization/Protective Stabilization

(Amended October 24, 2007, Effective December 31, 2007; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. The purpose of this rule is to recognize that pediatric cases may require special case management, and that pediatric and special needs patients may need specialized care in order to prevent injury and to protect the health and safety of the patients, the dentist, and the dental staff. In addition to patient management of the pediatric and special needs patient, it may be necessary to medically immobilize the pediatric and special needs patients to prevent injury and to protect the health and safety of the patients, the dentist, and the dental staff. To achieve effective pediatric patient management, it is important to build a trusting relationship between the dentist, the dental staff, the patient, and the parent of guardian. This necessitates that the dentist establishes communication with them and promotes a positive attitude towards oral and dental health in order to alleviate fear and anxiety and to deliver quality dental care.

B. Pediatric Case Management

1. Parents or legal guardians cannot be denied access to the patient during treatment in the

dental office unless the health and safety of the patient, parent or guardian, or dental staff would be at risk. The parent or guardian shall be informed of the reason they are denied access to the patient and both the incident of the denial and the reason for the denial shall be documented in the patient's dental record.

2. This provision shall not apply to dental care delivered in an accredited hospital or acute care facility.

C. Medical Immobilization/Protective Stabilization

1. Within this Rule, the terms medical immobilization and protective stabilization are used interchangeably. These terms refer to partial or complete immobilization of the patient necessary to protect the patient, practitioner, and other dental staff from injury while providing care. Immobilization can be performed by the dentist, staff, or parent or legal guardian with or without the aid of an immobilization device.

2. Training requirement. Prior to utilizing medical immobilization, the dentist shall have received training beyond basic dental education through a residency program or graduate program that contains content and experiences in advanced behavior management or a continuing education course of no less than 6 hours in advanced behavior management that involves both didactic and demonstration components. This training requirement will be effective October 1, 2006.

3. Pre-Immobilization Requirements

    a. Prior to utilizing medical immobilization, the dentist shall consider each of the following:

        1. Other alternative less restrictive behavioral management methods;

        2. The dental needs of the patient;

        3. The effect on the quality of dental care;

        4. The patient's emotional development; and

        5. The patient's physical condition; and

        6. The safety of the patient, dentist, and staff.

    b. Prior to using medical immobilization, the dentist shall obtain written informed consent for the specific technique of immobilization from the parent or legal guardian and document such consent in the dental record, unless the parent or legal guardian is immobilizing the patient. Consent involving solely the presentation or description of a listing of various behavior management techniques is not considered to constitute informed consent for medical immobilization. The parent or guardian must be informed of the advantages and disadvantaged of the technique(s) of immobilization being utilized and/or considered.

4. Medical Immobilization or Protective Stabilization

    a. Immobilization can be performed by the dentist, staff, or parent or legal guardian with or without the aid of an immobilization device.

    b. Immobilization must cause no serious or permanent injury and the least possible

discomfort.

c. Indication. Partial or complete immobilization may be used for required diagnosis and/or treatment if the patient cannot cooperate due to lack of maturity, mental or physical handicap, failure to cooperate after other behavior management techniques have failed and/or when the safety of the patient, dentist or dental staff would be at risk without using protective stabilization. This method can only be used to reduce or eliminate untoward movement, protect the patient and staff from injury, and to assist in the delivery of quality dental treatment.

d. Contraindications. Medical immobilization may not be used for the convenience of the dentist, as punishment, to provide care for a cooperative patient, or for a patient who cannot be immobilized safely due to medical conditions.

e. Documentation. The patient's records should include:

1. Specific written informed consent for the medical immobilization, including the reason why immobilization is required;

2. Type of immobilization used, including immobilization by a parent or guardian;

3. Indication or reason for specific immobilization;

4. Duration of application;

5. Documentation of adequacy of patient airway, peripheral circulation and proper positioning of immobilization device or technique in increments of 15 minutes while immobilization is utilized.

6. In addition, there must be documentation of the outcome of the immobilization, including the occurrence of any marks, bruises, injuries, or complications to the patient.

f. Duration of Application.

1. The patient record must document the time each immobilization began and ended.

2. The status and progress of the treatment and the plan for future or remaining treatment with treatment options shall be reported at least hourly, or more frequently if appropriate, to the parent or legal guardian. After each such hourly report, renewed consent for continuation of the immobilization must be specifically obtained. Such consent may be verbal but shall be documented in the record.

g. If the treatment plan changes during the procedure from that presented to the parent or legal guardian in the initial informed consent discussion, the parent or legal guardian shall be notified and consulted immediately.

h. Dental hygienists and dental assistants shall not use medical immobilization by themselves, but may assist the dentist as necessary.

Rule XVI. Infection Control

(Effective August 1, 2000; Amended January 5, 2001; Amended January 21, 2010, Effective March 30,

2010; Re-numbered December 30, 2011; Repealed January 22, 2015, Effective March 30, 2015)

~~A. Failure to utilize generally accepted standards of infection control procedures may violate 12-35-129 (1)(k), C.R.S.~~

Rule XVII. Advertising

(Effective August 1, 2000; Temporarily Expired December 2, 2002; Effective July 1, 2003; Amended October 27, 2004; Amended October 26, 2006, Effective December 30, 2006; Amended April 25, 2007, Effective July 1, 2007; Amended October 24, 2007, Effective December 31, 2007; Amended October 22, 2008, Effective November 30, 2008; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

This Rule applies to advertising in all types of media that is directed to the public. No dentist or dental hygienist shall advertise in any form of communication in a manner that is misleading, deceptive or false.

A. Misleading, deceptive, or false advertising includes, but is not limited to the following, and if proven is a violation of section 12-35-129 (1), C.R.S.:

1. A known material misrepresentation of fact;

2. Omits a fact necessary to make the statement considered as a whole not materially misleading;

3. Is intended to be or is likely to create an unjustified expectation about the results the dentist or dental hygienist can achieve;

4. Contains a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dental or dental hygiene services if that representation is not subject to reasonable substantiation. For the purposes of this subsection, reasonable substantiation is defined as tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Individual experiences are not a substitute for scientific research. Evidence about the individual experience of consumers may assist in the substantiation, but a determination as to whether reasonable substantiation exists is a question of fact on a case-by-case basis;

5. Claims that state or imply a specialty practice by a general dentist in violation of section (B) hereof;

6. The false or misleading use of a claim regarding Board certification, registration, listing, education, or an unearned degree;

7. Advertisement that uses patient testimonials unless the following conditions are met:

   a. The patient's name, address, and telephone number as of the time the advertisement was made must be maintained by the dentist or dental hygienist and that identifying information shall be made available to the Board within ten (10) days of a request for the information by the Board.

   b. Dentists or dental hygienists who advertise dental or dental hygiene services, which are the subject of the patient testimonial, must have actually provided these services to the patient making the testimonial.

c. If compensation, remuneration, a fee, or benefit of any kind has been provided to the person in exchange for consideration of the testimonial, such testimonial must include a statement that the patient has been compensated for such testimonial.

d. A specific release and consent for the testimonial from the patient shall be obtained from the patient which shall be made available to the Board within ten (10) days of request of that information.

e. Any testimonial shall indicate that results may vary in individual cases.

f. Patient testimonials attesting to the technical quality or technical competence of a service or treatment offered by a licensee must have reasonable substantiation.

8. Advertising that makes an unsubstantiated medical claim or is outside the scope of dentistry, unless the dentist or dental hygienist holds a license or registration in another profession and the advertising and/or claim is within the scope authorized by the license or registration in another profession;

9. Advertising that makes unsubstantiated promises or claims, including but not limited to claims that the patient will be cured;

10. The use of "bait and switch" in advertisements. "Bait and switch" advertising is defined as set forth in the Colorado Consumer Protection Act, section 6-1-105, C.R.S.;

11. The Board recognizes that clinical judgment must be exercised by a dentist or dental hygienist. Therefore, a good faith diagnosis that the patient is not an appropriate candidate for the advertised dental or dental hygiene service or product is not a violation of this rule;

12. If an advertisement includes an endorsement by a third party in which there is compensation, remuneration, fee paid, or benefit of any kind, the endorsement by the third party must indicate that it is a paid endorsement;

13. Inferring or giving the appearance that an advertisement is a news item without using the phrase "paid advertisement";

14. Promotion of a professional service which the licensee knows or should know is beyond the licensee’s ability to perform;

15. The use of any personal testimonial by the licensed provider attesting to a quality or competence of a service or treatment offered by a licensee that is not reasonably verifiable;

16. At the time any type of advertisement is placed the dentist or dental hygienist must in good faith possess information that would substantiate the truthfulness of any assertion, omission or claim set forth in the advertisement;

17. A licensed dentist or dental hygienist shall be responsible and shall approve any advertisement made on behalf of the dental or dental hygiene practice. The dentist or dental hygienist shall maintain a listing stating the name and license number of the dentists or dental hygienists who approved and are responsible for the advertisement and shall maintain such list for a period of three (3) years;

18. Advertising that claims to provide services at a specific rate and fails to disclose that the patient’s insurance may provide payment for all or part of the services.

B. Specialty Practice and Advertising.

1. A licensed dentist has the legal authority to practice in any and all areas of dentistry and also the authority to confine the areas in which he or she chooses to practice.

2. Dental specialties are recognized as only those defined by the American Dental Association and dental specialists are those dentists who have successfully completed a Commission on Dental Accreditation specialty program.

3. Practitioners who have successfully completed a Commission on Dental Accreditation accredited specialty program may advertise the practice of that specialty. Practitioners who have not completed an accredited specialty program, and have limited their practice to a specific Commission on Dental Accreditation defined specialty, must clearly state in all advertising and/or public promotions, that he or she is a general dentist who has limited his or her practice to that field of dentistry and must disclose "General Dentistry" in print larger and/or bolder and noticeably more prominent than any other area of practice or service advertised.

4. It is misleading, deceptive or false for general practitioners to list their names, advertise, or promote themselves in any area or location that implies a specialty. A general practitioner who advertises in any medium under a specialty heading or section may be considered as having engaged in misleading, deceptive or false advertising and may be in violation of section 12-35-129 (1), C.R.S.

5. Those group practices which include general dentists and specialists must list the phrase "General Dentistry and Specialty Practice" larger and/or bolder and noticeably more prominent than any service offered in an advertisement. Names and qualifications shall be made available to the public upon request.

C. Acronyms

In addition to those acronyms required by law pertaining to one's business entity such as Professional Corporation (P.C.) or Limited Liability Company (L.L.C.), dentists or dental hygienists may only use those acronyms earned at a program accredited by a regional or professional accrediting agency recognized by the United States Department of Education or the Council on Postsecondary Accreditation.

Rule XVIII. Protocol for Termination of Practice upon Revocation, Relinquishment, or Suspension for More than 90 Days of Dental License

(Amended December 2, 2002; Re-numbered December 30, 2011)

A. Upon revocation and relinquishment of the dental license, the licensee shall immediately stop the practice of dentistry and shall tender his/her license to practice dentistry to the Board within twenty-four (24) hours from the effective date of revocation or relinquishment. The licensee shall notify all patients within 30 calendar days that the licensee has ceased the practice of dentistry and that the patient must make arrangements for the transfer of patient records. The licensee shall make the patient records or copies of the patient records available to the patient, to a dentist designated by the patient, or if the licensee's practice is sold, to the dentist who purchases the practice. The transfer of patient records must be completed within 60 days. These terms may be set forth in the revocation or relinquishment order.

B. Any request to deviate from this rule must be set forth in writing to the Board. The Board may review the request and may, upon good cause shown, issue an amended termination order. The decision to amend the terms for the termination of practice is final with the Board. A failure to comply with

the provisions of the termination order may be grounds for disciplinary action for violation of a Board Order.

C. Written notice by first class mail of the termination of practice must be made to all patients of the practice to the patient's last known address, or by notice by publication as set forth in Rule .E.

D. The suspended practitioner cannot employ any licensed dentist, hygienist, or assistant and cannot be on the premises of the dental office to observe, monitor, or participate in any way in care given. The suspended practitioner may derive no income from the dental practice either directly or indirectly during the period of suspension, except for treatment provided before the beginning of the suspension. The suspended practitioner may provide administrative duties alone to the practice.

Rule XIX. Protocol upon Suspension of Dental License for Less than 90 Days (Summary Suspension and Suspension of Less than 90 Days)

(Effective December 2, 2002; Re-numbered December 30, 2011)

A. Upon suspension of license, the licensee shall immediately stop the practice of dentistry and shall tender his/her license to practice dentistry to the Board within twenty-four (24) hours from the effective date of the suspension.

B. The licensee shall assure the continued care of patients and must make arrangements for the transfer of patient records. The licensee shall make the patient records or copies of the patient records available to the patient, to a dentist designated by the patient, or if the licensee's practice is sold, to the dentist who purchases the practice.

C. Any request to deviate from this rule must be set forth in writing to the Board. The Board may review the request and may, upon good cause shown, issue an amended termination order. The decision to amend the terms for the termination of practice is final with the Board. A failure to comply with the provisions of the termination order may be grounds for disciplinary action for violation of a Board Order.

D. The suspended practitioner cannot employ any licensed dentist, hygienist, or assistant and cannot be on the premises of the dental office to observe, monitor, or participate in any way in care given. The suspended practitioner may derive no income from the dental practice either directly or indirectly during the period of suspension, except for treatment provided before the beginning of the suspension. The suspended practitioner may provide administrative duties alone to the practice.

Rule XX. Compliance with Board Subpoena

(Effective December 31, 2007; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. When the Board requests a patient's complete patient record, pursuant to subpoena, the patient chart or record shall include all medical histories for the patient, all patient notes, all labeled and dated radiographs, all billing and/or all insurance records that are compiled for a specific patient.

B. It is the responsibility of the licensed dentist or dental hygienist to assure that all records submitted are legible and, if necessary, to have records transcribed to assure legibility.

C. Failure by a licensed dentist or dental hygienist to submit the complete patient record to the Board, or any relevant papers, books, records, documentary evidence, and/or other materials, as requested pursuant to subpoena is a violation of § 12-35-129(1)(i), C.R.S.

Rule XXI. Declaratory Orders

(Re-numbered December 30, 2011)

Adopted in accordance with the requirements of 24-4-105(11).

A. Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Board.

B. The Board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such action.

C. In determining whether to rule upon a petition filed pursuant to this rule, the Board will consider the following matters, among others:

1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the petitioner of any statutory provision or rule or order of the Board.

2. Whether the petition involves any subject, question or issue which is the focus of a formal or informal matter or investigation currently pending before the Board or a court but not involving any petitioner.

3. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

4. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colo. R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

D. Any petition filed pursuant to this rule shall set forth the following:

1. The name and address of the petitioner and whether the petitioner is licensed pursuant to the provisions of C.R.S. 12 35 101, et seq., as amended.

2. The statute, rule or order to which the petition relates.

3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

E. If the Board determines that it will rule on the petition, the following procedures apply:

1. The Board may rule upon the petition based solely upon the facts presented in the petition. In such a case, any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.

2. The Board may order the petitioner to file a written brief, memorandum or statement of position.

3. The Board may set the petition, upon due notice to the petitioner, for a non evidentiary hearing.

4. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.

5. The Board may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition. The Board may take administrative notice of the facts pursuant to the Administrative Procedure Act (C.R.S. 1973 24 4 105(8)) and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.

6. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

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

8. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire.

9. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Board to consider.

F. The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by section D. of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.

Rule XXII. Practice Monitor Consultant Guidelines

(Amended February 1, 1998, May 15, 1998, December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011)

A. Licensees requiring monitoring must pay the monitor for service. Remuneration for such service will be a reasonable fee negotiated by the parties.

B. Monitors must be approved by the Board and shall submit their application for practice monitor on form(s) supplied by the Board.

C. Monitors are responsible for periodic assessment of a licensee’s practice as directed by the Board or its agent(s).

D. Monitors shall have access to all patient records, files, and materials to effectively monitor a licensee’s practice.

E. The monitor may elect to observe the licensee in the execution of certain procedures.

F. Monitors shall be required to submit practice monitor reports on form(s) supplied by the Board and on a schedule to be determined by the Board.

G. Monitors approved by the Board shall be deemed to be consultants of the Board.

Rule XXIII. Fining Schedule for Violations of the Dental Practice Act and Board Rules

(Adopted January 22, 2015, Effective March 30, 2015)

Pursuant to section 12-35-129.1(6), C.R.S., when a licensed dentist, including an academic dentist, or dental hygienist violates a provision of the Dental Practice Act or a Board rule, the Board may impose a fine on the licensee. The amount of an administrative fine assessed will be based on the following criteria:

- Severity of the violation,

- Type of violation,

- Whether the licensee committed repeated violations, and

- Any other mitigating or aggravating circumstances.

A. If the licensee is a dentist, the fine must not exceed $5,000. If the violation(s) involve:

1. Substandard Care, Fraud, or Attempting to Deceive the Board

a. First offense, may be fined up to $3,000.

b. Second offense, may be fined up to $4,000.

c. Third offense, may be fined up to $5,000.

2. Record Keeping Violations

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

3. Failure to Maintain or Provide Complete Records

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

4. Failure to Comply with Continuing Education Requirements

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

5. Practicing on an Expired License

a. 0 – 12 months, may be fined up to $1,250.

b. 1 -2 years, may be fined up to $2,500.

c. 2 or more years, may be fined up to $5,000.

6. Administering Anesthesia/Sedation without a Permit

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

7. Failure to Appropriately Supervise Dental Personnel

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

8. Failure to Meet Generally Accepted Standards for Infection Control – each day a violation continues or occurs may be considered a separate violation for the purpose of imposing a fine under this category.

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

9. False Advertising

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

10. Failure to Register for the Prescription Drug Monitoring Program (PDMP) – applicable only if you maintain an active Drug Enforcement Agency (DEA) registration

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

11. Failure to Respond in an Honest, Materially Responsive, and Timely Manner to a Complaint

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

12. Failure to Maintain Professional Liability Insurance

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

13. Violation of the Practice Ownership Laws

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

14. Aiding and Abetting the Unlicensed Practice of Dentistry or Dental Hygiene

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

15. Failure to Comply with a Board Order or Subpoena

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

16. Other Violations

a. First offense, may be fined up to $1,250.

b. Second offense, may be fined up to $2,500.

c. Third offense, may be fined up to $5,000.

B. If the licensee is a dental hygienist, the fine must not exceed $3,000. If the violation(s) involve:

1. Substandard Care, Fraud, or Attempting to Deceive the Board

a. First offense, may be fined up to $1,000.

b. Second offense, may be fined up to $2,000.

c. Third offense, may be fined up to $3,000.

2. Record Keeping Violations

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

3. Failure to Maintain or Provide Complete Records

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

4. Failure to Comply with Continuing Education Requirements

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

5. Practicing on an Expired License

a. 0 – 12 months, may be fined up to $750.

b. 1 -2 years, may be fined up to $1,500.

c. 2 or more years, may be fined up to $3,000.

6. Administering Local Anesthesia without a Permit

a. 0 – 12 months, may be fined up to $750.

b. 1 -2 years, may be fined up to $1,500.

c. 2 or more years, may be fined up to $3,000.

7. Failure to Meet Generally Accepted Standards for Infection Control – each day a violation continues or occurs may be considered a separate violation for the purpose of imposing a fine under this category.

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

8. False Advertising

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

9. Failure to Respond in an Honest, Materially Responsive, and Timely Manner to a Complaint

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

10. Failure to Maintain Professional Liability Insurance

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

11. Violation of the Practice Ownership Laws

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

12. Aiding and Abetting the Unlicensed Practice of Dentistry or Dental Hygiene

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

13. Failure to Comply with a Board Order or Subpoena

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

14. Other Violations

a. First offense, may be fined up to $750.

b. Second offense, may be fined up to $1,500.

c. Third offense, may be fined up to $3,000.

C. A fine is subject to an additional surcharge imposed by the Executive Director of the Department of Regulatory Agencies (DORA), pursuant to section 24-34-108, C.R.S.

Rule XXIV. Use of Lasers

(Adopted January 22, 2015, Effective March 30, 2015)

A. The requirements in this rule do not apply to use of non-adjustable laser units for purposes of diagnosis and curing.

B. Only a dentist may employ a laser capable of the removal of hard and/or soft tissue in the treatment of a dental patient.

C. Laser use by a dental hygienist can only be performed under the indirect or direct supervision of a dentist, and must be limited to pocket disinfection at settings that preclude hard and soft tissue

removal.

D. Effective June 30, 2015, a licensee who is a first time laser user must first successfully complete training that covers at a minimum laser physics, safety, and appropriate use prior to utilizing the laser.

1. Training must be obtained through (or a successor organization):

a. A Commission on Dental Accreditation (CODA) accredited institution;

b. An American Dental Association (ADA) Continuing Education Recognition Program (CERP) recognized course;

c. An Academy of General Dentistry (AGD) Program Approval for Continuing Education (PACE) recognized course; or

d. An American Medical Association (AMA) recognized course.

2. A licensee utilizing a laser, other than what is defined in section A of this rule, must maintain evidence of training as required in paragraph 1 of this rule above and provide it to the Board if requested or submit proof of laser use prior to June 30, 2015, if applicable.

E. All lasers must be used in accordance with accepted safety guidelines.

Editor's Notes

History

Rules XVII, XXVI eff. 07/01/2007.

Rules XXVI, XXIX, XXX eff. 12/31/2007.

Rule XXVI eff. 11/30/2008.

Rule III eff. 05/30/2009.

Rule III eff. 12/30/2009.

Rules III, XIV - XXX eff. 03/30/2010.

Rules I - IX, XI - XIII, XV - XXII eff. 12/30/2011.

Rules I, II, III, IX, XI, XII, XIII, XIV, XVI, XXIII, and XXIV eff. 03/30/2015.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

Rulemaking Hearing, January 22, 2015

Proposed Changes with Statement of Basis, Purpose, and Authority

Basis and Purpose: To implement House Bill 14-1227, which went into effect on July 1, 2015 and concerns the continuation of the State Board of Dental Examiners (now the Colorado Dental Board) and other statutory changes to the Dental Practice Law of Colorado (now the Dental Practice Act).

Statement of Authority: Pursuant to section 12-35-107(1)(b), C.R.S., the Colorado Dental Board shall "[m]ake, publish, declare, and periodically review reasonable rules as necessary to carry out and make effective the powers and duties of the board as vested in it" by Article 35 of Title 12.

Notice of Rulemaking Hearing

Tracking number

2014-01237

Department

700 - Department of Regulatory Agencies

Agency

718 - Passenger Tramway Safety Board

CCR number

3 CCR 718-1

Rule title

PASSENGER TRAMWAYS

Rulemaking Hearing

Date

02/26/2015

Time

09:00 AM

Location

1560 Broadway, Conference Room 1250-C Denver CO 80202

Subjects and issues involved

Adoption of Rule 2.2.9, 3.2.9, 4.2.9, 5.2.9, 6.2.9, 7.2.9

Statutory authority

25-5-704 (1) (a)

Contact information

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Title

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2.2.9 Manual control devices

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed at all conductor and operator work positions, control rooms, machine rooms, and out-of-doors in proximity to all loading and unloading areas.

As a minimum, each operator and conductor work position shall include an emergency shutdown device and a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet.

All control devices shall be conspicuously and permanently marked with the proper function and color code.

3.2.9 Manual control devices

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed in all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum, each of these control locations shall include an Emergency Shutdown device and a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

All control devices shall be conspicuously and permanently marked with the proper function and color code.

A full length stop cord or equivalent shall be provided adjacent to the terminal conveying equipment access ways provided for the inspection and maintenance while equipment is in operation.

4.2.9 Manual control devices

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed in all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum, each of these control locations shall include an Emergency Shutdown device and a Normal Stop device. All manual control devices located in or on a

control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

All control devices shall be conspicuously and permanently marked with the proper function and color code.

5.2.9 Manual control devices

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed at all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum, each of these control locations shall include an Emergency Shutdown device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

All control devices shall be conspicuously and permanently marked with the proper function and color code.

6.2.9 Manual control devices

Manual control devices shall be installed at all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum, each of these control locations shall include an Emergency Shutdown device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

All control devices shall be conspicuously and permanently marked with the proper function and color code.

7.2.9 Manual control devices

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices that will initiate a stop shall be installed at all attendants' and operators' work position, in machine rooms, machine compartments, access points to crawl spaces, and out-of-doors in proximity to all loading and unloading areas.

All control devices shall be conspicuously and permanently marked with the proper function and color code.

COLORADO
Department of
Regulatory Agencies
Division of Professions and Occupations

Business and Inspections Branch
Passenger Tramway Safety Board

NOTICE OF RULE MAKING HEARING

Pursuant to section 25-5-704 (1) (a) of the Colorado Revised Statutes, you are hereby advised that the Colorado Passenger Tramway Safety Board will be holding a public rule making hearing on Thursday, February 26, 2015, commencing at 9:00 a.m. at 1560 Broadway, Conference Room 1250-C, Denver, Colorado for the purpose of considering the following.

The Board will consider the adoption of the following rules and regulations:

Rule 2.2.9	**Manual control devices**
Rule 3.2.9	**Manual control devices**
Rule 4.2.9	**Manual control devices**
Rule 5.2.9	**Manual control devices**
Rule 6.2.9	**Manual control devices**
Rule 7.2.9	**Manual control devices**

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 Colorado Passenger Tramway Safety Board will afford interested parties an opportunity to submit written data, views, or arguments, and to submit briefly (3 minutes per item) the same orally if they so desire. **It is requested that written testimony be submitted to the Colorado Passenger Tramway Safety Board at least ten (10) days prior to the rule making hearing.** All submissions will be considered.

Dated this 10th day of December, 2014.

BY ORDER OF THE COLORADO PASSENGER TRAMWAY SAFETY BOARD

Joyce J. Young, Program Director

Notice of Rulemaking Hearing

Tracking number

2014-01220

Department

700 - Department of Regulatory Agencies

Agency

725 - Division of Real Estate

CCR number

4 CCR 725-3

Rule title

MORTGAGE LOAN ORIGINATORS AND MORTGAGE COMPANIES

Rulemaking Hearing

Date

01/14/2015

Time

09:00 AM

Location

1560 Broadway, Suite 110-D, Denver, CO

Subjects and issues involved

CHAPTER 5:&PROFESSIONAL STANDARDS

Statutory authority

Part 9 of Title 12, Article 61, Colorado Revised Statutes, as amended

Contact information

Name

Martha Torres-Recinos

Title

Rulemaking Administrator

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303-894-2359

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martha.torres-recinos@state.co.us

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
MORTGAGE LOAN ORIGINATORS AND MORTGAGE COMPANIES
4 CCR 725-3

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
January 14, 2015

CHAPTER 5: PROFESSIONAL STANDARDS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Board of Mortgage Loan Originators (the "Board") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Board.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Board of Mortgage Loan Originators is Part 9 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Mortgage Loan Originator Licensing and Mortgage Company Registration Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The purpose of this rule is to clarify advertising requirements of mortgage loan originators and companies.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

CHAPTER 5: PROFESSIONAL STANDARDS

5.1 Advertising

Any advertisement of a residential mortgage loan product or rate offered by a mortgage loan originator as that term is defined in § 12-61-902(6), C.R.S., or mortgage company as that term is defined in § 12-61-902(5), C.R.S., shall conform to the following requirements:

A. An advertisement shall be made only for such products and terms as are actually available at the time they are offered and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations;

B. The advertisement shall contain the following, each of which must be clearly and conspicuously included in the advertisement;

1. At least one (1) responsible party. The responsible party must be an individual person or a mortgage company. The responsible party must include their registration number that is approved on the Nationwide Mortgage Licensing System and Registry (NMLS);
2. The mortgage company name; AND
3. The business phone number of the responsible party.~~; and~~
~~4. The statement "Regulated by the Division of Real Estate."~~

C. The advertisement shall not appear to be offered by a government agency, a quasi-government agency or the perspective borrower's current lender and/or loan servicer;

D. An advertisement shall not make or omit any statement the result of which would be to present a misleading or deceptive impression to consumers;

E. An advertisement shall otherwise comply with all applicable state and federal disclosure requirements;

F. Advertisements shall incorporate applicable provisions of the final *Interagency Guidance on Nontraditional Mortgage Product Risks* ("Interagency Guidance") released on September 29, 2006, incorporated by reference in compliance with Section 24-4-103(12.5), C.R.S., and does not include any later amendments or editions of the final guidance. A certified copy of the Interagency Guidance is readily available for public inspection at the offices of the Board of Mortgage Loan Originators at 1560 Broadway, Suite 925, Denver, Colorado. The Interagency Guidance released by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift supervision, and the National Credit Union Administration can be examined at the internet website of the federal register (volume 71, number 192, page 58609-58618) at www.federalregister.gov. Reference copies of the federal register publications may also be found at the Colorado Supreme Court, located at 101 w. Colfax, Denver, Colorado 80202 or by telephone at (303) 837-3720; and

G. The responsible party must retain copies of all advertisements for a period of four (4) years, and provide said copies for inspection by an authorized

representative of the Board upon request.

5.2 The requirements set forth in Rule 5.1(b), Subsections one (1) through ~~four (4)~~ THREE (3) shall not apply to:

A. Any advertisement which indirectly promotes a credit transaction and which contains only the name of the mortgage company, the name and title of the mortgage loan originator, the contact information for the mortgage company or the mortgage loan originator, a mortgage company logo, or any license or registration numbers, such as the inscription on a coffee mug, pen, pencil, youth league jersey, sign, business card, or other promotional item; or
B. Any rate sheet, pricing sheet, or similar proprietary information provided to real estate brokers, builders, and other commercial entities that is not intended for distribution to consumers.

A hearing on the above subject matter will be held on Wednesday, January 14, 2015, at the Colorado Division of Real Estate, 1560 Broadway, Suite 110-D, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

Notice of Rulemaking Hearing

Tracking number

2014-01225

Department

1000 - Department of Public Health and Environment

Agency

1002 - Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-32

Rule title

REGULATION NO. 32 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR ARKANSAS RIVER BASIN

Rulemaking Hearing

Date

04/13/2015

Time

01:30 PM

Location

Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

Discharger specific variance for Lower Arkansas Segment 1a

Statutory authority

sections 25-8-202, 25-8-203, 25-8-204 and 25-8-402, C.R.S.

Contact information

Name

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Title

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COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC RULEMAKING HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of the adoption of revisions to Lower Arkansas Segment 1a in the Classifications and Numeric Standards for Arkansas River Basin, Regulation #32 (5 CCR 1002-32).

The revisions to Regulation #32 proposed by the City of Pueblo, along with a proposed statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1. Proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the revisions proposed in Exhibit 1 and developed in response to those proposed revisions, will also be considered.

HEARING SCHEDULE:

DATE:	Monday, April 13, 2015
TIME:	1:30 p.m.
PLACE:	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. The commission requests that all interested persons submit to the commission any available information that may be relevant in considering the noticed proposals.

Written submissions prior to the hearing by interested members of the public that do not have party status are encouraged. In order to be distributed to the commission for review prior to the hearing, such submissions need to be received in the commission office or the Colorado Department of Public Health and Environment's (Department's) mail room by April 1, 2015. Written submissions received after this date will be distributed to the commissioners at the hearing. However, for logistical reasons, the commission office cannot guarantee that **electronic submissions** received after 1:00 p.m. Friday, April 10, 2015 will be provided to commissioners. Interested persons wishing to submit comments or other documents after that date and time should bring paper copies to the hearing.

Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status generally will not be permitted. The commission requests that all interested persons submit to the commission any available information that may be relevant in considering the noticed proposals.

PARTY STATUS:

Participation as a "party" to this hearing will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). It is not necessary to acquire party status in order to testify or comment. **For each request for party status, please provide the organization's name, a contact person, mailing address, phone number, and email address.** Written party status requests are due in the commission office on or before:

DATE: Thursday, January 22, 2015
TIME: 5:00 p.m.

A single copy of the party status request may be transmitted as an email attachment to cdphe.wqcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the mail room of the Colorado Department of Public Health and Environment (department) no later than this deadline.

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established:

(1) A PDF version of a **Proponent's Prehearing Statement** from the City of Pueblo as the proponent of revisions proposed in Exhibit 1 attached to this notice, **including** written testimony and exhibits providing the basis for the proposals, must be submitted to the commission office no later than **February 4, 2015**. **In addition,** one complete paper copy, including written testimony and exhibits providing the basis for the proposed revisions, **AND** 13 paper copies of the Proponent's Prehearing Statement **without** written testimony and exhibits must be received in the department's mail room no later than **February 4, 2015**; and

(2) A PDF version of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of the Water Quality Control Division (division) or **anyone seeking party status and intending to respond to the proponent's proposal** must be submitted to the commission office no later than **March 4, 2015**. **In addition**, one complete paper copy, including written testimony and exhibits providing the basis for the proposals **AND** 13 paper copies of the Responsive Prehearing Statement **without** written testimony and exhibits must be received in the department's mail room no later than **March 4, 2015**.

The PDF versions of all hearing submittals may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site or submitted on a CD or flash drive so as to be received no later than the specified due date.

As soon as prehearing statements are posted on the commission's web site, the commission office will email a link to the page containing the prehearing statements to proponents, parties and the Attorney General's Office representatives for the commission and the division.

Also **note** that the commission has prepared a document entitled ***Information for Parties to Water Quality Control Commission Rulemaking Hearings***. A copy of this document will be emailed to all persons requesting party status. It is also posted on the commission's web site as Appendix C to the Public Participation Handbook. Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the request that all parties submit two-sided copies of all hearing documents on three-hole punch paper.**

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on March 4, 2015 may be submitted by the City of Pueblo, the division or anyone seeking party status. Any such rebuttal statements must be received in the commission office by **April 1, 2015**. A complete PDF version

(emailed to cdphe.wqcc@state.co.us, provided via an FTP site or submitted on a CD or flash drive) must be submitted to the commission office by this deadline. **In addition,** one complete paper copy of written rebuttal statements, including any exhibits, **AND** 13 paper copies without exhibits must be received in the department's mail room by this deadline. No other written materials will be accepted following this deadline except for good cause shown.

PREHEARING CONFERENCE:

DATE: Monday, March 23, 2015
TIME: 2:00 p.m.
PLACE: Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

Attendance at the prehearing conference is mandatory for all persons requesting party status. An opportunity may be available to participate in this prehearing conference by telephone. Persons wishing to participate by telephone should notify the commission office as early as possible.

Any motions regarding the conduct of this rulemaking shall be submitted by Wednesday, March 18, 2015, so that they can be considered at the prehearing conference. No motions will be accepted after March 18, 2015, except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202, 25-8-203, 25-8-204 and 25-8-402, C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

NOTIFICATION OF POTENTIAL MATERIAL INJURY TO WATER RIGHTS:

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate in the party status request submitted. In order for this potential to be considered fully by the commission and the other agencies listed in the statute, persons must fully explain the basis for their claim in their prehearing statement which is due in the commission office on the date specified above. This explanation should identify and describe the water right(s), and explain how and to what degree the material injury will be incurred.

Dated this 8th day of December, 2014 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth
cn=Trisha Oeth, o, ou=Water Quality Control Commission, email=trisha.oeth@state.co.us, c=US
2014.12.08 15:12:52 -07'00'

Trisha Oeth, Administrator

EXHIBIT 1
CITY OF PUEBLO

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

5 CCR 1002-32

REGULATION NO. 32

STREAM CLASSIFICATIONS AND WATER QUALITY STANDARDS FOR ARKANSAS RIVER BASIN

. . . .

32.6(5) Discharger-Specific Variances

The following Discharger-Specific Variances have been adopted by the Water Quality Control Commission. For each Discharger-Specific Variance, the first number is the underlying standard previously adopted by the Commission for the segment and represents the long-term goal for the waterbody. The first number will be used for assessing attainment for the waterbody and for the development of effluent limitations. The second number is the Commission's determination of the effluent concentration with the highest degree of protection of the classified use that is feasible for the named dischargers. Control requirements, such as discharge permit effluent limitations, shall be established using the first number as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number during the term of the DSV for the named dischargers.

(a) Lower Arkansas Segment 1a, Mainstem of the Arkansas River from a point immediately above the confluence with Fountain Creek to immediately above the Colorado Canal headgate near Avondale. City of Pueblo, [Permit No.] Expiration date: 12/31/2030.

(i) Effluent conditions.

Se(ac/ch)=19.1/14.1:40% annual average total selenium removal

So_4=329:871.2 mg/L annual average concentration

(ii) Exception for wet weather conditions.

The limitations for selenium and sulfate shall not apply when annual precipitation in the Fountain Creek watershed is equal to or greater than the 90^{th} percentile annual precipitation for the most recent twenty years of record.

(iii) Additional conditions.

Pueblo shall implement Best Management Practices (BMPs) to ensure that contributions to Pueblo's wastewater treatment plant of non-domestic waste water other than sources comprised only of ground water, that commenced on or after August 1, 2002, do not contribute to an exceedance of a 30-day average selenium concentration of 17 µg/l,

and/or a 30-day average sulfate concentration of 310 mg/l. BMPs shall include prohibitions of practices, treatment requirements, or other limitations on the sources of the contributions as necessary to meet the above requirements. This practice based condition shall be taken into consideration in the required evaluation and revisions for local limits.

. . . .

32.6 TABLES

STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION: 13 BASIN: **Lower Arkansas River** Stream Segment Description	Desig	Classifications	NUMERIC STANDARDS PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS µg/l			TEMPORARY MODIFICATIONS AND QUALIFIERS
1a. Mainstem of the Arkansas River from a point immediately above the confluence with Fountain Creek to immediately above the Colorado Canal headgate near Avondale.	UP	Aq Life Warm 2 Recreation E Water Supply Agriculture	D.O. = 5.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml	NH_3(ac/ch)=TVS CL_2(ac)=0.019 CL_2(ch)=0.011 CN=0.005 S=0.002	B=0.75 NO_2=0.5 NO_3=10 Cl=250 SO_4=329	As(ac)=340 As(ch)=0.02-10(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=2765(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(tot)	Ni(ac/ch)=TVS Se(ac)=19.1 Se(ch)=14.1 Ag(ac/ch)=TVS Zn(ac/ch)=TVS	~~Temporary modifications: type (i) Se(ac/ch) = existing quality; SO_4 = existing quality. Expiration date of 6/30/2016.~~ Discharger specific variance: Section 32.6(5)(a). Expiration date: 12/31/2030

CITY OF PUEBLO PROPOSED

32.55 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; APRIL 13, 2015 RULEMAKING; FINAL ACTION MAY 11, 2015; EFFECTIVE DATE NOVEMBER 1, 2015

The provisions of C.R S. 25-8-202(1)(a), (b) and (2); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The Commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

In 2010, the Commission adopted the discharger specific variance provisions at Regulation 31.7(4), which allow a temporary water quality standard to be adopted in cases where water quality based effluent limits are not feasible to achieve. A DSV is a hybrid standard that maintains the long-term water quality goal of fully protecting all designated uses, while temporarily authorizing an alternative effluent limit (AEL) to be developed for a specific pollutant and specific point source discharge where compliance with the water quality based effluent limit (WQBEL) is not feasible.

The Commission adopted a DSV for Lower Arkansas River Segment 1a for selenium and sulfate that represents the highest degree of protection of the classified uses that is feasible for the City of Pueblo. The Commission determined that the current level of treatment achieved at the Pueblo wastewater treatment plant for selenium, and the current concentrations of sulfate, represent the highest degree of protection of the uses. For selenium, the acute and chronic effluent limits for Pueblo shall not be more restrictive than a requirement to achieve an annual average of 40% removal of total selenium at the Pueblo Waste Water Treatment Facility. For sulfate, the effluent limits for Pueblo shall not be more restrictive than an annual average concentration of 871.2 mg/L. The Commission chose annual averages because of the variability of treatment performance and influent concentration caused by wet weather effects. For the same reasons, for both sulfate and selenium, in years with high precipitation in the Fountain Creek watershed greater than the 90^{th} percentile of the precipitation over the previous 20 years, the alternative limitations will not apply. Finally, the Commission adopted additional conditions to the DSV to maintain the status quo and prevent new contributions of selenium or sulfate to Pueblo's wastewater treatment facility from contributing to elevated selenium or sulfate concentrations.

The Commission reaffirmed its previous findings about the sources of selenium and sulfate to the Pueblo sewer system and Lower Arkansas River Segment 1a. Shallow ground water in the University Park and Fairmount areas of Pueblo has very high concentrations of selenium and sulfate. These two constituents are naturally occurring in the Pierre Shale formation that underlies this portion of Pueblo. While urbanization of the City is an irreversible human-caused condition that may result in increased water infiltration into and dissolution of selenium and sulfate in the shale, high natural ground water levels may also contribute to the problem. Much of this ground water flow is intercepted by basements in the University Park and Fairmount subdivisions and then in turn it is discharged to the sanitary sewer. The contribution of selenium and sulfates from industrial or other sources to the sewer system is virtually nil compared to the basement source. The Commission has determined that prohibiting this discharge to the sewer system would probably increase the amounts of selenium reaching Fountain Creek and subsequently Arkansas River segment 1a through naturally occurring ground water flow and would have a substantial and widespread economic and social impact. Approximately 40 to 50 percent of the selenium load to the Arkansas River is removed through the serendipitous interception and removal of selenium by the Pueblo Wastewater Treatment Plant. No adverse impacts on beneficial uses from the discharges of selenium or sulfates have been documented.

The Commission selected an expiration date of December 31, 2030, because the evidence demonstrated that the level of the highest degree of protection of the classified uses is unlikely to change before that date.

Notice of Rulemaking Hearing

Tracking number

2014-01248

Department

1000 - Department of Public Health and Environment

Agency

1002 - Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-61

Rule title

REGULATION NO. 61 - COLORADO DISCHARGE PERMIT SYSTEM

Rulemaking Hearing

Date

04/13/2015

Time

09:30 AM

Location

Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

Graywater provisions

Statutory authority

sections 25-8-202; 25-8-205; 25-8-401; and 25-8-402 C.R.S.

Contact information

Name

Bret Icenogle

Title

Section Manager

Telephone

303-692-3278

Email

bret.icenogle@state.co.us

COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC RULEMAKING HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of revisions to section 61.14(1)(b) of the Colorado Discharge Permit System, Regulation #61 (5 CCR 1002-61) and the adoption of a Graywater Control Regulation, Regulation #86, to be codified as (5 CCR 1002-86).

The revisions to Regulation #61 proposed by the Water Quality Control Division (division) as staff to the commission, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1. The new Regulation #86 proposed by the division, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, is attached to this notice as Exhibit 2. Any alternative proposals related to the revisions proposed in Exhibits 1 and 2, and developed in response to those proposed revisions, will also be considered.

HEARING SCHEDULE:

DATE:	Monday, April 13, 2015
TIME:	9:30 a.m.
PLACE:	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. The commission requests that all interested persons submit to the commission any available information that may be relevant in considering the noticed proposals.

Written submissions prior to the hearing by interested members of the public that do not have party status are encouraged. In order to be distributed to the commission for review prior to the hearing, such submissions need to be received in the commission office or the Colorado Department of Public Health and Environment's (Department's) mail room by April 1, 2015. Written submissions received after this date will be distributed to commissioners at the hearing. However, for logistical reasons, the commission office cannot guarantee that electronic submissions received after 1:00 p.m. Friday, April 10, 2015 will be provided to commissioners. Interested persons wishing to submit comments or other documents after that date and time should bring paper copies to the hearing and provide PDF versions to the commission office as soon as possible after the hearing.

Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status generally will not be permitted.

PARTY STATUS:

Participation as a "party" to this hearing will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). It is not necessary to acquire party status in order to testify or comment. **For each request for party status, please provide the organization's name, a contact person, mailing address, phone number, and email address.** Written party status requests are due in the commission office on or before:

DATE: Thursday, January 22, 2015
TIME: 5:00 p.m.

A single copy of the party status request may be transmitted as an email attachment to cdphe.wqcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the mail room of the Colorado Department of Public Health and Environment (department) no later than this deadline.

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established:

(1) A PDF version of a **Proponent's Prehearing Statement** from the division, as the proponent of revisions proposed in Exhibit 1 attached to this notice, including written testimony and exhibits providing the basis for the proposals, must be submitted to the commission office no later than **February 4, 2015**. **In addition,** one complete paper copy, including written testimony and exhibits providing the basis for the proposals, **AND** 13 paper copies of the Proponent's Prehearing Statements, **without** written testimony and exhibits, must be received in the department's mail room no later than **February 4, 2015**; and

(2) A PDF version of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of **anyone seeking party status and intending to respond to the proponent's proposal** must be submitted to the commission office no later than **March 4, 2015**. **In addition,** one complete paper copy, including written testimony and exhibits providing the basis for the proposals, **AND** 13 paper copies, **without** written testimony and exhibits, must be received in the department's mail room no later than **March 4, 2015**.

The PDF versions of all prehearing statements may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site or submitted on a CD or flash drive so as to be received no later than the specified due date.

As soon as prehearing statements are posted on the commission's web site, the commission office will email a link to the page containing the prehearing statements to proponents, parties and the Attorney General's Office representatives for the commission and the division.

Please **note** that the commission has prepared a document entitled ***Information for Parties to Water Quality Control Commission Rulemaking Hearings.*** A copy of this document will be emailed to all persons requesting party status. It is also posted on the commission's web site as Appendix C to the Public Participation Handbook. Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the request that all parties submit two-sided copies of all hearing documents on three-hole punch paper.**

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on March 4, 2015 may be submitted by the division or anyone seeking party status. Any such rebuttal statements must be received in the commission office by **April 1, 2015**. A PDF version (emailed to

cdphe.wqcc@state.co.us, provided via an FTP site or submitted on a CD or flash drive) must be submitted to the commission office by this deadline. **In addition**, one complete paper copy of written rebuttal statements, including any exhibits, **AND** 13 paper copies **without** exhibits must be received in the department's mail room by this deadline. No other written materials will be accepted following this deadline except for good cause shown.

PREHEARING CONFERENCE:

DATE: Monday, March 23, 2015
TIME: 9:00 a.m.
PLACE: Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

Attendance at the prehearing conference is mandatory for all persons requesting party status. An opportunity may be available to participate in this prehearing conference by telephone. Persons wishing to participate by telephone should notify the commission office as early as possible.

Any motions regarding the conduct of this rulemaking shall be submitted by Wednesday, March 18, 2015, so that they can be considered at the prehearing conference. No motions will be accepted after March 18, 2015, except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202; 25-8-205; 25-8-401; and 25-8-402 C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

NOTIFICATION OF POTENTIAL MATERIAL INJURY TO WATER RIGHTS:

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate in the party status request submitted. In order for this potential to be considered fully by the commission and the other agencies listed in the statute, persons must fully explain the basis for their claim in their prehearing statement which is due in the commission office on the date specified above. This explanation should identify and describe the water right(s), and explain how and to what degree the material injury will be incurred.

Dated this 15thth day of December, 2014 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth
cn=Trisha Oeth, o, ou=Water Quality Control Commission, email=trisha.oeth@state.co.us, c=US
2014.12.15 06:04:01 -07'00'

Trisha Oeth, Administrator

EXHIBIT 1

WATER QUALITY CONTROL DIVISION

DEPARTMENT OF HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-61

COLORADO DISCHARGE PERMIT SYSTEM

. . . .

61.14 GROUND WATER

61.14(1) APPLICABILITY

(b) The following facilities are specifically exempted from coverage under the ground water discharge provisions of this regulation:

. . . .

(x) Any graywater treatment works with a design flow of 2,000 gallons per day or less, if designed and constructed in accordance with Regulation 86 (5 CCR 1002-86).

. . . .

WATER QUALITY CONTROL DIVISION PROPOSED

61.68 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE – APRIL 13, 2015 RULEMAKING HEARING; EFFECTIVE DATE JUNE 30, 2015

The provisions of 25-8-202(1)(d) and (2), 25-8-401, 25-8-501, and 25-8-504, C.R.S., provide the specific statutory authority for the amendments to this regulation adopted by the Water Quality Control Commission (Commission). The Commission has also adopted, in compliance with 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

In coordination with the development of Regulation #86, the commission adopted an exemption from the ground water discharge provisions of Regulation #61 for certain graywater treatment works. The commission believes that graywater subsurface irrigation systems with a design flow of 2,000 gallons per day or less pose a similar risk to ground water as on-site wastewater treatment systems with a design capacity of 2,000 gallons per day or less, which currently has an exemption from ground water permitting in Regulation #61, and that a similar exemption for graywater treatment systems is appropriate as a matter of policy.

EXHIBIT 2

WATER QUALITY CONTROL DIVISION

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-86

REGULATION NO. 86

GRAYWATER CONTROL REGULATION

86.1 Authority

This regulation is promulgated pursuant to the Colorado Water Quality Control Act (CWQCA) sections 25-8-101 through 25-8-703, C.R.S. In particular, it is promulgated under section 25-8-205(1)(g), C.R.S.

86.2 Purpose and Scope

A. Purpose

The purpose of this regulation, as authorized by section 25-8-205(1)(g), is to describe requirements, prohibitions, and standards for the use of graywater for nondrinking water purposes, to encourage the use of graywater, and to protect public health and water quality.

B. Scope

This regulation establishes the allowed users and allowed uses of graywater within the state of Colorado; establishes the minimum state-wide standards for the location, design, construction, operation, installation, modification of graywater treatment works; and establishes the minimum ordinance or resolution requirements for a city, city and county, or county that chooses to authorize graywater use within its jurisdiction.

86.3 Severability

The provisions of this regulation are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of this regulation shall not be affected thereby.

86.4 Voluntary Local Graywater Control Programs

Each local city, city and county, or county has the discretion to decide whether to adopt any of the graywater uses along with the associated minimum design criteria and control measures set forth in this regulation.

86.5 Materials Incorporated by Reference

The materials incorporated by reference cited herein include only those versions that were in effect as of June 30, 2015 and not later amendments to the incorporated material.

All materials referenced in this regulation may be examined online, where available, or at the Water Quality Control Division, at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

86.6 Applicability

A. All graywater uses and graywater treatment works must comply with the minimum requirements of this regulation as set forth in a local graywater control program.

1. Graywater treatment works may only be installed and operated within the jurisdiction of a city, city and county, or county with a local graywater control program.

2. Graywater treatment works installed prior to the effective date of this regulation are only allowed under a local graywater control program and must meet the local requirements adopted pursuant to these regulations.

3. Graywater treatment works installed under a local graywater control program which is later revoked or rescinded must within 365 days:

a. Be physically removed or permanently disconnected; or

b. Be regulated under a limited graywater control program for existing graywater systems. In this case, the local city, city and county, or county must continue the limited graywater control program for the existing graywater treatment works only; or

c. Be regulated under another jurisdiction's local graywater control program which assumes authority over the existing graywater treatment works. The existing graywater treatment works will need to comply with the new city, city and county, or county's local graywater control program, including any required graywater treatment works modifications.

4. In the event that a property with a compliant graywater treatment works is annexed or de-annexed into a jurisdiction with differing graywater requirements, the property owner must within 365 days:

a. Ensure the graywater treatment works is physically removed or permanently disconnected; or

b. Ensure the graywater treatment works is incorporated into another city, city and county, or county's local graywater control program. This includes conforming to the minimum requirements of the new local graywater control program and may include improving or modifying the graywater treatment works.

B. Graywater use is only allowed under a local graywater control program and must meet the local requirements adopted pursuant to these regulations. Unauthorized graywater use and discharges are prohibited.

C. This regulation does not apply to: discharges pursuant to a Colorado Discharge Permit System (CDPS) permit, wastewater that has been treated and released to state waters prior to subsequent use, wastewater that has been treated and used at a domestic wastewater treatment works for landscape irrigation or process uses, on-site wastewater treatment works authorized under Regulation #43, reclaimed wastewater authorized under Regulation #84, water used in an industrial process that is internally recycled, and rainwater harvesting.

86.7 Enforcement and Division Oversight

A. The local city, city and county, or county with a local graywater control program has exclusive enforcement authority regarding compliance with the local ordinance or resolution.

B. The Colorado Water Quality Control Division oversees state-wide implementation of this regulation. As part of the state-wide implementation, a local city, city and county, or county that chooses to adopt a local graywater control program must notify the Water Quality Control Division within 60 days of program adoption, implementation, revision, or modification. A copy of the ordinance or resolution must be submitted to: Water Quality Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

86.8 Definitions

(1) "Agronomic rate" means the rate of application of nutrients to plants that is necessary to satisfy the nutritional requirements of the plants.

(2) "Agricultural irrigation" means irrigation of crops produced for direct human consumption, crops where lactating dairy animals forage, and trees that produce nuts or fruit intended for human consumption. This definition includes household gardens and fruit trees.

(3) "Closed sewerage system" means either a permitted domestic wastewater treatment works, which includes a permitted and properly functioning OWTS with a design capacity more than 2,000 gpd, or a properly functioning and approved or permitted OWTS with a design capacity of 2,000 gpd or less.

(4) "Commission" means the Water Quality Control Commission created by section 25-8-201, C.R.S.

(5) "Component" means a subpart of a graywater treatment works which may include multiple devices.

(6) "Cross-Connection" means <<definition of cross connection from the January 2015 Regulation 11 hearing>>.

(7) "Design" means the process of selecting and documenting in writing the size, calculations, site specific data, location, equipment specification and configuration of treatment components that match site characteristics and facility use.

(8) "Design flow" means the estimated volume of graywater per unit of time for which a component or graywater treatment works is designed.

(9) "Dispersed subsurface irrigation" means a subsurface irrigation system including piping and emitters installed throughout an irrigation area.

(10) "Division" means the Water Quality Control Division of the Colorado Department of Public Health and Environment.

(11) "Facility" means any building, structure, or installation, or any combination thereof that uses graywater subject to a local graywater control program, is located on one or more contiguous or adjacent properties, and is owned or operated by the same person or legal entity. Facility is synonymous with the term operation.

(12) "Floodplain (100-year)" means an area adjacent to a river or other watercourse which is subject to flooding as the result of the occurrence of a one hundred (100) year flood, and is so adverse to

past, current or foreseeable construction or land use as to constitute a significant hazard to public or environmental health and safety or to property or is designated by the Federal Emergency Management Agency (FEMA) or National Flood Insurance Program (NFIP). In the absence of FEMA/NFIP maps, a professional engineer shall certify the floodplain elevations.

(13) “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot or as designated by the Federal Emergency Management Agency or National Flood Insurance Program. In the absence of FEMA/NFIP maps, a professional engineer shall certify the floodway elevation and location.

(14) “Graywater" means that portion of wastewater that, before being treated or combined with other wastewater, is collected from fixtures within residential, commercial, or industrial buildings or institutional facilities for the purpose of being put to beneficial uses. Sources of graywater are limited to discharges from bathroom and laundry room sinks, bathtubs, showers, and laundry machines. Graywater does not include the wastewater from toilets, urinals, kitchen sinks, dishwashers, or nonlaundry utility sinks.

(15) "Graywater treatment works" means an arrangement of devices and structures used to: (a) collect graywater from within a building or a facility; and (b) treat, neutralize, or stabilize graywater within the same building or facility to the level necessary for its authorized uses.

(16) “Indirect connection” means a waste pipe from a graywater treatment works that does not connect directly with the closed sewerage system, but that discharges into the closed sewerage system though an air break or air gap into a trap, fixture, receptor, or interceptor.

(17) “Legally responsible party” (1) For a residential property, the legally responsible party is the property owner. (2) For a corporation, the legally responsible party is a responsible corporate officer, either: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for approval application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (3) For a partnership or sole proprietorship, the legally responsible party is either a general partner or the proprietor, respectively. (4) For a municipality, State, Federal, or other public agency, the legally responsible party is a principal executive officer or ranking elected official, either (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(18) “Limited local graywater control program” is a local graywater control program limited to existing graywater treatment works and which does not accept new graywater treatment works.

(19) “Local agency” means any local city, city or county, county agency including, but not limited to, a department, local public health agency, or district which is delegated the authority to administer all or a portion of the responsibilities of the local graywater control program.

(20) “Local graywater control program” is a local ordinance or resolution, including implementation practices, authorized by a city, city and county or county which is in compliance with the minimum requirements of this regulation.

(21) “Local public health agency” means any county, district, or municipal public health agency and may include a county, district, or municipal board of health.

(22) “Modification” means the alteration or replacement of any component of a graywater treatment works that can affect the quality of the finished water, the rated capacity of a graywater treatment works, the graywater use, alters the treatment process of a graywater treatment works, or compliance with this regulation and the local graywater control program. This definition does not include normal operations and maintenance of a graywater treatment works.

(23) “Mulch” means organic material including but not limited to leaves, prunings, straw, pulled weeds, and wood chips.

(24) “Mulch basin” means a type of irrigation or treatment field filled with mulch or other approved permeable material of sufficient depth, length, and width to prevent ponding or runoff. A mulch basin may include a basin around a tree, a trough along a row of plants, or other shapes necessary for irrigation.

(25) “On-site wastewater treatment system” or "OWTS" means an absorption system of any size or flow or a system or facility for treating, neutralizing, stabilizing, or dispersing sewage generated in the vicinity, which system is not a part of or connected to a sewage treatment works.

(26) “Percolation test” means a subsurface soil test at the depth of a proposed irrigation area to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed. The rate is expressed in minutes per inch.

(27) “Potable water system” means a system for the provision of water to the public for human consumption through pipes or other constructed conveyances, where such system has less than fifteen service connections or regularly serves less than an average of at least 25 individuals daily at least 60 days per year.

(28) “Professional engineer” means an engineer licensed in accordance with section 12-25-1, C.R.S.

(29) “Public nuisance” means the unreasonable, unwarranted and/or unlawful use of property, which causes inconvenience or damage to others, including to an individual or to the general public.

(30) “Public water system” means a system for the provision of water to the public for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. A public water system is either a community water system or a non-community water system. Such term does not include any special irrigation district. Such term includes:

(a) Any collection, treatment, storage, and distribution facilities under control of the supplier of such system and used primarily in connection with such system.

(b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.

(31) “Single family” means a detached or attached structure, arranged and designed as a single family residential unit intended to be occupied by not more than one family and that has separate water and sewer services connections from other dwelling units.

(32) “Site evaluation” means a comprehensive analysis of soil and site conditions for a graywater irrigation area.

(33) “Soil horizon” means layers in the soil column differentiated by changes in texture, color, redoximorphic features, bedrock, structure, consistence, and any other characteristic that affects water movement.

(34) “Soil profile test pit” means a trench or other excavation used for access to evaluate the soil horizons for properties influencing effluent movement, bedrock, evidence of seasonal high ground water, and other information to be used in locating and designing a graywater irrigation area.

(35) “Soil structure” means the naturally occurring combination or arrangement of primary soil particles into secondary units or peds; secondary units are characterized on the basis of shape, size class, and grade (degree of distinctness).

(36) “Suitable soil” means unsaturated soil in which the movement of water, air, and growth of roots is sustained to support healthy plant life and conserve moisture. Soil criteria for graywater subsurface irrigation are further defined in section 86.12.

(37) “Subsurface irrigation” means a discharge of graywater into soil a minimum of four inches (4”) and no deeper than twelve inches (12”) below the finished grade.

(38) “State waters” means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

Table 8-1 Abbreviations and Acronyms

ANSI	American National Standards Institute
BK	Blocky
C.R.S.	Colorado Revised Statutes
CDPS	Colorado Discharge Permit System
FEMA	Federal Emergency Management Agency
gpd	gallons per day
GR	Granular
mg/L	milligrams per Liter
MPI	Minutes Per Inch
NFIP	National Flood Insurance Program
NSF	NSF International, formally known as National Sanitation Foundation
O&M	Operations and Maintenance
OWTS	On-site Wastewater Treatment System(s)
PR	Prismatic

86.9 Administration

A. Local Coordination

Nothing in this regulation shall be deemed to limit the authority of local cities, cities and counties, or counties, pursuant to section 29-1-203, C.R.S., to enter into intergovernmental agreements with each other pertaining to the coordinated adoption and operation of local graywater control program.

B. Minimum Requirements for a Graywater Ordinance or Resolution

1. The local city, city and county, or county that chooses to authorize graywater use within its jurisdiction must adopt an ordinance or resolution which meets the following minimum requirements:

a. The ordinance or resolution must be in compliance with the minimum requirements of this regulation.

b. The ordinance or resolution must provide that all graywater treatment works are in compliance with applicable federal, state, and local requirements.

c. The ordinance or resolution must define the legal boundary of the local city, city and county, or county's local graywater control program which, at a maximum, is limited by the provisions in Titles 30 and 31 of the C.R.S. and the Colorado Constitution. If coordination with other agencies results in graywater implementation not being allowed within a portion of the local city, city and county, or county then these areas must be clearly excluded.

d. The ordinance or resolution must explicitly state which graywater use categories defined in section 86.10 are allowed within the local city, city and county, or county's local graywater control program boundary.

e. The ordinance or resolution must identify the local agency or agencies for all graywater regulatory activities including, but not limited to, design review, inspection, enforcement, tracking, and complaints.

f. The ordinance or resolution must clearly indicate whether a fee(s) will be imposed for graywater activities, which local agency establishes the fee(s) and where fee(s) information is located.

g. The ordinance or resolution must include a requirement for a searchable tracking mechanism that is indefinitely maintained by the local agency that must include, at a minimum, the following information:

    i. Legal address of each facility with graywater treatment works, allowed graywater uses at each facility, and a graywater treatment works description.

    ii. The legally responsible party associated with every graywater treatment works.

    iii. Where required, the certified operator associated with every graywater treatment works.

    iv. Any changes to the legally responsible party, certified operator, and status of the graywater treatment works must be updated within 60 days.

h. The ordinance and resolution must include a requirement for a local agency to develop a graywater design criteria document. The design criteria document must meet the minimum requirements of this regulation but may be more stringent. The graywater design criteria must define a site and soil evaluation methodology for subsurface irrigation systems unless only single family dispersed subsurface irrigation systems are allowed.

i. The ordinance or resolution must include a requirement and process for the local agency to approve or deny the installation of new graywater treatment works or modifications to an existing graywater treatment works. As part of the approval process the local agency(ies) must review a design submittal and perform a construction verification in accordance with:

i. All graywater treatments works must submit the following design information: the graywater uses, graywater treatment system location, design flow calculations for the graywater treatment works, fixtures that are the source of the graywater, design of the plumbing or irrigation system, any supporting soil analysis information, a description of the products or components, legally responsible party information, and contact information for system designer or professional engineer and operator, if applicable. The application for graywater treatment works must be signed by the legally responsible party.

ii. All graywater treatment works must be inspected or verified and accepted by the local agency.

j. The ordinance or resolution must require all graywater treatment works to have an operation and maintenance (O&M) manual. The O&M manual must remain with the graywater treatment works throughout the system's life and be updated based on each modification and approval made to the system. The O&M manual must be transferred, upon change of ownership or occupancy, to the new owner or tenant.

k. The ordinance or resolution must clearly indicate if any reporting is required for graywater regulatory activities, the required parameters, and the required frequency.

l. The ordinance or resolution must include a requirement for the local agency to administer and enforce the provisions of the ordinance or resolution.

C. Discontinuation of local graywater program

A local city, city and county, and county that decides to revoke or rescind an adopted local graywater control program must require that all previously allowed graywater treatment works either:

1 Be physically removed or permanently disconnected; or

2. Be regulated under a limited graywater control program for existing graywater systems. In this case, the local city, city and county, or county must continue a limited graywater control program for the existing graywater treatment works. The limited graywater program must include a graywater control program for the existing graywater treatment works but no new graywater treatment works. At a minimum, the limited graywater control program must include items: 86.9(B) items a, b, e, g, j, and l. If the limited graywater control program allows modifications to existing treatment works then items d, h, and i must also be included; or

3. Be regulated under another jurisdiction's local graywater control program which assumes authority over the existing graywater treatment works. The existing graywater treatment works will need to comply with the new city, city and county, or county's local graywater control program, including any required graywater treatment works modifications.

86.10 Graywater Use Categories

General: The graywater use categories allowed are defined below. A single facility may have multiple graywater treatment works as long as all applicable use and design requirements are satisfied.

A. Category A: Single family, subsurface irrigation

Category A graywater use must meet the following:

1. Allowed users: Single family.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: The design flow for a single family graywater treatment works is limited to a 400 gallons per day (gpd) or less combined flow for all approved uses.

B. Category B: Non-single family, subsurface irrigation, 2,000 gallons per day (gpd) or less

Category B graywater use must meet the following:

1. Allowed users: Non-single family users.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: The design flow for a non-single family graywater treatment works is limited to 2,000 gallons per day (gpd) or less for outdoor irrigation for the entire facility.

C. Category C: Single family, indoor toilet and urinal flushing, subsurface irrigation

Category C graywater use must meet the following:

1. Allowed users: Single family.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Indoor toilet and urinal flushing and outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: The design flow for a single family graywater treatment works is limited to 400 gallons per day (gpd) or less combined flow for all approved uses.

D. Category D: Non-single family, indoor toilet and urinal flushing, subsurface irrigation

Category D graywater use must meet the following:

1. Allowed users: Non-single family users.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Indoor toilet and urinal flushing and outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: There is no maximum design flow for a non-single family graywater treatment works for indoor toilet and urinal flushing. There is no maximum design flow for the amount of wastewater from the facility that can go to a closed sewerage system. The design flow is limited to 2,000 gallons per day (gpd) or less for outdoor irrigation for the entire facility.

86.11 <u>Graywater Use Requirements - Control Measures</u>

A. All graywater uses

All graywater treatment works must be operated in accordance with the following control measures:

1. Graywater must be collected in a manner that minimizes the presence or introduction of:

    a. hazardous or toxic chemicals in the graywater to the greatest extent possible;

    b. human excreta in the graywater to the greatest extent possible;

    c. household wastes; and

    d. animal or vegetable matter.

2. Use of graywater is limited to the confines of the facility that generates the graywater.

3. The graywater treatment works must be operated and maintained in accordance with the O&M manual, including all manufacturer recommended maintenance activities. The O&M manual must remain with the graywater treatment works throughout the system's life and be updated based on each modification and approval made to the system. The O&M manual must be transferred, upon change of ownership or occupancy, to the new owner or tenant.

    a. For Category D graywater treatment works that have a capacity to receive greater than 2,000 gallons per day (gpd), operational and maintenance records must be maintained for a minimum of the past five (5) years.

4. The owner or operator of a graywater treatment works must minimize exposure of graywater to humans and domestic pets.

5. Graywater use and graywater treatment works must not create a public nuisance.

6. Graywater must not be stored for more than 24 hours unless the graywater has been treated by a graywater treatment works that meets the design requirements of section 86.12. All graywater must be stored inside a tank(s) that meets the design requirements of section 86.12(B)(5).

7. Temporary or semi-temporary connections from the potable water system or public water system to the graywater treatment works are prohibited. Permanent connections from the potable water system or public water system to the graywater treatment works must meet the design requirements of 86.12(B)(6).

B. Subsurface irrigation graywater use

Graywater use for subsurface irrigation must also comply with the following additional control measures:

1. Agricultural irrigation with graywater is prohibited.

2. Irrigation is prohibited when the ground is frozen, plants are dormant, or the ground is saturated.

3. Irrigation scheduling must be adjusted so that application rates are closely matched with soil and weather conditions.

4. Graywater must be applied in a manner that does not result in ponding, runoff, or unauthorized discharge to state waters. For dispersed subsurface irrigation systems, the graywater must be applied at an agronomic rate. For mulch basins systems, the graywater must not be applied in excess of the soil adsorption rate.

5. For mulch basin systems, mulch must be replenished and undergo periodic maintenance as needed to reshape or remove material to maintain surge capacity and to prevent ponding and runoff.

C Indoor toilet and urinal flushing graywater use

Graywater use for indoor toilet and urinal flushing must also comply with the following additional control measures.

1. Graywater for toilet and urinal flushing use must be disinfected.

   a. Graywater treatment works that utilize chlorine for disinfection must have a minimum of 0.2 mg/L and a maximum of 4.0 mg/L of free chlorine residual throughout the indoor graywater plumbing system, including fixtures.

   b. Single family graywater treatment works that utilize non-chemical methods, such as UV, for disinfection must have a chlorine puck present in each toilet or urinal tank.

2. Graywater for toilet and urinal flushing must be dyed with either blue or green food grade vegetable dye and be visibly distinct from potable water.

86.12 <u>Graywater Treatment Works - Design Criteria</u>

A. Graywater treatment works flow projections

All graywater treatment works must be sized using the following flow projection methods:

1. Residential users: Flow to graywater treatment works must be calculated on the occupancy and the fixtures connected to the graywater treatment works. The calculated graywater flow is the number of occupants multiplied by the estimate graywater flow in terms of gpd/occupant from the attached fixtures.

   a. The occupancy must be calculated based on a minimum of two (2) occupants for the first bedroom and one (1) occupant for each additional bedroom.

   b. The estimated graywater flow from each fixture is based on the design flow of the fixture. If the fixture's design flow is unknown then the estimated graywater flow per occupant is:

      i. Traditional fixtures: 25 gpd/occupant for each shower, bathtub, and wash basin and 15 gpd/occupant for each clothes washer.

ii. Water saving fixtures: 20 gpd/occupant for each shower, bathtub, and wash basin and 8 gpd/occupant for each clothes washer.

2. Non-residential users: Graywater treatment works must be sized must be sized in accordance with fixture or water use records taking into account the number of fixtures attached to the graywater treatment works.

B. Graywater treatment works design criteria

All graywater treatment works must comply with the following design criteria:

1. The graywater treatment works must be designed to meet the design requirements of this regulation and meet any additional requirements of the Colorado Plumbing Code.

2. The design flow of each treatment component or combination of multiple components must be greater than the calculated peak graywater production if upstream of the storage tank or no tank is present.

3. The graywater treatment works must have a diversion valve that directs graywater to either the graywater treatment works or a closed sewerage system. The diversion valve must be easily operable and clearly labeled. The diversion valve must be constructed of material that is durable, corrosion resistant, watertight, and designed to accommodate the inlet and outlet pipes in a secure and watertight manner. The bypass line must be indirectly connected to the closed sewerage system.

4. Piping that allows the treatment process(es) or a storage tank to be bypassed prior to graywater use is prohibited unless the graywater bypass piping has an indirect connection to a closed sewerage system.

5. Graywater treatment works must include a tank to collect and store graywater except for subsurface irrigation systems that discharge to a mulch basin which meets the sizing criteria of section 86.12(C)(3)(g)(ii)(a) for Category A and C graywater treatment works or 86.12(D)(4)(g)(ii)(a) for Category B and D graywater treatment works.

The storage tank must:

a. be made of durable, non-absorbent, water-tight, and corrosion resistant materials;

b. be closed and have access openings for inspection and cleaning;

c. be vented:

i. for indoor tanks: the tanks must be vented to the atmosphere outside of the house;

ii. for outdoor tanks: the storage tank must have a downturned screened vent;

d. have an overflow line:

i. with the same or larger diameter line as the influent line;

ii. without a shut off valve;

iii. that is trapped to prevent the escape of gas vapors from the tank; and

iv. that is indirectly connected to the closed sewerage system;

e. have a valved drain line with the same or larger diameter line as the influent line that is indirectly connected to the closed sewerage system;

f. be a minimum of 50 gallons;

g. be placed on a stable foundation; and

h. have a permanent label that states “CAUTION! NON-POTABLE WATER. DO NOT DRINK.”

6. Category A and Category B graywater treatment works may, but are not required to, have a backup potable water system that provides potable irrigation water when graywater is not being produced or is produced in insufficient quantities. Category C and Category D graywater treatment works must have a backup potable water system connection.

Backup potable water system connections must meet the following requirements:

a. For non-public water system, potable water system connections: uncontrolled cross connections between a potable water system and a graywater treatment works are prohibited. All cross connections must be protected by a reduced pressure principle backflow prevention zone assembly or an approved air gap.

b. For public water system potable water system connections: uncontrolled cross connections between a public water system and a graywater treatment works are prohibited. The graywater treatment works design must protect the public water system from cross connections by meeting the requirements of Regulation #11: Colorado Primary Drinking Water Regulations.

7. Use or installation of graywater treatment works cannot be used as a factor to reduce the design, capacity or soil treatment area requirements for OWTS or domestic wastewater treatment works.

8 Wastewater from graywater treatment works (e.g., filter backwash water) must be properly contained and disposed into a closed sewerage system or an approved Underground Injection Control (UIC) well.

9. All graywater piping shall be clearly distinguished and must be clearly labeled, including pipe identification and flow arrows.

10. Graywater treatment works located in a 100-year floodplain must meet or exceed the requirements of FEMA and the local emergency agency. The graywater system must be designed to minimize or eliminate infiltration of floodwaters into the system and prevent discharge from the system into the floodwaters.

11. Graywater treatment works are prohibited in floodways.

12. The graywater treatment works must be located:

a. Within the confines of the legal property boundary and not within an easement; and

b. Outdoor tanks must not be exposed to direct sunlight.

C. Category A: Graywater treatment works design criteria

In addition to the requirements in sections 86.12(A) and 86.12(B), graywater treatment works for "Category A: Single family, subsurface irrigation" uses must include the following components:

1. The graywater treatment works must include either:

   a. For mulch basin systems, a filter is not required but the mulch basin design must meet the design criteria in sections 86.12(C)(2) and 86.12(C)(3).

   b. For dispersed subsurface irrigation systems, a cartridge filter is required. The cartridge filter must be a minimum of 60 mesh or smaller. The filter must be located between the storage tank and the irrigation system. If a pump is being used to pressurize the graywater distribution system, the filter must be located after the pump. The dispersed subsurface irrigation system must meet design criteria in sections 86.12(C)(2) and 86.12(C)(4).

2. Subsurface irrigation system designs, including dispersed subsurface irrigation systems and mulch basin systems, must meet the following criteria:

   a. The subsurface irrigation components of the graywater irrigation system must be installed a minimum of four inches (4") and a maximum of twelve inches (12") below the finished grade.

   b. The subsurface irrigation components of the graywater irrigation system must be installed in suitable soil, as defined in section 86.8(36).

   c. There must be a minimum of twenty-four inches (24") of suitable soil between the subsurface irrigation components of the graywater irrigation system and any restrictive soil layer, bedrock, concrete, or the highest water table. Restrictive soil layers are soil types 4, 4A, and 5 in Table 12-2.

   d. The system design shall provide the user with controls, such as valves, switches, timers, and other controllers, as appropriate, to ensure the distribution of graywater throughout the entire irrigation zone.

   e. When used, emitters shall be designed to resist root intrusion and shall be of a design recommended by the manufacturer for the intended graywater flow and use. Minimum spacing between emitters shall be sufficient to deliver graywater at an agronomic rate and to prevent surfacing or runoff.

   f. All irrigation supply lines shall be polyethylene tubing or PVC Class 200 pipe or better and Schedule 40 fittings. All joints shall be pressure tested at 40 psi (276 kPa), and shown to be drip tight for five minutes before burial. Drip feeder lines can be poly or flexible PVC tubing.

   g. All irrigation systems must meet the following setback distances in Table 12-1.

Table 12-1: Graywater System Setback Requirements

Minimum Horizontal Distance Required from:	Graywater Storage Tank	Irrigation Field
Buildings	5 feet	2 feet

Property line adjoining private property	10 feet	10 feet
Property line adjoining private property with supporting property line survey	1.5 feet	1.5 feet
Water supply wells	50 feet	100 feet
Streams and lakes	50 feet	50 feet
Seepage pits or cesspools	5 feet	5 feet
OWTS disposal field	5 feet	25 feet
OWTS tank	5 feet	10 feet
Domestic potable water service line	10 feet	10 feet
Public water main	10 feet	10 feet

h. The irrigation field may only be located on slopes of less than thirty percent (30%) from horizontal.

3. Mulch basin systems must be designed to meet the following requirements:

a. A site and soil evaluation must be conducted for each proposed graywater irrigation area to determine the site suitability. The site and soil evaluation must include:

i Site information, including:

(a) a site map; and

(b) location of proposed graywater irrigation area in relation to physical features requiring setbacks in Table 12-1.

ii. Soil investigation to determine long-term acceptance rate of a graywater irrigation area as a design basis. Soil investigation must be completed by either:

(a). a visual and tactile evaluation of soil profile test pit, or

(b) a percolation test.

b. Irrigation rates must not exceed maximum allowable soil loading rates in Table 12-2 based on the finest textured soil in the twenty-four inches (24”) of suitable soil beneath the subsurface irrigation components.

Table 12-2: Soil Type Description and Maximum Hydraulic Loading Rate

Soil Type	USDA Soil Texture	USDA Structure - Shape	USDA Soil Structure-Grade	Percolation Rate (MPI)	Loading Rate for Graywater (gal./sq. ft./day)
0	Soil Type 1 with more than 35% Rock (>2mm); Soil Types 2-5 with more than 50% Rock (>2mm)	--	0 (Single Grain)	Less than 5	Not suitable without augmentation 1.0 with augmentation
1	Sand, Loamy Sand	--	0	5-15	Not suitable without augmentation 1.0 with augmentation
2	Sandy Loam, Loam, Silt Loam	PR BK GR	2 (Moderate) 3 (Strong)	16-25	0.8
2A	Sandy Loam, Loam, Silt Loam	PR, BK, GR 0 (none)	1 (Weak) Massive	26-40	0.6
3	Sandy Clay Loam, Clay Loam, Silty Clay Loam	PR, BK, GR	2, 3	41-60	0.4
3A	Sandy Clay Loam, Clay Loam, Silty Clay Loam	PR, BK, GR 0	1 Massive	61-75	0.2
4	Sandy Clay, Clay, Silty Clay	PR, BK, GR	2, 3	76-90	Not suitable
4A	Sandy Clay, Clay, Silty Clay	PR, BK, GR 0	1 Massive	91-120	Not suitable
5	Soil Types 2-4A	Platy	1, 2, 3	121+	Not suitable

c. Suitable soil may consist of original, undisturbed soil or original soil that is augmented. Not suitable soil may be augmented as needed to ensure suitable soil is used.

d. If the original soil is augmented, the mixture used for augmentation must meet the following criteria to ensure that suitable soil is achieved:

i. The mixture must have an organic content that is at least five percent (5%) and no greater than ten percent (10%);

ii. The mixture must be a well blended mix of mineral aggregate (soil) and compost where the soil ratio depends on the requirements for the plant species; and

iii. The mineral aggregate must have the following gradation:

Sieve Size	Percent Passing
3/8	100
No. 4	95 - 100
No. 10	75 - 90
No. 40	25 - 40
No. 100	4 - 10
No. 200	2 - 5

e. If the original soil is augmented, the additional soil must be tilled into the native soil a minimum of twelve inches (12") below irrigation application zone.

f. Soil types 0 and 1 must be augmented before use. Soil type 4, 4A, and 5 are not suitable for subsurface irrigation.

g. Mulch basins must be designed to meet the following requirements:

i. Mulch shall be permeable enough to allow rapid infiltration of graywater.

ii. The minimum void space mulch basin volume must be either:

(a) Three (3) times the anticipated average daily flow for graywater treatment works without a storage tank to allow for graywater volume surges and to prevent surfacing or runoff.

(b) One and a half (1.5) times the anticipated average daily flow for graywater treatment works with storage tank meeting the section 86.12(B)(5) design criteria.

iii. Piping to mulch basins must discharge a minimum of four inches (4") below grade into a container for dispersal of graywater into the mulch basin. The container must be designed to have four inches (4") of freefall between the invert of the discharge pipe and the mulch. The container must have an access lid for observation of flow and to check mulch levels.

iv. The mulch basin must have a minimum depth of twelve inches (12") below grade and not more than twenty four (24") below grade.

4. Dispersed subsurface irrigation systems must be sized using one of the following methodologies:

a. Irrigation area equation:

The minimum graywater irrigation area must be calculated using the following equation.

LA = GW / (CF x ET x PF)

Where:

LA = Landscaped area (square feet)

GW = Estimated graywater flow (gallons per week)

CF = 0.62 (square foot x inch / gallon) = ((7.48 gallons/ 1-cu-ft) / 12 inch/ft)

ET = Evapotranspiration rate (inch / week), as determined by USDA Natural Resources Conservation Service CO652.0408 “Figure CO4-1: Map of Colorado Climate Zones” dated April 1978, or weekly averages based on actual conditions;

PF = Plant factor, 0.5;

or,

b. The mulch basin system design criteria in Section 86.12(C)(3), except 86.12(C)(3)(g).

D Category B: Graywater treatment works design criteria

In addition to the requirements in sections 86.12(A) and 86.12(B), graywater treatment works for “Category B: Non-single family, subsurface irrigation, 2,000 gallons per day (gpd) or less” uses must include the following treatment components:

1. The graywater treatment works must include either:

   a. For mulch basin systems, a filter is not required but the mulch basin design must meet design criteria in sections 86.12(D)(3) and 86.12(D)(4).

   b. For dispersed subsurface irrigation systems, a cartridge filter is required. The cartridge filter must be a minimum of 60 mesh or smaller, to protect the irrigation system. The filter must be located between the storage tank and the irrigation system. If a pump is being used to pressurize the graywater distribution system the filter must be located after the pump. The dispersed subsurface irrigation system must meet the design criteria in sections 86.12(D)(3) and 86.12(D)(4), except 86.12(D)(4)(g).

2. Signage: Notification shall include posting of signs of sufficient size to be clearly read with the language below in the dominant language(s) expected to be spoken at the site.

   a. A permanent warning sign must be visible at all fixtures from which graywater is collected. The signs must state that, “WATER FROM THIS FIXTURE IS REUSED. CHEMICALS, EXCRETA, PETROLEUM OILS AND HAZARDOUS MATERIALS MUST NOT BE DISPOSED DOWN THE DRAIN”;

   b. Each room that contains graywater treatment works components must have a sign that says “CAUTION GRAYWATER TREATMENT WORKS, DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM. NOTICE: CONTACT BUILDING MANAGEMENT BEFORE PERFORMING ANY WORK ON THIS WATER SYSTEM.”; and

   c. Each irrigation area must have a sign that says “CAUTION GRAYWATER BEING USED FOR IRRIGATION. DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM.”

3. Subsurface irrigation system designs, including dispersed subsurface irrigation systems and mulch basin systems, must meet the following criteria:

   a. The subsurface irrigation components of the graywater irrigation system must be installed a minimum of four inches (4”) and a maximum of twelve inches (12”) below the finished grade.

   b. The subsurface irrigation components of the graywater irrigation system must be installed in suitable soil, as defined in section 86.8(36).

   c. There must be a minimum of twenty-four inches (24”) of suitable soil between the subsurface irrigation components of the graywater irrigation system and any restrictive soil layer, bedrock, concrete, or the highest water table. Restrictive soil layers are soil types 4, 4A, and 5 in Table 12-2.

   d. The system design shall provide the user with controls, such as valves, switches, timers, and other controllers, as appropriate, to ensure the distribution of graywater throughout the entire irrigation zone.

   e. When used, emitters shall be designed to resist root intrusion and shall be of a design recommended by the manufacturer for the intended graywater flow and use. Minimum spacing between emitters shall be sufficient to deliver graywater at an agronomic rate and to prevent surfacing or runoff.

   f. All irrigation supply lines shall be polyethylene tubing or PVC Class 200 pipe or better and Schedule 40 fittings. All joints shall be pressure tested at 40 psi (276 kPa), and shown to be drip tight for five minutes before burial. Drip feeder lines can be poly or flexible PVC tubing.

   g. All irrigation systems must meet the setback distances in Table 12-1.

   h. The irrigation field may only be located on slopes of less than thirty percent (30%) from horizontal.

4. Dispersed subsurface irrigation systems and mulch basin systems must be designed to meet the following requirements:

   a. A site and soil evaluation must be conducted for each proposed graywater irrigation area to determine the site suitability. The site and soil evaluation must include:

      i Site information, including:

         (a) a site map; and

         (b) location of proposed graywater irrigation area in relation to physical features requiring setbacks in Table 12-1.

      ii. Soil investigation to determine long-term acceptance rate of a graywater irrigation area as a design basis. Soil investigation must be completed by either:

         (a) a visual and tactile evaluation of soil profile test pit, or

         (b) a percolation test.

b. Irrigation rates must not exceed maximum allowable soil loading rates in Table 12-2 based on the finest textured soil in the twenty-four inches (24") of suitable soil beneath the subsurface irrigation components.

c. Suitable soil may consist of original, undisturbed soil or original soil that is augmented. Not suitable soil may be augmented as needed to ensure suitable soil is used.

d. If the original soil is augmented, the mixture used for augmentation must meet the following criteria to ensure that suitable soil is achieved:

i. The mixture must have an organic content that is at least five percent (5%) and no greater than ten percent (10%);

ii. The mixture must be a well blended mix of mineral aggregate (soil) and compost where the soil ratio depends on the requirements for the plant species; and

iii. The mineral aggregate must have the following gradation:

Sieve Size	Percent Passing
3/8	100
No. 4	95 - 100
No. 10	75 - 90
No. 40	25 - 40
No. 100	4 - 10
No. 200	2 - 5

e. If the original soil is augmented, the additional soil must be tilled into the native soil a minimum of twelve inches (12") below irrigation application zone.

f. Soil types 0 and 1 must be augmented before use. Soil type 4, 4A, and 5 are not suitable for subsurface irrigation.

g. Mulch basins must be designed to meet the following requirements:

i. Mulch shall be permeable enough to allow rapid infiltration of graywater.

ii. The minimum void space mulch basin volume must be either:

(a) Three (3) times the anticipated average daily flow for graywater treatment works without a storage tank to allow for graywater volume surges and to prevent surfacing or runoff.

(b) One and a half (1.5) times the anticipated average daily flow for graywater treatment works with storage tank meeting the section 86.12(B)(5) design criteria.

iii. Piping to mulch basins must discharge a minimum of four inches (4") below grade into a container for dispersal of graywater into the mulch basin. The container must be designed to have four inches (4") of freefall between the invert of the discharge pipe and the mulch. The

container must have an access lid for observation of flow and to check mulch levels.

iv. The mulch basin must have a minimum depth of twelve inches (12") below grade and not more than twenty four (24") below grade.

E. Category C: Graywater treatment works design criteria

In addition to the requirements in Sections 86.12(A) and (B), graywater treatment works for "Category C: Single family, indoor toilet and urinal flushing, subsurface irrigation" uses must include the following treatment components:

1. The graywater treatment works must be certified under "Class R" of NSF/ANSI 350 Onsite Residential and Commercial Water Reuse Treatment Systems.

2. If a disinfection process is not part of NSF/ANSI 350-2011 equipment, separate disinfection system equipment is required. For graywater treatment works that use sodium hypochlorite (bleach), the graywater treatment works must be capable of providing a free chlorine residual of 0.2 to 4.0 mg/L in the graywater throughout the indoor graywater plumbing system.

3. The graywater treatment works must include a dye injection system that is capable of providing a dye concentration that is visibly distinct from potable water.

4. Category C graywater treatment works that use graywater for subsurface irrigation must meet:

   a. For mulch basin systems, the mulch basin design must meet the design criteria in sections 86.12(C)(2) and 86.12(C)(3).

   b. For dispersed subsurface irrigation systems, the dispersed subsurface irrigation system must meet design criteria in sections 86.12(C)(2) and 86.12(C)(4).

F. Category D: Graywater treatment works design criteria

In addition to the requirements in Sections 86.12(A) and (B), graywater treatment works for "Category D: Non-single family, indoor toilet and urinal flushing, subsurface irrigation" uses must include the following treatment components:

1. The graywater treatment works must be certified under "Class R" or "Class C" of NSF/ANSI 350 Onsite Residential and Commercial Water Reuse Treatment Systems. Required classification shall be dictated by the size of the graywater treatment works and if the graywater sources are residential or commercial as defined by NSF/ANSI 350.

2. Separate disinfection system equipment is required if a disinfection process is not part of NSF/ANSI 350-2011 equipment. A graywater treatment works must be capable of providing a free chlorine residual of 0.2 to 4.0 mg/L in the graywater throughout the indoor graywater plumbing system.

3. The graywater treatment works must include a dye injection system that is capable of providing a dye concentration that is visibly distinct from potable water.

4. Signage: Notification shall include posting of signs of sufficient size to be clearly read with the language below in the dominant language(s) expected to be spoken at the site.

a. A permanent warning sign must be visible at all fixtures from which graywater is collected. The signs must state that, “WATER FROM THIS FIXTURE IS REUSED. CHEMICALS, EXCRETA, PETROLEUM OILS AND HAZARDOUS MATERIALS MUST NOT BE DISPOSED DOWN THE DRAIN”;

b. Each room that contains graywater treatment works components must have a sign that says “CAUTION GRAYWATER TREATMENT WORKS, DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM. NOTICE: CONTACT BUILDING MANAGEMENT BEFORE PERFORMING ANY WORK ON THIS WATER SYSTEM.”; and

c. Each toilet and urinal must have a sign that says: “TO CONSERVE WATER, THIS BUILDING USES TREATED NON-POTABLE GRAYWATER TO FLUSH TOILETS AND URINALS.”

5. Category D graywater treatment works that use graywater for subsurface irrigation must meet:

a. For mulch basin systems, the mulch basin design must meet design criteria in sections 86.12(D)(3) and 86.12(D)(4).

b. For dispersed subsurface irrigation systems, the dispersed subsurface irrigation system must meet the design criteria in sections 86.12(D)(3) and 86.12(D)(4), except 86.12(D)(4)(g).

6. For graywater treatment works that have a capacity to receive greater than 2,000 gallons per day, the design must be prepared under the supervision of and submitted with the seal and signature of a professional engineer licensed to practice engineering in the State of Colorado in accordance with the requirements of the Colorado Department of Regulatory Agencies (DORA) – Division of Registrations.

86.13 <u>Operation and Maintenance Manual</u>

All graywater systems must have an O&M manual. The O&M manual must include the following items:

A. A graywater treatment works description including: equipment list, design basis data including but not limited to, design volumes, design flow rates of each component and service area, system drawing, and process description.

B. Maintenance information for the graywater treatment works including but not limited to: component maintenance schedule, instructions for component repair, replacement, or cleaning, replacement component source list, testing and frequency for potable containment device, and instructions for periodic removal of residuals.

C. Operational ranges for parameters including but not limited to: disinfectant concentration levels, filter replacement parameters, pressure ranges, tank level, and valve status under normal operation.

D. Step-by-step instructions for starting and shutting down the graywater treatment works including but not limited to: valve operation, any electrical connections, cleaning procedures, visual inspection, and filter installation.

E. A guide for visually evaluating the graywater treatment works and narrowing any problem scope based on alarm activations, effluent characteristics, system operation, and history.

F. A list of graywater control measures in which the graywater treatment works must be operated.

86.14 Certified Operator

A graywater treatment works must be operated by qualified personnel who meet any applicable requirements of Regulation #100, the Water and Wastewater Facility Operators Certification Requirements.

86.15 - 86.20 Reserved

86.21 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; APRIL 13, 2015 RULEMAKING, FINAL ACTION MAY 11, 2015, EFFECTIVE JUNE 30, 2015

The provisions of sections 25-8-202(1)(c) and 25-8-205(1)(g), C.R.S., provide the specific statutory authority for the Graywater Control Regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-203(4), C.R.S., the following statement of basis, specific statutory authority, and purpose.

BASIS AND PURPOSE

I. Purpose

The commission has determined that the adoption of the requirements set forth in Regulation #86 are necessary to protect public health and the environment in the state. The commission believes that the implementation of graywater use in Colorado will proceed more expeditiously by limiting the initial regulatory scope. This approach promotes development of local graywater programs through two initial graywater uses with specific treatment and control measure requirements. The commission expects the adoption of modifications to Regulation #86 over time to allow for additional graywater uses, graywater users, and expanded treatment options.

It is the intent of the commission that this regulation promote the use of graywater by providing a comprehensive framework which, when followed, will assure responsible use of graywater compatible with the state's public policy to foster the health, welfare and safety of the inhabitants of the state of Colorado and to protect, maintain, and improve, where necessary and reasonable, the water quality in Colorado.

II. House Bill 13-1044 Background

House Bill 13-1044 was signed into law on May 15, 2003, and authorizes the use of graywater in Colorado. The legislation defined “graywater” and “graywater treatment works” and established a basic implementation framework for graywater use within Colorado.

Under the statute, each local city, city and county, or county are able to decide whether to allow graywater use within its jurisdiction via the adoption of a resolution or ordinance that meets minimum local, state and federal requirements, including but not limited to the Colorado Plumbing Board regulations, local graywater control programs, water rights requirements, and operator certification requirements. All graywater users must wait until all relevant regulations are effective before implementing graywater treatment works.

III. Regulatory Goals

Through adoption of this regulation, the commission is encouraging the use of graywater. Because graywater has the potential to be a human pathogen pathway, the commission is adopting measures to adequately protect public health. The graywater regulation is structured so that local governments will have flexibility to adopt ordinances and resolutions that are appropriate in each individual circumstance.

Local graywater control programs are voluntary, and may allow one or both of the authorized graywater uses. The local graywater control program may be more stringent but must meet the minimum requirements of Regulation #86. Since neither the local implementing agencies nor the state agencies were allocated funds for graywater regulation, ordinance, code, resolution, and other supporting graywater control legal framework, the regulation aims to be cognizant of resource limitations linked to local implementation. At this time, the commission is authorizing two graywater uses – indoor toilet flushing and outdoor irrigation. The commission anticipates that the allowed graywater uses may be expanded in the future after Colorado gains some experience and further scientifically based research can define the risks and benefits.

IV. Applicability

The statute states that, "graywater may only be used in areas where the local city, city and county, or county has adopted an ordinance or resolution approving the use of graywater", and ordinances and resolutions must be "in compliance" with the commission's regulation and other federal, state, and local. §§ 25-8-205(1)(g)(II), 31-11-107(1) and 31-15-601(1)(m), C.R.S.

The statutory language does not appear to have any regulatory exemptions for or show intent to grandfather existing graywater treatment works or existing graywater uses. The commission finds that the statute intended the regulation to apply prospectively following adoption since protection of public health and the environment cannot be assured for graywater treatment works unless all graywater treatment works meet the minimum requirements of Regulation #86. Therefore, all Colorado graywater systems must be authorized under a local graywater control program even if the graywater system was installed prior to the statute or the effective date this regulation.

Systems which capture graywater in a septic tank and dispose of it in a soil treatment area, and which are authorized onsite wastewater treatment systems (OWTS) will not be required to be regulated under a local graywater control program.

A local city, city and county or county that adopts a graywater ordinance or resolution must include the ability to compel graywater users to discontinue the practice in the event the program is discontinued. Where a local jurisdiction adopts a local graywater program, and later decides to discontinue the local graywater control program, the local government may either fully discontinue the program or adopt a limited graywater control program to allow existing graywater systems to continue. The "limited graywater control program" option means that the previously adopted local control program (including all Regulation #86 requirements) can be limited to the existing graywater treatment works and that no additional applications for graywater systems will be accepted.

V. Enforcement and Division Oversight

The statute conveys exclusive enforcement authority regarding compliance with the local ordinance or resolution to the local jurisdiction. The commission does not intend to directly enforce on individual users or graywater treatment works that are located within a local graywater control program. In cases where there is no local graywater control program in place, graywater use within the local jurisdiction will not be authorized and the user (not the local agency) may face enforcement action from the Water Quality Control Division (division).

A local city, city and county, or county that chooses to adopt a local graywater control program must notify the Division within 60 days of adoption and provide a copy of the ordinance or resolution. The division may review the ordinance or resolution to ensure that the ordinance or resolution meets the minimum intent of Regulation #86, and may take action to compel any local graywater program to conform to the minimum requirements of the regulation.

VI. Definitions

The commission relied upon existing regulatory definitions where possible and adopted definitions for several terms not already defined in statute. The definitions of the terms “cross-connection” and “public water system” were taken from Regulation #11: Colorado Primary Drinking Water Regulations. The definitions of the terms “component”, “design”, “design flow”, “floodplain”, “floodway”, “local public health agency”, “on-site wastewater treatment system”, “percolation test”, “site evaluation”, “soil horizon”, “soil profile test pit”, and “soil structure” were taken or modified from Regulation #43: On-site Wastewater Treatment System Regulation. The definitions of the terms “agronomic rate”, “agricultural irrigation”, and “Division” were taken or modified from Regulation #84: Reclaimed Water Control Regulation. The definition for “indirect connection” was modified from the International Plumbing Code 2012 edition definition of an “indirect waste pipe”. The definitions of the terms “suitable soil” and “subsurface irrigation” were modified from Washington Administrative Code Chapter 246-274.

The commission created definitions for “closed sewerage system”, “facility”, “legally responsible party”, “local agency”, “local graywater control program”, “modification”, “public nuisance”, and “single family”.

VII. Administration

In section 86.9 of the regulation, the commission set mandatory minimum requirements for a resolution or ordinance adopted by a local agency. The minimum ordinance or resolution requirements are intended to ensure that the local graywater control program meets the statutory requirements and to ensure a comprehensive graywater program. The minimum ordinance and resolution requirements are meant to be flexible recognizing that many local agencies will incorporate graywater into existing business processes. A local agency may adopt more stringent standards in its ordinance or resolution.

A local government may only authorize graywater use in accordance with federal, state, and local requirements. The city, city and county, or county is ultimately responsible for legal compliance with its own ordinance or resolution. Before a local city, city and county, or county adopts an ordinance or resolution to authorize the use of graywater, a board of county commissioners or a municipal governing body is encouraged to coordinate with other local agencies, including but not limited to, the local board of health, local public health agencies, any water and wastewater service providers, and basin water quality authorities. Coordination with other local agencies may be accomplished through memorandums of agreement, memorandums of understanding, agency referral mechanism, or agency agreements. The commission anticipates there may be circumstances where one regulatory entity’s rules and regulations could impact the legality of graywater use in a portion of an overall jurisdiction. For example, if a county allows graywater use but a portion of the county is served by a public water system that does not have appropriate water rights to allow graywater uses, this portion of the county must be excluded from the local graywater control program.

The ordinance or resolution must clearly state the requirements for graywater use within the jurisdiction. The local graywater control program must outline: the allowed graywater category(ies), the graywater treatment design criteria, site and soil evaluation methodology (if applicable), any regulatory fees, any testing requirements, or specific local requirements. The regulation does not require that an ordinance impose fees or water quality reporting.

A local agency’s graywater program must include a tracking mechanism for all graywater treatment works, a regulatory approval process, and mechanisms to ensure that on-going graywater use is done in compliance with the requirements of the resolution or ordinance (e.g., control measures are being met). The commission concludes that a local graywater program must address all graywater treatment works within a jurisdiction, including single family users. Current information on the installed graywater treatment works will be useful in the event of an outbreak investigation and during property transfers. Information regarding the legally responsible party associated with every graywater treatment works will also allow the local jurisdiction to have a contact for the decision maker of each graywater treatment works.

The commission determined that the ordinance or resolution must define the local regulatory structure to implement the program to ensure compliance with the resolution or ordinance. The ordinance or

resolution must clearly state which agency(ies) are involved in a local graywater control program and each agency's roles and responsibilities. These requirements are meant to encourage coordination within and between agencies.

Since the local jurisdiction will have enforcement authority, the local graywater control program must include violation notification mechanisms and escalation or enforcement actions. Possible violations of the ordinance or resolution that cause enforcement actions include, but are not limited to: not testing backflow prevention devices as required, not complying with control measures, and installation of a new or modification of an existing system without going through approval process.

The local jurisdiction will be responsible for coordinating with the Water and Wastewater Facility Operator Board to ensure that any Regulation #100: Water and Wastewater Facility Operator Certification Requirements are being satisfied. The commission encourages local jurisdictions to incorporate a mechanism for operator compliance assurance and a referral mechanism to the Water and Wastewater Facility Operator Board.

VIII. Graywater Categories

The commission is authorizing two uses for graywater - subsurface irrigation and indoor toilet /urinal flushing. There were several factors that guided the commission in determining the graywater categories within the two allowed graywater uses, including the population exposed, potential health exposure, potential cross-connection control risk, and environmental risk. The commission established a major category distinction between a single family residential user and all other users (referred to in the regulation as non-single family). The commission anticipates that a single family user will be financially and personally vested in keeping the household graywater treatment works operating properly. Single family residents will likely be aware of the health status of the other residents in their immediate household. In contrast, non-single family users may not be as diligent in following graywater control measures, may not understand the implications to other graywater users, or may not be responsible for maintaining a graywater treatment works. Accordingly, four graywater use categories were created to address single family and non-single family graywater use for subsurface irrigation (Categories A and B) and indoor toilet and urinal flushing (Categories C and D).

Within the four graywater categories, the commission is adopting daily graywater flow restrictions to ensure that graywater treatment works are consistent with other commission regulations. The commission decided to define a daily graywater flow rate rather than use the building occupancy for a variety of reasons. A daily flow rate is more consistent with the plumbing code, and is more consistent with other commission regulations. Based on a joint American Water Works Association Research Foundation (AwwaRF) and American Water Works Association (AWWA) study titled the Residential End Uses of Water, approximately 40 gallons per day (gpd) of graywater is produced per person and approximately 18.5 gpd/person is used for toilet flushing. The commission decided on a flow limit of 400 gpd for single family users which is roughly the amount of graywater produced by 10 people and the amount that 22 people could use for indoor toilet flushing. The non-single family limit of 2,000 gpd is roughly the amount of graywater produced by 50 people and the amount that 108 people could use for indoor toilet flushing.

Graywater is expected to contain nitrogen, phosphorus, and total dissolved solids which are regulated pollutants for groundwater discharges under Regulation #41 (5 CCR 1002-41). The commission determined that the potential risks to groundwater from graywater systems are similar to the risk posed by decentralized onsite wastewater treatment systems. Therefore, at the same time as adopting this control regulation, the commission revised Regulation #61 (section 61.14(1)(b)) to exempt graywater treatment works from the requirement to obtain a discharge permit.

IX. Control Measures

In addition to design requirements, the commission is adopting control measures, which are the required routine actions for graywater treatment works. The control measures compliment the design criteria. The

control measures attempt to control potential graywater exposure though: limitation of graywater contamination at the point of production (e.g., sink), proper operation of the treatment process, and limitation of graywater exposure (e.g., toilet or irrigation system). For example, the design criteria for indoor toilet flushing use requires the installation of a dye injection system and the associated control measure is the daily operation of the dye injection system. The control measures are the critical barrier to protect public health and environment after installation of the graywater treatment works. The adopted control measures were developed after reviewing other states' graywater programs and the International Plumbing Code requirements. Some control measures are required for all graywater uses, while other control measures are only required for subsurface irrigation or indoor toilet flushing.

A. Control measures required for all graywater uses

- Graywater must be collected in a manner that minimizes the presence or introduction of hazardous or toxic chemicals to the greatest extent possible. Residual hazardous or toxic chemicals may result from activities including, but not limited to: the use of cleaning chemicals; the use of hazardous household products; waste from a water softener; cleaning car parts; washing greasy or oily rags or clothing; rinsing paint brushes; disposal of pesticides, herbicides, or other chemicals; disposing of waste solutions from home photo labs or similar hobbyist or home occupation activities; or from other home maintenance activities.

- *Graywater must be collected in a manner that minimizes the presence or introduction of human excreta to the greatest extent possible.* Human excreta may result from activities such as, but not limited to: washing diapers, washing soiled garments, and washing infectious garments.

- *Graywater must be collected in a manner that minimizes the presence or introduction of household wastes*. Residual household wastes may result from activities including, but not limited to: the use of cleaning chemicals; pharmaceuticals, or from home maintenance activities.

- *Graywater must be collected in a manner that minimizes the presence or introduction of animal or vegetable matter.* Animal or vegetable matter may result from activities such as but not limited to: cooking, cleaning, and washing pets

- *Use of graywater is limited to the confines of the facility that generates the graywater.* This control measure is a statutory requirement.

- *The graywater treatment works must be operated and maintained in accordance with the O&M manual, including all manufacturer recommended maintenance activities.* On the surface this control measure is similar to the administration section which requires each graywater treatment works to have an O&M manual. However, this control measure requires that the O&M manual be actively followed and be used to guide proper operation and maintenance of a graywater treatment works. The commission included a five (5) year minimum O&M recordkeeping requirement for Category D graywater treatment works that have a capacity to receive equal to or greater than 2,000 gallons per day since maintenance of these systems will be essential to protect public health. In the event an outbreak, having records will allow public health officials to have a baseline of operational information to ensure that the graywater treatment works was properly operated.

- *The owner or operator of a graywater treatment works must minimize humans and domestic pets' exposure to graywater.* Research indicates that graywater is to be expected to contain human pathogens. Therefore, the commission considers minimization of exposure to humans and pets as a common sense measure to limit possible pathogen pathways. The commission understands that some exposures will be necessary for graywater treatment works maintenance, cleaning, aerosolization when

flushing of urinals and toilets, and irrigation system maintence. Users should be aware that human pathogens are likely present, and should therefore limit their exposure as much as possible and take protective measures.

- *Graywater use and graywater treatment works must not create a public nuisance.* Graywater use and graywater treatment works must not create public nuisances such as odors and disease vectors (e.g., mosquitoes) habitat.

- *Graywater must not be stored for more than 24 hours unless the graywater has been treated by a graywater treatment works that meets the design requirements of section 86.12. All graywater must be stored inside a tank(s) that meets the design requirements of section 86.12.* Graywater stored for an extended time period will create an environment that encourages microorganism growth. Extended storage of untreated graywater will result in anaerobic (a.k.a. no oxygen) conditions and unpleasant odors. Colorado water rights laws will likely impact storage of treated graywater for an extended time period. In addition, this requirement is in conformance with the 2015 International Plumbing Code.

- *Temporary or semi-temporary connections from the potable water system or public water system to the graywater treatment works are prohibited. Permanent connections from the potable water system or public water system must be controlled with an appropriate backflow prevention assembly or backflow prevention method.* Temporary potable water connections to graywater treatment works are not allowed. An example of a temporary connection is a hose submerged in a graywater storage tank to provide irrigation water during vacation. The prohibition was put in place since temporary connections will not undergo design approval or have an appropriate backflow prevention assembly or backflow prevention method. While temporary connections are prohibited, graywater treatment works may have a permanent connection from a potable water system or public water system. Permanent connections from the potable water system or public water system must be controlled with an appropriate backflow prevention assembly or backflow prevention method as required in section 86.12.

B. <u>Additional control measures required for subsurface irrigation use</u>

- *Agricultural irrigation with graywater is prohibited*. The definition of agricultural irrigation is generally consistent with the definition from Regulation #84 (which addresses centralized reclaimed water operations). The commission does not feel that sufficient scientific evidence proved that graywater is safer than reclaimed wastewater effluent. Therefore, consistent with the policy determination made for reclaimed water and in order to be protective of public health, graywater may not be used for agricultural irrigation. The definition of agricultural irrigation includes household gardens, fruit trees, and other flora intended for human consumption. This is especially critical for local jurisdictions that allow household produced food products to be sold at farmers markets. The commission considers “human consumption” to mean any food or beverage consumed by humans, regardless of the processing method (e.g., raw, fermented, baked, canned).

- *Irrigation is prohibited when the ground is frozen, plants are dormant, or the ground is saturated.* The commission intends to ensure that graywater use does not result in ponding, runoff, or unauthorized discharge to state waters. Therefore, graywater irrigation under these conditions is not allowed.

- *Irrigation scheduling must be adjusted so that application rates are closely matched with soil and weather conditions.* The amount of water needed for irrigation is dependent on a variety of local conditions such as the flora being irrigated, weather condition, and local soils. The user needs to be mindful that the required amount of graywater and nutrients will change over time and therefore the graywater application rate must also be adjusted.

- *Graywater must be applied at an agronomic rate which does not result in ponding, runoff, or unauthorized discharge to state waters.* The definition of agronomic rate is generally consistent with the definition from Regulation #84 (which addresses centralized reclaimed water operations). While this regulation does not require a water quality test, such testing is encouraged. Graywater use must not result in ponding, runoff, or unauthorized discharge to state waters.

- *For mulch basin systems, mulch must be replenished as required due to decomposition of organic manner. Mulch basins must undergo periodic maintenance, reshaping or removal of material to maintain surge capacity and to prevent ponding and runoff.* Microbial activity within the mulch basins will result in decomposition of organic material. To maintain the required storage volume and soil permeability, the mulch beds must undergo routine maintenance. This requirement was based on the 2013 California Plumbing Code.

C. Additional control measures required for indoor toilet flushing use

- *Graywater for toilet and urinal flushing use must be disinfected*. Graywater research indicates that graywater is to be expected to contain human pathogens. Therefore, the commission is using a multi-barrier approach, including the addition of a potent disinfectant to inhibit the presence of organisms, pathogens and viruses in the graywater distribution system.

- *Graywater treatment works that utilize chlorine for disinfection must have a minimum of 0.2 mg/L and a maximum of 4.0 mg/L of free chlorine residual throughout the indoor plumbing system, including fixtures.* The free chlorine residual requirement is generally consistent with Regulation #11. The commission is not implying that graywater for indoor toilet and urinal flushing must be treated to potable water standards, as defined by Regulation #11, but that a free chlorine residual range of 0.2 to 4.0 mg/L is reliably detectable and not high enough to adversely impact plumbing fixtures.

- *Single family graywater treatment works that utilize non-chemical methods, such as UV, for disinfection must have a chlorine puck present in each toilet tank.* The commission wants to give some flexibility to Category C systems and not require chlorine injection for all systems. Since some disinfectants, such as UV, do not have a residual present in the distribution system, a chlorine puck will inhibit the presence of organisms, pathogens, and viruses within the toilet tank and bowl.

- *Graywater for toilet and urinal flushing must be dyed with either blue or green food grade vegetable dye and be visibly distinct from potable water.* The commission adopted this requirement from the 2012 International Plumbing Code. Dye is a visual indicator that the water within the building is non-potable. Because single family households are not required to have signage for indoor toilet flushing, the dye serves as the notification method that a cross connection has occurred and graywater is entering the potable water lines of the operation.

X. Treatment Works Design Criteria

A. Design criteria treatment basis

For dispersed subsurface irrigation, the commission's intention with the design criteria is to protect the subsurface irrigation system from failure. The commission anticipates that without filtration, graywater irrigation systems would fail in a similar manner to an OWTS soil treatment area. Therefore, the commission is requiring filtration prior to the irrigation distribution system to

inhibit failure of the emitter systems by particulate or bio-growth clogging. Irrigation system failure will result in surfacing graywater, unequal distribution, and discharge to groundwater.

For subsurface irrigation mulch basin systems, the commission's intention is to ensure that the mulch basin has an adequate volume for surge events and that the soil is capable of adsorption of any excess graywater that is not utilized by the flora. Mulch basin system failure will result in clogged mulch basins, surfacing graywater, and excessive discharge to groundwater.

For indoor toilet and urinal flushing, the commission is requiring a treatment technology that will be protective of public health and will consistently treat graywater without on-going water quality testing. Graywater research indicates that graywater is to be expected to contain human pathogens. Graywater is an emerging research area and peer reviewed research regarding graywater as a potential disease vector and treatment technology impacts on human pathogens are limited. Until additional graywater research studies indicate a definite public health safety threshold, the commission selected the ANSI/NSF 350-2011 standard for indoor toilet and urinal flushing. ANSI/NSF 350 is a performance based treatment testing protocol which requires a third party review of water quality data. The ANSI/NSF 350 standard is required in the 2015 International Plumbing Code and is required by other western states that allow indoor toilet flushing with graywater. The 2013 California Plumbing Code sets ANSI/NSF 350 as the minimum water quality standards (unless the authority having jurisdiction has other water quality requirements). Oregon allows indoor use with an ANSI certified graywater standard. In addition to ANSI/NSF 350 treatment, the commission is requiring dye to visually differentiate graywater from potable water, as well as requiring a disinfectant to prevent biological growth in the graywater distribution system.

B. Flow projections

The commission is adopting graywater flow rates based on the 2012 Uniform Plumbing Code. The 2012 Uniform Plumbing Code includes daily flow estimates for water saving fixtures while the 2015 International Plumbing Code only has traditional fixture daily flow estimates. The commission received comments from local agencies indicating that the allowed occupancy rates and therefore overall flow rate projections are not very conservative. The commission determined that if graywater is produced at graywater treatment works designed with a storage tank at a rate higher than the estimates, that any excess graywater will overflow to a combined sewer system. Excess graywater production will not impact the graywater treatment works flow (after the storage tank) for graywater use and the overall flow to the closed sewerage system from the facility will not be impacted.

For mulch basin systems without a storage tank, excess graywater production may have a more direct impact. A mulch basin without a storage tank, which is sized for surge events at three times the daily production volume, provides some safety factor for additional daily flow. The local implementing agencies will have the flexibility to adopt more conservative flow rates. For multi-family residential systems, this flow projection design criteria allows flexibility if site specific flow information is available. The residential flow values are intended for circumstances where site specific fixture information is unknown.

C. General graywater treatment works design criteria

The commission is adopting general design criteria for all graywater treatment works including: component sizing requirements, a graywater diversion valve, no bypass lines around the treatment works, and labeling. Treatment works components must be sized to treat the anticipated peak flow rate. For example: an improperly sized filter upstream of a storage tank may result in graywater backing up into the building's plumbing system. The diversion valve is a critical component for the graywater user to allow graywater to be sent to the closed sewerage system during non-irrigation periods, divert graywater when cleaning the tank, divert graywater when hazardous chemical are being used in the building, etc. The diversion valve is intended to

direct graywater prior to the graywater treatment works to a closed sewerage system. No bypass lines around the graywater treatment works prior to use is allowed. The graywater lines must also be clearly distinguished to guarantee that the graywater piping is not mistaken for potable water piping. This requirement is intended to be consistent with the anticipated Colorado Plumbing Code requirements but will apply to all graywater piping, including piping outside the structure.

This regulation is consistent with the requirements for onsite wastewater treatment facilities with respect to: the impact of a graywater system on the onsite wastewater treatment facility sizing, floodplain, and floodway requirements. The onsite wastewater treatment system must be sized for the potentially full wastewater treatment flow from the facility in the event that future property owners elect to discontinue use of the graywater treatment works.

The commission determined that a storage tank is required for all graywater treatment works, except for properly sized mulch basin systems. Tanks equalize flow surges and minimize water quality variations through the day. Tanks also allow graywater application to be controlled to ensure agronomic rate control. If excess graywater is produced (over the agronomic rate), the excess graywater will be sent to the closed sewerage system via the overflow line rather than being disposed of in the subsurface irrigation system. Tanks can be used as a collection reservoir for a pressurized graywater distribution system which will allow for equal distribution of graywater throughout graywater piping. For indoor tanks, the Colorado Plumbing code may be more restrictive than the requirements in this regulation, but the design criteria adopted here set minimum standards for water quality needs. The required tank appurtenances are important design features necessary for maintaining the required control measures. Design criteria were included for tank materials, access openings, vents, overflow lines, drains, tank foundation, and signage. A minimum tank volume of 50 gallons was adopted based on the 2012 Uniform Plumbing Code. Outdoor tanks must be protected from direct sunlight to limit biological growth prior to use.

Graywater treatment works with a treatment process wastewater stream must be properly contain or dispose of such wastewater. An example of a graywater treatment works with a produced wastewater stream would be a filter with a backwash process. Any wastewater from the treatment process must be sent to an appropriate disposal location such as a closed sewerage system or an approved Underground Injection Control well.

Graywater treatment works must be located within the confines of the legal property boundary and not within an easement.

D. Additional design criteria for Categories A and B

In order to ensure the integrity of the irrigation system, the commission is requiring a filter. The filter must be located between the treatment system and the irrigation distribution system to inhibit failure of the soil or emitter systems by particulate clogging. A 60 mesh filter was determined to be the appropriate minimum size for protection of the irrigation system. However, the irrigation system manufacturer may recommend smaller filter sizes based on the selected graywater irrigation system components. Local governments can be more stringent and require designers to follow the manufacturer's recommendations. Prefiltration is not required but is recommended to reduce maintenance on the 60 mesh filter. The filter must be located between the tank and the irrigation area. To prevent pump failure, the filter must be located after the pump and not on the suction side of the pump.

For mulch basin systems, the commission's aim was to not require a filter and to allow for simple graywater systems. It is anticipated that the mulch and underlying soil will act similar to a trickling filter and will provide some treatment of graywater that is not used by the flora.

E. Back up potable water system requirements for Categories A, B, C, and D

The commission is adopting different cross-connection control requirements for a graywater system served by a public water system (as defined in Regulation #11) than for graywater systems served by a non-public water system. The commission believes that installation of control devices is critical at all graywater treatment works with potable water connections. However, the commission does not want to require annual device testing for non-public water system users and customers (e.g., a single family house on an individual private well) that would not be required under the commission's existing regulations. The cross connection control requirements for public water systems are well defined in Regulation #11 and therefore this regulation does not repeat the associated requirements. For urinal and toilet flushing users, potable water supply is required for sanitary purposes since toilets and urinals must have a water supply at all times. For subsurface irrigation users, a potable water supply is optional.

F. Signage requirements for non-single family users

The regulation requires signage for public notification. The signage requirement is for non-single family users since the building occupants and visitors are less likely to be aware that a graywater treatment works is in use than at a single family residence. The required signage is for general notification and is a component of the required control measures. For non-single family users, signs are required at three locations: 1) point of graywater production (e.g., sink), 2) location of the graywater treatment works, and 3) point of graywater use (e.g., irrigation area, toilet). At the point of production, the purpose of the sign is to notify building occupants or visitors that the water is being reused and to ensure that the graywater is not being inadvertently contaminated. At the location of the graywater treatment works, the purpose of the sign is to notify occupants and building maintenance personnel in order to prevent accidental exposure to graywater. At the point of use, the purpose of the sign is to notify the persons using the irrigation area, toilet, or urinal.

G. ANSI/NSF 350 standard certified treatment for Category C and D systems

NSF/ANSI 350-2011 is a performance based water quality standard developed by the NSF Joint Committee on Wastewater Technology in 2011 for residential and commercial graywater treatment for indoor toilet and urinal flushing. The standard sets the minimum design, material, design and construction, and performance requirements for on-site residential and commercial graywater treatment systems. Technologies are tested under normal operating conditions and stress conditions and water quality results are verified by a third party certification agency. The standard does not specify the treatment technologies used to meet the water quality standard which gives flexibility of various treatment technologies to get certified. The commission finds that the ANSI/NSF standard meets an acceptable technology review protocol that would be certified by a third party agency to simplify the technology review process for the local jurisdictions. In addition, ANSI/NSF is a nationally recognized standard that is intended to be protective of public health and would consistently treat graywater without the need for on-going water quality testing. As the ANSI/NSF certification standard is relatively recent only a few manufacturers have gone through the certification process. The commission anticipates that as indoor graywater use becomes more accepted, more manufacturers will certify their products. Additionally, the ANSI/NSF 350 standard has on-site performance testing and evaluation protocol for commercial systems over 1,500 gallons per day. The commission anticipates some graywater users will use a third party testing agency to certify their graywater treatment works to the NSF/ANSI 350 standard.

H. Disinfection requirements for Category C and D systems

Graywater research indicates that graywater is to be expected to contain human pathogens; therefore, the commission considers the use of a potent disinfectant an essential part of a multi-barrier approach to protect public health. The use of a disinfectant is required if disinfection is not already part of the ANSI/NSF equipment. The disinfectant is to inhibit the growth of microorganisms, pathogens and viruses in the indoor graywater plumbing system. For non-single

family systems, the commission is requiring a free chlorine residual of 0.2 mg/L to 4 mg/L to prevent regrowth of microorganism in the graywater distribution system. Non-single family users are expected to have a large potentially impacted population and a more complicated distribution system design than single family systems. For single family users the commission is allowing for a chlorine puck in the toilet to minimize microorganism growth.

To maintain a multi-barrier approach, the commission is requiring that the disinfection process be capable of producing free chlorine rather than total chlorine. The disinfection process for non-single family users must be capable of injecting enough chlorine to react with all reducing agents, ammonium, organics, etc present in the graywater (aka past the breakpoint chlorination point) and that free chlorine must be present. EPA documents indicate that chloramines (which are formed prior to breakpoint chlorination) are approximately 100 times less effective than free chlorine at inactivating pathogens such as Giardia lamblia or viruses. Therefore, the commission believes that free chlorine is a readily available and safe, potent disinfectant.

I. Professional Engineers for Category D systems

The professional engineer requirement for graywater treatment works with a design capacity greater than 2,000 gallons per day was determined to be necessary to ensure the protection of public health and the environment. The local jurisdiction may elect to make designer requirements more stringent in their graywater control program.

XI. Irrigation System Design Criteria

A. General design criteria basis

The irrigation design requirements in this regulation are modeled after the State of Washington's graywater regulation (Chapter 246-274 WAC). Washington requires that graywater be applied directly to the plant root zone. The requirement that irrigation systems be located four (4) inches below ground rather than two (2) inches results in less potential graywater surfacing or accidental breakage incidents. The commission wants to be in general conformance with the required set back distance requirements.

The requirements adopted for single family dispersed subsurface irrigation systems are intended to prevent under sizing of the subsurface irrigation area while making the application process straightforward. For non-single family dispersed subsurface irrigation systems and mulch basin systems, the commission's intent was to adequately size the irrigation system using the best information available including site specific soil testing.

B. Irrigation system requirements for Single Family irrigation system

The intention with the dispersed subsurface irrigation systems area sizing was to have a reasonable and simple calculation for single family systems. The commission believes this equation is the simplest and most economical method to estimate the landscape area for small graywater systems. The equation is used by other state agencies (e.g., Idaho, Washington) and designers (e.g., Oasis Design). Furthermore, this method does not require soils testing at each single family residential site. Local jurisdictions that are not comfortable without soils testing results may elect to require the mulch bed or Category B requirements for the single family dispersed subsurface irrigation systems.

C. Irrigation system requirements for Mulch Basin and Non-Single Family dispersed subsurface irrigation systems

The commission modeled the Category B and mulch basin irrigation design requirements on the State of Washington's graywater regulation (Chapter 246-274 WAC). The Washington soil type

table was merged with the soil type descriptions in Regulation #43 for ease of local implementation and for consistency between commission regulations. The soil depths are not the same as the Regulation #43 requirements since Regulation #43 is intended for onsite wastewater treatment while this regulation is intended for graywater use by flora. Although intended for use by flora, the mulch basin system design criteria recognize that disposal to groundwater may result. This recognition is the basis for requiring a site and soil evaluation for all mulch basin systems, even single family systems. The site and soil evaluation requirement aims to provide site specific conditions design parameters to allow proper design for category B and mulch basin systems.

Mulch basin design requirements in other western states were researched, and detailed mulch basin design parameters were not found. Therefore the commission's goal for the mulch basin design criteria was to have sufficient volume to adsorb graywater volume surges for graywater treatment works. For graywater treatments works that do not have a storage tank the volume requirement are to capture a surge volume three (3) times the daily flow. For graywater treatments works with a storage tank the volume requirement has a safety factor of 1.5 times the daily flow. The purposes of the other mulch basin design criteria are for proper operation and to minimize potential human exposure.

Notice of Rulemaking Hearing

Tracking number

2014-01249

Department

1000 - Department of Public Health and Environment

Agency

1002 - Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-86

Rule title

Graywater Control Regulation

Rulemaking Hearing

Date

04/13/2015

Time

09:30 AM

Location

Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

Adoption of a regulation to describe requirements, prohibitions and standards for use of graywater for nondrinking water purposes

Statutory authority

sections 25-8-202; 25-8-205; 25-8-401; and 25-8-402 C.R.S.

Contact information

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COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC RULEMAKING HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of revisions to section 61.14(1)(b) of the Colorado Discharge Permit System, Regulation #61 (5 CCR 1002-61) and the adoption of a Graywater Control Regulation, Regulation #86, to be codified as (5 CCR 1002-86).

The revisions to Regulation #61 proposed by the Water Quality Control Division (division) as staff to the commission, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notice as Exhibit 1. The new Regulation #86 proposed by the division, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, is attached to this notice as Exhibit 2. Any alternative proposals related to the revisions proposed in Exhibits 1 and 2, and developed in response to those proposed revisions, will also be considered.

HEARING SCHEDULE:

DATE:	Monday, April 13, 2015
TIME:	9:30 a.m.
PLACE:	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. The commission requests that all interested persons submit to the commission any available information that may be relevant in considering the noticed proposals.

Written submissions prior to the hearing by interested members of the public that do not have party status are encouraged. In order to be distributed to the commission for review prior to the hearing, such submissions need to be received in the commission office or the Colorado Department of Public Health and Environment's (Department's) mail room by April 1, 2015. Written submissions received after this date will be distributed to commissioners at the hearing. However, for logistical reasons, the commission office cannot guarantee that electronic submissions received after 1:00 p.m. Friday, April 10, 2015 will be provided to commissioners. Interested persons wishing to submit comments or other documents after that date and time should bring paper copies to the hearing and provide PDF versions to the commission office as soon as possible after the hearing.

Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status generally will not be permitted.

PARTY STATUS:

Participation as a "party" to this hearing will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). It is not necessary to acquire party status in order to testify or comment. **For each request for party status, please provide the organization's name, a contact person, mailing address, phone number, and email address.** Written party status requests are due in the commission office on or before:

DATE: Thursday, January 22, 2015
TIME: 5:00 p.m.

A single copy of the party status request may be transmitted as an email attachment to cdphe.wqcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the mail room of the Colorado Department of Public Health and Environment (department) no later than this deadline.

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established:

(1) A PDF version of a **Proponent's Prehearing Statement** from the division, as the proponent of revisions proposed in Exhibit 1 attached to this notice, including written testimony and exhibits providing the basis for the proposals, must be submitted to the commission office no later than **February 4, 2015**. **In addition,** one complete paper copy, including written testimony and exhibits providing the basis for the proposals, **AND** 13 paper copies of the Proponent's Prehearing Statements, **without** written testimony and exhibits, must be received in the department's mail room no later than **February 4, 2015**; and

(2) A PDF version of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of **anyone seeking party status and intending to respond to the proponent's proposal** must be submitted to the commission office no later than **March 4, 2015**. **In addition,** one complete paper copy, including written testimony and exhibits providing the basis for the proposals, **AND** 13 paper copies, **without** written testimony and exhibits, must be received in the department's mail room no later than **March 4, 2015**.

The PDF versions of all prehearing statements may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site or submitted on a CD or flash drive so as to be received no later than the specified due date.

As soon as prehearing statements are posted on the commission's web site, the commission office will email a link to the page containing the prehearing statements to proponents, parties and the Attorney General's Office representatives for the commission and the division.

Please **note** that the commission has prepared a document entitled ***Information for Parties to Water Quality Control Commission Rulemaking Hearings.*** A copy of this document will be emailed to all persons requesting party status. It is also posted on the commission's web site as Appendix C to the Public Participation Handbook. Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the request that all parties submit two-sided copies of all hearing documents on three-hole punch paper.**

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on March 4, 2015 may be submitted by the division or anyone seeking party status. Any such rebuttal statements must be received in the commission office by **April 1, 2015**. A PDF version (emailed to

cdphe.wqcc@state.co.us, provided via an FTP site or submitted on a CD or flash drive) must be submitted to the commission office by this deadline. **In addition**, one complete paper copy of written rebuttal statements, including any exhibits, **AND** 13 paper copies **without** exhibits must be received in the department's mail room by this deadline. No other written materials will be accepted following this deadline except for good cause shown.

PREHEARING CONFERENCE:

DATE: Monday, March 23, 2015
TIME: 9:00 a.m.
PLACE: Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

Attendance at the prehearing conference is mandatory for all persons requesting party status. An opportunity may be available to participate in this prehearing conference by telephone. Persons wishing to participate by telephone should notify the commission office as early as possible.

Any motions regarding the conduct of this rulemaking shall be submitted by Wednesday, March 18, 2015, so that they can be considered at the prehearing conference. No motions will be accepted after March 18, 2015, except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202; 25-8-205; 25-8-401; and 25-8-402 C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

NOTIFICATION OF POTENTIAL MATERIAL INJURY TO WATER RIGHTS:

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate in the party status request submitted. In order for this potential to be considered fully by the commission and the other agencies listed in the statute, persons must fully explain the basis for their claim in their prehearing statement which is due in the commission office on the date specified above. This explanation should identify and describe the water right(s), and explain how and to what degree the material injury will be incurred.

Dated this 15thth day of December, 2014 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth
cn=Trisha Oeth, o, ou=Water Quality Control Commission, email=trisha.oeth@state.co.us, c=US
2014.12.15 06:04:01 -07'00'

Trisha Oeth, Administrator

EXHIBIT 1

WATER QUALITY CONTROL DIVISION

DEPARTMENT OF HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-61

COLORADO DISCHARGE PERMIT SYSTEM

. . . .

61.14 GROUND WATER

61.14(1) APPLICABILITY

(b) The following facilities are specifically exempted from coverage under the ground water discharge provisions of this regulation:

. . . .

(x) Any graywater treatment works with a design flow of 2,000 gallons per day or less, if designed and constructed in accordance with Regulation 86 (5 CCR 1002-86).

. . . .

WATER QUALITY CONTROL DIVISION PROPOSED

61.68 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE – APRIL 13, 2015 RULEMAKING HEARING; EFFECTIVE DATE JUNE 30, 2015

The provisions of 25-8-202(1)(d) and (2), 25-8-401, 25-8-501, and 25-8-504, C.R.S., provide the specific statutory authority for the amendments to this regulation adopted by the Water Quality Control Commission (Commission). The Commission has also adopted, in compliance with 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

In coordination with the development of Regulation #86, the commission adopted an exemption from the ground water discharge provisions of Regulation #61 for certain graywater treatment works. The commission believes that graywater subsurface irrigation systems with a design flow of 2,000 gallons per day or less pose a similar risk to ground water as on-site wastewater treatment systems with a design capacity of 2,000 gallons per day or less, which currently has an exemption from ground water permitting in Regulation #61, and that a similar exemption for graywater treatment systems is appropriate as a matter of policy.

EXHIBIT 2

WATER QUALITY CONTROL DIVISION

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-86

REGULATION NO. 86

GRAYWATER CONTROL REGULATION

86.1 Authority

This regulation is promulgated pursuant to the Colorado Water Quality Control Act (CWQCA) sections 25-8-101 through 25-8-703, C.R.S. In particular, it is promulgated under section 25-8-205(1)(g), C.R.S.

86.2 Purpose and Scope

A. Purpose

The purpose of this regulation, as authorized by section 25-8-205(1)(g), is to describe requirements, prohibitions, and standards for the use of graywater for nondrinking water purposes, to encourage the use of graywater, and to protect public health and water quality.

B. Scope

This regulation establishes the allowed users and allowed uses of graywater within the state of Colorado; establishes the minimum state-wide standards for the location, design, construction, operation, installation, modification of graywater treatment works; and establishes the minimum ordinance or resolution requirements for a city, city and county, or county that chooses to authorize graywater use within its jurisdiction.

86.3 Severability

The provisions of this regulation are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of this regulation shall not be affected thereby.

86.4 Voluntary Local Graywater Control Programs

Each local city, city and county, or county has the discretion to decide whether to adopt any of the graywater uses along with the associated minimum design criteria and control measures set forth in this regulation.

86.5 Materials Incorporated by Reference

The materials incorporated by reference cited herein include only those versions that were in effect as of June 30, 2015 and not later amendments to the incorporated material.

All materials referenced in this regulation may be examined online, where available, or at the Water Quality Control Division, at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

86.6 Applicability

A. All graywater uses and graywater treatment works must comply with the minimum requirements of this regulation as set forth in a local graywater control program.

1. Graywater treatment works may only be installed and operated within the jurisdiction of a city, city and county, or county with a local graywater control program.

2. Graywater treatment works installed prior to the effective date of this regulation are only allowed under a local graywater control program and must meet the local requirements adopted pursuant to these regulations.

3. Graywater treatment works installed under a local graywater control program which is later revoked or rescinded must within 365 days:

a. Be physically removed or permanently disconnected; or

b. Be regulated under a limited graywater control program for existing graywater systems. In this case, the local city, city and county, or county must continue the limited graywater control program for the existing graywater treatment works only; or

c. Be regulated under another jurisdiction's local graywater control program which assumes authority over the existing graywater treatment works. The existing graywater treatment works will need to comply with the new city, city and county, or county's local graywater control program, including any required graywater treatment works modifications.

4. In the event that a property with a compliant graywater treatment works is annexed or de-annexed into a jurisdiction with differing graywater requirements, the property owner must within 365 days:

a. Ensure the graywater treatment works is physically removed or permanently disconnected; or

b. Ensure the graywater treatment works is incorporated into another city, city and county, or county's local graywater control program. This includes conforming to the minimum requirements of the new local graywater control program and may include improving or modifying the graywater treatment works.

B. Graywater use is only allowed under a local graywater control program and must meet the local requirements adopted pursuant to these regulations. Unauthorized graywater use and discharges are prohibited.

C. This regulation does not apply to: discharges pursuant to a Colorado Discharge Permit System (CDPS) permit, wastewater that has been treated and released to state waters prior to subsequent use, wastewater that has been treated and used at a domestic wastewater treatment works for landscape irrigation or process uses, on-site wastewater treatment works authorized under Regulation #43, reclaimed wastewater authorized under Regulation #84, water used in an industrial process that is internally recycled, and rainwater harvesting.

86.7 Enforcement and Division Oversight

A. The local city, city and county, or county with a local graywater control program has exclusive enforcement authority regarding compliance with the local ordinance or resolution.

B. The Colorado Water Quality Control Division oversees state-wide implementation of this regulation. As part of the state-wide implementation, a local city, city and county, or county that chooses to adopt a local graywater control program must notify the Water Quality Control Division within 60 days of program adoption, implementation, revision, or modification. A copy of the ordinance or resolution must be submitted to: Water Quality Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

86.8 Definitions

(1) "Agronomic rate" means the rate of application of nutrients to plants that is necessary to satisfy the nutritional requirements of the plants.

(2) "Agricultural irrigation" means irrigation of crops produced for direct human consumption, crops where lactating dairy animals forage, and trees that produce nuts or fruit intended for human consumption. This definition includes household gardens and fruit trees.

(3) "Closed sewerage system" means either a permitted domestic wastewater treatment works, which includes a permitted and properly functioning OWTS with a design capacity more than 2,000 gpd, or a properly functioning and approved or permitted OWTS with a design capacity of 2,000 gpd or less.

(4) "Commission" means the Water Quality Control Commission created by section 25-8-201, C.R.S.

(5) "Component" means a subpart of a graywater treatment works which may include multiple devices.

(6) "Cross-Connection" means <<definition of cross connection from the January 2015 Regulation 11 hearing>>.

(7) "Design" means the process of selecting and documenting in writing the size, calculations, site specific data, location, equipment specification and configuration of treatment components that match site characteristics and facility use.

(8) "Design flow" means the estimated volume of graywater per unit of time for which a component or graywater treatment works is designed.

(9) "Dispersed subsurface irrigation" means a subsurface irrigation system including piping and emitters installed throughout an irrigation area.

(10) "Division" means the Water Quality Control Division of the Colorado Department of Public Health and Environment.

(11) "Facility" means any building, structure, or installation, or any combination thereof that uses graywater subject to a local graywater control program, is located on one or more contiguous or adjacent properties, and is owned or operated by the same person or legal entity. Facility is synonymous with the term operation.

(12) "Floodplain (100-year)" means an area adjacent to a river or other watercourse which is subject to flooding as the result of the occurrence of a one hundred (100) year flood, and is so adverse to

past, current or foreseeable construction or land use as to constitute a significant hazard to public or environmental health and safety or to property or is designated by the Federal Emergency Management Agency (FEMA) or National Flood Insurance Program (NFIP). In the absence of FEMA/NFIP maps, a professional engineer shall certify the floodplain elevations.

(13) “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot or as designated by the Federal Emergency Management Agency or National Flood Insurance Program. In the absence of FEMA/NFIP maps, a professional engineer shall certify the floodway elevation and location.

(14) “Graywater" means that portion of wastewater that, before being treated or combined with other wastewater, is collected from fixtures within residential, commercial, or industrial buildings or institutional facilities for the purpose of being put to beneficial uses. Sources of graywater are limited to discharges from bathroom and laundry room sinks, bathtubs, showers, and laundry machines. Graywater does not include the wastewater from toilets, urinals, kitchen sinks, dishwashers, or nonlaundry utility sinks.

(15) "Graywater treatment works" means an arrangement of devices and structures used to: (a) collect graywater from within a building or a facility; and (b) treat, neutralize, or stabilize graywater within the same building or facility to the level necessary for its authorized uses.

(16) “Indirect connection” means a waste pipe from a graywater treatment works that does not connect directly with the closed sewerage system, but that discharges into the closed sewerage system though an air break or air gap into a trap, fixture, receptor, or interceptor.

(17) “Legally responsible party” (1) For a residential property, the legally responsible party is the property owner. (2) For a corporation, the legally responsible party is a responsible corporate officer, either: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for approval application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (3) For a partnership or sole proprietorship, the legally responsible party is either a general partner or the proprietor, respectively. (4) For a municipality, State, Federal, or other public agency, the legally responsible party is a principal executive officer or ranking elected official, either (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(18) “Limited local graywater control program” is a local graywater control program limited to existing graywater treatment works and which does not accept new graywater treatment works.

(19) “Local agency” means any local city, city or county, county agency including, but not limited to, a department, local public health agency, or district which is delegated the authority to administer all or a portion of the responsibilities of the local graywater control program.

(20) “Local graywater control program” is a local ordinance or resolution, including implementation practices, authorized by a city, city and county or county which is in compliance with the minimum requirements of this regulation.

(21) “Local public health agency” means any county, district, or municipal public health agency and may include a county, district, or municipal board of health.

(22) “Modification” means the alteration or replacement of any component of a graywater treatment works that can affect the quality of the finished water, the rated capacity of a graywater treatment works, the graywater use, alters the treatment process of a graywater treatment works, or compliance with this regulation and the local graywater control program. This definition does not include normal operations and maintenance of a graywater treatment works.

(23) “Mulch” means organic material including but not limited to leaves, prunings, straw, pulled weeds, and wood chips.

(24) “Mulch basin” means a type of irrigation or treatment field filled with mulch or other approved permeable material of sufficient depth, length, and width to prevent ponding or runoff. A mulch basin may include a basin around a tree, a trough along a row of plants, or other shapes necessary for irrigation.

(25) “On-site wastewater treatment system” or "OWTS" means an absorption system of any size or flow or a system or facility for treating, neutralizing, stabilizing, or dispersing sewage generated in the vicinity, which system is not a part of or connected to a sewage treatment works.

(26) “Percolation test” means a subsurface soil test at the depth of a proposed irrigation area to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed. The rate is expressed in minutes per inch.

(27) “Potable water system” means a system for the provision of water to the public for human consumption through pipes or other constructed conveyances, where such system has less than fifteen service connections or regularly serves less than an average of at least 25 individuals daily at least 60 days per year.

(28) “Professional engineer” means an engineer licensed in accordance with section 12-25-1, C.R.S.

(29) “Public nuisance” means the unreasonable, unwarranted and/or unlawful use of property, which causes inconvenience or damage to others, including to an individual or to the general public.

(30) “Public water system” means a system for the provision of water to the public for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. A public water system is either a community water system or a non-community water system. Such term does not include any special irrigation district. Such term includes:

(a) Any collection, treatment, storage, and distribution facilities under control of the supplier of such system and used primarily in connection with such system.

(b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.

(31) “Single family” means a detached or attached structure, arranged and designed as a single family residential unit intended to be occupied by not more than one family and that has separate water and sewer services connections from other dwelling units.

(32) “Site evaluation” means a comprehensive analysis of soil and site conditions for a graywater irrigation area.

(33) “Soil horizon” means layers in the soil column differentiated by changes in texture, color, redoximorphic features, bedrock, structure, consistence, and any other characteristic that affects water movement.

(34) “Soil profile test pit” means a trench or other excavation used for access to evaluate the soil horizons for properties influencing effluent movement, bedrock, evidence of seasonal high ground water, and other information to be used in locating and designing a graywater irrigation area.

(35) “Soil structure” means the naturally occurring combination or arrangement of primary soil particles into secondary units or peds; secondary units are characterized on the basis of shape, size class, and grade (degree of distinctness).

(36) “Suitable soil” means unsaturated soil in which the movement of water, air, and growth of roots is sustained to support healthy plant life and conserve moisture. Soil criteria for graywater subsurface irrigation are further defined in section 86.12.

(37) “Subsurface irrigation” means a discharge of graywater into soil a minimum of four inches (4”) and no deeper than twelve inches (12”) below the finished grade.

(38) “State waters” means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

Table 8-1 Abbreviations and Acronyms

ANSI	American National Standards Institute
BK	Blocky
C.R.S.	Colorado Revised Statutes
CDPS	Colorado Discharge Permit System
FEMA	Federal Emergency Management Agency
gpd	gallons per day
GR	Granular
mg/L	milligrams per Liter
MPI	Minutes Per Inch
NFIP	National Flood Insurance Program
NSF	NSF International, formally known as National Sanitation Foundation
O&M	Operations and Maintenance
OWTS	On-site Wastewater Treatment System(s)
PR	Prismatic

86.9 Administration

A. Local Coordination

Nothing in this regulation shall be deemed to limit the authority of local cities, cities and counties, or counties, pursuant to section 29-1-203, C.R.S., to enter into intergovernmental agreements with each other pertaining to the coordinated adoption and operation of local graywater control program.

B. Minimum Requirements for a Graywater Ordinance or Resolution

1. The local city, city and county, or county that chooses to authorize graywater use within its jurisdiction must adopt an ordinance or resolution which meets the following minimum requirements:

a. The ordinance or resolution must be in compliance with the minimum requirements of this regulation.

b. The ordinance or resolution must provide that all graywater treatment works are in compliance with applicable federal, state, and local requirements.

c. The ordinance or resolution must define the legal boundary of the local city, city and county, or county's local graywater control program which, at a maximum, is limited by the provisions in Titles 30 and 31 of the C.R.S. and the Colorado Constitution. If coordination with other agencies results in graywater implementation not being allowed within a portion of the local city, city and county, or county then these areas must be clearly excluded.

d. The ordinance or resolution must explicitly state which graywater use categories defined in section 86.10 are allowed within the local city, city and county, or county's local graywater control program boundary.

e. The ordinance or resolution must identify the local agency or agencies for all graywater regulatory activities including, but not limited to, design review, inspection, enforcement, tracking, and complaints.

f. The ordinance or resolution must clearly indicate whether a fee(s) will be imposed for graywater activities, which local agency establishes the fee(s) and where fee(s) information is located.

g. The ordinance or resolution must include a requirement for a searchable tracking mechanism that is indefinitely maintained by the local agency that must include, at a minimum, the following information:

    i. Legal address of each facility with graywater treatment works, allowed graywater uses at each facility, and a graywater treatment works description.

    ii. The legally responsible party associated with every graywater treatment works.

    iii. Where required, the certified operator associated with every graywater treatment works.

    iv. Any changes to the legally responsible party, certified operator, and status of the graywater treatment works must be updated within 60 days.

h. The ordinance and resolution must include a requirement for a local agency to develop a graywater design criteria document. The design criteria document must meet the minimum requirements of this regulation but may be more stringent. The graywater design criteria must define a site and soil evaluation methodology for subsurface irrigation systems unless only single family dispersed subsurface irrigation systems are allowed.

i. The ordinance or resolution must include a requirement and process for the local agency to approve or deny the installation of new graywater treatment works or modifications to an existing graywater treatment works. As part of the approval process the local agency(ies) must review a design submittal and perform a construction verification in accordance with:

i. All graywater treatments works must submit the following design information: the graywater uses, graywater treatment system location, design flow calculations for the graywater treatment works, fixtures that are the source of the graywater, design of the plumbing or irrigation system, any supporting soil analysis information, a description of the products or components, legally responsible party information, and contact information for system designer or professional engineer and operator, if applicable. The application for graywater treatment works must be signed by the legally responsible party.

ii. All graywater treatment works must be inspected or verified and accepted by the local agency.

j. The ordinance or resolution must require all graywater treatment works to have an operation and maintenance (O&M) manual. The O&M manual must remain with the graywater treatment works throughout the system's life and be updated based on each modification and approval made to the system. The O&M manual must be transferred, upon change of ownership or occupancy, to the new owner or tenant.

k. The ordinance or resolution must clearly indicate if any reporting is required for graywater regulatory activities, the required parameters, and the required frequency.

l. The ordinance or resolution must include a requirement for the local agency to administer and enforce the provisions of the ordinance or resolution.

C. Discontinuation of local graywater program

A local city, city and county, and county that decides to revoke or rescind an adopted local graywater control program must require that all previously allowed graywater treatment works either:

1 Be physically removed or permanently disconnected; or

2. Be regulated under a limited graywater control program for existing graywater systems. In this case, the local city, city and county, or county must continue a limited graywater control program for the existing graywater treatment works. The limited graywater program must include a graywater control program for the existing graywater treatment works but no new graywater treatment works. At a minimum, the limited graywater control program must include items: 86.9(B) items a, b, e, g, j, and l. If the limited graywater control program allows modifications to existing treatment works then items d, h, and i must also be included; or

3. Be regulated under another jurisdiction's local graywater control program which assumes authority over the existing graywater treatment works. The existing graywater treatment works will need to comply with the new city, city and county, or county's local graywater control program, including any required graywater treatment works modifications.

86.10 Graywater Use Categories

General: The graywater use categories allowed are defined below. A single facility may have multiple graywater treatment works as long as all applicable use and design requirements are satisfied.

A. Category A: Single family, subsurface irrigation

Category A graywater use must meet the following:

1. Allowed users: Single family.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: The design flow for a single family graywater treatment works is limited to a 400 gallons per day (gpd) or less combined flow for all approved uses.

B. Category B: Non-single family, subsurface irrigation, 2,000 gallons per day (gpd) or less

Category B graywater use must meet the following:

1. Allowed users: Non-single family users.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: The design flow for a non-single family graywater treatment works is limited to 2,000 gallons per day (gpd) or less for outdoor irrigation for the entire facility.

C. Category C: Single family, indoor toilet and urinal flushing, subsurface irrigation

Category C graywater use must meet the following:

1. Allowed users: Single family.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Indoor toilet and urinal flushing and outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: The design flow for a single family graywater treatment works is limited to 400 gallons per day (gpd) or less combined flow for all approved uses.

D. Category D: Non-single family, indoor toilet and urinal flushing, subsurface irrigation

Category D graywater use must meet the following:

1. Allowed users: Non-single family users.

2. Allowed graywater sources: Graywater collected from bathroom and laundry room sinks, bathtubs, showers, and laundry machines.

3. Allowed uses: Indoor toilet and urinal flushing and outdoor, subsurface irrigation within the confines of the legal property boundary.

4. Design flow: There is no maximum design flow for a non-single family graywater treatment works for indoor toilet and urinal flushing. There is no maximum design flow for the amount of wastewater from the facility that can go to a closed sewerage system. The design flow is limited to 2,000 gallons per day (gpd) or less for outdoor irrigation for the entire facility.

86.11 <u>Graywater Use Requirements - Control Measures</u>

A. All graywater uses

All graywater treatment works must be operated in accordance with the following control measures:

1. Graywater must be collected in a manner that minimizes the presence or introduction of:

    a. hazardous or toxic chemicals in the graywater to the greatest extent possible;

    b. human excreta in the graywater to the greatest extent possible;

    c. household wastes; and

    d. animal or vegetable matter.

2. Use of graywater is limited to the confines of the facility that generates the graywater.

3. The graywater treatment works must be operated and maintained in accordance with the O&M manual, including all manufacturer recommended maintenance activities. The O&M manual must remain with the graywater treatment works throughout the system's life and be updated based on each modification and approval made to the system. The O&M manual must be transferred, upon change of ownership or occupancy, to the new owner or tenant.

    a. For Category D graywater treatment works that have a capacity to receive greater than 2,000 gallons per day (gpd), operational and maintenance records must be maintained for a minimum of the past five (5) years.

4. The owner or operator of a graywater treatment works must minimize exposure of graywater to humans and domestic pets.

5. Graywater use and graywater treatment works must not create a public nuisance.

6. Graywater must not be stored for more than 24 hours unless the graywater has been treated by a graywater treatment works that meets the design requirements of section 86.12. All graywater must be stored inside a tank(s) that meets the design requirements of section 86.12(B)(5).

7. Temporary or semi-temporary connections from the potable water system or public water system to the graywater treatment works are prohibited. Permanent connections from the potable water system or public water system to the graywater treatment works must meet the design requirements of 86.12(B)(6).

B. Subsurface irrigation graywater use

Graywater use for subsurface irrigation must also comply with the following additional control measures:

1. Agricultural irrigation with graywater is prohibited.

2. Irrigation is prohibited when the ground is frozen, plants are dormant, or the ground is saturated.

3. Irrigation scheduling must be adjusted so that application rates are closely matched with soil and weather conditions.

4. Graywater must be applied in a manner that does not result in ponding, runoff, or unauthorized discharge to state waters. For dispersed subsurface irrigation systems, the graywater must be applied at an agronomic rate. For mulch basins systems, the graywater must not be applied in excess of the soil adsorption rate.

5. For mulch basin systems, mulch must be replenished and undergo periodic maintenance as needed to reshape or remove material to maintain surge capacity and to prevent ponding and runoff.

C Indoor toilet and urinal flushing graywater use

Graywater use for indoor toilet and urinal flushing must also comply with the following additional control measures.

1. Graywater for toilet and urinal flushing use must be disinfected.

   a. Graywater treatment works that utilize chlorine for disinfection must have a minimum of 0.2 mg/L and a maximum of 4.0 mg/L of free chlorine residual throughout the indoor graywater plumbing system, including fixtures.

   b. Single family graywater treatment works that utilize non-chemical methods, such as UV, for disinfection must have a chlorine puck present in each toilet or urinal tank.

2. Graywater for toilet and urinal flushing must be dyed with either blue or green food grade vegetable dye and be visibly distinct from potable water.

86.12 <u>Graywater Treatment Works - Design Criteria</u>

A. Graywater treatment works flow projections

All graywater treatment works must be sized using the following flow projection methods:

1. Residential users: Flow to graywater treatment works must be calculated on the occupancy and the fixtures connected to the graywater treatment works. The calculated graywater flow is the number of occupants multiplied by the estimate graywater flow in terms of gpd/occupant from the attached fixtures.

   a. The occupancy must be calculated based on a minimum of two (2) occupants for the first bedroom and one (1) occupant for each additional bedroom.

   b. The estimated graywater flow from each fixture is based on the design flow of the fixture. If the fixture's design flow is unknown then the estimated graywater flow per occupant is:

      i. Traditional fixtures: 25 gpd/occupant for each shower, bathtub, and wash basin and 15 gpd/occupant for each clothes washer.

ii. Water saving fixtures: 20 gpd/occupant for each shower, bathtub, and wash basin and 8 gpd/occupant for each clothes washer.

2. Non-residential users: Graywater treatment works must be sized must be sized in accordance with fixture or water use records taking into account the number of fixtures attached to the graywater treatment works.

B. Graywater treatment works design criteria

All graywater treatment works must comply with the following design criteria:

1. The graywater treatment works must be designed to meet the design requirements of this regulation and meet any additional requirements of the Colorado Plumbing Code.

2. The design flow of each treatment component or combination of multiple components must be greater than the calculated peak graywater production if upstream of the storage tank or no tank is present.

3. The graywater treatment works must have a diversion valve that directs graywater to either the graywater treatment works or a closed sewerage system. The diversion valve must be easily operable and clearly labeled. The diversion valve must be constructed of material that is durable, corrosion resistant, watertight, and designed to accommodate the inlet and outlet pipes in a secure and watertight manner. The bypass line must be indirectly connected to the closed sewerage system.

4. Piping that allows the treatment process(es) or a storage tank to be bypassed prior to graywater use is prohibited unless the graywater bypass piping has an indirect connection to a closed sewerage system.

5. Graywater treatment works must include a tank to collect and store graywater except for subsurface irrigation systems that discharge to a mulch basin which meets the sizing criteria of section 86.12(C)(3)(g)(ii)(a) for Category A and C graywater treatment works or 86.12(D)(4)(g)(ii)(a) for Category B and D graywater treatment works.

The storage tank must:

a. be made of durable, non-absorbent, water-tight, and corrosion resistant materials;

b. be closed and have access openings for inspection and cleaning;

c. be vented:

i. for indoor tanks: the tanks must be vented to the atmosphere outside of the house;

ii. for outdoor tanks: the storage tank must have a downturned screened vent;

d. have an overflow line:

i. with the same or larger diameter line as the influent line;

ii. without a shut off valve;

iii. that is trapped to prevent the escape of gas vapors from the tank; and

iv. that is indirectly connected to the closed sewerage system;

e. have a valved drain line with the same or larger diameter line as the influent line that is indirectly connected to the closed sewerage system;

f. be a minimum of 50 gallons;

g. be placed on a stable foundation; and

h. have a permanent label that states “CAUTION! NON-POTABLE WATER. DO NOT DRINK.”

6. Category A and Category B graywater treatment works may, but are not required to, have a backup potable water system that provides potable irrigation water when graywater is not being produced or is produced in insufficient quantities. Category C and Category D graywater treatment works must have a backup potable water system connection.

Backup potable water system connections must meet the following requirements:

a. For non-public water system, potable water system connections: uncontrolled cross connections between a potable water system and a graywater treatment works are prohibited. All cross connections must be protected by a reduced pressure principle backflow prevention zone assembly or an approved air gap.

b. For public water system potable water system connections: uncontrolled cross connections between a public water system and a graywater treatment works are prohibited. The graywater treatment works design must protect the public water system from cross connections by meeting the requirements of Regulation #11: Colorado Primary Drinking Water Regulations.

7. Use or installation of graywater treatment works cannot be used as a factor to reduce the design, capacity or soil treatment area requirements for OWTS or domestic wastewater treatment works.

8 Wastewater from graywater treatment works (e.g., filter backwash water) must be properly contained and disposed into a closed sewerage system or an approved Underground Injection Control (UIC) well.

9. All graywater piping shall be clearly distinguished and must be clearly labeled, including pipe identification and flow arrows.

10. Graywater treatment works located in a 100-year floodplain must meet or exceed the requirements of FEMA and the local emergency agency. The graywater system must be designed to minimize or eliminate infiltration of floodwaters into the system and prevent discharge from the system into the floodwaters.

11. Graywater treatment works are prohibited in floodways.

12. The graywater treatment works must be located:

a. Within the confines of the legal property boundary and not within an easement; and

b. Outdoor tanks must not be exposed to direct sunlight.

C. Category A: Graywater treatment works design criteria

In addition to the requirements in sections 86.12(A) and 86.12(B), graywater treatment works for "Category A: Single family, subsurface irrigation" uses must include the following components:

1. The graywater treatment works must include either:

   a. For mulch basin systems, a filter is not required but the mulch basin design must meet the design criteria in sections 86.12(C)(2) and 86.12(C)(3).

   b. For dispersed subsurface irrigation systems, a cartridge filter is required. The cartridge filter must be a minimum of 60 mesh or smaller. The filter must be located between the storage tank and the irrigation system. If a pump is being used to pressurize the graywater distribution system, the filter must be located after the pump. The dispersed subsurface irrigation system must meet design criteria in sections 86.12(C)(2) and 86.12(C)(4).

2. Subsurface irrigation system designs, including dispersed subsurface irrigation systems and mulch basin systems, must meet the following criteria:

   a. The subsurface irrigation components of the graywater irrigation system must be installed a minimum of four inches (4") and a maximum of twelve inches (12") below the finished grade.

   b. The subsurface irrigation components of the graywater irrigation system must be installed in suitable soil, as defined in section 86.8(36).

   c. There must be a minimum of twenty-four inches (24") of suitable soil between the subsurface irrigation components of the graywater irrigation system and any restrictive soil layer, bedrock, concrete, or the highest water table. Restrictive soil layers are soil types 4, 4A, and 5 in Table 12-2.

   d. The system design shall provide the user with controls, such as valves, switches, timers, and other controllers, as appropriate, to ensure the distribution of graywater throughout the entire irrigation zone.

   e. When used, emitters shall be designed to resist root intrusion and shall be of a design recommended by the manufacturer for the intended graywater flow and use. Minimum spacing between emitters shall be sufficient to deliver graywater at an agronomic rate and to prevent surfacing or runoff.

   f. All irrigation supply lines shall be polyethylene tubing or PVC Class 200 pipe or better and Schedule 40 fittings. All joints shall be pressure tested at 40 psi (276 kPa), and shown to be drip tight for five minutes before burial. Drip feeder lines can be poly or flexible PVC tubing.

   g. All irrigation systems must meet the following setback distances in Table 12-1.

Table 12-1: Graywater System Setback Requirements

Minimum Horizontal Distance Required from:	Graywater Storage Tank	Irrigation Field
Buildings	5 feet	2 feet

Property line adjoining private property	10 feet	10 feet
Property line adjoining private property with supporting property line survey	1.5 feet	1.5 feet
Water supply wells	50 feet	100 feet
Streams and lakes	50 feet	50 feet
Seepage pits or cesspools	5 feet	5 feet
OWTS disposal field	5 feet	25 feet
OWTS tank	5 feet	10 feet
Domestic potable water service line	10 feet	10 feet
Public water main	10 feet	10 feet

h. The irrigation field may only be located on slopes of less than thirty percent (30%) from horizontal.

3. Mulch basin systems must be designed to meet the following requirements:

a. A site and soil evaluation must be conducted for each proposed graywater irrigation area to determine the site suitability. The site and soil evaluation must include:

i Site information, including:

(a) a site map; and

(b) location of proposed graywater irrigation area in relation to physical features requiring setbacks in Table 12-1.

ii. Soil investigation to determine long-term acceptance rate of a graywater irrigation area as a design basis. Soil investigation must be completed by either:

(a). a visual and tactile evaluation of soil profile test pit, or

(b) a percolation test.

b. Irrigation rates must not exceed maximum allowable soil loading rates in Table 12-2 based on the finest textured soil in the twenty-four inches (24”) of suitable soil beneath the subsurface irrigation components.

Table 12-2: Soil Type Description and Maximum Hydraulic Loading Rate

Soil Type	USDA Soil Texture	USDA Structure - Shape	USDA Soil Structure-Grade	Percolation Rate (MPI)	Loading Rate for Graywater (gal./sq. ft./day)
0	Soil Type 1 with more than 35% Rock (>2mm); Soil Types 2-5 with more than 50% Rock (>2mm)	--	0 (Single Grain)	Less than 5	Not suitable without augmentation 1.0 with augmentation
1	Sand, Loamy Sand	--	0	5-15	Not suitable without augmentation 1.0 with augmentation
2	Sandy Loam, Loam, Silt Loam	PR BK GR	2 (Moderate) 3 (Strong)	16-25	0.8
2A	Sandy Loam, Loam, Silt Loam	PR, BK, GR 0 (none)	1 (Weak) Massive	26-40	0.6
3	Sandy Clay Loam, Clay Loam, Silty Clay Loam	PR, BK, GR	2, 3	41-60	0.4
3A	Sandy Clay Loam, Clay Loam, Silty Clay Loam	PR, BK, GR 0	1 Massive	61-75	0.2
4	Sandy Clay, Clay, Silty Clay	PR, BK, GR	2, 3	76-90	Not suitable
4A	Sandy Clay, Clay, Silty Clay	PR, BK, GR 0	1 Massive	91-120	Not suitable
5	Soil Types 2-4A	Platy	1, 2, 3	121+	Not suitable

c. Suitable soil may consist of original, undisturbed soil or original soil that is augmented. Not suitable soil may be augmented as needed to ensure suitable soil is used.

d. If the original soil is augmented, the mixture used for augmentation must meet the following criteria to ensure that suitable soil is achieved:

i. The mixture must have an organic content that is at least five percent (5%) and no greater than ten percent (10%);

ii. The mixture must be a well blended mix of mineral aggregate (soil) and compost where the soil ratio depends on the requirements for the plant species; and

iii. The mineral aggregate must have the following gradation:

Sieve Size	Percent Passing
3/8	100
No. 4	95 - 100
No. 10	75 - 90
No. 40	25 - 40
No. 100	4 - 10
No. 200	2 - 5

e. If the original soil is augmented, the additional soil must be tilled into the native soil a minimum of twelve inches (12") below irrigation application zone.

f. Soil types 0 and 1 must be augmented before use. Soil type 4, 4A, and 5 are not suitable for subsurface irrigation.

g. Mulch basins must be designed to meet the following requirements:

i. Mulch shall be permeable enough to allow rapid infiltration of graywater.

ii. The minimum void space mulch basin volume must be either:

(a) Three (3) times the anticipated average daily flow for graywater treatment works without a storage tank to allow for graywater volume surges and to prevent surfacing or runoff.

(b) One and a half (1.5) times the anticipated average daily flow for graywater treatment works with storage tank meeting the section 86.12(B)(5) design criteria.

iii. Piping to mulch basins must discharge a minimum of four inches (4") below grade into a container for dispersal of graywater into the mulch basin. The container must be designed to have four inches (4") of freefall between the invert of the discharge pipe and the mulch. The container must have an access lid for observation of flow and to check mulch levels.

iv. The mulch basin must have a minimum depth of twelve inches (12") below grade and not more than twenty four (24") below grade.

4. Dispersed subsurface irrigation systems must be sized using one of the following methodologies:

a. Irrigation area equation:

The minimum graywater irrigation area must be calculated using the following equation.

LA = GW / (CF x ET x PF)

Where:

LA = Landscaped area (square feet)

GW = Estimated graywater flow (gallons per week)

CF = 0.62 (square foot x inch / gallon) = ((7.48 gallons/ 1-cu-ft) / 12 inch/ft)

ET = Evapotranspiration rate (inch / week), as determined by USDA Natural Resources Conservation Service CO652.0408 “Figure CO4-1: Map of Colorado Climate Zones” dated April 1978, or weekly averages based on actual conditions;

PF = Plant factor, 0.5;

or,

b. The mulch basin system design criteria in Section 86.12(C)(3), except 86.12(C)(3)(g).

D Category B: Graywater treatment works design criteria

In addition to the requirements in sections 86.12(A) and 86.12(B), graywater treatment works for “Category B: Non-single family, subsurface irrigation, 2,000 gallons per day (gpd) or less” uses must include the following treatment components:

1. The graywater treatment works must include either:

   a. For mulch basin systems, a filter is not required but the mulch basin design must meet design criteria in sections 86.12(D)(3) and 86.12(D)(4).

   b. For dispersed subsurface irrigation systems, a cartridge filter is required. The cartridge filter must be a minimum of 60 mesh or smaller, to protect the irrigation system. The filter must be located between the storage tank and the irrigation system. If a pump is being used to pressurize the graywater distribution system the filter must be located after the pump. The dispersed subsurface irrigation system must meet the design criteria in sections 86.12(D)(3) and 86.12(D)(4), except 86.12(D)(4)(g).

2. Signage: Notification shall include posting of signs of sufficient size to be clearly read with the language below in the dominant language(s) expected to be spoken at the site.

   a. A permanent warning sign must be visible at all fixtures from which graywater is collected. The signs must state that, “WATER FROM THIS FIXTURE IS REUSED. CHEMICALS, EXCRETA, PETROLEUM OILS AND HAZARDOUS MATERIALS MUST NOT BE DISPOSED DOWN THE DRAIN”;

   b. Each room that contains graywater treatment works components must have a sign that says “CAUTION GRAYWATER TREATMENT WORKS, DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM. NOTICE: CONTACT BUILDING MANAGEMENT BEFORE PERFORMING ANY WORK ON THIS WATER SYSTEM.”; and

   c. Each irrigation area must have a sign that says “CAUTION GRAYWATER BEING USED FOR IRRIGATION. DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM.”

3. Subsurface irrigation system designs, including dispersed subsurface irrigation systems and mulch basin systems, must meet the following criteria:

   a. The subsurface irrigation components of the graywater irrigation system must be installed a minimum of four inches (4”) and a maximum of twelve inches (12”) below the finished grade.

   b. The subsurface irrigation components of the graywater irrigation system must be installed in suitable soil, as defined in section 86.8(36).

   c. There must be a minimum of twenty-four inches (24”) of suitable soil between the subsurface irrigation components of the graywater irrigation system and any restrictive soil layer, bedrock, concrete, or the highest water table. Restrictive soil layers are soil types 4, 4A, and 5 in Table 12-2.

   d. The system design shall provide the user with controls, such as valves, switches, timers, and other controllers, as appropriate, to ensure the distribution of graywater throughout the entire irrigation zone.

   e. When used, emitters shall be designed to resist root intrusion and shall be of a design recommended by the manufacturer for the intended graywater flow and use. Minimum spacing between emitters shall be sufficient to deliver graywater at an agronomic rate and to prevent surfacing or runoff.

   f. All irrigation supply lines shall be polyethylene tubing or PVC Class 200 pipe or better and Schedule 40 fittings. All joints shall be pressure tested at 40 psi (276 kPa), and shown to be drip tight for five minutes before burial. Drip feeder lines can be poly or flexible PVC tubing.

   g. All irrigation systems must meet the setback distances in Table 12-1.

   h. The irrigation field may only be located on slopes of less than thirty percent (30%) from horizontal.

4. Dispersed subsurface irrigation systems and mulch basin systems must be designed to meet the following requirements:

   a. A site and soil evaluation must be conducted for each proposed graywater irrigation area to determine the site suitability. The site and soil evaluation must include:

      i Site information, including:

         (a) a site map; and

         (b) location of proposed graywater irrigation area in relation to physical features requiring setbacks in Table 12-1.

      ii. Soil investigation to determine long-term acceptance rate of a graywater irrigation area as a design basis. Soil investigation must be completed by either:

         (a) a visual and tactile evaluation of soil profile test pit, or

         (b) a percolation test.

b. Irrigation rates must not exceed maximum allowable soil loading rates in Table 12-2 based on the finest textured soil in the twenty-four inches (24") of suitable soil beneath the subsurface irrigation components.

c. Suitable soil may consist of original, undisturbed soil or original soil that is augmented. Not suitable soil may be augmented as needed to ensure suitable soil is used.

d. If the original soil is augmented, the mixture used for augmentation must meet the following criteria to ensure that suitable soil is achieved:

i. The mixture must have an organic content that is at least five percent (5%) and no greater than ten percent (10%);

ii. The mixture must be a well blended mix of mineral aggregate (soil) and compost where the soil ratio depends on the requirements for the plant species; and

iii. The mineral aggregate must have the following gradation:

Sieve Size	Percent Passing
3/8	100
No. 4	95 - 100
No. 10	75 - 90
No. 40	25 - 40
No. 100	4 - 10
No. 200	2 - 5

e. If the original soil is augmented, the additional soil must be tilled into the native soil a minimum of twelve inches (12") below irrigation application zone.

f. Soil types 0 and 1 must be augmented before use. Soil type 4, 4A, and 5 are not suitable for subsurface irrigation.

g. Mulch basins must be designed to meet the following requirements:

i. Mulch shall be permeable enough to allow rapid infiltration of graywater.

ii. The minimum void space mulch basin volume must be either:

(a) Three (3) times the anticipated average daily flow for graywater treatment works without a storage tank to allow for graywater volume surges and to prevent surfacing or runoff.

(b) One and a half (1.5) times the anticipated average daily flow for graywater treatment works with storage tank meeting the section 86.12(B)(5) design criteria.

iii. Piping to mulch basins must discharge a minimum of four inches (4") below grade into a container for dispersal of graywater into the mulch basin. The container must be designed to have four inches (4") of freefall between the invert of the discharge pipe and the mulch. The

container must have an access lid for observation of flow and to check mulch levels.

iv. The mulch basin must have a minimum depth of twelve inches (12") below grade and not more than twenty four (24") below grade.

E. Category C: Graywater treatment works design criteria

In addition to the requirements in Sections 86.12(A) and (B), graywater treatment works for "Category C: Single family, indoor toilet and urinal flushing, subsurface irrigation" uses must include the following treatment components:

1. The graywater treatment works must be certified under "Class R" of NSF/ANSI 350 Onsite Residential and Commercial Water Reuse Treatment Systems.

2. If a disinfection process is not part of NSF/ANSI 350-2011 equipment, separate disinfection system equipment is required. For graywater treatment works that use sodium hypochlorite (bleach), the graywater treatment works must be capable of providing a free chlorine residual of 0.2 to 4.0 mg/L in the graywater throughout the indoor graywater plumbing system.

3. The graywater treatment works must include a dye injection system that is capable of providing a dye concentration that is visibly distinct from potable water.

4. Category C graywater treatment works that use graywater for subsurface irrigation must meet:

   a. For mulch basin systems, the mulch basin design must meet the design criteria in sections 86.12(C)(2) and 86.12(C)(3).

   b. For dispersed subsurface irrigation systems, the dispersed subsurface irrigation system must meet design criteria in sections 86.12(C)(2) and 86.12(C)(4).

F. Category D: Graywater treatment works design criteria

In addition to the requirements in Sections 86.12(A) and (B), graywater treatment works for "Category D: Non-single family, indoor toilet and urinal flushing, subsurface irrigation" uses must include the following treatment components:

1. The graywater treatment works must be certified under "Class R" or "Class C" of NSF/ANSI 350 Onsite Residential and Commercial Water Reuse Treatment Systems. Required classification shall be dictated by the size of the graywater treatment works and if the graywater sources are residential or commercial as defined by NSF/ANSI 350.

2. Separate disinfection system equipment is required if a disinfection process is not part of NSF/ANSI 350-2011 equipment. A graywater treatment works must be capable of providing a free chlorine residual of 0.2 to 4.0 mg/L in the graywater throughout the indoor graywater plumbing system.

3. The graywater treatment works must include a dye injection system that is capable of providing a dye concentration that is visibly distinct from potable water.

4. Signage: Notification shall include posting of signs of sufficient size to be clearly read with the language below in the dominant language(s) expected to be spoken at the site.

a. A permanent warning sign must be visible at all fixtures from which graywater is collected. The signs must state that, “WATER FROM THIS FIXTURE IS REUSED. CHEMICALS, EXCRETA, PETROLEUM OILS AND HAZARDOUS MATERIALS MUST NOT BE DISPOSED DOWN THE DRAIN”;

b. Each room that contains graywater treatment works components must have a sign that says “CAUTION GRAYWATER TREATMENT WORKS, DO NOT DRINK, DO NOT CONNECT TO THE POTABLE DRINKING WATER SYSTEM. NOTICE: CONTACT BUILDING MANAGEMENT BEFORE PERFORMING ANY WORK ON THIS WATER SYSTEM.”; and

c. Each toilet and urinal must have a sign that says: “TO CONSERVE WATER, THIS BUILDING USES TREATED NON-POTABLE GRAYWATER TO FLUSH TOILETS AND URINALS.”

5. Category D graywater treatment works that use graywater for subsurface irrigation must meet:

a. For mulch basin systems, the mulch basin design must meet design criteria in sections 86.12(D)(3) and 86.12(D)(4).

b. For dispersed subsurface irrigation systems, the dispersed subsurface irrigation system must meet the design criteria in sections 86.12(D)(3) and 86.12(D)(4), except 86.12(D)(4)(g).

6. For graywater treatment works that have a capacity to receive greater than 2,000 gallons per day, the design must be prepared under the supervision of and submitted with the seal and signature of a professional engineer licensed to practice engineering in the State of Colorado in accordance with the requirements of the Colorado Department of Regulatory Agencies (DORA) – Division of Registrations.

86.13 <u>Operation and Maintenance Manual</u>

All graywater systems must have an O&M manual. The O&M manual must include the following items:

A. A graywater treatment works description including: equipment list, design basis data including but not limited to, design volumes, design flow rates of each component and service area, system drawing, and process description.

B. Maintenance information for the graywater treatment works including but not limited to: component maintenance schedule, instructions for component repair, replacement, or cleaning, replacement component source list, testing and frequency for potable containment device, and instructions for periodic removal of residuals.

C. Operational ranges for parameters including but not limited to: disinfectant concentration levels, filter replacement parameters, pressure ranges, tank level, and valve status under normal operation.

D. Step-by-step instructions for starting and shutting down the graywater treatment works including but not limited to: valve operation, any electrical connections, cleaning procedures, visual inspection, and filter installation.

E. A guide for visually evaluating the graywater treatment works and narrowing any problem scope based on alarm activations, effluent characteristics, system operation, and history.

F. A list of graywater control measures in which the graywater treatment works must be operated.

86.14 Certified Operator

A graywater treatment works must be operated by qualified personnel who meet any applicable requirements of Regulation #100, the Water and Wastewater Facility Operators Certification Requirements.

86.15 - 86.20 Reserved

86.21 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; APRIL 13, 2015 RULEMAKING, FINAL ACTION MAY 11, 2015, EFFECTIVE JUNE 30, 2015

The provisions of sections 25-8-202(1)(c) and 25-8-205(1)(g), C.R.S., provide the specific statutory authority for the Graywater Control Regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-203(4), C.R.S., the following statement of basis, specific statutory authority, and purpose.

BASIS AND PURPOSE

I. Purpose

The commission has determined that the adoption of the requirements set forth in Regulation #86 are necessary to protect public health and the environment in the state. The commission believes that the implementation of graywater use in Colorado will proceed more expeditiously by limiting the initial regulatory scope. This approach promotes development of local graywater programs through two initial graywater uses with specific treatment and control measure requirements. The commission expects the adoption of modifications to Regulation #86 over time to allow for additional graywater uses, graywater users, and expanded treatment options.

It is the intent of the commission that this regulation promote the use of graywater by providing a comprehensive framework which, when followed, will assure responsible use of graywater compatible with the state's public policy to foster the health, welfare and safety of the inhabitants of the state of Colorado and to protect, maintain, and improve, where necessary and reasonable, the water quality in Colorado.

II. House Bill 13-1044 Background

House Bill 13-1044 was signed into law on May 15, 2003, and authorizes the use of graywater in Colorado. The legislation defined “graywater” and “graywater treatment works” and established a basic implementation framework for graywater use within Colorado.

Under the statute, each local city, city and county, or county are able to decide whether to allow graywater use within its jurisdiction via the adoption of a resolution or ordinance that meets minimum local, state and federal requirements, including but not limited to the Colorado Plumbing Board regulations, local graywater control programs, water rights requirements, and operator certification requirements. All graywater users must wait until all relevant regulations are effective before implementing graywater treatment works.

III. Regulatory Goals

Through adoption of this regulation, the commission is encouraging the use of graywater. Because graywater has the potential to be a human pathogen pathway, the commission is adopting measures to adequately protect public health. The graywater regulation is structured so that local governments will have flexibility to adopt ordinances and resolutions that are appropriate in each individual circumstance.

Local graywater control programs are voluntary, and may allow one or both of the authorized graywater uses. The local graywater control program may be more stringent but must meet the minimum requirements of Regulation #86. Since neither the local implementing agencies nor the state agencies were allocated funds for graywater regulation, ordinance, code, resolution, and other supporting graywater control legal framework, the regulation aims to be cognizant of resource limitations linked to local implementation. At this time, the commission is authorizing two graywater uses – indoor toilet flushing and outdoor irrigation. The commission anticipates that the allowed graywater uses may be expanded in the future after Colorado gains some experience and further scientifically based research can define the risks and benefits.

IV. Applicability

The statute states that, "graywater may only be used in areas where the local city, city and county, or county has adopted an ordinance or resolution approving the use of graywater", and ordinances and resolutions must be "in compliance" with the commission's regulation and other federal, state, and local. §§ 25-8-205(1)(g)(II), 31-11-107(1) and 31-15-601(1)(m), C.R.S.

The statutory language does not appear to have any regulatory exemptions for or show intent to grandfather existing graywater treatment works or existing graywater uses. The commission finds that the statute intended the regulation to apply prospectively following adoption since protection of public health and the environment cannot be assured for graywater treatment works unless all graywater treatment works meet the minimum requirements of Regulation #86. Therefore, all Colorado graywater systems must be authorized under a local graywater control program even if the graywater system was installed prior to the statute or the effective date this regulation.

Systems which capture graywater in a septic tank and dispose of it in a soil treatment area, and which are authorized onsite wastewater treatment systems (OWTS) will not be required to be regulated under a local graywater control program.

A local city, city and county or county that adopts a graywater ordinance or resolution must include the ability to compel graywater users to discontinue the practice in the event the program is discontinued. Where a local jurisdiction adopts a local graywater program, and later decides to discontinue the local graywater control program, the local government may either fully discontinue the program or adopt a limited graywater control program to allow existing graywater systems to continue. The "limited graywater control program" option means that the previously adopted local control program (including all Regulation #86 requirements) can be limited to the existing graywater treatment works and that no additional applications for graywater systems will be accepted.

V. Enforcement and Division Oversight

The statute conveys exclusive enforcement authority regarding compliance with the local ordinance or resolution to the local jurisdiction. The commission does not intend to directly enforce on individual users or graywater treatment works that are located within a local graywater control program. In cases where there is no local graywater control program in place, graywater use within the local jurisdiction will not be authorized and the user (not the local agency) may face enforcement action from the Water Quality Control Division (division).

A local city, city and county, or county that chooses to adopt a local graywater control program must notify the Division within 60 days of adoption and provide a copy of the ordinance or resolution. The division may review the ordinance or resolution to ensure that the ordinance or resolution meets the minimum intent of Regulation #86, and may take action to compel any local graywater program to conform to the minimum requirements of the regulation.

VI. Definitions

The commission relied upon existing regulatory definitions where possible and adopted definitions for several terms not already defined in statute. The definitions of the terms “cross-connection” and “public water system” were taken from Regulation #11: Colorado Primary Drinking Water Regulations. The definitions of the terms “component”, “design”, “design flow”, “floodplain”, “floodway”, “local public health agency”, “on-site wastewater treatment system”, “percolation test”, “site evaluation”, “soil horizon”, “soil profile test pit”, and “soil structure” were taken or modified from Regulation #43: On-site Wastewater Treatment System Regulation. The definitions of the terms “agronomic rate”, “agricultural irrigation”, and “Division” were taken or modified from Regulation #84: Reclaimed Water Control Regulation. The definition for “indirect connection” was modified from the International Plumbing Code 2012 edition definition of an “indirect waste pipe”. The definitions of the terms “suitable soil” and “subsurface irrigation” were modified from Washington Administrative Code Chapter 246-274.

The commission created definitions for “closed sewerage system”, “facility”, “legally responsible party”, “local agency”, “local graywater control program”, “modification”, “public nuisance”, and “single family”.

VII. Administration

In section 86.9 of the regulation, the commission set mandatory minimum requirements for a resolution or ordinance adopted by a local agency. The minimum ordinance or resolution requirements are intended to ensure that the local graywater control program meets the statutory requirements and to ensure a comprehensive graywater program. The minimum ordinance and resolution requirements are meant to be flexible recognizing that many local agencies will incorporate graywater into existing business processes. A local agency may adopt more stringent standards in its ordinance or resolution.

A local government may only authorize graywater use in accordance with federal, state, and local requirements. The city, city and county, or county is ultimately responsible for legal compliance with its own ordinance or resolution. Before a local city, city and county, or county adopts an ordinance or resolution to authorize the use of graywater, a board of county commissioners or a municipal governing body is encouraged to coordinate with other local agencies, including but not limited to, the local board of health, local public health agencies, any water and wastewater service providers, and basin water quality authorities. Coordination with other local agencies may be accomplished through memorandums of agreement, memorandums of understanding, agency referral mechanism, or agency agreements. The commission anticipates there may be circumstances where one regulatory entity’s rules and regulations could impact the legality of graywater use in a portion of an overall jurisdiction. For example, if a county allows graywater use but a portion of the county is served by a public water system that does not have appropriate water rights to allow graywater uses, this portion of the county must be excluded from the local graywater control program.

The ordinance or resolution must clearly state the requirements for graywater use within the jurisdiction. The local graywater control program must outline: the allowed graywater category(ies), the graywater treatment design criteria, site and soil evaluation methodology (if applicable), any regulatory fees, any testing requirements, or specific local requirements. The regulation does not require that an ordinance impose fees or water quality reporting.

A local agency’s graywater program must include a tracking mechanism for all graywater treatment works, a regulatory approval process, and mechanisms to ensure that on-going graywater use is done in compliance with the requirements of the resolution or ordinance (e.g., control measures are being met). The commission concludes that a local graywater program must address all graywater treatment works within a jurisdiction, including single family users. Current information on the installed graywater treatment works will be useful in the event of an outbreak investigation and during property transfers. Information regarding the legally responsible party associated with every graywater treatment works will also allow the local jurisdiction to have a contact for the decision maker of each graywater treatment works.

The commission determined that the ordinance or resolution must define the local regulatory structure to implement the program to ensure compliance with the resolution or ordinance. The ordinance or

resolution must clearly state which agency(ies) are involved in a local graywater control program and each agency's roles and responsibilities. These requirements are meant to encourage coordination within and between agencies.

Since the local jurisdiction will have enforcement authority, the local graywater control program must include violation notification mechanisms and escalation or enforcement actions. Possible violations of the ordinance or resolution that cause enforcement actions include, but are not limited to: not testing backflow prevention devices as required, not complying with control measures, and installation of a new or modification of an existing system without going through approval process.

The local jurisdiction will be responsible for coordinating with the Water and Wastewater Facility Operator Board to ensure that any Regulation #100: Water and Wastewater Facility Operator Certification Requirements are being satisfied. The commission encourages local jurisdictions to incorporate a mechanism for operator compliance assurance and a referral mechanism to the Water and Wastewater Facility Operator Board.

VIII. Graywater Categories

The commission is authorizing two uses for graywater - subsurface irrigation and indoor toilet /urinal flushing. There were several factors that guided the commission in determining the graywater categories within the two allowed graywater uses, including the population exposed, potential health exposure, potential cross-connection control risk, and environmental risk. The commission established a major category distinction between a single family residential user and all other users (referred to in the regulation as non-single family). The commission anticipates that a single family user will be financially and personally vested in keeping the household graywater treatment works operating properly. Single family residents will likely be aware of the health status of the other residents in their immediate household. In contrast, non-single family users may not be as diligent in following graywater control measures, may not understand the implications to other graywater users, or may not be responsible for maintaining a graywater treatment works. Accordingly, four graywater use categories were created to address single family and non-single family graywater use for subsurface irrigation (Categories A and B) and indoor toilet and urinal flushing (Categories C and D).

Within the four graywater categories, the commission is adopting daily graywater flow restrictions to ensure that graywater treatment works are consistent with other commission regulations. The commission decided to define a daily graywater flow rate rather than use the building occupancy for a variety of reasons. A daily flow rate is more consistent with the plumbing code, and is more consistent with other commission regulations. Based on a joint American Water Works Association Research Foundation (AwwaRF) and American Water Works Association (AWWA) study titled the Residential End Uses of Water, approximately 40 gallons per day (gpd) of graywater is produced per person and approximately 18.5 gpd/person is used for toilet flushing. The commission decided on a flow limit of 400 gpd for single family users which is roughly the amount of graywater produced by 10 people and the amount that 22 people could use for indoor toilet flushing. The non-single family limit of 2,000 gpd is roughly the amount of graywater produced by 50 people and the amount that 108 people could use for indoor toilet flushing.

Graywater is expected to contain nitrogen, phosphorus, and total dissolved solids which are regulated pollutants for groundwater discharges under Regulation #41 (5 CCR 1002-41). The commission determined that the potential risks to groundwater from graywater systems are similar to the risk posed by decentralized onsite wastewater treatment systems. Therefore, at the same time as adopting this control regulation, the commission revised Regulation #61 (section 61.14(1)(b)) to exempt graywater treatment works from the requirement to obtain a discharge permit.

IX. Control Measures

In addition to design requirements, the commission is adopting control measures, which are the required routine actions for graywater treatment works. The control measures compliment the design criteria. The

control measures attempt to control potential graywater exposure though: limitation of graywater contamination at the point of production (e.g., sink), proper operation of the treatment process, and limitation of graywater exposure (e.g., toilet or irrigation system). For example, the design criteria for indoor toilet flushing use requires the installation of a dye injection system and the associated control measure is the daily operation of the dye injection system. The control measures are the critical barrier to protect public health and environment after installation of the graywater treatment works. The adopted control measures were developed after reviewing other states' graywater programs and the International Plumbing Code requirements. Some control measures are required for all graywater uses, while other control measures are only required for subsurface irrigation or indoor toilet flushing.

A. Control measures required for all graywater uses

- Graywater must be collected in a manner that minimizes the presence or introduction of hazardous or toxic chemicals to the greatest extent possible. Residual hazardous or toxic chemicals may result from activities including, but not limited to: the use of cleaning chemicals; the use of hazardous household products; waste from a water softener; cleaning car parts; washing greasy or oily rags or clothing; rinsing paint brushes; disposal of pesticides, herbicides, or other chemicals; disposing of waste solutions from home photo labs or similar hobbyist or home occupation activities; or from other home maintenance activities.

- *Graywater must be collected in a manner that minimizes the presence or introduction of human excreta to the greatest extent possible.* Human excreta may result from activities such as, but not limited to: washing diapers, washing soiled garments, and washing infectious garments.

- *Graywater must be collected in a manner that minimizes the presence or introduction of household wastes*. Residual household wastes may result from activities including, but not limited to: the use of cleaning chemicals; pharmaceuticals, or from home maintenance activities.

- *Graywater must be collected in a manner that minimizes the presence or introduction of animal or vegetable matter.* Animal or vegetable matter may result from activities such as but not limited to: cooking, cleaning, and washing pets

- *Use of graywater is limited to the confines of the facility that generates the graywater.* This control measure is a statutory requirement.

- *The graywater treatment works must be operated and maintained in accordance with the O&M manual, including all manufacturer recommended maintenance activities.* On the surface this control measure is similar to the administration section which requires each graywater treatment works to have an O&M manual. However, this control measure requires that the O&M manual be actively followed and be used to guide proper operation and maintenance of a graywater treatment works. The commission included a five (5) year minimum O&M recordkeeping requirement for Category D graywater treatment works that have a capacity to receive equal to or greater than 2,000 gallons per day since maintenance of these systems will be essential to protect public health. In the event an outbreak, having records will allow public health officials to have a baseline of operational information to ensure that the graywater treatment works was properly operated.

- *The owner or operator of a graywater treatment works must minimize humans and domestic pets' exposure to graywater.* Research indicates that graywater is to be expected to contain human pathogens. Therefore, the commission considers minimization of exposure to humans and pets as a common sense measure to limit possible pathogen pathways. The commission understands that some exposures will be necessary for graywater treatment works maintenance, cleaning, aerosolization when

flushing of urinals and toilets, and irrigation system maintence. Users should be aware that human pathogens are likely present, and should therefore limit their exposure as much as possible and take protective measures.

- *Graywater use and graywater treatment works must not create a public nuisance.* Graywater use and graywater treatment works must not create public nuisances such as odors and disease vectors (e.g., mosquitoes) habitat.

- *Graywater must not be stored for more than 24 hours unless the graywater has been treated by a graywater treatment works that meets the design requirements of section 86.12. All graywater must be stored inside a tank(s) that meets the design requirements of section 86.12.* Graywater stored for an extended time period will create an environment that encourages microorganism growth. Extended storage of untreated graywater will result in anaerobic (a.k.a. no oxygen) conditions and unpleasant odors. Colorado water rights laws will likely impact storage of treated graywater for an extended time period. In addition, this requirement is in conformance with the 2015 International Plumbing Code.

- *Temporary or semi-temporary connections from the potable water system or public water system to the graywater treatment works are prohibited. Permanent connections from the potable water system or public water system must be controlled with an appropriate backflow prevention assembly or backflow prevention method.* Temporary potable water connections to graywater treatment works are not allowed. An example of a temporary connection is a hose submerged in a graywater storage tank to provide irrigation water during vacation. The prohibition was put in place since temporary connections will not undergo design approval or have an appropriate backflow prevention assembly or backflow prevention method. While temporary connections are prohibited, graywater treatment works may have a permanent connection from a potable water system or public water system. Permanent connections from the potable water system or public water system must be controlled with an appropriate backflow prevention assembly or backflow prevention method as required in section 86.12.

B. <u>Additional control measures required for subsurface irrigation use</u>

- *Agricultural irrigation with graywater is prohibited*. The definition of agricultural irrigation is generally consistent with the definition from Regulation #84 (which addresses centralized reclaimed water operations). The commission does not feel that sufficient scientific evidence proved that graywater is safer than reclaimed wastewater effluent. Therefore, consistent with the policy determination made for reclaimed water and in order to be protective of public health, graywater may not be used for agricultural irrigation. The definition of agricultural irrigation includes household gardens, fruit trees, and other flora intended for human consumption. This is especially critical for local jurisdictions that allow household produced food products to be sold at farmers markets. The commission considers “human consumption” to mean any food or beverage consumed by humans, regardless of the processing method (e.g., raw, fermented, baked, canned).

- *Irrigation is prohibited when the ground is frozen, plants are dormant, or the ground is saturated.* The commission intends to ensure that graywater use does not result in ponding, runoff, or unauthorized discharge to state waters. Therefore, graywater irrigation under these conditions is not allowed.

- *Irrigation scheduling must be adjusted so that application rates are closely matched with soil and weather conditions.* The amount of water needed for irrigation is dependent on a variety of local conditions such as the flora being irrigated, weather condition, and local soils. The user needs to be mindful that the required amount of graywater and nutrients will change over time and therefore the graywater application rate must also be adjusted.

- *Graywater must be applied at an agronomic rate which does not result in ponding, runoff, or unauthorized discharge to state waters.* The definition of agronomic rate is generally consistent with the definition from Regulation #84 (which addresses centralized reclaimed water operations). While this regulation does not require a water quality test, such testing is encouraged. Graywater use must not result in ponding, runoff, or unauthorized discharge to state waters.

- *For mulch basin systems, mulch must be replenished as required due to decomposition of organic manner. Mulch basins must undergo periodic maintenance, reshaping or removal of material to maintain surge capacity and to prevent ponding and runoff.* Microbial activity within the mulch basins will result in decomposition of organic material. To maintain the required storage volume and soil permeability, the mulch beds must undergo routine maintenance. This requirement was based on the 2013 California Plumbing Code.

C. Additional control measures required for indoor toilet flushing use

- *Graywater for toilet and urinal flushing use must be disinfected*. Graywater research indicates that graywater is to be expected to contain human pathogens. Therefore, the commission is using a multi-barrier approach, including the addition of a potent disinfectant to inhibit the presence of organisms, pathogens and viruses in the graywater distribution system.

- *Graywater treatment works that utilize chlorine for disinfection must have a minimum of 0.2 mg/L and a maximum of 4.0 mg/L of free chlorine residual throughout the indoor plumbing system, including fixtures.* The free chlorine residual requirement is generally consistent with Regulation #11. The commission is not implying that graywater for indoor toilet and urinal flushing must be treated to potable water standards, as defined by Regulation #11, but that a free chlorine residual range of 0.2 to 4.0 mg/L is reliably detectable and not high enough to adversely impact plumbing fixtures.

- *Single family graywater treatment works that utilize non-chemical methods, such as UV, for disinfection must have a chlorine puck present in each toilet tank.* The commission wants to give some flexibility to Category C systems and not require chlorine injection for all systems. Since some disinfectants, such as UV, do not have a residual present in the distribution system, a chlorine puck will inhibit the presence of organisms, pathogens, and viruses within the toilet tank and bowl.

- *Graywater for toilet and urinal flushing must be dyed with either blue or green food grade vegetable dye and be visibly distinct from potable water.* The commission adopted this requirement from the 2012 International Plumbing Code. Dye is a visual indicator that the water within the building is non-potable. Because single family households are not required to have signage for indoor toilet flushing, the dye serves as the notification method that a cross connection has occurred and graywater is entering the potable water lines of the operation.

X. Treatment Works Design Criteria

A. Design criteria treatment basis

For dispersed subsurface irrigation, the commission's intention with the design criteria is to protect the subsurface irrigation system from failure. The commission anticipates that without filtration, graywater irrigation systems would fail in a similar manner to an OWTS soil treatment area. Therefore, the commission is requiring filtration prior to the irrigation distribution system to

inhibit failure of the emitter systems by particulate or bio-growth clogging. Irrigation system failure will result in surfacing graywater, unequal distribution, and discharge to groundwater.

For subsurface irrigation mulch basin systems, the commission's intention is to ensure that the mulch basin has an adequate volume for surge events and that the soil is capable of adsorption of any excess graywater that is not utilized by the flora. Mulch basin system failure will result in clogged mulch basins, surfacing graywater, and excessive discharge to groundwater.

For indoor toilet and urinal flushing, the commission is requiring a treatment technology that will be protective of public health and will consistently treat graywater without on-going water quality testing. Graywater research indicates that graywater is to be expected to contain human pathogens. Graywater is an emerging research area and peer reviewed research regarding graywater as a potential disease vector and treatment technology impacts on human pathogens are limited. Until additional graywater research studies indicate a definite public health safety threshold, the commission selected the ANSI/NSF 350-2011 standard for indoor toilet and urinal flushing. ANSI/NSF 350 is a performance based treatment testing protocol which requires a third party review of water quality data. The ANSI/NSF 350 standard is required in the 2015 International Plumbing Code and is required by other western states that allow indoor toilet flushing with graywater. The 2013 California Plumbing Code sets ANSI/NSF 350 as the minimum water quality standards (unless the authority having jurisdiction has other water quality requirements). Oregon allows indoor use with an ANSI certified graywater standard. In addition to ANSI/NSF 350 treatment, the commission is requiring dye to visually differentiate graywater from potable water, as well as requiring a disinfectant to prevent biological growth in the graywater distribution system.

B. Flow projections

The commission is adopting graywater flow rates based on the 2012 Uniform Plumbing Code. The 2012 Uniform Plumbing Code includes daily flow estimates for water saving fixtures while the 2015 International Plumbing Code only has traditional fixture daily flow estimates. The commission received comments from local agencies indicating that the allowed occupancy rates and therefore overall flow rate projections are not very conservative. The commission determined that if graywater is produced at graywater treatment works designed with a storage tank at a rate higher than the estimates, that any excess graywater will overflow to a combined sewer system. Excess graywater production will not impact the graywater treatment works flow (after the storage tank) for graywater use and the overall flow to the closed sewerage system from the facility will not be impacted.

For mulch basin systems without a storage tank, excess graywater production may have a more direct impact. A mulch basin without a storage tank, which is sized for surge events at three times the daily production volume, provides some safety factor for additional daily flow. The local implementing agencies will have the flexibility to adopt more conservative flow rates. For multi-family residential systems, this flow projection design criteria allows flexibility if site specific flow information is available. The residential flow values are intended for circumstances where site specific fixture information is unknown.

C. General graywater treatment works design criteria

The commission is adopting general design criteria for all graywater treatment works including: component sizing requirements, a graywater diversion valve, no bypass lines around the treatment works, and labeling. Treatment works components must be sized to treat the anticipated peak flow rate. For example: an improperly sized filter upstream of a storage tank may result in graywater backing up into the building's plumbing system. The diversion valve is a critical component for the graywater user to allow graywater to be sent to the closed sewerage system during non-irrigation periods, divert graywater when cleaning the tank, divert graywater when hazardous chemical are being used in the building, etc. The diversion valve is intended to

direct graywater prior to the graywater treatment works to a closed sewerage system. No bypass lines around the graywater treatment works prior to use is allowed. The graywater lines must also be clearly distinguished to guarantee that the graywater piping is not mistaken for potable water piping. This requirement is intended to be consistent with the anticipated Colorado Plumbing Code requirements but will apply to all graywater piping, including piping outside the structure.

This regulation is consistent with the requirements for onsite wastewater treatment facilities with respect to: the impact of a graywater system on the onsite wastewater treatment facility sizing, floodplain, and floodway requirements. The onsite wastewater treatment system must be sized for the potentially full wastewater treatment flow from the facility in the event that future property owners elect to discontinue use of the graywater treatment works.

The commission determined that a storage tank is required for all graywater treatment works, except for properly sized mulch basin systems. Tanks equalize flow surges and minimize water quality variations through the day. Tanks also allow graywater application to be controlled to ensure agronomic rate control. If excess graywater is produced (over the agronomic rate), the excess graywater will be sent to the closed sewerage system via the overflow line rather than being disposed of in the subsurface irrigation system. Tanks can be used as a collection reservoir for a pressurized graywater distribution system which will allow for equal distribution of graywater throughout graywater piping. For indoor tanks, the Colorado Plumbing code may be more restrictive than the requirements in this regulation, but the design criteria adopted here set minimum standards for water quality needs. The required tank appurtenances are important design features necessary for maintaining the required control measures. Design criteria were included for tank materials, access openings, vents, overflow lines, drains, tank foundation, and signage. A minimum tank volume of 50 gallons was adopted based on the 2012 Uniform Plumbing Code. Outdoor tanks must be protected from direct sunlight to limit biological growth prior to use.

Graywater treatment works with a treatment process wastewater stream must be properly contain or dispose of such wastewater. An example of a graywater treatment works with a produced wastewater stream would be a filter with a backwash process. Any wastewater from the treatment process must be sent to an appropriate disposal location such as a closed sewerage system or an approved Underground Injection Control well.

Graywater treatment works must be located within the confines of the legal property boundary and not within an easement.

D. Additional design criteria for Categories A and B

In order to ensure the integrity of the irrigation system, the commission is requiring a filter. The filter must be located between the treatment system and the irrigation distribution system to inhibit failure of the soil or emitter systems by particulate clogging. A 60 mesh filter was determined to be the appropriate minimum size for protection of the irrigation system. However, the irrigation system manufacturer may recommend smaller filter sizes based on the selected graywater irrigation system components. Local governments can be more stringent and require designers to follow the manufacturer's recommendations. Prefiltration is not required but is recommended to reduce maintenance on the 60 mesh filter. The filter must be located between the tank and the irrigation area. To prevent pump failure, the filter must be located after the pump and not on the suction side of the pump.

For mulch basin systems, the commission's aim was to not require a filter and to allow for simple graywater systems. It is anticipated that the mulch and underlying soil will act similar to a trickling filter and will provide some treatment of graywater that is not used by the flora.

E. Back up potable water system requirements for Categories A, B, C, and D

The commission is adopting different cross-connection control requirements for a graywater system served by a public water system (as defined in Regulation #11) than for graywater systems served by a non-public water system. The commission believes that installation of control devices is critical at all graywater treatment works with potable water connections. However, the commission does not want to require annual device testing for non-public water system users and customers (e.g., a single family house on an individual private well) that would not be required under the commission's existing regulations. The cross connection control requirements for public water systems are well defined in Regulation #11 and therefore this regulation does not repeat the associated requirements. For urinal and toilet flushing users, potable water supply is required for sanitary purposes since toilets and urinals must have a water supply at all times. For subsurface irrigation users, a potable water supply is optional.

F. Signage requirements for non-single family users

The regulation requires signage for public notification. The signage requirement is for non-single family users since the building occupants and visitors are less likely to be aware that a graywater treatment works is in use than at a single family residence. The required signage is for general notification and is a component of the required control measures. For non-single family users, signs are required at three locations: 1) point of graywater production (e.g., sink), 2) location of the graywater treatment works, and 3) point of graywater use (e.g., irrigation area, toilet). At the point of production, the purpose of the sign is to notify building occupants or visitors that the water is being reused and to ensure that the graywater is not being inadvertently contaminated. At the location of the graywater treatment works, the purpose of the sign is to notify occupants and building maintenance personnel in order to prevent accidental exposure to graywater. At the point of use, the purpose of the sign is to notify the persons using the irrigation area, toilet, or urinal.

G. ANSI/NSF 350 standard certified treatment for Category C and D systems

NSF/ANSI 350-2011 is a performance based water quality standard developed by the NSF Joint Committee on Wastewater Technology in 2011 for residential and commercial graywater treatment for indoor toilet and urinal flushing. The standard sets the minimum design, material, design and construction, and performance requirements for on-site residential and commercial graywater treatment systems. Technologies are tested under normal operating conditions and stress conditions and water quality results are verified by a third party certification agency. The standard does not specify the treatment technologies used to meet the water quality standard which gives flexibility of various treatment technologies to get certified. The commission finds that the ANSI/NSF standard meets an acceptable technology review protocol that would be certified by a third party agency to simplify the technology review process for the local jurisdictions. In addition, ANSI/NSF is a nationally recognized standard that is intended to be protective of public health and would consistently treat graywater without the need for on-going water quality testing. As the ANSI/NSF certification standard is relatively recent only a few manufacturers have gone through the certification process. The commission anticipates that as indoor graywater use becomes more accepted, more manufacturers will certify their products. Additionally, the ANSI/NSF 350 standard has on-site performance testing and evaluation protocol for commercial systems over 1,500 gallons per day. The commission anticipates some graywater users will use a third party testing agency to certify their graywater treatment works to the NSF/ANSI 350 standard.

H. Disinfection requirements for Category C and D systems

Graywater research indicates that graywater is to be expected to contain human pathogens; therefore, the commission considers the use of a potent disinfectant an essential part of a multi-barrier approach to protect public health. The use of a disinfectant is required if disinfection is not already part of the ANSI/NSF equipment. The disinfectant is to inhibit the growth of microorganisms, pathogens and viruses in the indoor graywater plumbing system. For non-single

family systems, the commission is requiring a free chlorine residual of 0.2 mg/L to 4 mg/L to prevent regrowth of microorganism in the graywater distribution system. Non-single family users are expected to have a large potentially impacted population and a more complicated distribution system design than single family systems. For single family users the commission is allowing for a chlorine puck in the toilet to minimize microorganism growth.

To maintain a multi-barrier approach, the commission is requiring that the disinfection process be capable of producing free chlorine rather than total chlorine. The disinfection process for non-single family users must be capable of injecting enough chlorine to react with all reducing agents, ammonium, organics, etc present in the graywater (aka past the breakpoint chlorination point) and that free chlorine must be present. EPA documents indicate that chloramines (which are formed prior to breakpoint chlorination) are approximately 100 times less effective than free chlorine at inactivating pathogens such as Giardia lamblia or viruses. Therefore, the commission believes that free chlorine is a readily available and safe, potent disinfectant.

I. Professional Engineers for Category D systems

The professional engineer requirement for graywater treatment works with a design capacity greater than 2,000 gallons per day was determined to be necessary to ensure the protection of public health and the environment. The local jurisdiction may elect to make designer requirements more stringent in their graywater control program.

XI. Irrigation System Design Criteria

A. General design criteria basis

The irrigation design requirements in this regulation are modeled after the State of Washington's graywater regulation (Chapter 246-274 WAC). Washington requires that graywater be applied directly to the plant root zone. The requirement that irrigation systems be located four (4) inches below ground rather than two (2) inches results in less potential graywater surfacing or accidental breakage incidents. The commission wants to be in general conformance with the required set back distance requirements.

The requirements adopted for single family dispersed subsurface irrigation systems are intended to prevent under sizing of the subsurface irrigation area while making the application process straightforward. For non-single family dispersed subsurface irrigation systems and mulch basin systems, the commission's intent was to adequately size the irrigation system using the best information available including site specific soil testing.

B. Irrigation system requirements for Single Family irrigation system

The intention with the dispersed subsurface irrigation systems area sizing was to have a reasonable and simple calculation for single family systems. The commission believes this equation is the simplest and most economical method to estimate the landscape area for small graywater systems. The equation is used by other state agencies (e.g., Idaho, Washington) and designers (e.g., Oasis Design). Furthermore, this method does not require soils testing at each single family residential site. Local jurisdictions that are not comfortable without soils testing results may elect to require the mulch bed or Category B requirements for the single family dispersed subsurface irrigation systems.

C. Irrigation system requirements for Mulch Basin and Non-Single Family dispersed subsurface irrigation systems

The commission modeled the Category B and mulch basin irrigation design requirements on the State of Washington's graywater regulation (Chapter 246-274 WAC). The Washington soil type

table was merged with the soil type descriptions in Regulation #43 for ease of local implementation and for consistency between commission regulations. The soil depths are not the same as the Regulation #43 requirements since Regulation #43 is intended for onsite wastewater treatment while this regulation is intended for graywater use by flora. Although intended for use by flora, the mulch basin system design criteria recognize that disposal to groundwater may result. This recognition is the basis for requiring a site and soil evaluation for all mulch basin systems, even single family systems. The site and soil evaluation requirement aims to provide site specific conditions design parameters to allow proper design for category B and mulch basin systems.

Mulch basin design requirements in other western states were researched, and detailed mulch basin design parameters were not found. Therefore the commission's goal for the mulch basin design criteria was to have sufficient volume to adsorb graywater volume surges for graywater treatment works. For graywater treatments works that do not have a storage tank the volume requirement are to capture a surge volume three (3) times the daily flow. For graywater treatments works with a storage tank the volume requirement has a safety factor of 1.5 times the daily flow. The purposes of the other mulch basin design criteria are for proper operation and to minimize potential human exposure.

Notice of Rulemaking Hearing

Tracking number

2014-01240

Department

1000 - Department of Public Health and Environment

Agency

1003 - Water Quality Control Commission (1003 Series)

CCR number

5 CCR 1003-7

Rule title

BENEFICIAL USE OF WATER TREATMENT SLUDGE AND FEES APPLICABLE TO THE BENEFICIAL USE OF SLUDGES

Rulemaking Hearing

Date

02/17/2015

Time

09:30 AM

Location

Colorado Department of Public Health and Environment Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

This amendment repeals 5 CCR 1003-7 (Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Use of Sludges).The Water Quality Control Commission has similar authorities and has adopted regulations related to beneficial uses in regulations at 5 CCR 1002-64. The purpose of this repeal is to remove this redundant and obsolete regulation.

Statutory authority

Section 30-20-09 and Section 30-20-109(4)(a), C.R.S.

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

5 CCR 1003-7

BENEFICIAL USE OF WATER TREATMENT SLUDGE AND FEES APPLICABLE TO THE BENEFICIAL USES OF SLUDGES

Repeal of the Regulations pertaining to the Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Uses of Sludges (5 CCR 1003-7)

1) 5 CCR 1003-7 (Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Uses of Sludges) is being repealed in its entirety as follows:

~~**1. GENERAL PROVISIONS**~~

~~A. Purpose~~

~~The purposes of these regulations are to ensure that the quality of waste discharged on land for beneficial uses is reasonably consistent with the protection of the public health and to establish rules and regulations for the engineering, design and operation of water treatment sludge disposal sites and facilities which serve the purposes set forth in C.R.S. 1973, 30-20-109 and 25-1-107 (as amended). Water treatment sludge disposal sites and facilities for which a Certificate of Designation has been issued are exempted from the provisions of these regulations.~~

~~These regulations also provide the regulatory framework to allow implementation of the sludge management program for system pursuant to C.R.S. 1986, 30-20-110.5.~~

~~B. Definitions~~

~~As used in these regulations, unless the context otherwise requires:~~

~~(1) "APPLICATION SITE" means all contiguous areas of a user's property intended for sludge applications.~~

~~(2) "APPLY" means to place onto or into the soil till zone.~~

~~(3) "BENEFICIAL USE" means the use of the nutrients and/or moisture in the sludge to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on the land.~~

~~(4) "BENEFICIAL USE CERTIFICATION" means the Department's written approval indicating the conformance of a proposed beneficial use of water treatment sludge with the criteria contained in this regulation.~~

~~(5) "BENEFICIAL USE PLAN" means the written application for Department authorization to land apply water treatment sludges.~~

(6) "BIOSOLIDS" means the accumulated residual product resulting from a domestic wastewater treatment works. Biosolids does not include grit or screenings from a wastewater treatment works, grease, commercial or industrial sludges, or domestic or industrial septage. Beneficial use of biosolids is regulated under the Colorado Biosolids Regulations.

(7) "BOARD" means the State Board of Health.

(8) "CO-APPLICATION" means to application of both biosolids and water treatment sludges to the same beneficial use site. Co-application of biosolids and water treatment sludges is subject to the requirements of the Colorado Biosolids Regulations.

(9) "DEPARTMENT" means the Colorado Department of Health.

(10) "FERTILIZER" means any organic or inorganic material that is added to the soil to supply elements essential to plant growth.

(11) "MUNICIPALITY" means any regional commission, county, metropolitan district, water conservancy district, metropolitan sewage disposal district, service authority, city and county, city, town, Indian tribe or authorized Indian tribal organization, or any two or more of the above which are acting jointly in connection with a sewage treatment facility.

(12) "PERSON" means an individual, corporation, partnership, association, state, or political subdivision thereof, federal agency, state agency, municipality, or commission.

(13) "PRODUCER" means a person operating a water treatment facility which generates water treatment sludge. The producer is that person who files a Beneficial Use Plan and in whose name any subsequent Beneficial Use Certification is issued. The producer is thereby responsible for assuring conformance of a proposed beneficial use of water treatment sludge with the criteria contained in this regulation.

(14) "ROOT CROPS AND LOW GROWING FRUITS AND VEGETABLES" means those crops, the edible portion of which grow below, at, or within one foot of the soil surface.

(15) "USER" means a person who owns or operates application site.

(16) "WATER TREATMENT PLANT SLUDGE" or "WATER TREATMENT SLUDGE" means the accumulated solids resulting from the processing of raw water in a treatment plant of a municipality.

C. Severability

Each provision of these regulations is severable and intended to be independently valid. Any determination that any provision of these regulations is invalid shall not operate to invalidate the remainder of the regulations.

D. Variance

The Department may grant a variance from any provision of these regulations in a particular case, where it determines that the public health benefits which will be created by compliance with the subject provision do not bear a reasonable relationship to the costs required to achieve compliance, and that the granting of a variance will be reasonably consistent with the protection of the public health.

Any person who requests a variance from a provision of these regulations shall have the burden of supplying the Department with that information which demonstrates that conditions exist which warrant the granting of a variance. A request for a variance may be filed simultaneously with the Letter of Intent,

~~or at any other time provided good cause is shown for not having requested the variance at the time the Letter of Intent was submitted. The Department shall grant or deny a variance request within 90 days of receipt thereof. No person shall be considered to have obtained a variance until he has received a written statement from the Department granting the variance. In any such written statement, the Department shall identify the provision of these regulations from which a variance has been granted, and shall prescribe any other requirements which the person receiving the variance must meet, in lieu of the provision from which a variance has been granted. The Department shall prescribe such requirements as are reasonably consistent with the protection of the public health.~~

~~All variances granted by the Department in anyone month shall be reported to the Board of Health at its next regular meeting.~~

~~E. Enforcement~~

~~The Department shall enforce these regulations pursuant to C.R.S. 1973, Section 25-1-114 and 30-20-113, -114 as amended.~~

~~F. References~~

~~The attached statement of basis and purpose is incorporated by reference. With respect to material incorporated herein by reference these regulations do not include future amendments to or editions of such material. Copies of such material may be acquired by contacting the Director, Water Quality Control Division, Colorado Department of Health, 4210 East 11th Avenue, Denver, Colorado 80220.~~

~~G. Effective date~~

~~These regulations shall take effect on February 19, 1993.~~

~~2. ADMINISTRATION OF BENEFICIAL USE CERTIFICATIONS~~

~~A. Submission of Beneficial Use Plans Prior to Application of Water Treatment Sludge~~

~~No producer shall sell water treatment sludge, distribute water treatment sludge or supply water treatment sludge in any manner to any other person for use at an application site unless:~~

~~(1) The producer has submitted a complete Beneficial Use Plan by certified mail or by personal service to the Department, and a copy of the letter to the local health department authority, regarding that application;~~

~~(2) the producer has obtained permission from the user to enter on the site to perform any monitoring and analysis identified in the Beneficial Use Plan;~~

~~(3) the producer has made available a copy of these regulations to the user;~~

~~(4) the Department has issued a Beneficial Use Certification.~~

~~B. Content of Beneficial Use Plan~~

~~The Beneficial Use Plan shall contain a legal description of the land to which water treatment sludge is to be applied; the number of pounds of water treatment sludge to be applied per acre; the types of crops to be grown on the land, and the number of acres of each crop; analysis of the water treatment sludge for the parameters identified in Table 1; documentation that the comments of the local health authority have been solicited; the name and address of the producer, the name and address of any contractor, and a copy of the contract, if applicable, the name and address of the user, a detailed monitoring plan and identifying measures which remediate any detrimental impact of the application, and other information~~

~~deemed by the Department as appropriate to evaluate potential human health and environmental impact of the proposed use.~~

~~C. Department Review~~

~~Following adoption of these regulations a producer shall be advised by the Department not more than thirty days after receipt of a Beneficial Use Plan by the Department if, and in what respects, the Beneficial Use Plan is incomplete.~~

~~D. Beneficial Use Certification~~

~~The Department shall either issue or deny the Beneficial Use Certification not more than thirty days after the Department has deemed the Beneficial Use Plan to be complete.~~

~~3. BENEFICIAL USE OF WATER TREATMENT SLUDGE~~

~~A. Beneficial use of co-applied water treatment sludge and biosolids shall comply with all applicable requirements of the Colorado Biosolids Regulations, 4.9.0. Co-applied domestic sewage sludge and water treatment plant sludge shall be either mixed prior to application or shall be incorporated following application.~~

~~B. No person shall apply water treatment plant sludge to land used to grow root crops and low growing fruits and vegetables if such crops are intended for direct human consumption.~~

~~C. No person shall undertake the beneficial use of water treatment plant sludges which exceed 40 picocuries total alpha activity per gram of dry sludge.~~

~~4. WATER TREATMENT SLUDGE STORAGE~~

~~A. Beneficial Use Certification Required. No person shall store water treatment sludge at an application site unless a Beneficial Use Certification has been issued by the Department for such storage.~~

~~B. Exemptions~~

~~The requirements of this section shall not apply to the following:~~

~~(1) Process components of a water treatment facility and water treatment sludge storage components located at a water treatment facility.~~

~~(2) Components of a solid waste disposal site or facility which has received a Certificate of Designation pursuant to the Solid Wastes Disposal Sites and Facilities Act, C.R.S. 30-20-100.5 § ~., 1973 (as amended).~~

~~(3) Facilities which are intended for the offloading of water treatment sludges from vehicles transporting water treatment sludges to an application site and subsequent loading of water treatment sludges into application equipment, notwithstanding any incidental spillage or placement on the land during transfer. Such facilities shall be bermed or otherwise protected or managed so as to prevent movement of spillage or runoff from the transfer area off of the permitted site.~~

~~C. Storage Requirements for Water Treatment Sludge~~

~~Facilities for the storage of water treatment sludges located at an application site shall be bermed or otherwise protected so as to prevent movement of spillage or runoff from the storage facilities off of the~~

permitted site. Water treatment sludge shall be stored in a manner which will prevent windblown sludge from escaping the storage facility.

5. MONITORING AND REPORTING

A. Water Treatment Sludge Monitoring

Analysis of water treatment plant sludges shall be performed on composite samples for the parameters set forth in Table 1. Analyses of water treatment plant sludges shall be performed either annually, or if disposal occurs on a less frequent basis, prior to disposal.

B. Additional Monitoring

If the Department has reasonable grounds to believe that a particular water treatment sludge may contain any elements or compounds which could cause a hazard to the public health or to the environment, the Department may require groundwater, soils or plant tissue monitoring and/or the analysis of water treatment sludge for parameters other than those set forth in Table 1, or may require that analyses be performed at a greater frequency than is otherwise required by this section.

TABLE 1 ANALYSES AND REPORTING UNITS1

Parameter	**Units**	**Parameter**	**Units**
Total Solids	Percent	Total Chromium	mg/kg
pH	Standard Units	Total Copper	mg/kg
Organic N	Percent	Total Iron	mg/kg
Total Ammonia N	Percent	Total Lead	mg/kg
Nitrate N	Percent	Total Mercury	mg/kg
Total Phosphorus	Percent	Total Molybdenum	mg/kg
Total Potassium	Percent	Total Nickel	mg/kg
Total Aluminum	mg/kg[2]	Total Selenium	mg/kg
Total Arsenic	mg/kg	Total Zinc	mg/kg
Total Cadmium	mg/kg	Total Alpha Activity	pCi/g[3]

1 All results expressed in dry weight basis for a composited sample.
2 Milligrams per kilogram.
3 Picocuries per gram.

C. Reporting

Annually, on or before February 19, each producer shall report to the Department the results of all analyses the producer has performed during the preceding year to meet the requirements of this section, the total amount of water treatment sludge applied during the preceding year and the location at which any water treatment sludge was applied during the preceding year.

6. FEES

A. Establishment of Fees

Pursuant to Section 30-20-110.5,C.R.S. (1986 supp.), the State Board of Health shall establish, and may revise as necessary, a schedule of non-refundable fees to cover the reasonable costs of implementing a program for the beneficial use of sludge. For purposes of this section the term "sludge" is defined to mean water treatment sludge which use is subject to the provisions of this regulation and water treatment sludge and/or biosolids which use is subject to the provisions of the Colorado Biosolids Regulations.

The fee schedule shall be based on program cost projections prepared by the Department and submitted in writing to the Board for review. The Board will conduct a public hearing on any proposed change to the fee structure.

The reasonable costs of implementing and maintaining the program include, but may not be limited to, the following:

- Personal Services - the cost of personnel assigned to implement and maintain the program, i.e., salaries, benefits, etc.

- Operating - the costs associated with travel, laboratory analysis, and capital outlay.

- Program Evaluation - the costs associated with assessment of potential beneficial sludge use technology.

B. Assessment of Fees and Billing

(1) A non-refundable fee of one dollar and twenty four cents per dry ton of sludge shall be assessed the producers whose sludge is used for beneficial purposes as defined in Section 1.B of these regulations.

The Department will notify producers when adjustments are made to the fee schedule and the effective date for implementing the changes.

(2) Producers shall receive a notice from the Department of the annual fee schedule. This notice shall accompany the Department's Beneficial Use Certification or Notice of Authorization for the Use and Distribution of Biosolids.

(3) Payment may be prepaid based on the annual projected sludge tonnage or paid based on the actual amount of dry sludge applied.

a) Prepayment of the annual projected payment must be made within the first quarter (January - March) of the calendar year. Prepayment must be made for an entire year.

Adjustment will be made to the following year's annual projected payment to reflect any overpayment or underpayment of the actual amount due. Adjustments will be based on the

~~actual amount of sludge applied as reported in the annual reports multiplied by the fee in place during the period the sludge is to be applied, or~~

~~b) Payments based on the actual amount of sludge (dryweight basis) applied in the previous reporting period covered in the annual report must be remitted on or before May 19.~~

~~(4) Payment by check shall be made out to the Colorado Department of Health, Sludge Management Program. All such payments received shall be credited to the Sludge Management Program as provided for in C.R.S. 30-20-110.5 (3).~~

~~C. Enforcement of Fee Payments~~

~~(1) Failure or refusal to make payment for application of domestic sewage sludge to land for beneficial purposes within the time frame specified in Section 6.B of these regulations shall result in suspension and/or revocation of the Beneficial Use Certification or Notice of Authorization for the Use and Distribution of Biosolids.~~

~~(2) Action to suspend or revoke the Beneficial Use Certification or Notice of Authorization for the Use and Distribution of Biosolids shall be taken by the Department if payment is not received following written notice sent by certified mail pursuant to Section 6.C.3. In the event of suspension or revocation of the Beneficial Use Certification or Notice of Authorization for the Use and Distribution of Biosolids, subsequent sludge application shall be subject to all applicable requirements of the State Solid Wastes Disposal Sites and Facilities Act until such time as payment is received and the Beneficial Use Certification or Notice of Authorization for the Use and Distribution of Biosolids is reinstated.~~

~~(3) Formal notification of the suspension or revocation shall be sent to the producer by certified mail. The notice shall state:~~

~~a) the effective date of the suspension or revocation;~~

~~b) the basis for suspension or revocation;~~

~~c) the consequences of applying sludge without the required Beneficial Use Certification or Notice of Authorization for the Use and Distribution of Biosolids.~~

~~D. Appeals of Actions on Fees~~

~~(1) All appeal reviews will be conducted by the Board in accordance with Section 24-4-105 of the State Administrative Procedures Act.~~

~~(2) Board action on the appeal is considered final agency action.~~

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission

Hazardous Materials and Waste Management Division

5 CCR 1003-7

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Repeal of 5 CCR 1003-7 (Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Uses of Sludges)

Basis and Purpose

This amendment to repeal 5 CCR 1003-7 is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 30-20-109, C.R.S. and § 30-20-109(4)(a), C.R.S.

The Department has undertaken an effort to evaluate existing regulations and repeal those that have been determined as no longer necessary. These regulations were identified during the Department's regulatory review process as being outdated and unnecessary regulations that could be repealed. The beneficial use and disposal of water treatment plant residuals is regulated by the Hazardous Materials and Waste Management Division (HMWMD) pursuant to its authority under the Solid Waste Disposal Sites and Facilities Act and the Colorado Solid Waste Regulations (6 CCR 1007-2). Accordingly, the Division is requesting that the 5 CCR 1003-7 regulations be repealed.

COLORADO
Solid & Hazardous
Waste Commission
Department of Public Health & Environment

NOTICE OF PROPOSED RULE-MAKING HEARING BEFORE THE COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the repeal of 5 CCR 1003-7, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Repeal of 5 CCR 1003-7 - Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Use of Sludges

These modifications are made pursuant to the authority granted to the Board of Health and transferred to the Solid and Hazardous Waste Commission in Section 30-20-109, and Section 30-20-109(4)(a) C.R.S. The purpose of this repeal is to remove this redundant and obsolete regulation.

Any alternative proposals for rules or written comments relating to the proposed repeal of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed repeal or alternatives. **The Commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, 4300 Cherry Creek Dr. South, 5th Floor, Building A, Denver, CO 80246-1530, or via email to brandy.valdezmurphy@state.co.us by Friday, January 23, 2015 at 5:00 p.m. Written materials submitted in advance will be distributed to the Commission members prior to the day of the hearing.** Submittal of written testimony and materials on the day of the hearing will be accepted, but is strongly discouraged. Any information that is incorporated by reference in these proposed rules is available for review at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any state publications depository library.

Pursuant to C.R.S. §24-4-103(3), a notice of proposed rule-making was submitted to the Secretary of State on December 15, 2014. Copies of the proposed rulemaking will be mailed to all persons on the Solid and Hazardous Waste Commission's mailing list on or before the date of publication of the notice of proposed rule-making in the Colorado Register on December 25, 2014.

The proposed rulemaking materials may also be accessed at https://www.colorado.gov/pacific/cdphe/shwc-rulemaking-hearings or the Solid and Hazardous Waste Commission Office, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, 5th Floor, Building A, Denver, CO 80246-1530.

HEARING SCHEDULE:

DATE: Tuesday, February 17, 2015
TIME: 9:30 a.m.
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Building A, Sabin Conference Room
Denver, CO 80246

Oral testimony at the hearing regarding the proposed repeal may be limited.

Michael Silverstein, Commission Administrator

Notice of Rulemaking Hearing

Tracking number

2014-01239

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-7

Rule title

ENVIRONMENTAL RECORD SEARCHES

Rulemaking Hearing

Date

02/17/2015

Time

09:30 AM

Location

Colorado Department of Public Health and Environment Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

The purpose of this amendment is to repeal 6 CCR 1007-7 (Environmental Records Searches), because these regulations are redundant and obsolete. The Colorado Open Records Act (CORA) details a specific procedure for record searches; therefore these regulations are no longer necessary.

Statutory authority

Section 25-15-302, C.R.S.

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-7

PART 1 - ENVIRONMENTAL RECORD SEARCHES

Repeal of the Regulations pertaining to Environmental Record Searches (6 CCR 1007-7, Part 1)

1) 6 CCR 1007-7, Part 1 (Environmental Record Searches) is being repealed in its entirety as follows:

~~**PART 1 ENVIRONMENTAL RECORD SEARCHES**~~

~~**1.1 Definitions.**~~

~~For purpose of these regulations:~~

~~(a) "Division" means the Hazardous Materials and Waste Management Division.~~

~~(b) "Environmental record search" means a search of environmental information and databases available to the Division concerning real property initiated by a requestor.~~

~~(c) "Requestor" means a person or entity that has requested the Division to perform an environmental record search.~~

~~**1.2 Fees Charged.**~~

~~(a) The Division may charge a requestor the actual reasonable costs incurred, not to exceed $25.00 per hour for researching, reviewing and/or providing an environmental record search report. The Division shall bill the requestor by the quarter hour. In addition, the Division may charge the same fee for subsequent requests for the same or similar information. The fees in this subparagraph (a) may be waived or reduced by the Division if the information is to be used for a public purpose, including public agency program support, nonprofit activities, journalism or academic research.~~

~~(b) The Division shall notify the requestor when the environmental record search report is complete and payment shall be made to the "Colorado Department of Health".~~

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission

Hazardous Materials and Waste Management Division

6 CCR 1007-7

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Repeal of 6 CCR 1007-7, Environmental Records Search

Basis and Purpose

This amendment to repeal 6 CCR 1007-7 is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302, C.R.S.

These regulations are in contradiction to the Colorado Open Records Act (CORA) and if retained would need to be amended to be consistent with CORA. However, after investigation and review with the Division, these regulations were determined to be outdated and no longer utilized or enforced. As CORA outlines a specific procedure for records searches, these rules are redundant and the Division is requesting that they be repealed.

COLORADO
Solid & Hazardous
Waste Commission
Department of Public Health & Environment

NOTICE OF PROPOSED RULE-MAKING HEARING BEFORE THE COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the repeal of 6 CCR 1007-7, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Repeal of 6 CCR 1007-7 - Environmental Records Searches

The rule was adopted pursuant to the Commission's authority at § 25-15-302, C.R.S. The purpose of this repeal is to remove the redundant and obsolete regulation. The Colorado Open Records Act (CORA) details a specific procedure for records searches; therefore this regulation is redundant and obsolete.

Any alternative proposals for rules or written comments relating to the proposed repeal of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed repeal or alternatives. **The Commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, 4300 Cherry Creek Dr. South, 5th Floor, Building A, Denver, CO 80246-1530, or via email to brandy.valdezmurphy@state.co.us by Friday, January 23, 2015 at 5:00 p.m. Written materials submitted in advance will be distributed to the Commission members prior to the day of the hearing.** Submittal of written testimony and materials on the day of the hearing will be accepted, but is strongly discouraged. Any information that is incorporated by reference in these proposed rules is available for review at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any state publications depository library.

Pursuant to C.R.S. §24-4-103(3), a notice of proposed rule-making was submitted to the Secretary of State on December 15, 2014. Copies of the proposed rulemaking will be mailed to all persons on the Solid and Hazardous Waste Commission's mailing list on or before the date of publication of the notice of proposed rule-making in the Colorado Register on December 25, 2014.

The proposed rulemaking materials may also be accessed at https://www.colorado.gov/pacific/cdphe/shwc-rulemaking-hearings or the Solid and Hazardous Waste Commission Office, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, 5th Floor, Building A, Denver, CO 80246-1530.

HEARING SCHEDULE:

DATE:	Tuesday, February 17, 2015
TIME:	9:30 a.m.
PLACE:	Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Building A, Sabin Conference Room Denver, CO 80246

Oral testimony at the hearing regarding the proposed repeal may be limited.

Michael Silverstein

Michael Silverstein, Commission Administrator

Notice of Rulemaking Hearing

Tracking number

2014-01250

Department

1100 - Department of Labor and Employment

Agency

1101 - Division of Workers' Compensation

CCR number

7 CCR 1101-3

Rule title

WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES

Rulemaking Hearing

Date

01/29/2015

Time

09:00 AM

Location

633 17th st Denver CO 80214

Subjects and issues involved

Rule 8

Statutory authority

8-47-107

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation
7 CCR 1101-3
WORKERS' COMPENSATION RULES OF PROCEDURE

Rule 8 AUTHORIZED TREATING PHYSICIAN

8-1 APPLICABILITY

~~(A) Employers who meet the criteria in §8-43-404(5)(a)(I)(B) or (II)(A), are exempt from the requirement to provide a list of at least two physicians or two corporate medical providers, or at least one physician and one corporate medical provider, when notified of an on the job injury. This Rule 8 does not apply to those exempt employers, except for the provisions of 8-2(B) and (C). If emergency care is provided an exempt employer may designate an authorized treating physician as allowed by statute when emergency care is no longer required. If an exempt employer refers an injured worker to a physician who can attend the injured worker when the injury occurred while the worker was away from the worker's usual place of employment, such employer may designate an authorized treating physician as allowed by statute within seven (7) business days following the date the employer has notice of the injury. If an exempt employer does not properly designate an authorized treating physician as allowed by statute the injured worker may select a provider of the worker's choosing.~~

(A) THIS RULE APPLIES TO ALL EMPLOYERS UNLESS SPECIFICALLY EXEMPTED UNDER PARAGRAPH (B) OR (C).

(B) EMPLOYERS THAT ARE HEALTH CARE PROVIDERS OR GOVERNMENTAL ENTITIES THAT CURRENTLY HAVE THEIR OWN OCCUPATIONAL HEALTH CARE PROVIDER SYSTEM PURSUANT TO §8-43-404(5)(a)(II)(A) MAY DESIGNATE HEALTH CARE PROVIDERS FROM THEIR OWN SYSTEM AND ARE OTHERWISE EXEMPT FROM THE REQUIREMENT TO PROVIDE A LIST OF ALTERNATE PHYSICIANS OR CORPORATE MEDICAL PROVIDERS

(1) IF EMERGENCY CARE IS PROVIDED, AN EMPLOYER EXEMPT UNDER 8-1(B) SHALL DESIGNATE AN AUTHORIZED TREATING PHYSICIAN AS ALLOWED BY STATUTE WHEN EMERGENCY CARE IS NO LONGER REQUIRED. IF AN EXEMPT EMPLOYER REFERS AN INJURED WORKER TO A PHYSICIAN WHO CAN ATTEND THE INJURED WORKER WHEN THE INJURY OCCURRED WHILE THE WORKER WAS AWAY FROM THE WORKER'S USUAL PLACE OF EMPLOYMENT, SUCH EMPLOYER MAY DESIGNATE AN AUTHORIZED TREATING PHYSICIAN PURSUANT TO 8-1(A) WITHIN SEVEN (7) BUSINESS DAYS FOLLOWING THE DATE THE EMPLOYER HAS NOTICE OF THE INJURY.

(2) IF AN EXEMPT EMPLOYER DOES NOT PROPERLY DESIGNATE A HEALTH CARE PROVIDER FROM ITS OWN SYSTEM THE INJURED WORKER MAY SELECT A PROVIDER OF THE WORKER'S CHOOSING.

(C) IF AN EMPLOYER HAS A QUALIFIED ON-SITE HEALTH CARE FACILITY, THE EMPLOYER MAY DESIGNATE THAT FACILITY AS THE AUTHORIZED TREATING PHYSICIAN.

(1) TO BE A QUALIFIED ON-SITE HEALTH CARE FACILITY, THE ON-SITE FACILITY MUST BE UNDER THE SUPERVISION AND CONTROL OF A PHYSICIAN, AND A PHYSICIAN MUST BE ON THE PREMISES OR REASONABLY AVAILABLE.

`(2) IF THE EMPLOYER DESIGNATES AN ON-SITE HEALTH CARE FACILITY, THE EMPLOYER MUST, WITHIN SEVEN (7) BUSINESS DAYS FOLLOWING NOTICE OF AN ON THE JOB INJURY, PROVIDE THE INJURED WORKER WITH A DESIGNATED PROVIDER LIST CONSISTENT WITH THE PROVISIONS OF RULE 8-2. WHILE THE ON-SITE HEALTH CARE FACILITY SHALL BE THE INITIAL AUTHORIZED TREATING PHYSICIAN, THE INJURED WORKER MAY THEREAFTER CHANGE TO A PHYSICIAN OR CORPORATE MEDICAL PROVIDER ON THE DESIGNATED PROVIDER LIST IF THE INJURED WORKER COMPLIES WITH ALL STATUTORY AND RULE REQUIREMENTS FOR THE ONE TIME CHANGE OF PHYSICIANS.

8-2 DESIGNATED PROVIDER LIST

(A) WHEN AN EMPLOYER HAS NOTICE OF AN ON-THE-JOB INJURY, THE EMPLOYER OR INSURER SHALL PROVIDE THE INJURED WORKER WITH A WRITTEN LIST OF DESIGNATED PROVIDERS FROM WHICH THE INJURED WORKER MAY SELECT A PHYSICIAN OR CORPORATE MEDICAL PROVIDER. FOR PURPOSES OF THIS RULE 8, THE LIST WILL BE REFERRED TO AS THE DESIGNATED PROVIDER LIST.

(1) THE DESIGNATED PROVIDER LIST MAY INITIALLY BE PROVIDED TO THE INJURED WORKER VERBALLY OR THROUGH AN EFFECTIVE PRE-INJURY DESIGNATION. IF PROVIDED VERBALLY OR THROUGH A PRE-INJURY DESIGNATION, THE WRITTEN DESIGNATED PROVIDER LIST MUST BE MAILED, HAND-DELIVERED OR FURNISHED IN SOME OTHER VERIFIABLE MANNER TO THE INJURED WORKER WITHIN SEVEN (7) BUSINESS DAYS FOLLOWING THE DATE THE EMPLOYER HAS NOTICE OF THE INJURY.

(2) THE DESIGNATED PROVIDER LIST MUST INCLUDE CONTACT INFORMATION FOR THE INSURER OF RECORD INCLUDING ADDRESS, PHONE NUMBER AND CLAIMS CONTACT INFORMATION. IF THE EMPLOYER IS SELF-INSURED, THE SAME CONTACT INFORMATION IS REQUIRED INCLUDING THE NAMES AND CONTACT INFORMATION OF PERSONS RESPONSIBLE FOR ADJUSTING THE CLAIM.

(B) THE DESIGNATED PROVIDER LIST MAY INCLUDE ANY COMBINATION OF PHYSICIANS AND/OR CORPORATE MEDICAL PROVIDERS SO LONG AS AT LEAST ONE PHYSICIAN OR CORPORATE MEDICAL PROVIDER IS AT A DISTINCT LOCATION WITHOUT COMMON OWNERSHIP. IF THERE ARE NOT AT LEAST TWO PHYSICIANS OR CORPORATE MEDICAL PROVIDERS AT DISTINCT LOCATIONS WITHOUT COMMON OWNERSHIP WITHIN THIRTY MILES OF THE EMPLOYER'S PLACE OF BUSINESS THE LIST MAY BE COMPRISED OF PROVIDERS AT THE SAME LOCATION OR WITH COMMON OWNERSHIP.

(C) THE NUMBER OF PHYSICIANS OR CORPORATE MEDICAL PROVIDERS REQUIRED ON THE DESIGNATED PROVIDER LIST IS DETERMINED BY THE NUMBER OF PHYSICIANS OR CORPORATE MEDICAL PROVIDERS WILLING TO TREAT AN INJURED EMPLOYEE WITHIN THIRTY MILES OF THE EMPLOYER'S LOCATION:

AVAILABLE PROVIDERS WITHIN 30 MILES:	REQUIRED NUMBER OF DESIGNATED PROVIDERS TO BE LISTED:
THREE OR LESS	ONE
AT LEAST FOUR BUT LESS THAN NINE	TWO
NINE OR MORE	FOUR

(D) A PHYSICIAN OR CORPORATE MEDICAL PROVIDER IS PRESUMED WILLING TO TREAT INJURED WORKERS UNLESS THE EMPLOYER IS SPECIFICALLY INFORMED BY THE PHYSICIAN OR CORPORATE MEDICAL PROVIDER TO THE CONTRARY.

(E) IF THE EMPLOYER FAILS TO SUPPLY THE REQUIRED DESIGNATED PROVIDER LIST IN ACCORDANCE WITH THIS RULE, THE INJURED WORKER MAY SELECT AN AUTHORIZED TREATING PHYSICIAN OR CHIROPRACTOR OF THEIR CHOOSING.

8-2**3** ~~INITIAL REFERRAL~~ **EMERGENCY DESIGNATION**

~~(A) When an employer has notice of an on the job injury, the employer or insurer shall provide the injured worker with a written list in compliance with §8-43-404(5)(a)(I)(A), that for purposes of this Rule 8 will be referred to as the designated provider list, from which the injured worker may select a physician or corporate medical provider.~~

~~(1) The designated provider list can initially be provided to the injured worker verbally or through an effective pre-injury designation. If provided verbally or through a pre-injury designation, a written designated provider list shall be mailed, hand-delivered or furnished in some other verifiable manner to the injured worker within seven (7) business days following the date the employer has notice of the injury.~~

~~(2) The designated provider list shall state the insurer responsible for the claim, or that the employer is self-insured. In addition, the designated provider list shall include the name and contact information of the person, or a maximum of two people, that the employer and/or insurer designate as their representative(s). For purposes of this Rule 8, the person or people so designated shall be referred to as the respondents' representative(s).~~

(~~B~~ **A**) In an emergency situation the injured worker shall be taken to any physician or medical facility that is able to provide the necessary care. When emergency care is no longer required the provisions of ~~paragraph (A)~~ **SECTION 8-2** of this rule apply.

(~~C~~ **B**) If the injured worker is away from the worker's usual place of employment at the time of the injury, the injured worker may be referred to a physician in the vicinity where the injury occurred who can attend to the injury. Within seven (7) business days following the date the employer has notice of the injury the employer shall comply with the provisions of ~~paragraph (A)~~ **SECTION 8-2** of this rule.

~~(D) If the employer fails to comply with this Rule 8-2, the injured worker may select an authorized treating physician of the worker's choosing.~~

8-3**4** INFORMATION PROVIDED BY DESIGNATED PROVIDERS

(A) An interested party to a particular claim **(**as referenced in §8-43- 404(5)(a)(I)(A)**)** ~~and for purposes of this Rule 8-3,~~ includes the injured worker, the attorneys of record, the employer, the insurer, and any third party administrator authorized to handle the specific claim.

(B) In order to provide information to assist in choosing a physician or deciding to change physicians, an interested party is entitled to receive a list of ownership interests and employment relationships involving the provision of medical care, if any, by making a written request for such information from a designated provider. A copy of the written request must be provided by the interested party to the respondents' representative(s). A physician who provides medical services on behalf of a corporate medical provider, but does not act as a primary care physician, is not subject to this provision. A designated provider shall utilize a form established by the Division to provide this information.

(1) The designated provider's list of ownership interests and employment relationships shall be current to within thirty (30) days of the date of the request.

(2) If the form was not previously provided and an interested party requests such information from a designated provider, the form shall be provided within five (5) business days of the request.

(3) If the information referenced in this paragraph (B) is provided, no follow-up questions or request for additional information shall be permitted, except for information allowed pursuant to a hearing or discovery process.

(C) If the list of ownership interests and employment relationships was not previously provided, and an interested party requests the information in compliance with the provisions of ~~Rule 8-3(B)~~ **RULE 8-4(B)** and the information is not provided in a timely manner, the interested party may notify the respondents' representative(s) in writing. To be effective, such notification must be made within seven (7) business days following the date the information should have been provided.

(1) Within seven (7) business days following timely notification pursuant to this paragraph (C), the injured worker shall be provided with a substitute authorized treating physician. If a substitute authorized treating physician is not timely furnished the injured worker may select an authorized treating physician of the worker's choosing.

~~8-4 ON-SITE HEALTH CARE FACILITY~~

~~(A) If an employer has a qualified on-site health care facility, the employer may designate that facility as the authorized treating physician.~~

~~(B) To be a qualified on-site health care facility under this Rule 8-4, the on-site facility must be under the supervision and control of a physician, and a physician must be on the premises or reasonably available.~~

~~(C) If the employer designates an on-site health care facility, the employer must, within seven (7) business days following notice of an on the job injury, provide the injured worker with a designated provider list consistent with the provisions of Rule 8-2(A)(2). While the on-site health care facility shall be the initial authorized treating physician, the injured worker may thereafter change to a physician or corporate medical provider on the designated provider list if the injured worker complies with all statutory and rule requirements for the one time change of physicians.~~

8-5 ONE TIME CHANGE OF AUTHORIZED TREATING PHYSICIAN **WITHIN NINETY DAYS**

(A) Within ninety (90) days following the date of injury, but before reaching maximum medical improvement, an injured worker may request a one-time change of authorized treating physician **PURSUANT TO §8-43-404(5)(a)(III)**. The new physician must be a physician on the designated provider list or provide medical services for a designated corporate medical provider on the list. The medical provider(s) to whom the injured worker may change is determined by the designated provider list given to the injured worker pursuant to Rule 8-2 or 8-~~4~~**5**(C).

(B) To make a change pursuant to this Rule 8-5 the injured worker must complete and sign the form established by the division for this purpose. The injured worker shall submit the form to the employer by mailing or hand-delivering the completed form to the person(s) designated by the employer to receive the form. The person(s) so designated is listed on the designated provider list given to the injured worker pursuant to Rule 8-2 or ~~8-4(C)~~ **8-5(C)** as the respondents' representative(s). The injured worker may, but is not required to, provide the form to the impacted physicians. In any event, the respondents' representative(s) shall notify the impacted physicians and the individual adjusting the claim of the change, unless an objection is submitted pursuant to paragraph (C) of this Rule 8-5.

(C) ~~An injured worker may obtain a one time change of physician by providing notice that meets the requirements set out in statute.~~ If the insurer or employer believes the notice **PROVIDED PURSUANT TO THIS RULE** does not meet statutory requirements and does not want to recognize the change of physicians, it must provide written objection to the injured worker within seven (7) business days following receipt of the form referenced in paragraph (B). The written objection shall set out the reason(s) for the belief that the notice does not meet statutory requirements.

(1) If the employer or insurer does not provide timely objection as set out in this paragraph (C), the injured worker's request to change physicians must be processed and the new physician considered an authorized treating physician as of the time of the injured worker's initial visit with the new physician.

(2) If written objection is provided and the dispute continues, any party may file a motion or, if there is a factual dispute requiring a hearing, any party may request that the hearing be set on an expedited basis.

8-6 TRANSFER OF MEDICAL CARE

(A) When there is a change of authorized treating physicians, the physician who had been the authorized treating physician remains authorized and is expected to provide necessary care until the injured worker's initial visit with the new authorized physician.

(B) The insurer or employer may facilitate the transfer of medical records to the new authorized physician. Otherwise, the new authorized physician should request medical records from the previous physician as soon as practicable. Upon receipt of a request for medical records, the physician receiving the request shall provide the medical records to the new physician within seven (7) calendar days following the physician's receipt of the request. If any copying is necessary the insurer shall pay for the copies consistent with the medical fee schedule.

(C) The insurer, employer or injured worker may schedule an appointment for the injured worker with the new authorized physician. If the new authorized physician is unwilling or unable to schedule an appointment to treat the injured worker, the injured worker shall notify the respondents' representative(s) in writing. Upon receiving such a notification, the respondents' representative(s) shall attempt to facilitate the scheduling of an appointment, which shall be scheduled to take place within thirty (30) days following the date of receipt of the notification. If a timely appointment cannot be scheduled and the injured worker does not agree to a later appointment, the injured worker shall be provided with a substitute authorized treating physician. If, within seven (7) business days following the date the respondents' representative(s) received written notice that the appointment could not be scheduled, an appointment is not scheduled or a substitute physician provided, the injured worker may select an authorized treating physician of the worker's choosing.

8-7 CHANGE OF MEDICAL PROVIDER

In addition and separately from all the other provisions of this Rule 8, an injured worker may submit a written request to change physicians pursuant to **§**8-43-404(5)(a)(VI). The provisions of this Rule 8 relating to a one-time change of physician do not apply to a request for change of physician made under §8-43-404(5)(a)(VI).

8-8 INDEPENDENT MEDICAL EXAMINATIONS

The following rules apply when the employer or insurer causes an independent medical examination to be conducted pursuant to ~~section~~ **§**8-43-404. Prior to each such examination the employer or insurer shall ensure that the examining physician is provided written notice that describes the requirements relating to recording the examination as set out in statute and these rules.

8-10 NOTICE TO CLAIMANT

(A) Prior to commencing the examination the injured worker must review and sign a form issued by the Division that contains information regarding the independent medical examination process. A language interpreter may provide assistance if necessary. This form may be presented by the examining physician or by the employer, insurer or third-party administrator anytime prior to the examination. The injured worker shall sign the form to reflect receipt of the information. The injured worker, examining physician and all parties are entitled to a copy of the signed form. The examination shall not take place unless the injured worker has signed the form. Refusing to sign the form shall constitute refusal to submit to the independent medical examination.

(B) Immediately prior to the examination, the examining physician shall verbally notify the injured worker that the examination will be audio recorded.

8-11 AUDIO RECORDING AND FEES

(A) The examining physician shall not alter the recording.

(B) The required audio recording shall be saved in a digital format. The examining physician shall retain the original recording.

(C) The examining physician shall be compensated for conducting the examination pursuant to the medical fee schedule, Rule 18-6(G)(4)-Special Reports. In addition, the examining physician may add a $30 charge for all recorded examinations. The physician shall be entitled to charge $20.00 for each copy of the recording that is provided.

(D) If a party requests a copy of the audio recording, regardless of which party makes the initial request the first copy of the recording is provided only to the injured worker. If the injured worker makes the initial request for a copy of the recording, he/she shall be responsible for the cost of the copy. If the employer/insurer makes the initial request for a copy of the recording, it shall be responsible for the cost of the copy provided to the injured worker. The physician may require payment prior to releasing a copy of the recording.

8-12 PROCESS

(A) The recording shall not be released to anyone other than a party to the claim or the Division. This rule does not prohibit an employee or vendor of the examining physician or the Division from access to the recording for purposes of copying or transcribing the recording.

(B) The examining physician shall provide to both parties a written medical report prepared as a result of the independent medical examination.

(C) Any party may request a copy of the recorded examination within twenty (20) days of the date the written medical report was issued. All requests for copies shall be made to the examining physician, in writing, with a copy of the request to all other parties. The written request shall include the address to which the copy is to be provided along with payment of $20.

(D) If the injured worker makes the initial request for a copy of the recording, the examining physician shall, within fifteen (15) calendar days of the date of the written request, provide a copy of the recording to only the injured worker.

(E) If the employer/insurer makes the initial request for a copy of the recording, the employer/insurer's written request shall instruct the examining physician to provide a copy of the recording only to the injured worker. The employer/insurer's written request must also provide the address for the injured worker. The examining physician shall provide a copy to the injured worker within fifteen (15) calendar days of the date of the written request.

(F) If the injured worker alleges that the recording contains medical information not relevant to the workers' compensation claim which should remain confidential, he/she must raise that allegation in writing within fifteen (15) calendar days of the date the copy of the recording was provided. The written allegation along with the copy of the recording and a copy of the written medical report received by the injured worker must be provided to the Division's Customer Service Unit. A copy of the written allegation shall also be provided to the examining physician and the employer/insurer. Within ten (10) days of the allegation being provided to the employer/insurer, the employer/insurer may file a response to the injured worker's allegation with the Division's Customer Service Unit. Failure to raise an allegation in a timely manner results in the injured worker having waived the right to raise any allegations of confidentiality in the recording.

(G) Only medical information that is not discussed in the written report generated by the physician as a result of the independent medical examination may be raised pursuant to paragraph (F) above. This limitation does not impact the injured worker's ability to challenge any aspect of the written report.

(H) A written allegation from an injured worker that the recording contains medical information that should remain confidential must provide a sufficient level of detail. A sufficient level of detail exists if the written statement provides general information as to

what medical information was communicated that should remain confidential, and why the information should remain confidential within the context of the workers' compensation claim. Raising medical issues contained in the report, or failing to provide sufficient detail shall result in a summary denial of the allegation by an ALJ.

(I) If no timely allegation regarding confidential information pursuant to paragraph (F) is made, the employer/insurer may then request a copy of the recording by providing a written request to the examining physician, explaining that no allegation was made by the injured worker and a copy of the recording may be released to the employer/insurer. A $20 payment to the examining physician shall be included with this request. The examining physician shall provide a copy of the recording within fifteen (15) calendar days of the date the written request is received.

(J) If the injured worker alleges that the recording contains confidential medical information as set out in paragraph (F) of this rule, the employer/insurer shall not request a copy of the recording until the allegation is resolved.

(K) If the Division receives an allegation pursuant to paragraph (F), the Division will submit the recording, a copy of the written medical report, the injured worker's allegation and any response from the employer/insurer to an Administrative Law Judge either in the Prehearing Unit or the Office of Administrative Courts.

(L) An Administrative Law Judge shall consider the injured workers' allegations and any response, listen to the recording in camera if necessary, and determine if the recording contains confidential medical information not relevant to the claim.

(M) If an Administrative Law Judge determines that the recording does not contain confidential medical information, the Administrative Law Judge will issue an appropriate order and return the recording to the injured worker. The employer/insurer may then request a copy of the recording within twenty (20) days of the date the order was issued by providing a written request, along with $20 payment to the examining physician. The examining physician shall provide a copy of the recording to the employer/insurer within fifteen (15) days calendar days of the date the written request is received.

(N) If an Administrative Law Judge determines that the recording contains confidential medical information, the Administrative Law Judge shall issue an order to the parties and the examining physician. The Administrative Law Judge shall then produce, or cause to be produced, a copy of the recording with the confidential medical information redacted. An order to redact information does not constitute a final decision as to the relevancy of that information in any future proceeding. The Administrative Law Judge will provide the original recording and the redacted recording to the Division's Customer Service Unit. The Division will maintain the copy of the original and redacted recording until the claim is closed. Either party may obtain a copy of the redacted recording by providing a written request, along with payment of $10, to the Division.

(O) If paragraph (N) applies and for any reason the Administrative Law Judge is unable to redact the recording, the Administrative Law Judge will issue an order that copies of the recording may not be released and will provide the copy of the original recording to the Division's Customer Service Unit. If necessary an Administrative Law Judge may thereafter review the recording in camera to assist in resolving factual disputes that may arise.

8-13 MAINTENANCE OF THE RECORDINGS

(A) Absent an order to the contrary, the examining physician may destroy the recording twelve (12) months after the date the examining physician's written report was issued.

(B) Any recording in the possession of the Division may be destroyed once the claim is closed.

8-14 DISPUTES

If a dispute arises, such as, the examination was not recorded, or if the recording is inaudible, the parties may file a motion with an Administrative Law Judge if they cannot agree on a resolution. Each dispute will be considered individually and determined based upon the specific facts in existence so that the Administrative Law Judge may fashion an appropriate remedy. Generally, the striking of the IME report will be the appropriate remedy. If the examining physician was responsible for the faulty or inaudible recording, the examining physician may be required to repeat the examination without additional payment. If another party was responsible for a faulty or inaudible recording that party may be required to pay for a repeat examination.

Notice of Rulemaking Hearing

Tracking number

2014-01255

Department

1200 - Department of Agriculture

Agency

1202 - Inspection and Consumer Services Division

CCR number

8 CCR 1202-6

Rule title

RULES FOR COMMERCIAL FEED UNDER THE COLORADO FEED LAW, SECTIONS 35-60-101 THROUGH 115, C.R.S.

Rulemaking Hearing

Date

01/23/2015

Time

09:00 AM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to update statutory references; update references to the 2015 official publication of AAFCO; edit definitions; specify labeling exemptions; remove the in lieu of ingredient statement; remove pet food from adulterants; and change registration and report due dates. Amendments will also incorporate changes as a result of the Departments Regulatory Efficiency Review Process; add clarity, uniformity and correct typographical errors and formatting.

Statutory authority

35-60-102(2) and 35-60-109(1)

Contact information

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*Editing comments: Changes to this rule are indicated in **~~bold strikethrough~~** for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red.*

COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

Rules for Commercial Feed Under the Colorado Feed Law, Sections 35-60-101 through 115, C.R.S.

8 CCR 1202-6

~~Section~~ PART 1. Legal Authority

Section**s 35-60-102(2) AND** 35-60-109(1), C.R.S.

~~Section~~ PART 2. Definitions and Terms

~~(a)~~ 2.1 These **~~r~~R**ules incorporate the Official Definitions of Feed Ingredients as published in the 20**~~07~~15** Official Publication of the Association of American Feed Control Officials, Inc. ("AAFCO"), incorporated herein by reference (later amendments not included), except as the Commissioner of Agriculture ("Commissioner") designates otherwise in specific cases.

~~(b)~~ 2.2 These **~~r~~R**ules incorporate the Official Feed Terms as published in the 20**~~07~~15** Official Publication of AAFCO, incorporated herein by reference (later amendments not included), except as the Commissioner designates otherwise in specific cases.

~~(c)~~ 2.3 The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of **S~~s~~**ection 35-60-102(2)**, C.R.S.,** of the Colorado Feed Law**, WHEN UNDERGROUND AND WHEN NOT MIXED OR INTERMIXED WITH OTHER MATERIALS**: **R**~~R~~aw meat, individual chemical compounds, hay, loose salt, straw, stover, silage, cobs, husks, and hulls**;** ~~**when unground and when not mixed or intermixed with other materials:**~~ provided that these commodities are not adulterated within the meaning of **S~~s~~**ection 35-60-107, **C.R.S.,** of the Colorado Feed Law. **THE EXEMPTION FROM THE DEFINITION OF COMMERCIAL FEED DOES NOT APPLY TO AN OTHERWISE EXEMPTED COMMODITY THAT BEARS A LABEL LISTING NUTRITIONAL CLAIMS OR GUARANTEES.**

~~**(d) The exemption from the definition of commercial feed is removed for an exempted commodity that bears a label listing nutritional claims or guarantees.**~~

~~Section~~ PART 3. Label Format

~~(a)~~ 3.1 Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this ~~**section**~~ **PART** on the principal display panel of the product and in the following format:

~~(1)~~ 3.1.1. Product name and brand name, if any, as stipulated in ~~**section 4(a)(1)**~~**PART 4.1.1**.

~~(2)~~ 3.1.2. If a drug is used, label as stipulated in ~~**section 4(a)(2)**~~**PART 4.1.2**.

~~(3)~~ 3.1.3. Purpose Statement as stipulated in ~~**section 4(a)(3)**~~**PART 4.1.3**.

~~(4)~~ 3.1.4. Guaranteed analysis as stipulated in ~~**section 4(a)(4)**~~**PART 4.1.4**.

~~(5)~~ 3.1.5. Feed ingredients as stipulated in ~~**section 4(a)(5)**~~**PART 4.1.5**.

~~(6)~~ 3.1.6. Directions for use and precautionary statements as stipulated in ~~section 4(a)(6)~~PART 4.1.6.

~~(7)~~ 3.1.7. Name and principal mailing address of the manufacturer or person responsible for distributing the feed as stipulated ~~in section 4(a)(7)~~PART 4.1.7.

~~(8)~~ 3.1.8. Quantity Statement.

~~(b)~~ 3.2. The information required in ~~section 3(a)(1)-(5) and (7)-(8)~~ PARTS 3.1.1 THROUGH 3.1.5, 3.1.7 AND 3.1.8 must appear in its entirety on one side of the label or on one side of the container.

~~(c)~~ 3.3. The information required by ~~section 3(a)(6)~~ PART 3.1.6 shall be displayed in a prominent place on the label or container but not necessarily on the same side as the above information. When the information required by ~~section 3(a)(6)~~PART 3.1.6 is placed on a different side of the label or container, it must be referenced on the front side with a statement such as "See back of label for directions for use." None of the information required by ~~section~~ PART 3 shall be subordinated or obscured by other statements or designs.

~~(d)~~ 3.4. Customer-formula feed shall be accompanied with the information prescribed in this ~~section~~ PART using labels, invoice, delivery ticket, or other shipping document bearing the following information.

~~(1)~~ 3.4.1. The name and address of the manufacturer.

~~(2)~~ 3.4.2. The name and address of the purchaser.

~~(3)~~ 3.4.3. The date of sale or delivery.

~~(4)~~ 3.4.4. The customer-formula feed name and brand name if any.

~~(5)~~ 3.4.5. The product name and net quantity of each registered commercial feed and each other ingredient used in the mixture.

~~(6)~~ 3.4.6. The direction for use and precautionary statements as required by ~~sections~~ PARTS 8 and 9.

~~(7)~~ 3.4.7. If a drug containing product is used:

~~I~~ 3.4.7.1. The purpose of the medication (claim statement).

~~II~~ 3.4.7.2. The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with ~~section~~ PART ~~5.4 (d)~~.

~~Section~~ PART 4. Label Information.

~~(a)~~ 4.1. Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this section.

~~(1)~~ 4.1.1. Product name and brand name if any.

~~I~~ 4.1.1.1. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A commercial feed for a particular animal class, must be suitable for that purpose.

~~II~~ 4.1.1.2. Commercial, registered brand or trade names are not permitted in guarantees or ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.

~~III~~ 4.1.1.3. The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name: Provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredients or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

~~IV~~ 4.1.1.4. The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen.

~~V~~ 4.1.1.5. When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein": Provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer.

~~VI~~ 4.1.1.6. Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by AAFCO unless the Commissioner designates otherwise.

~~VII~~ 4.1.1.7. The word "vitamin", or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in ~~section~~ PART 5.3 ~~(c)~~.

~~VIII~~ 4.1.1.8. The term "mineralized" shall not be used in the name of a feed except for "TRACE MINERALIZED SALT". When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

~~IX~~ 4.1.1.9. The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are made from cattle, swine, sheep and goats.

~~(2)~~ 4.1.2. If a drug is used:

~~I~~ 4.1.2.1. The word "medicated" shall appear directly following and below the product name in type size, no smaller than one-half the type size of the product name.

~~I~~ 4.1.2.2. Purpose statement as required in ~~section~~ PART 4.1.3~~(a)(3)~~.

~~III~~ 4.1.2.3. The purpose of medication (claim statement).

~~IV~~ ~~4.1.2.4~~. An active ingredient statement listing the active drug ingredients by their

established name and the amounts in accordance with ~~section~~ PART 5.4 ~~(d)~~.

~~(3)~~ 4.1.3. Purpose Statement

~~I~~ 4.1.3.1. The statement of purpose shall contain the specific species and animal class(es) for which the feed is intended as defined in ~~section~~ PART 4.1.4 ~~(a) (4)~~.

~~II~~ 4.1.3.2. The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, species and purpose while being consistent with the category of animal class defined in ~~section~~ PART 4.1.4(a)(4) which may include, but is not limited to weight range(s), sex, or ages of the animal(s) for which the feed is manufactured.

~~III~~ 4.1.3.3. The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(es) for which the product is intended.

~~IV~~ 4.1.3.4. The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specifications are provided by the end user of the premix. [This section applicable to commercial feeds regulated under ~~section~~ PART 4.1.4.10.2.10 ~~(a)(4)(X)(b)(10).~~]

~~V~~ 4.1.3.5. The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds. [This section applicable to commercial feeds regulated under ~~section~~ PART 4.1.4.10.2.10. ~~(a)(4)(X)(b)(10).~~]

~~VI~~ 4.1.3.6. The purpose statement of a product shall include a statement of enzyme functionality if enzymatic activity is represented in any manner.

~~(4)~~ 4.1.4 Guarantees - Crude Protein, Equivalent Crude Protein from Non Protein Nitrogen, Amino Acids, Crude Fat, Crude Fiber, Acid Detergent Fiber, Calcium, Phosphorus, Salt and Sodium shall be the sequence of nutritional guarantees when such guarantee is stated. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are listed in a sequence that provides a consistent grouping of the units of measure. All guarantees shall be stated on an "as is" basis.

~~I~~ 4.1.4.1. Required guarantees for swine formula feeds

~~a~~ 4.1.4.1.1. Animal Classes

~~(1)~~ 4.1.4.1.1.1. Pre-Starter - 2 to 11 pounds

~~(2)~~ 4.1.4.1.1.2. Starter -11 to 44 pounds

~~(3)~~ 4.1.4.1.1.3. Grower - 44 to 110 pounds

~~(4)~~ 4.1.4.1.1.4. Finisher -110 to 242 pounds (market)

~~(5)~~ 4.1.4.1.1.5. Gilts, Sows and Adult Boars

~~(6)~~ 4.1.4.1.1.6. Lactating Gilts and Sows

~~b~~ 4.1.4.1.2. Guaranteed Analysis for Swine Complete Feeds and Supplements (all animal classes)

~~(1)~~ 4.1.4.1.2.1. Minimum percentage of Crude Protein

~~(2)~~ 4.1.4.1.2.2. Minimum percentage of Lysine

~~(3)~~ 4.1.4.1.2.3. Minimum percentage of Crude Fat

~~(4)~~ 4.1.4.1.2.4. Maximum percentage of Crude Fiber

~~(5)~~ 4.1.4.1.2.5. Minimum and maximum percentage of Calcium

~~(6)~~ 4.1.4.1.2.6. Minimum percentage of Phosphorus

~~(7)~~ 4.1.4.1.2.7. Minimum and maximum percentage of Salt (if added)

~~(8)~~ 4.1.4.1.2.8. Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum ~~s~~S~~S~~alt guarantee

~~(9)~~ 4.1.4.1.2.9. Minimum Selenium in parts per million (ppm)

~~(10)~~ 4.1.4.1.2.10. Minimum Zinc in parts per million (ppm)

~~II~~ 4.1.4.2. Required guarantees for Formula Poultry Feeds (Broilers, Layers and Turkeys)

~~A~~ 4.1.4.2.1. Animal Classes

~~(1)~~ 4.1.4.2.1.1. Layer - Chickens that are grown to produce eggs for food, e.g., table eggs

~~(a)~~ 4.1.4.2.1.1.1. Starting/Growing - From day of hatch to approximately 10 weeks of age.

~~(b)~~ 4.1.4.2.1.1.2. Finisher - From approximately 10 weeks of age to time first egg is produced. (Approximately 20 weeks of age).

~~(c)~~ 4.1.4.2.1.1.3. Laying - From time first egg is laid throughout the time of egg production.

~~(d)~~ 4.1.4.2.1.1.4. Breeders - Chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from time first egg is laid throughout their productive cycle.

~~(2)~~ 4.1.4.2.1.2. Broilers - Chickens that are grown for human food.

~~(a)~~ 4.1.4.2.1.2.1. Starting/growing - From day of hatch to approximately 5 weeks of age.

~~(b)~~ 4.1.4.2.1.2.2. Finisher - From approximately 5 weeks of age to market, (42 to 52 days).

~~(c)~~ 4.1.4.2.1.2.3. Breeders - Hybrid strains of chickens whose offspring are grown for human food, (broilers), any age and either sex.

~~(3)~~ 4.1.4.2.1.3. Broilers, Breeders - Chickens whose offspring are grown for human food (broilers).

~~(a)~~ 4.1.4.2.1.3.1. Starting/Growing - From day of hatch until approximately 10 weeks of age.

~~(b)~~ 4.1.4.2.1.3.2. Finishing - From approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age.

~~(c)~~ 4.1.4.2.1.3.3. Laying - Fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.

~~(4)~~ 4.1.4.2.1.4. Turkeys

~~(a)~~ 4.1.4.2.1.4.1. Starting/Growing - Turkeys that are grown for human food from day of hatch to approximately 13 weeks of age (females) and 16 weeks of age (males).

~~(b)~~ 4.1.4.2.1.4.2. Finisher - Turkeys that are grown for human food, females from approximately 13 weeks of age to approximately 17 weeks of age; males from 16 weeks of age to 20 weeks of age, (or desired market weight).

~~(c)~~ 4.1.4.2.1.4.3. Laying - Female turkeys that are producing eggs; from time first egg is produced, throughout the time they are producing eggs.

~~(d)~~ 4.1.4.2.1.4.4. Breeder - Turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately 30 weeks of age), both sexes.

~~b~~ 4.1.4.2.2. Guaranteed Analysis for Poultry Complete Feeds and Supplements (all animal classes)

~~(1)~~ 4.1.4.2.2.1. Minimum percentage of Crude Protein

~~(2)~~ 4.1.4.2.2.2. Minimum percentage of Lysine

~~(3)~~ 4.1.4.2.2.3. Minimum percentage of Methionine

~~(4)~~ 4.1.4.2.2.4. Minimum percentage of Crude Fat

~~(5)~~ 4.1.4.2.2.5. Maximum percentage of Crude Fiber

~~(6)~~ 4.1.4.2.2.6. Minimum and maximum percentage of Calcium

~~(7)~~ 4.1.4.2.2.7. Minimum percentage of Phosphorus

~~(8)~~ 4.1.4.2.2.8. Minimum and maximum percentage of Salt (if added)

~~(9)~~ 4.1.4.2.2.9. Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum ~~s~~Salt guarantee

~~III~~ 4.1.4.3. Required Guarantees for Beef Cattle Formula Feeds

~~A~~ 4.1.4.3.1. Animal Classes

~~(1)~~ 4.1.4.3.1.1.Calves (birth to weaning)

~~(2)~~ 4.1.4.3.1.2. Cattle on Pasture (may be specific as to production stage; e.g. stocker, feeder, replacement heifers, brood cows, bulls, etc.)

~~(3)~~ 4.1.4.3.1.3. Feedlot Cattle

~~b~~ 4.1.4.3.2. Guaranteed analysis for Beef Complete Feeds and Supplements (all animal classes)

~~(1)~~ 4.1.4.3.2.1. Minimum percentage of Crude Protein

~~(2)~~ 4.1.4.3.2.2. Maximum percentage of equivalent crude protein from Non-Protein Nitrogen (NPN) when added

~~(3)~~ 4.1.4.3.2.3. Minimum percentage of Crude Fat

~~(4)~~ 4.1.4.3.2.4. Maximum percentage of Crude Fiber

~~(5)~~ 4.1.4.3.2.5. Minimum and maximum percentage of Calcium

~~(6)~~ 4.1.4.3.2.6. Minimum percentage of Phosphorus

~~(7)~~ 4.1.4.3.2.7. Minimum and maximum percentage of Salt (if added)

~~(8)~~ 4.1.4.3.2.8. Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum ~~s~~Salt guarantee

~~(9)~~ 4.1.4.3.2.9. Minimum percentage of Potassium

~~(10)~~ 4.1.4.3.2.10. Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

~~c~~ 4.1.4.3.3. Guaranteed analysis for Beef Mineral Feeds (if added)

~~(1)~~ 4.1.4.3.3.1. Minimum and maximum percentage Calcium

~~(2)~~ 4.1.4.3.3.2. Minimum percentage of Phosphorus

~~(3)~~ 4.1.4.3.3.3. Minimum and maximum percentage of Salt

~~(4)~~ 4.1.4.3.3.4. Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum ~~s~~Salt guarantee

~~(5)~~ 4.1.4.3.3.5. Minimum percentage of Magnesium

~~(6)~~ 4.1.4.3.3.6. Minimum percentage of Potassium

~~(7)~~ 4.1.4.3.3.7. Minimum Copper in parts per million (ppm)

~~(8)~~ 4.1.4.3.3.8. Minimum Selenium in parts per million (ppm)

~~(9)~~ 4.1.4.3.3.9. Minimum Zinc in parts per million (ppm)

~~(10)~~ 4.1.4.3.3.10. Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound

~~IV~~ 4.1.4.4. Required Guarantees for Dairy Formula Feeds

~~a~~ 4.1.4.4.1. Animal Classes

~~(1)~~ 4.1.4.4.1.1. Veal Milk Replacer - Milk Replacer to be fed for veal production.

~~(2)~~ 4.1.4.4.1.2. Herd Milk Replacer - Milk Replacer to be fed for herd replacement calves.

~~(3)~~ 4.1.4.4.1.3. Starter - Approximately 3 days to 3 months.

~~(4)~~ 4.1.4.4.1.4. Growing Heifers, Bulls and Dairy Beef

~~(a)~~ 4.1.4.4.1.4.1. Grower 1 -3 months to 12 months of age

~~(b)~~ 4.1.4.4.1.4.2 Grower 2 - More than 12 months of age

~~(5)~~ 4.1.4.4.1.5. Lactating Dairy Cattle

~~(6)~~ 4.1.4.4.1.6. Non-Lactating Dairy Cattle

~~b~~ 4.1.4.4.2. Guaranteed Analysis for Veal and Herd Replacement Milk Replacer

~~(1)~~ 4.1.4.4.2.1. Minimum percentage Crude Protein

~~(2)~~ 4.1.4.4.2.2. Minimum percentage Crude Fat

~~(3)~~ 4.1.4.4.2.3. Maximum percentage of Crude Fiber

~~(4)~~ 4.1.4.4.2.4. Minimum and maximum percentage Calcium

~~(5)~~ 4.1.4.4.2.5. Minimum percentage of Phosphorus

~~(6)~~ 4.1.4.4.2.6. Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

~~c~~ 4.1.4.4.3. Guaranteed Analysis for Dairy Cattle Complete Feeds and Supplements

~~(1)~~ 4.1.4.4.3.1. Minimum percentage of Crude Protein

~~(2)~~ 4.1.4.4.3.2. Maximum percentage of Equivalent Crude Protein from Non-Protein Nitrogen (NPN) when added

~~(3)~~ 4.1.4.4.3.3. Minimum percentage of Crude Fat

~~(4)~~ 4.1.4.4.3.4. Maximum percentage of Crude Fiber

~~(5)~~ 4.1.4.4.3.5. Maximum percentage of Acid Detergent Fiber (ADF)

~~(6)~~ 4.1.4.4.3.6. Minimum and maximum percentage of Calcium

~~(7)~~ 4.1.4.4.3.7. Minimum percentage of Phosphorus

~~(8)~~ 4.1.4.4.3.8. Minimum Selenium in parts per million (ppm)

~~(9)~~ 4.1.4.4.3.9. Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

~~d~~ 4.1.4.4.4. Required Guaranteed Analysis for Dairy Mixing and Pasture Mineral

~~(1)~~ 4.1.4.4.4.1. Minimum and maximum percentage of Calcium

~~(2)~~ 4.1.4.4.4.2. Minimum percentage of Phosphorus

~~(3)~~ 4.1.4.4.4.3. Minimum and maximum percentage of Salt

~~(4)~~ 4.1.4.4.4.4. Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum ~~s~~S~~S~~alt guarantee

~~(5)~~ 4.1.4.4.4.5. Minimum percentage of Magnesium

~~(6)~~ 4.1.4.4.4.6. Minimum percentage of Potassium

~~(7)~~ 4.1.4.4.4.7. Minimum Selenium in parts per million (ppm)

~~(8)~~ 4.1.4.4.4.8. Minimum Vitamin A, other than the precursors of Vitamin A, in International Units per pound

~~V~~ 4.1.4.5. Required Guarantees for Equine Formula Feeds

~~a~~ 4.1.4.5.1. Animal Classes

~~(1)~~ 4.1.4.5.1.1. Foal

~~(2)~~ 4.1.4.5.1.2. Mare

~~(3)~~ 4.1.4.5.1.3. Breeding

~~(4)~~ 4.1.4.5.1.4. Maintenance

~~b~~ 4.1.4.5.2. Guaranteed Analysis for Equine Complete Feeds and Supplements (all animal classes)

~~(1)~~ 4.1.4.5.2.1. Minimum percentage of Crude Protein

~~(2)~~ 4.1.4.5.2.2. Minimum percentage of Crude Fat

~~(3)~~ 4.1.4.5.2.3. Maximum percentage of Crude Fiber

~~(4)~~ 4.1.4.5.2.4. Minimum and maximum percentage of Calcium

~~(5)~~ 4.1.4.5.2.5. Minimum percentage of Phosphorus

~~(6)~~ 4.1.4.5.2.6. Minimum Copper in parts per million (ppm)

~~(7)~~ 4.1.4.5.2.7. Minimum Selenium in parts per million (ppm)

~~(8)~~ 4.1.4.5.2.8. Minimum Zinc in parts per million (ppm)

~~(9)~~ 4.1.4.5.2.9. Minimum Vitamin A, other than the precursors of Vitamin A, in International Units per pound (if added)

~~c~~ 4.1.4.5.3. Guaranteed Analysis for Equine Mineral Feeds (all animal classes)

~~(1)~~ 4.1.4.5.3.1. Minimum and maximum percentage of Calcium

~~(2)~~ 4.1.4.5.3.2. Minimum percentage of Phosphorus

~~(3)~~ 4.1.4.5.3.3. Minimum and maximum percentage of Salt (if added)

~~(4)~~ 4.1.4.5.3.4. Minimum and maximum percentage of Sodium shall be guaranteed only when the total Sodium exceeds that furnished by the maximum ~~s~~Salt guarantee

~~(5)~~ 4.1.4.5.3.5. Minimum Copper in parts per million (ppm)

~~(6)~~ 4.1.4.5.3.6. Minimum Selenium in parts per million (ppm)

~~(7)~~ 4.1.4.5.3.7. Minimum Zinc in parts per million (ppm)

~~(8)~~ 4.1.4.5.3.8. Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

~~VI~~ 4.1.4.6. Required Guarantees for Goat and Sheep Formula Feeds

~~a~~ 4.1.4.6.1. Animal Classes

~~(1)~~ 4.1.4.6.1.1. Starter

~~(2)~~ 4.1.4.6.1.2. Grower

~~(3)~~ 4.1.4.6.1.3. Finisher

~~(4)~~ 4.1.4.6.1.4. Breeder

~~(5)~~ 4.1.4.6.1.5. Lactating

~~b~~ 4.1.4.6.2. Guaranteed Analysis for Goat and Sheep Complete Feeds and Supplements (all animal classes)

~~(1)~~ 4.1.4.6.2.1. Minimum percentage of Crude Protein

~~(2)~~ 4.1.4.6.2.2. Maximum percentage of equivalent crude protein from Non-Protein Nitrogen (NPN) when added

~~(3)~~ 4.1.4.6.2.3. Minimum percentage of Crude Fat

~~(4)~~ 4.1.4.6.2.4. Maximum percentage of Crude Fiber

~~(5)~~ 4.1.4.6.2.5. Minimum and maximum percentage of Calcium

~~(6)~~ 4.1.4.6.2.6. Minimum percentage of Phosphorus

~~(7)~~ 4.1.4.6.2.7. Minimum and maximum percentage of Salt (if added)

~~(8)~~ 4.1.4.6.2.8. Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum ~~sS~~alt guarantee

~~(9)~~ 4.1.4.6.2.9. Minimum and maximum Copper in parts per million (ppm) (if added, or if total copper exceeds 20 ppm)

~~(10)~~ 4.1.4.6.2.10. Minimum Selenium in parts per million (ppm)

~~(11)~~ 4.1.4.6.2.11. Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

~~VII~~ 4.1.4.7. Required Guarantees for Duck and Geese Formula Feeds

~~a~~ 4.1.4.7.1. Animal Classes

~~(1)~~ 4.1.4.7.1.1. Ducks

~~(a)~~ 4.1.4.7.1.1.1. Starter - 0 to 3 weeks of age

~~(b)~~ 4.1.4.7.1.1.2. Grower - 3 to 6 weeks of age

~~(c)~~ 4.1.4.7.1.1.3. Finisher - 6 weeks to market

~~(d)~~ 4.1.4.7.1.1.4. Breeder Developer - 8 to 19 weeks of age

~~(e)~~ 4.1.4.7.1.1.5. Breeder - 22 weeks to end of lay

~~(2)~~ 4.1.4.7.1.2. Geese

~~(a)~~ 4.1.4.7.1.2.1. Starter - 0 to 4 weeks of age

~~(b)~~ 4.1.4.7.1.2.2. Grower - 4 to 8 weeks of age

~~(c)~~ 4.1.4.7.1.2.3. Finisher - 8 weeks to market

~~(d)~~ 4.1.4.7.1.2.4. Breeder Developer -10 to 22 weeks of age

~~(e)~~ 4.1.4.7.1.2.5. Breeder - 22 weeks to end of lay

~~b~~ 4.1.4.7.2. Guaranteed Analysis for Duck and Geese Complete Feeds and Supplements (for all animal classes)

~~(1)~~ 4.1.4.7.2.1. Minimum percentage of Crude Protein

~~(2)~~ 4.1.4.7.2.2. Minimum percentage of Crude Fat

~~(3)~~ 4.1.4.7.2.3. Maximum percentage of Crude Fiber

~~(4)~~ 4.1.4.7.2.4. Minimum and maximum percentage of Calcium

~~(5)~~ 4.1.4.7.2.5. Minimum percentage of Phosphorus

~~(6)~~ 4.1.4.7.2.6. Minimum and maximum percentage of Salt (if added)

~~(7)~~ 4.1.4.7.2.7. Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum ~~s~~Salt guarantee

~~VII~~ 4.1.4.8. Required Guarantees for Fish Complete Feeds and Supplements

~~a~~ 4.1.4.8.1. Animal Species shall be declared in lieu of animal class

~~(1)~~ 4.1.4.8.1.1. Trout

~~(2)~~ 4.1.4.8.1.2. Catfish

~~(3)~~ 4.1.4.8.1.3. Species other than trout or catfish

~~b~~ 4.1.4.8.2. Guaranteed analysis for all Fish Complete Feeds and Supplements

~~(1)~~ 4.1.4.8.2.1. Minimum percentage of Crude Protein

~~(2)~~ 4.1.4.8.2.2. Minimum percentage of Crude Fat

~~(3)~~ 4.1.4.8.2.3. Maximum percentage of Crude Fiber

~~(4)~~ 4.1.4.8.2.4. Minimum percentage of Phosphorus

~~IX~~ 4.1.4.9. Required Guarantees for Rabbit Complete Feeds and Supplements

~~a~~ 4.1.4.9.1. Animal Classes

~~(1)~~ 4.1.4.9.1.1. Grower - 4 to 12 weeks of age

~~(2)~~ 4.1.4.9.1.2. Breeder -12 weeks of age and over

~~b~~ 4.1.4.9.2. Guaranteed analysis for Rabbit Complete Feeds and Supplements (all animal classes)

~~(1)~~ 4.1.4.9.2.1. Minimum percentage of Crude Protein

~~(2)~~ 4.1.4.9.2.2. Minimum percentage of Crude Fat

~~(3)~~ 4.1.4.9.2.3. Minimum and maximum percentage of Crude Fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 units)

~~(4)~~ 4.1.4.9.2.4. Minimum and maximum percentage of Calcium

~~(5)~~ 4.1.4.9.2.5. Minimum percentage of Phosphorus

~~(6)~~ 4.1.4.9.2.6. Minimum and maximum percentage of Salt (if added)

~~(7)~~ 4.1.4.9.2.7. Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum ~~s~~S~~alt~~ guarantee

~~(8)~~ 4.1.4.9.2.8. Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added)

~~X~~ 4.1.4.10. The required guarantees of grain mixtures with or without molasses and feeds other than those described in ~~section~~ PART 4.1.4.1 THROUGH 4.1.4.9 ~~(a)(4) (I through IX)~~ shall include the following items, unless exempted in ~~section XI~~ PART 9, in the order listed:

~~a~~ 4.1.4.10.1. Animal class(es) and species for which the product is intended.

~~b~~ 4.1.4.10.2. Guaranteed analysis

~~(1)~~ 4.1.4.10.2.1. Minimum percentage Crude Protein

~~(2)~~ 4.1.4.10.2.2. Maximum or minimum percentage of equivalent Crude Protein from Non-Protein Nitrogen as required in ~~s~~S~~ection~~ 5.5.~~(e)~~

~~(3)~~ 4.1.4.10.2.3. Minimum percentage of Crude Fat

~~(4)~~ 4.1.4.10.2.4. Maximum percentage of Crude Fiber

~~(5)~~ 4.1.4.10.2.5. Minerals in formula feeds, to include in the following order:

~~(a)~~ 4.1.4.10.2.5.1. Minimum and maximum percentages of Calcium

~~(b)~~ 4.1.4.10.2.5.2. Minimum percentage of Phosphorus

~~(c)~~ 4.1.4.10.2.5.3. Minimum and maximum percentage of Salt (if added)

~~(d)~~ 4.1.4.10.2.5.4. Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum ~~s~~Salt guarantee

~~(e)~~ 4.1.4.10.2.5.5. Other Minerals

~~(6)~~ 4.1.4.10.2.6. Minerals in feed ingredients - as specified by the Official Definitions of Feed Ingredients published in the 20~~07~~15 Official Publication of AAFCO.

~~(7)~~ 4.1.4.10.2.7. Vitamins in such terms as specified in ~~section~~ PART 5.3. ~~(c)~~

~~(8)~~ 4.1.4.10.2.8. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content

~~(9)~~ 4.1.4.10.2.9. Viable lactic acid producing microorganisms for use in silage in terms specified in ~~section~~ PART 5.7.~~(g)~~

~~(10)~~ 4.1.4.10.2.10. A commercial feed (e.g. vitamin/mineral premix, base mix, etc.) intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state its intended purpose and guarantee those nutrients relevant to such stated purpose.

~~XI~~ 4.1.4.11. Exemptions

~~a~~ 4.1.4.11.1. A mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, and veal and herd milk replacers, is not required when:

~~(1)~~ 4.1.4.11.1.1. The feed or feed ingredient is not intended or represented or does not serve as a principal source of that mineral to the animal; or

~~(2)~~ 4.1.4.11.1.2. The feed or feed ingredient is intended for non-food producing animals and contains less than 6.5% total mineral.

~~b~~ 4.1.4.11.2. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

~~c~~ 4.1.4.11.3. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

~~d~~ 4.1.4.11.4. Guarantees for microorganisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, and no specific label claims are made.

~~e~~ 4.1.4.11.5. The indication for animal class(es) and species is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class(es) or species.

4.1.4.11.6. IN LIEU OF A GUARANTEED ANALYSIS STATEMENT, WILD BIRD FEED LABELS MAY SUBSTITUTE A COMPOSITION STATEMENT THAT LISTS THE PERCENTAGE OF EACH INGREDIENT. COMPOSITION STATEMENT VALUES ARE ALLOWED A VARIANCE FROM THE ACTUAL VALUE UP TO 5%.

~~(5)~~ 4.1.5. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of ~~s~~Section 35-60-106(1)(e), C.R.S. of the Colorado Feed Law.

~~I~~. 4.1.5.1. The name of each ingredient listed in descending order of predominance by weight and as defined in the Official Definitions of Feed Ingredients published in the Official Publication of AAFCO, common or usual name, or one approved by the Commissioner.

~~II~~. 4.1.5.2. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of AAFCO, in lieu of the individual ingredients; ~~P~~provided that:

~~a~~. 4.1.5.2.1. When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

~~b~~. 4.1.5.2.2. The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

~~III. The registrant may affix the statement, "Ingredients as registered with the State" in lieu of ingredient list on the label. The list of ingredients must be on file with the Commissioner. This list shall be made available to the feed purchaser upon request.~~

~~(6)~~ 4.1.6. Directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by ~~sections~~ PARTS 8 and 9 appear elsewhere on the label.

~~(7)~~ 4.1.7. Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state, zip code. However, the street address may be omitted if it is shown in the current city directory or telephone directory.

~~(8)~~ 4.1.8. Quantity Statement.

~~Section~~ PART 5. Expression of Guarantees

~~(a)~~ 5.1 The guarantees for crude protein, equivalent crude protein from non-protein nitrogen, lysine, methionine, other amino acids, crude fat, crude fiber and acid detergent fiber shall be in terms of percentage.

~~(b)~~ 5.2 Mineral Guarantees

~~(1)~~ 5.2.1. When the calcium, ~~s~~Salt, and sodium guarantees are given in the guaranteed analysis such shall be stated and conform to the following:

~~I~~ 5.2.1.1. When the minimum is below 2.5%, the maximum shall not exceed the minimum by more than 0.5 percentage point.

~~II~~ 5.2.1.2. When the minimum is 2.5% but less than 5.0%, the maximum shall not exceed the minimum by more than one percentage point.

~~III~~ 5.2.1.3. When the minimum is above 5.0% or greater the maximum shall not exceed the minimum by more than 20% of the minimum and in no case shall the maximum exceed the minimum by more than five percentage points.

~~(2)~~ 5.2.2. When stated, guarantees for minimum and maximum total sodium and ~~s~~Salt: minimum potassium, magnesium, sulfur, phosphorus and maximum fluoride shall be in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) when the concentration is less than 10,000 ppm and in percentage when the concentration is 10,000 ppm (1%) or greater.

~~(3)~~ 5.2.3. Products labeled with a quantity statement (e.g., tablets, capsules, granules, or liquid) may state mineral guarantees in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with the quantity statement and directions for use.

~~(c)~~ 5.3 Guarantees for minimum vitamin content of commercial feeds shall be listed in the order specified and are stated in mg/lb or in units consistent with those employed for the quantity statement unless otherwise specified:

~~(1)~~ 5.3.1. Vitamin A, other than precursors of vitamin A, in International Units per pound.

~~(2)~~ 5.3.2. Vitamin D-3 in products offered for poultry feeding, in International Chick Units per pound.

~~(3)~~ 5.3.3. Vitamin D for other uses, International Units per pound.

~~(4)~~ 5.3.4. Vitamin E, in International Units per pound.

~~(5)~~ 5.3.5. Concentrated oils and feed additive premixes containing vitamins A, D and/or E may, at the option of the distributor be stated in units per gram instead of units per pound.

~~(6)~~ 5.3.6. Vitamin B-12, in milligrams or micrograms per pound.

~~(7)~~ 5.3.7. All other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: menadione; riboflavin; d-pantothenic acid; thiamine; niacin; vitamin B-6; folic acid; choline; biotin; inositol; p-amino benzoic acid; ascorbic acid; and carotene.

~~(d)~~ 5.4 Guarantees for drugs shall be stated in terms of percent by weight, except:

~~(1)~~ 5.4.1. Antibiotics, present at less than 2,000 grams per ton (total) of commercial feed

shall be stated in grams per ton of commercial feed.

~~(2)~~ **5.4.2.** Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed.

~~(3)~~ **5.4.3.** Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in Part 558 of the Code of Federal Regulations, Title 21, 2000, incorporated herein by reference (later amendments not included), for certain antibiotics, wherein quantitative, guarantees are required regardless of the level or purpose of the antibiotic.

~~(4)~~ **5.4.4.** The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

~~(c)~~ **5.5** Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:

~~(1)~~ **5.5.1** For ruminants

~~a~~ **5.5.1.1**. Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5% protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum, _____ %

(This includes not more than ____ % equivalent crude protein from non-protein nitrogen).

~~b~~ **5.5.1.2**. Mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as follows:

Equivalent Crude Protein from Non-Protein Nitrogen, minimum, _____ %

~~c~~ **5.5.1.3**. Ingredient sources of non-protein nitrogen such as Urea, Diammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined and published in the Official Publication of AAFCO Inc. (later amendments not included) shall be guaranteed as follows:

Nitrogen, minimum, ____ %

Equivalent Crude Protein from Non-Protein Nitrogen, minimum, ___ %

~~(2)~~ **5.5.2.** For non-ruminants

~~a~~ **5.5.2.1**. Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:

Crude protein, minimum ____ %

(This includes not more than ____ % equivalent crude protein, which is not nutritionally available to species of animal for which feed is intended).

~~b~~ **5.5.2.2**. Premixes, concentrates or supplements intended for non-ruminants

containing more than 1.25% equivalent crude protein from all forms of non-protein nitrogen, added as such, must contain adequate directions for use and a prominent statement:

WARNING: This feed must be used only in accordance with directions furnished on the label.

~~(f)~~ 5.6. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

~~(g)~~ 5.7. Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams, or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

~~(h)~~ 5.8. Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified, such as: Protease (Bacillus subtilis) 5.5 mg amino acids liberated/min./milligram. If two or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.

~~(i)~~ 5.9. Guarantees for minimum percentage of total sugars, as invert shall be included for products being sold for their molasses content or products containing more than 16% sugars.

~~(j)~~ 5.10. Guarantees for maximum percentage of moisture shall be included for liquid feed supplements and liquid ingredients containing more than 20% moisture.

~~(k)~~ 5.11. WILD BIRD SEED COMPOSITION STATEMENT VALUES ARE ALLOWED A VARIANCE FROM THE ACTUAL VALUE UP TO 5%.

~~Section~~ PART 6. Suitability

~~(a)~~ 6.1. A commercial feed, other than a customer-formula feed, shall be nutritionally suitable for its intended purpose as represented by its labeling.

~~(b)~~ 6.2. If the Commissioner has reasonable cause to believe a feed is not nutritionally suitable, then the Commissioner may request the feed manufacturer to either submit an “Affidavit of Suitability” or an alternate procedure acceptable to the Commissioner, certifying the nutritional adequacy of the feed. The Affidavit of Suitability or alternate procedure of suitability shall serve as substantiation of the suitability of the feed.

~~(c)~~ 6.3. If an Affidavit of Suitability, or alternative procedure acceptable to the Commissioner is not submitted by the feed manufacturer within 30 days of written notification, the Commissioner may deem the feed adulterated under ~~s~~Section 35-60-107(2)(m), C.R.S., and order the feed removed from the marketplace.

~~(d)~~ 6.4. The Affidavit of Suitability shall contain the following information:

~~(1)~~ 6.4.1. The feed company's name;

~~(2)~~ 6.4.2. The feed's product name;

~~(3)~~ 6.4.3. The name and title of the affiant submitting the document;

~~(4)~~ 6.4.4. A statement that the affiant has knowledge of the nutritional content of the feed and based on valid scientific evidence the feed is nutritionally adequate for its intended purpose;

~~(5)~~ 6.4.5. The date of submission; and

~~(6)~~ 6.4.6. The signature of the affiant notarized by a certified Notary Public.

~~Section~~ PART 7. Ingredients

~~(a)~~ 7.1. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients published in the 20~~07~~15 Official Publication of AAFCO, the common or usual name, or one approved by the Commissioner.

~~(b)~~ 7.2. The name of each ingredient must be shown in letters or type of the same size.

~~(c)~~ 7.3. No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

~~(d)~~ 7.4. The term “dehydrated” may precede the name of any product that has been artificially dried.

~~(e)~~ 7.5. A single ingredient product as defined in the Official Definitions of Feed Ingredients published in the 20~~07~~15 Official Publication of AAFCO is not required to have an ingredient statement.

~~(f)~~ 7.6. Tentative definitions as published in the Official Definitions of Feed Ingredients published in the 20~~07~~15 Official Publication of AAFCO for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar).

~~(g)~~ 7.7. When the word “iodized” is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007% iodine, uniformly distributed.

~~Section~~ PART 8. Directions for Use and Precautionary Statements

~~(a)~~ 8.1. Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds including those containing additives shall:

~~(1)~~ 8.1.1. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and,

~~(2)~~ 8.1.2 Include, but not be limited to, all information described by all applicable regulations under the Federal Food, Drug and Cosmetic Act.

~~(b)~~ 8.2. Adequate directions for use and precautionary statements are required for feeds containing non-protein nitrogen as specified in ~~section~~ PART 9.

~~(c)~~ 8.3. Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

~~Section~~ PART 9. Non-Protein Nitrogen

~~(a)~~ 9.1. Urea and other non-protein nitrogen products defined in the Official Definitions of Feed Ingredients published in the 20~~07~~15 Official Publication of AAFCO are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen, added as such, or the equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED." The directions for use and the caution statement shall be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.

~~(b)~~ 9.2. Non-protein nitrogen defined in the Official Definitions of Feed Ingredients published in the 20~~07~~15 Official Publication of AAFCO when so indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25% of the total daily ration.

~~(c)~~ 9.3. On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen.

~~Section~~ PART 10. Drug and Feed Additives

~~(a)~~ 10.1. Prior to approval of a registration application and/or approval of a label for commercial feed which contains additives (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

~~(b)~~ 10.2. Satisfactory evidence of safety and efficacy of a commercial feed may be:

~~(1)~~ 10.2.1. When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use, or

~~(2)~~ 10.2.2. When the commercial feed is itself a drug as defined in ~~s~~Section 35-60-102(8) of the Colorado Feed Law and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C. 360 b, or

~~(3)~~ 10.2.3. When one of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for the purpose through the Federal Virus, Serum and Toxins Act of 1913, as amended, or

~~(4)~~ 10.2.4. When the commercial feed is a direct fed microbial product and:

~~I~~. 10.2.4.1. The product meets the particular fermentation product definition; and

~~II~~. 10.2.4.2. The microbial content statement, as expressed in the labeling, is limited to the following: "Contains a source of live (viable) naturally occurring microorganisms." This statement shall appear on the label; and

~~III~~. 10.2.4.3. The source is stated with a corresponding guarantee expressed in accordance with ~~section~~ PART 5.~~7(g)~~.

~~(5)~~ 10.2.5. When the commercial feed is an enzyme product and:

~~I~~. 10.2.5.1. The product meets the particular enzyme definition as defined in the Official Definitions of Feed Ingredients published in the 20~~07~~15 Official Publication of AAFCO, and

~~II~~. 10.2.5.2. The enzyme is stated with a corresponding guarantee expressed in accordance with ~~section~~ PART 5.~~8.~~

~~Section~~ PART 11. Adulterants

~~(a)~~ 11.1. For the purpose of ~~s~~Section 35-60-107(2)(a)~~, C.R.S.,~~ of the Colorado Feed Law, the terms “poisonous or deleterious substances” include but are not limited to the following:

~~(1)~~ 11.1.1. Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20% for breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for lambs; 0.45% for swine; and 0.60% for poultry.

~~(2)~~ 11.1.2. Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: 0.004% for breeding and dairy cattle; 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for lambs; 0.015% for swine and 0.03% for poultry.

~~(3)~~ 11.1.3. Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of 50 milligrams of fluorine per 100 pounds of body weight.

~~(4)~~ 11.1.4. Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents.

~~(5)~~ 11.1.5. Sulfur dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of vitamin B1(Thiamine).

~~(6)~~ 11.1.6. Aflatoxin B1, B2, G1, G2 above 20 parts per billion (ppb) individually or total when in feed destined for dairy animals~~, pet food~~ or an unknown use, over 20 ppb for feed and ingredients (excluding cottonseed meal) for immature animals, over 100 ppb for corn and peanut products for breeding cattle, breeding swine, and mature poultry, over 200 ppb for corn and peanut products for finishing swine over 100 pounds, over 300 ppb for corn and peanut products finishing beef cattle, and over 300 ppb for cottonseed meal for beef cattle, swine or poultry.

~~(7)~~ 11.1.7. Fumonisin above 5 parts per million (ppm) except that with proper labeling as approved by the Commissioner less than 15 ppm may be distributed when destined for finishing swine (more than 100 lbs. body weight); less than 50 ppm may be distributed for feedlot cattle.

~~(b)~~ 11.2. All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or

otherwise treated to destroy the viability of such weed seeds so that the finished product contains no viable prohibited weed seeds and not more than 1 viable restricted weed seeds per pound. For the purposes of this provision, prohibited weed seed and restricted weed seeds shall be those as established by the Commissioner under the Colorado Seed Act (~~s~~Section 35-27-103 (16), C.R.S.) and in the ~~r~~Rules adopted thereunder.

~~Section~~ PART 12. Good Manufacturing Practices

~~(a)~~ 12.1 For the purposes of enforcement of ~~s~~Section 35-60-107(2)(n), C.R.S., of the Colorado Feed Law the Commissioner adopts and incorporates by reference the following as current good manufacturing practices:

~~(1)~~ 12.1.1. The Regulations prescribing good manufacturing practices for Type B and Type C medicated feeds as published in the Code of Federal Regulations, Title 21, Part 225, ~~s~~Sections 225.1-225.202, (2000) (later amendments not included).

~~(2)~~ 12.1.2 The Regulations prescribing good manufacturing practices for Type A Medicated Articles as published in the Code of Federal Regulations Title 21, Part 226, ~~s~~Sections 226.1-226.115, (2000) (later amendments not included).

~~Section~~ PART 13. Material Incorporated by Reference

All materials incorporated by reference into these ~~r~~Rules may be examined at any state publications depository library. For further information on how the incorporated materials may be obtained or examined, please contact the Technical Services Section Chief at the Division of Inspection and Consumer Services, Department of Agriculture, 2331 West 31st Avenue, Denver, Colorado 80211.

~~Section~~ PART 14. False or Incomplete Information

All information required by the Commissioner from any person in connection with any application for a registration, report, or record required under the Colorado Feed Law must be accurate and complete. Failure to provide accurate and complete information in connection with any such document, including but not limited to providing all documentation required to establish an individual applicant's lawful presence in the United States pursuant to Section 24-76.5-103, C.R.S., shall be grounds for denial of an application for registration or for renewal thereof, or revocation or suspension of an existing registration.

~~Section~~ PART 15. Commercial Feed Registration

No person shall manufacture commercial feed within the state or allow his or her name to appear on the label of a commercial feed as guarantor, without first registering with the Department as required by SECTIONS 35-60-103 and 35-60-104, C.R.S. Such registration shall expire on ~~January~~ DECEMBER 31st and may be renewed annually.

~~Section~~ PART 16. Distribution Fees-Reports

~~(a)~~16.1. A distributor who is subject to a tonnage distribution fee required by ~~s~~Section 35-60-105(1), C.R.S. shall file with the Commissioner, no later than January 31st each year, a statement that sets forth the number of net tons of commercial feeds distributed in the state.

~~(b)~~16.2. A distributor who is subject to the distribution fee for small packages of ten pounds or less shall file with the Commissioner, no later than ~~January~~ DECEMBER 31st each year, a list of all small package products of ten pounds or less that are distributed in this state.

~~(c)~~16.3. A distributor who is subject to a tonnage distribution fee required by ~~s~~Section 35-60-105(1),

C.R.S., and the distribution fee for small packages of ten pounds or less shall comply with both **~~section~~ PARTS** 16**.1(a)** and **~~section~~** 16**.2(b) ~~OF THESE~~ RULES**.

~~Section~~ PART ~~2017~~. Statements of Basis, Specific Statutory Authority and Purpose

~~(a)~~17.1. Adopted April 10, 2001 – Effective May 30, 2001

STATUTORY AUTHORITY:

The Commissioner of Agriculture, Colorado Department of Agriculture, adopts these permanent rules pursuant to the provisions and requirements of the Colorado Commercial Feed Law, § 35-60- 109(1), C.R.S. (2000).

PURPOSE:

The purpose of these rules is to comply with the requirements of the Colorado Commercial Feed to provide specific guidelines for the manufacture, labeling and distribution of commercial feed.

These rules are designed to:

- Set standards for the correct labeling of livestock and pet food.

- Set standards for good manufacturing practices for medicated livestock feed.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

1. The Colorado Commercial Feed Law was repealed and reenacted effective January 1, 2000. That statute requires the Commissioner to adopt the Official Definitions of Feed Ingredients and Official Feed Terms adopted by the Association of American Feed Control Officials, Inc. (AAFCO), as published in the official publication of such association.

2. These new, revised rules are based upon national standard (model) regulations developed by AAFCO, a nation-wide group of regulatory officials. They are specifically for the purpose of promoting standardization between states for the animal feed industry.

3. Over 30% of the states have adopted the AAFCO model regulations. These rules are widely accepted by Colorado and national feed companies. Adoption of these rules would help to ensure uniform labeling requirements.

4. The Department met with the Colorado Grain and Feed Association's (CFGA) Feed Committee throughout the rule drafting process. The CGFA supports these new rules and regulations.

5. Two sets of rules are needed, one for livestock feed, the other for pet food. Livestock feed rules are specific to matters regarding production, animal growth and weight gain, and use of medications in feed. Pet food rules employ separate criteria for complete and balanced nutrition and provide regulatory guidance for advertising and claims frequently found on pet food labels.

~~(b)~~17.2. Emergency Rule Adopted October 19, 2006 – Effective October 19, 2006

Statutory Authority:

These emergency amendments to the Rules Pertaining to the Administration and Enforcement of the Colorado Commercial Feed Law, §§ 35-60-101 - 115, C.R.S., are proposed for adoption by the Commissioner pursuant to his authority in Section 35-60-109(1), C.R.S.

Purpose:

The purposes of these emergency amendments to the rules are as follows:

(a) To specify in rule that all information required or requested by the Commissioner, including lawful presence documentation required under Section 24-76.5-103, C.R.S., must be complete and accurate, and to specify the legal consequences of noncompliance with this rule.

(b) To document and record the statements of statutory authority, basis and purpose for these rules.

Factual Basis:

(a) On August 1, 2006, Section 24-76.5-103, C.R.S., took effect following its enactment in House Bill 06S-1023 by the General Assembly in the July, 2006, special legislative session.

(b) Currently, neither the Commercial Feed Law nor its associated rules specify that individuals who apply for registrations must comply with the verification documentation requirements of Section 24-76.5-103, C.R.S.

(c) These emergency rules are necessary to provide the Commissioner with specific legal authority to deny applications for registration or renewal of existing registrations from natural persons who do not provide sufficient documentation to comply with Section 24-76.5-103, C.R.S., and to revoke existing registrations if the information provided in connection with an application is later proven to be false.

(d) These emergency rules are necessary to fulfill the purposes described above prior to the adoption of permanent rules to that effect.

~~(c)~~17.3. Adopted November 13, 2006 – Effective January 1, 2007

Statutory Authority:

These permanent amendments to the Rules Pertaining to the Administration and Enforcement of the Colorado Commercial Feed Law, §§ 35-60-101 - 115, C.R.S., are proposed for adoption by the Commissioner pursuant to his authority in Section 35-60-109(1), C.R.S.

Purpose:

The purposes of these permanent amendments are as follows:

(a) To specify in a permanent rule that all information required or requested by the Commissioner, including lawful presence documentation required under Section 24-76.5-103, C.R.S., must be complete and accurate, and to specify the legal consequences of noncompliance with this rule.

(b) To document and record the statements of statutory authority, basis and purpose for these rules.

Factual Basis:

(a) On August 1, 2006, Section 24-76.5-103, C.R.S., took effect following its enactment in House Bill 06S-1023 by the General Assembly in the July, 2006, special legislative session.

(b) On October 19, 2006, the Commissioner adopted emergency rules specifying that individuals who apply for registrations under the Commercial Feed Law must comply with the verification documentation requirements of Section 24-76.5-103, C.R.S.

(c) These permanent amendments to the rules are necessary to provide the Commissioner with specific legal authority, following the expiration of the emergency rules adopted on October 19, 2006, to deny applications for registration or renewal of existing registrations from natural persons who do not provide sufficient documentation to comply with Section 24-76.5-103, C.R.S., and to revoke existing registrations if the information provided in connection with an application is later proven to be false.

(d) These permanent amendments to the rules are necessary to make permanent the provisions of the emergency rules adopted by the Commissioner on October 2, 2006.

~~(d)~~17.4. Adopted November 1, 2007 – Effective December 30, 2007

Statutory Authority:

These amendments are proposed for adoption by the Commissioner pursuant to his authority in section 35-60-109(1), C.R.S.

Purpose:

The purposes of these amendments are as follows:

(a) To amend the name of the Act used in the Rules to correspond with the new name adopted under Senate Bill 07-207.

(b) Remove the definition of “contract feeder.”

(c) To clarify the reporting requirements associated with the respective distribution fees.

(d) To specify the due date of the distribution fees and report.

(e) To specify the expiration date of a commercial feed registration.

(f) To amend the listing of guarantees from an “as fed” basis to an “as is” basis.

(g) Update the references to the official publications of the Association of American Feed Control Officials (AAFCO) incorporated by reference to the 2007 version.

(h) To correct typographical errors.

Factual Basis:

(a) On May 22, 2007, the Colorado Commercial Feed Law was amended by Senate Bill 07-207. The title of the law was amended to the Colorado Feed Law.

(b) The registration expiration date and the filing date for distribution fees and reports were removed from the Colorado Feed Law. The rules maintain the existing date for the submission of distribution reports and fees, and establish a new expiration date for feed registration to coincide with the distribution due date. This change will allow industry to file both reports at one time.

(c) A new definition for “contract feeder” was adopted in the Colorado Feed Law which supersedes

the current rule definition.

(d) The current rules require the guaranteed analysis to be listed on an “as fed” basis. The AAFCO national standard requires it be listed on an “as is” basis.

17.5. Adopted February 11, 2015 – Effective March 30, 2015

The Commissioner's authority for the adoption of these permanent Rule amendments is set forth in Sections 35-60-102(2) and 35-60-109(1), C.R.S.

The Purpose of this rulemaking is to:

1. Edit Part 1 Legal Authority to include all rulemaking authority in 35-60, C.R.S.

2. Update the references throughout the Rules to the official publication of the Association of American Feed Control Officials (AAFCO) incorporated by reference to the 2015 version.

3. Edit commercial feed definition Part 2.3. for clarity.

4. Add Part 4.1.4.11.6. to specify a labeling exemption to allow manufacturers of wild bird seed products to use a composition statement instead of a guaranteed analysis statement.

5. Remove Section (5)(III) “In lieu of ingredient statement.”

6. Remove “pet food” from Part 11.1.6. Adulterants

7. Change the date in Part 15 and Part 16.2. for registrations and the due date for small package distribution reports and fees to December 31st.

8. Correct typographical errors.

9. Reformat Rules to meet new rulemaking guidelines.

Factual and Policy Issues:

The factual and policy issues encountered in the proposal of these permanent Rules are as follows:

1. The previous version of these Rules did not include the rulemaking authority under 35-60-102(2), C.R.S.

2. Numerous changes to the AAFCO publication have occurred since the printing of the 2007 version which is referenced in the Rules. This change will make our Rules more consistent with other states’ feed Rules

3. Purchasers of wild bird seeds are generally more interested in the composition of the seed mix rather than nutritional guarantees. This voluntary change in labeling will allow manufacturers the option of using a composition statement to convey that information.

4. The option of filing an ingredient list with the state in lieu of listing the ingredients on the label makes it more difficult for the public to know what is in the feed that they purchase. This option has not been exercised by feed manufacturers in Colorado in many years.

5. Pet food adulterants are now covered in the Pet Food Rules (8 CCR 1202-7) and no longer needs to be addressed in this Rule.

*Editing comments: Changes to this rule are indicated in **~~bold strikethrough~~** for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red.*

6. THE COLORADO DEPARTMENT OF AGRICULTURE LICENSE AND REGISTRATION EXPIRATION DATES HAVE BEEN MOVED TO THE CALENDAR YEAR IN ORDER TO CONSOLIDATE LICENSING FOR THE DEPARTMENT.

7. THESE AMENDMENTS INCORPORATE CHANGES AS A RESULT OF THE DEPARTMENT'S REGULATORY EFFICIENCY REVIEW PROCESS.

COLORADO
Department of Agriculture
F 303.466.2867
www.colorado.gov/ag

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

"Rules for Commercial Feed Under the Colorado Feed Law, Sections 35-60-101 through 115, C.R.S."

8 CCR 1202-6

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE:	Friday, January 23, 2015
TIME:	9:00 a.m.
LOCATION:	Colorado Department of Agriculture San Juan Conference Room 305 Interlocken Parkway Broomfield, Colorado 80021

The purpose of this rulemaking is to update statutory references; update references to the 2015 official publication of AAFCO; edit definitions; specify labeling exemptions; remove the "in lieu of ingredient statement"; remove pet food from adulterants; and change registration and report due dates. Amendments will also incorporate changes as a result of the Department's Regulatory Efficiency Review Process; add clarity, uniformity and correct typographical errors and formatting.

The statutory authority for these rules is §§ 35-60-102(2) and 35-60-109(1), C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 303-869-9002. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.

Notice of Rulemaking Hearing

Tracking number

2014-01256

Department

1200 - Department of Agriculture

Agency

1202 - Inspection and Consumer Services Division

CCR number

8 CCR 1202-7

Rule title

RULES FOR PET FOOD UNDER THE COLORADO FEED LAW, SECTIONS 35-60-101 THROUGH 115, C.R.S.

Rulemaking Hearing

Date

01/23/2015

Time

09:00 AM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway Broomfield, CO 80021

Subjects and issues involved

Update statutory references; update references to the 2015 official publication of AAFCO; specify commodity and label exemptions; specify labeling and product name requirements; add rules for adulterants, false or incomplete information, commercial feed registration and distribution fees-reports. Amendments will also incorporate changes as a result of the Departments Regulatory Efficiency Review Process; add clarity, uniformity and correct typographical errors and formatting.

Statutory authority

35-60-102(2) and 35-60-109(1)

Contact information

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Title

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*Editing comments: Changes to this rule are indicated in **~~bold strikethrough~~** for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red.*

COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

Rules for Pet Food Under the Colorado Feed Law, Sections 35-60-101 through 115, C.R.S.

8 CCR 1202-7

~~Section~~ PART 1. Legal Authority

Section**S 35-60-102(2) AND** 35-60-109(1), C.R.S.

~~Section~~ PART 2. Definitions and Terms

~~(a)~~ 2.1. These ~~r~~Rules incorporate the Official Definitions of Feed Ingredients as published in the 20~~07~~15 Official Publication of the Association of American Feed Control Officials, Inc. ("AAFCO"), incorporated herein by reference (later amendments not included), except as the Commissioner of Agriculture ("Commissioner") designates otherwise in specific cases.

~~(b)~~ 2.2. These ~~r~~Rules incorporate the Official Feed Terms as published in the 20~~07~~15 Official Publication of AAFCO, incorporated herein by reference (later amendments not included), except as the Commissioner designates otherwise in specific cases.

2.3. THE FOLLOWING COMMODITIES ARE HEREBY DECLARED EXEMPT FROM THE DEFINITION OF COMMERCIAL FEED, UNDER THE PROVISIONS OF SECTION 35-60-102(2), C.R.S. OF THE COLORADO FEED LAW, WHEN UNGROUND AND WHEN NOT MIXED OR INTERMIXED WITH OTHER MATERIALS: RAW MEAT, BONE AND ANTLER, INDIVIDUAL CHEMICAL COMPOUNDS, HAY, LOOSE SALT, STRAW, STOVER, SILAGE, COBS, HUSKS, AND HULLS; PROVIDED THAT THESE COMMODITIES ARE NOT ADULTERATED WITHIN THE MEANING OF SECTION 35-60-107, C.R.S., OF THE COLORADO FEED LAW. THE EXEMPTION FROM THE DEFINITION OF COMMERCIAL FEED IS REMOVED FOR AN EXEMPTED COMMODITY THAT BEARS A LABEL LISTING NUTRITIONAL CLAIMS OR GUARANTEES.

The definitions in the Colorado Feed Law shall apply in addition to the following:

~~(c)~~ 2.4. "AAFCO" means the Association of American Feed Control Officials, Inc.

~~(d)~~ 2.5. "AAFCO Cat Food Nutrient Profiles" means the lists of nutrients required for cat foods as published in the 20~~07~~15 Official Publication of AAFCO, incorporated herein by reference (later amendments not included.)

~~(e)~~ 2.6. "AAFCO Dog Food Nutrient Profiles" means the lists of nutrients required for dog foods as published in the 20~~07~~15 Official Publication of AAFCO, incorporated herein by reference (later amendments not included.)

~~(f)~~ 2.7. "AAFCO Family Guidelines" means the procedures for establishing pet food product families as published in the 20~~07~~15 Official Publication of AAFCO, incorporated herein by reference (later amendments not included).

~~(g)~~ 2.8. "AAFCO-Recognized Animal Feeding Protocols" means the AAFCO Dog and Cat Food Feeding Protocols as published in the 20~~07~~15 Official Publication of AAFCO, incorporated herein by reference (later amendments not included.)

~~(h)~~ 2.9. "AAFCO-Recognized Authority" means the nutritional authority for a given species of animal as published in the 20~~07~~15 Official Publication of AAFCO, incorporated herein by reference (later amendments not included.)

~~(i)~~ 2.10. "AAFCO-Recognized Nutrient Profile" means the list of nutrients required for specialty pet foods for specific species of specialty pets as published in the 20~~07~~15 Official Publication of AAFCO, incorporated herein by reference (later amendments not included.)

~~(j)~~ 2.11. "All Life Stages" means gestation/lactation, growth, and adult maintenance life stages.

~~(k)~~ 2.12. "Immediate Container" means the unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers.

~~(l)~~ 2.13. "Ingredient Statement" means a collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed.

~~(m)~~ 2.14. "Pet" means dog or cat.

~~(n)~~ 2.15. "Pet Food" means any commercial feed ~~prepared and~~ distributed OR INTENDED TO BE DISTRIBUTED for consumption by pets.

~~(o)~~ 2.16. "Principal Display Panel" means the part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

~~(p)~~ 2.17. "Specialty Pet" means any domesticated pet animal normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, finches, parrots, other cage birds, tropical fish, goldfish, snakes, turtles, and iguanas.

~~(q)~~ 2.18. "Specialty Pet Food" means any commercial feed ~~prepared and~~ distributed OR INTENDED TO BE DISTRIBUTED for consumption by specialty pets.

~~(r)~~ 2.19. "Family means a group of products which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product which has been successfully test-fed according to an AAFCO-Recognized Animal Feeding Protocol(s).

~~Section~~ PART 3. Label Format and Labeling

~~(a)~~ 3.1. Pet food and specialty pet food shall be labeled with the following information prescribed in this ~~section~~ PART:

~~(1)~~ 3.1.1. Product name and brand name, if any, on the principal display panel as stipulated in ~~section~~ PART 4;

~~(2)~~ 3.1.2. The species of pet or specialty pet for which the food is intended conspicuously designated on the principal display panel;

~~(3)~~ 3.1.3. Quantity statement, as defined in ~~s~~Section 35-60-102(18), C.R.S., of the Colorado Feed Law, on the principal display panel;

~~(4)~~ 3.1.4. Guaranteed analysis as stipulated in ~~section~~ PART 5;

~~(5)~~ 3.1.5. Ingredient statement as stipulated in ~~section~~ PART 6.1~~(a)~~;

~~(6)~~ 3.1.6. A statement of nutritional adequacy or purpose if required under ~~section~~ PART 8;

~~(7)~~ 3.1.7. Feeding directions if required under ~~section~~ PART 9; and

~~(8)~~ 3.1.8. Name and address of the manufacturer or distributor as stipulated in ~~section~~ PART 12.

~~(b)~~ 3.2. When a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information shall appear on the outer container or wrapper.

~~(c)~~ 3.3. A vignette, graphic, or pictorial representation on a pet food or specialty pet food label shall not misrepresent the contents of the package.

~~(d)~~ 3.4. The use of the word "proven" in connection with a label claim for a pet food or specialty pet food is not permitted unless the claim is substantiated by scientific or other empirical evidence.

~~(e)~~ 3.5. No statement shall appear upon the label or labeling of a pet food or specialty pet food which makes false or misleading comparisons between that product and any other product.

~~(f)~~ 3.6. A personal or commercial endorsement is permitted on a pet food or specialty pet food label provided the endorsement is not false or misleading.

~~(g)~~ 3.7. A statement on a pet food or specialty pet food label stating "Improved", "New", or similar designation shall be substantiated and limited to six- (6) months production.

~~(h)~~ 3.8. A statement on a pet food or specialty pet food label stating preference or comparative attribute claims shall be substantiated and limited to one (1) year production, after which the claim shall be removed or re-substantiated.

3.9. STORAGE AND HANDLING INFORMATION STATEMENTS

3.9.1. PRODUCTS CONTAINING RAW FROZEN MEAT AND/OR POULTRY FOR ANIMAL CONSUMPTION MUST BEAR A STATEMENT, "KEEP FROZEN", DISPLAYED IN A PROMINENT MANNER ON THE PRINCIPAL DISPLAY PANEL.

3.9.2. PRODUCTS CONTAINING RAW FROZEN MEAT AND/OR POULTRY FOR ANIMAL CONSUMPTION MUST CONSPICUOUSLY BEAR THE FOLLOWING STATEMENT UNDER A HEADING "HANDLING GUIDELINES FOR SAFE USE" ON THE OUTSIDE OF THE IMMEDIATE CONTAINER:

SOME RAW FOOD PRODUCTS MAY CONTAIN BACTERIA THAT COULD CAUSE ILLNESS IF MISHANDLED. FOLLOW THESE INSTRUCTIONS FOR SAFEST USE.

1. KEEP FROZEN UNTIL READY TO USE.

2. THAW IN REFRIGERATOR OR MICROWAVE.

3. KEEP RAW MEAT AND POULTRY SEPARATE FROM OTHER FOODS. WASH WORKING SURFACES, UTENSILS (INCLUDING CUTTING BOARDS, PREPARATION AND FEEDING BOWLS), HANDS, AND ANY OTHER ITEMS THAT TOUCH OR CONTACT RAW MEAT OR POULTRY WITH HOT SOAPY WATER.

4. REFRIGERATE LEFTOVERS IMMEDIATELY OR DISCARD.

~~Section~~ PART 4. Brand and Product Names

~~(a)~~ 4.1. The words "100%", "All", or words of similar designation shall not be used in the brand or product

name of a pet food or a specialty pet food if the product contains more than one ingredient, not including water sufficient for processing, decharacterizing agents, or trace amounts of preservatives and condiments.

~~(b)~~ 4.2. An ingredient or a combination of ingredients may form a part of the product name of a pet food or specialty pet food:

~~(1)~~ 4.2.1. When the ingredient(s) ~~derived from animals, poultry, or fish~~ THAT ARE INCLUDED IN THE PRODUCT NAME constitute~~s~~ at least 95% of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredient(s) shall constitute at least 70% of the total product weight.

~~(2)~~ 4.2.2. When any ingredient(s) THAT ARE INCLUDED IN THE PRODUCT NAME constitute~~s~~ at least 25% of the weight of the product, provided that:

~~A.~~ 4.2.2.1. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredients) shall constitute at least 10% of the total product weight; and

~~B.~~ 4.2.2.2. A descriptor is used with the ingredient name(s). This descriptor shall imply other ingredients are included in the product formula. Examples of descriptors include “dinner”, “platter”, “entree”, “formula”, and “recipe”; and

~~C.~~ 4.2.2.3. The descriptor shall be in the same size, style, and color print as the ingredient name(s).

~~(3)~~ 4.2.3. When a combination of ingredients ~~which~~ THAT are included in the product name in accordance with ~~section~~ PART 4.2~~(b)~~ meet~~s~~ all of the following:

~~A.~~ 4.2.3.1. Each ingredient constitutes at least 3% of the product weight, excluding water sufficient for processing; and

~~B.~~ 4.2.3.2. The names of the ingredients appear in the order of their respective predominance by weight in the product; and

~~C.~~ 4.2.3.3. All such ingredient names appear on the label in the same size, style, and color print.

~~(c)~~ 4.3. When the name of any ingredient appears in the product name of a pet food or elsewhere on the product label and includes a descriptor such as “with” or similar designation, the named ingredient(s) must each constitute at least 3% of the product weight exclusive of water for processing. If the names of more than one ingredient are shown, they shall appear in their respective order of predominance by weight in the product. The 3% minimum level shall not apply to claims for nutrients, such as, but not limited to, vitamins, minerals, and fatty acids, as well as condiments. The word “with,” or similar designation, and named ingredients shall be in the same size, style, color and case print and be of no greater size than:

Panel Size	Maximum “with” Claim Type Size
<UP TO 5 sq. in.	1/8"
GREATER THAN 5 SQ.IN. UP TO – 25 sq. in	1/4”
GREATER THAN 25 SQ.IN. UP TO – 100 sq. in.	3/8"

Panel Size	Maximum "with" Claim Type Size
GREATER THAN 100 SQ.IN. UP TO – 400 sq. in.	1/2
~~>~~ GREATER THAN 400 sq. in.	1"

~~(d)~~ 4.4. A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food when the flavor designation meets all of the following:

~~(1)~~ 4.4.1. The flavor designation:

~~A.~~ 4.1.1.1 Conforms to the name of the ingredient as listed in the ingredient statement; or

~~B.~~ 4.4.1.2. Is identified by the source of the flavor in the ingredient statement; and

~~(2)~~ 4.4.2. The word "flavor" is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation; and

~~(3)~~ 4.4.3. Substantiation of the flavor designation, the flavor claim, or the ingredient source is provided upon request.

~~(c)~~ 4.5. The product name of the pet food or specialty pet food shall not be derived from one or more ingredients unless all ingredients are included in the name, except as specified by ~~section~~ PART 4.2 ~~(b)~~ or ~~(c)~~4.3; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

~~(1)~~ 4.5.1. The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

~~(2)~~ 4.5.2. It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients.

~~(f)~~ 4.6. Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food or specialty pet food unless it is in compliance with ~~section~~ PART 4.2~~(b)~~, ~~(c)~~4.3, or ~~(d)~~4.4.

~~Section~~ PART 5. Expression of Guarantees

~~(a)~~ 5.1. The "Guaranteed Analysis" shall be listed on an "as is" basis and in the following order and format unless otherwise specified in these ~~s~~Sections:

~~(1)~~ 5.1.1. A pet food or specialty pet food label shall list the following required guarantees:

~~A.~~ 5.1.1.1. Minimum percentage of crude protein;

~~B.~~ 5.1.1.2. Minimum percentage of crude fat;

~~C.~~ 5.1.1.3. Maximum percentage of crude fat, if required by ~~section~~ PART 11;

~~D.~~ 5.1.1.4. Maximum percentage of crude fiber;

~~E.~~ 5.1.1.5. Maximum percentage of moisture; and

~~F.~~ 5.1.1.6. Additional guarantees shall follow moisture.

~~(2)~~ 5.1.2. When ash is listed in the guaranteed analysis on a pet food or specialty pet food label, it shall be guaranteed as a maximum percentage and shall immediately follow moisture.

~~(3)~~ 5.1.3. A dog or cat food label shall list other required or voluntary guarantees in the same order and units of the nutrients in the AAFCO Dog Food Nutrient Profiles, or the AAFCO Cat Food Nutrient Profiles, as applicable, and may be listed as minimum, maximum, or both, unless otherwise specified. Guarantees for substances not listed in the AAFCO Dog (or Cat) Food Nutrient Profiles, or not otherwise provided for in these regulations, shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the AAFCO Dog (or Cat) Food Nutrient Profiles." The disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees.

~~(4)~~ 5.1.4. A specialty pet food label shall list other required or voluntary guarantees in the same order and units of the nutrients in an AAFCO-Recognized Nutrient Profile for the specific species and may be listed as minimum, maximum, or both, unless otherwise specified; however, if no species-specific AAFCO-Recognized Nutrient Profile is available, the order and units shall follow the same order and units of nutrients in the AAFCO Cat Food Nutrient Profiles. Guarantees for substances not listed in an AAFCO-Recognized Nutrient Profile for the specific species of animal shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the _____ (Blank is to be completed by listing the specific AAFCO-Recognized Nutrient Profile)." The disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees. No such disclaimer shall be required unless an AAFCO-Recognized Nutrient Profile is available for the specific species of specialty pet.

~~(b)~~ 5.2. The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label (for example. "Minimum crude protein 15-18%") is prohibited.

~~(c)~~ 5.3. The label of a pet food or specialty pet food which is formulated as and represented to be a mineral supplement shall include:

~~(1)~~ 5.3.1. Minimum guarantees for all minerals from sources declared in the ingredient statement and established by an AAFCO-Recognized Nutrient Profile expressed as the element in units specified in the nutrient profile; or

~~(2)~~ 5.3.2. Minimum guarantees for all minerals from sources declared in the ingredient statement expressed as the element in the same order and units of the AAFCO Cat Food Nutrient Profiles, when no species-specific profile has been recognized by AAFCO.

~~(3)~~ 5.3.3. Mineral guarantees required by ~~section~~ PART 5.3.1 ~~(c)(1)~~ and ~~(2)~~ 5.3.2. may be expressed in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

~~(4)~~ 5.3.4. A weight equivalent (e.g., 1 fl. oz. = 28 grams) shall be listed for liquid products.

~~(d)~~ 5.4. The label of a pet food or a specialty pet food which is formulated as and represented to be a

vitamin supplement shall include:

~~(1)~~ 5.4.1. Minimum guarantees for all vitamins from sources declared in the ingredient statement and established by an AAFCO-Recognized Nutrient Profile expressed in units specified in the nutrient profile; or

~~(2)~~ 5.4.2. Minimum guarantees for all vitamins from sources declared in the ingredient statement expressed in the same order and units of AAFCO Cat Food Nutrient Profiles, when no species-specific nutrient profile has been recognized by AAFCO.

~~(3)~~ 5.4.3. Vitamin guarantees required by ~~section~~ PART 5.4.1~~(d)(1)~~ and ~~(2)~~5.4.2, may be expressed in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

~~(4)~~ 5.4.4. A weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

~~(e)~~ 5.5. When the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an AAFCO-Recognized Nutrient Profile such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels, the following apply:

~~(1)~~ 5.5.1. The product shall meet the AAFCO-Recognized Nutrient Profile; and

~~(2)~~ 5.5.2. The statement of comparison shall be preceded by a statement that the product meets the AAFCO-Recognized Nutrient Profile. However, the statement that the product meets the AAFCO-Recognized Nutrient Profile is not required provided that a nutritional adequacy statement permitted by ~~section~~ PART 8.1.1 ~~(a)(1)~~ or ~~section~~ 8.2.2.1~~(b)(2)(A)~~ appears elsewhere on the product label; and

~~(3)~~ 5.5.3. The statement of comparison of the nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis; and

~~(4)~~ 5.5.4. The statement of comparison may appear on the label separate and apart from the guaranteed analysis.

~~(f)~~ 5.6. The maximum moisture declared on a pet food or specialty pet food label shall not exceed 78.00% or the natural moisture content of the ingredients, whichever is higher. However, pet food and specialty pet food such as, but not limited to, those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer, and which are so labeled, may contain moisture in excess of 78.00%.

~~(g)~~ 5.7. Guarantees for crude protein, crude fat, and crude fiber are not required when the pet food or specialty pet food is intended for purposes other than to furnish these substances or they are of minor significance relative to the primary purpose of the product, such as mineral or vitamin supplement.

~~(h)~~ 5.8. Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams, or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement shall list each species in order of predominance.

~~(i)~~ 5.9. Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be

specified, such as: Protease (Bacillus subtilis) 5.5 mg amino acid liberated/minute/milligram. If two or more sources have the same type of activity, they shall be listed in order of predominance based upon the amount of enzymatic activity provided.

5.10. PET FOOD PRODUCTS MADE FROM ONLY ANIMAL SKIN AND/OR CARTILAGE SUCH AS RAWHIDE, PIZZLES, PIG EARS, TRACHEA, ARE NOT REQUIRED TO BE LABELED WITH A GUARANTEED ANALYSIS STATEMENT.

~~Section~~ PART 6. Ingredients

~~(a)~~ 6.1. Each ingredient of a pet food or specialty pet food shall be listed in the ingredient statement as follows:

~~(1)~~ 6.1.1. The names of all ingredients in the ingredient statement shall be shown in letters or type of the same size and color;

~~(2)~~ 6.1.2. The ingredients shall be listed in descending order by their predominance by weight in non-quantitative terms;

~~(3)~~ 6.1.3. Ingredients shall be listed and identified by the name and definition published in the 20~~07~~15 Official Publication of AAFCO; and

~~(4)~~ 6.1.4. Any ingredient for which no name and definition have been so established shall be identified by the common or usual name of the ingredient.

~~(b)~~ 6.2. The ingredients “meat” or “meat by-products” shall be qualified to designate the animal from which the meat or meat by-products are derived unless the meat or meat by-products are derived from cattle, swine, sheep, goats, or any combination thereof. For example, ingredients derived from horses shall be listed as “horsemeat” or “horsemeat by-products”.

~~(c)~~ 6.3. Brand or trade names shall not be used in the ingredient statement.

~~(d)~~ 6.4. A reference to the quality, nature, form, or other attribute of an ingredient shall be allowed when the reference meets all of the following:

~~(1)~~ 6.4.1. The designation is not false or misleading;

~~(2)~~ 6.4.2. The ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute; and

~~(3)~~ 6.4.3. A reference to quality or grade of the ingredient does not appear in the ingredient statement.

~~Section~~ PART 7. Additives and Drugs

~~(a)~~ 7.1. An artificial color may be used in a pet food or a specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in the United States Food and Drug Administration regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets or specialty pets.

~~(b)~~ 7.2. Evidence may be required to prove the safety and efficacy or utility of a pet food or specialty pet food which contains additives or drugs, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food or specialty pet food may be established;

~~(1)~~ 7.2.1. When the pet food or specialty pet food contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "Generally Recognized as Safe" for such use; or

~~(2)~~ 7.2.2. When the pet food or specialty pet food itself is a drug or contains a drug as defined in ~~s~~**S**ection 35-60-102(8), C.R.S., of the Colorado Feed Law and is "generally recognized as safe and effective" for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21, U.S.C. 360 (b)

~~(c)~~ 7.3. When a drug is included in a pet food or specialty pet food, the following format is required:

~~(1)~~ 7.3.1. The word "medicated" shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

~~(2)~~ 7.3.2. A purpose statement shall be listed that includes the following information:

~~A.~~ 7.3.2.1. The specific species and animal class for which the feed is intended.

~~B.~~ 7.3.2.2. The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(es) for which the product is intended.

~~C.~~ 7.3.2.3. The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specifications are provided by the end user of the premix.

~~D.~~ 7.3.2.4. The purpose statement of a single purpose ingredient blend may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.

~~E.~~ 7.3.2.5. The purpose statement of a product shall include a statement of enzyme functionality if enzymatic activity is represented in any manner.

~~(3)~~ 7.3.3. The purpose of medication (claim statement).

~~(4)~~ 7.3.4. An active ingredient statement listing the active drug ingredients by their established name and guarantees for drugs stated in terms of percent by weight, except:

~~A.~~ 7.3.4.1. Antibiotics present at less than 2,000 grams per ton (total) in a pet or specialty pet food shall be stated in grams per ton of feed.

~~B.~~ 7.3.4.2. Antibiotics present at 2,000 or more grams per ton (total) in a pet or specialty pet food shall be stated in grams per pound of feed.

~~C.~~ 7.3.4.3. Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the Federal Food Additive Regulations for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.

~~D.~~ 7.3.4.4. The term “milligrams per pound” may be used for drugs or antibiotics in those cases where a dosage is given in “milligrams” in the feeding directions.

~~Section~~ PART 8. Nutritional Adequacy

~~(a)~~ 8.1. The label of a pet food or specialty pet food which is intended for all life stages of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as “complete and balanced”, “perfect”, “scientific”, or “100% nutritious” if at least one of the following apply:

~~(1)~~ 8.1.1. The product meets the nutrient requirements for all life stages established by an AAFCO-Recognized Nutrient Profile; or

~~(2)~~ 8.1.2. The product meets the criteria for all life stages as substantiated by completion of the appropriate AAFCO-Recognized Animal Feeding Protocol(s); or

~~(3)~~ 8.1.3. The product is a member of a product family which is nutritionally similar to a lead product which contains a combination of ingredients that has been fed to a normal animal as the sole source of nourishment in accordance with the testing procedures established by AAFCO for all life stages, provided that:

~~A.~~ 8.1.3.1. The nutritional similarity of the family product can be substantiated according to the appropriate AAFCO Family Guidelines, and

~~B.~~ 8.1.3.2. The family product meets the criteria for all life stages; and

~~C.~~ 8.1.3.3. Under circumstances of reasonable doubt, the Commissioner may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy.

~~(b)~~ 8.2. The label of a pet food or specialty pet food which is intended for a limited purpose or a specific life stage, but not for all life stages, may include a qualified claim such as “complete and balanced”, “perfect”, “scientific”, or “100% nutritious” when the product and claim meets all of the following:

~~(1)~~ 8.2.1. The claim is qualified with a statement of the limited purpose or specific life stage for which the product is intended or suitable, for example, “complete and balanced for puppies (or kittens)”. The claim and the required qualification shall be juxtaposed on the same label panel and in the same size, style and color print; and

~~(2)~~ 8.2.2. The product meets at least one of the following:

~~A.~~ 8.2.2.1. The nutrient requirements for the limited purpose or specific life stage established by an AAFCO-Recognized Nutrient Profile; or

~~B.~~ 8.2.2.2. The criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate AAFCO-Recognized Animal Feeding Protocol(s); or

~~C.~~ 8.2.2.3. The product is a member of a product family which is nutritionally similar to a lead product which contains a combination of ingredients which, when fed for such limited purpose, will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing, and provided that:

~~1.~~ 8.2.2.3.1. The nutritional similarity of the family product can be

substantiated according to the appropriate AAFCO Family Guidelines; and

~~2.~~ 8.2.2.3.2. The family product meets the criteria for such limited purpose; and

~~3.~~ 8.2.2.3.3. Under circumstances of reasonable doubt, the Commissioner may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy.

~~(c)~~ 8.3. Dog and cat food labels shall include a statement of nutritional adequacy or purpose of the product except when the dog or cat food is clearly and conspicuously identified on the principal display panel as a “snack” or “treat”. The statement shall consist of one of the following:

~~(1)~~ 8.3.1. A claim that the dog or cat food meets the requirements of one or more of the recognized categories of nutritional adequacy: gestation/lactation, growth, maintenance, and all life stages. The claim shall be stated verbatim as one of the following:

~~A.~~ 8.3.1.1. “(Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for ___.” (Blank is to be completed by using the stage or stages of the pet's life, such as, gestation/lactation, growth, maintenance or the words “All Life Stages”); or

~~B.~~ 8.3.1.2. “Animal feeding tests using AAFCO procedures substantiate that (Name of Product) provides complete and balanced nutrition for __.” (Blank is to be completed by using the stage or stages of the pet's life tested, such as, gestation/lactation, growth, maintenance or the words “All Life Stages”); or

~~C.~~ 8.3.1.3. “(Name of Product) provides complete and balanced nutrition for __ (Blank is to be completed by using the stage or stages of the pet's life, such as gestation, lactation, growth, maintenance or the words “All Life Stages”) and is comparable in nutritional adequacy to a product which has been substantiated using AAFCO feeding tests.”

~~(2)~~ 8.3.2. A nutritional or dietary claim for purposes other than those listed in ~~section~~ PART 8.~~1(a)~~ or ~~8.2(b)~~ if the claim is scientifically substantiated; or

~~(3)~~ 8.3.3. The statement: “This product is intended for intermittent or supplemental feeding only”, if a product does not meet the requirements of ~~section~~ PART 8.~~1(a)~~ or ~~8.2(b)~~ or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding.

~~(d)~~ 8.4. A product intended for use by, or under the supervision or direction of a veterinarian shall make a statement in accordance with ~~section~~ PART 8.~~3.1(c)(1)~~ or ~~(3)~~8.3.3.

~~(e)~~ 8.5. A signed affidavit attesting that the product meets the requirements of ~~section~~ PART 8.~~1(a)~~ or ~~(b)~~ ~~(2)~~8.2 shall be submitted to the Commissioner upon request.

~~(f)~~ 8.6. If the nutrient content of a product does not meet those nutrient requirements established by an AAFCO-Recognized Nutrient Profile, or if no requirement has been established by an AAFCO-Recognized Nutritional Authority for the life stage(s) of the intended species, the claimed nutritional adequacy or purpose of the product shall be scientifically substantiated.

~~(g)~~ 8.7. The following shall be acceptable as the basis for a claim of nutritional adequacy:

~~(1)~~ 8.7.1. An AAFCO-Recognized Nutrient Profile or Nutritional Authority:

~~A.~~ 8.7.1.1. For dogs, the AAFCO Dog Food Nutrient Profiles;

~~B.~~ 8.7.1.2. For cats, the AAFCO Cat Food Nutrient Profiles;

~~C.~~ 8.7.1.3. For specialty pets, a nutrient recommendation approved by the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences, provided that such nutrient recommendation is recognized only for the specific species of specialty pet for which the profile is intended.

~~(2)~~ 8.7.2. An AAFCO-Recognized Animal Feeding Protocol(s):

~~A.~~ 8.7.2.1. The AAFCO Dog Food Feeding Protocols; or

~~B.~~ 8.7.2.2. The AAFCO Cat Food Feeding Protocols.

~~Section~~ PART 9. Feeding Directions

~~(a)~~ 9.1. Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in ~~section~~ PART 8.3.1~~(c)(1)~~, except those pet foods labeled in accordance with ~~section~~ PART 8.4~~(d)~~, shall list feeding directions on the product label. These directions shall be consistent with the intended use(s) indicated in the nutritional adequacy statement, unless a limited use or more limited life stage designation is declared elsewhere (e.g., “adult formula”). These directions shall be expressed in common terms and shall appear prominently on the label. Feeding directions shall, at a minimum, state “Feed (weight/unit of product) per (weight only) of dog (or cat)”. The frequency of feeding shall also be specified.

~~(b)~~ 9.2. When a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement: “Use only as directed by your veterinarian” may be used in lieu of feeding directions.

~~(c)~~ 9.3. Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in ~~section~~ PART 8.1~~(a)~~, shall list feeding directions on the product label. These feeding directions shall be adequate to meet the nutrient requirements of the intended species of specialty pet as recommended by the AAFCO-Recognized Nutritional Authority. These directions shall be expressed in common terms and shall appear prominently on the label. The frequency of feeding shall also be specified.

~~Section~~ PART 10. Statements of Calorie Content

~~(a)~~ 10.1. Except as required in ~~section~~ PART 11, the label of a dog or cat food may bear a statement of calorie content when the label meets all of the following:

~~(1)~~ 10.1.1. The statement shall be separate and distinct from the “Guaranteed Analysis” and shall appear under the heading “Calorie Content”;

~~(2)~~ 10.1.2. The statement shall be measured in terms of metabolizable energy (ME) on an “as fed” basis and shall be expressed as “kilocalories per kilogram” (“kcal/kg”) of product, and may also be expressed as kilocalories per familiar household measure (e.g., cans, cups, pounds); and

~~(3)~~ 10.1.3. The calorie content is determined by one of the following methods:

~~A.~~ 10.1.3.1. By calculation using the following “Modified Atwater” formula:

ME (kcal/kg) = 10[(3.5 x CP) + (8.5 x CF) + (3.5 x NFE)]

Where: ME = Metabolizable Energy

CP = % crude protein "as fed"

CF = % crude fat "as fed"

NFE = % nitrogen-free extract (carbohydrate) "as fed"

and the percentages of CP and CF are the arithmetic averages from proximate analyses of at least four production batches of the product, and the NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash (determined in the same manner as CP and CF); or

~~B.~~ 10.1.3.2. In accordance with a testing procedure established by AAFCO.

~~(4)~~ 10.1.4. An affidavit shall be provided upon request to the Commissioner, substantiating that the calorie content was determined by:

~~A.~~ 10.1.4.1. ~~section~~ PART 10.1.3.1~~(a)(3)A~~ in which case the results of all the analyses used in the calculation shall accompany the affidavit; or

~~B.~~ 10.1.4.2. ~~section~~ PART 10.1.3.2~~(a)(3)B~~ in which case the summary data used in the determination of calorie content shall accompany the affidavit.

~~(5)~~ 10.1.5. The calorie content statement shall appear as one of the following:

~~A.~~ 10.1.5.1. The claim on the label or other labeling shall be followed parenthetically by the word "calculated" when the calorie content is determined in accordance with ~~section~~ PART 10.1.3.1~~(a)(3)A~~; or

~~B.~~ 10.1.5.2. The value of calorie content stated on the label which is determined in accordance with ~~section~~ PART 10.1.3.2~~(a)(3)B~~ shall not exceed or understate the value determined in accordance with ~~section~~ PART 10.1.3.1~~(a)(3)A~~ by more than 15%.

~~(b)~~ 10.2. Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared.

~~Section~~ PART 11. Descriptive Terms

~~(a)~~ 11.1. Calorie Terms

~~(1)~~ 11.1.1. "Light"

~~A.~~ 11.1.1.1. A dog food product which bears on its label the terms "light", "lite", "low calorie", or words of similar designation shall:

~~i.~~ 11.1.1.1.1. Contain no more than 3100 kcal ME/kg for products containing less than 20% moisture, no more than 2500 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 900 kcal ME/kg for products containing 65% or more moisture; and

~~ii.~~ 11.1.1.1.2. Include on the label a calorie content statement:

~~aa.~~ 11.1.1.1.2.1. In accordance with the format provided in ~~section~~ PART 10; and

~~bb.~~ 11.1.1.1.2.2. Which states no more than 3100 kcal ME/kg for products containing less than 20% moisture, no more than 2500 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 900 kcal ME/kg for products containing 65% or more moisture; and

~~iii.~~ 11.1.1.1.3. Include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

~~B.~~ 11.1.1.2. A cat food product which bears on its label the terms “light”, “lite”, “low calorie”, or words of similar designation shall:

~~i.~~ 11.1.1.2.1. Contain no more than 3250 kcal ME/kg for products containing less than 20% moisture, no more than 2650 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 950 kcal ME/kg for products containing 65% or more moisture; and

~~ii.~~ 11.1.1.2.2. Include on the label a calorie content statement:

~~aa.~~ 11.1.1.2.2.1. In accordance with the format provided in ~~section~~ PART 10; and

~~bb.~~ 11.1.1.2.2.2. Which states no more than 3250 kcal ME/kg for products containing less than 20% moisture, no more than 2650 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 950 kcal ME/kg for products containing 65% or more moisture; and

~~iii.~~ 11.1.1.2.3. Include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

~~(2)~~ 11.1.2. “Less” or “Reduced Calories”

~~A.~~ 11.1.2.1. A dog or cat food product which bears on its label a claim of “less calories”, “reduced calories”, or words of similar designation, shall include on the label:

~~i.~~ 11.1.2.1.1. The name of the product of comparison and the percentage of calorie reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label where the term appears; and

~~ii.~~ 11.1.2.1.2. The comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

~~iii.~~ 11.1.2.1.3. A calorie content statement in accordance with the format provided in ~~section~~ PART 10; and

~~iv.~~ 11.1.2.1.4. Feeding directions which reflect a reduction in calories compared to feeding directions for the product of comparison.

~~B.~~ **11.1.2.2.** A comparison between products in different categories of moisture content (i.e., less than 20%, 20% or more but less than 65%, 65% or more) is misleading,

~~(b)~~ **11.2.** Fat Terms

~~(1)~~ **11.2.1.** "Lean"

~~A.~~ **11.2.1.1.** A dog food product which bears on its label the terms "lean", "low fat", or words of similar designation shall:

~~i.~~ **11.2.1.1.1.** Contain no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for products containing 65% or more moisture; and

~~ii.~~ **11.2.1.1.2.** Include on the product label in the Guaranteed Analysis:

~~aa.~~ **11.2.1.1.2.1.** A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in **~~section~~** **PART** 5**.1.1~~(a)(1)~~**; and

~~bb.~~ **11.2.1.1.2.2.** A maximum crude fat guarantee which is no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for products containing 65% or more moisture.

~~B.~~ **11.2.1.2.** A cat food product which bears on its label the terms "lean", "low fat", or words of similar designation shall:

~~i.~~ **11.2.1.2.1.** Contain a maximum percentage of crude fat which is no more than 10% crude fat for products containing less than 20% moisture, no more than 8% crude fat for products containing 20% or more but less than 65% moisture, and no more than 5% crude fat for products containing 65% or more moisture; and

~~ii.~~ **11.2.1.2.2.** Include on the product label in the Guaranteed Analysis:

~~aa.~~ **11.2.1.2.2.1.** A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in **~~section~~** **PART** 4**.1.1~~(a)(1)~~**; and

~~bb.~~ **11.2.1.2.2.2.** A maximum crude fat guarantee which is no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for products containing 65% or more moisture.

~~(2)~~ **11.2.2.** "Less" or "Reduced Fat"

~~A.~~ **11.2.2.1.** A dog or cat food product which bears on its label a claim of "less fat",

"reduced fat", or words of similar designation, shall include on the label:

~~i.~~ 11.2.2.1.1. The name of the product of comparison and the percentage of fat reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label where the term appears; and

~~ii.~~ 11.2.2.1.2. The comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

~~iii.~~ 11.2.2.1.3. A maximum crude fat guarantee in the Guaranteed Analysis immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in ~~section~~ PART 5.1.1~~(a)(1).~~

~~B.~~ 11.2.2.2. A comparison on the label between products in different categories of moisture content (i.e., less than 20%, 20% or more but less than 65%, 65% or more) is misleading.

~~Section~~ PART 12. Manufacturer or Distributor; Name and Address

~~(a)~~ 12.1. The label of a pet food or specialty pet food shall specify the name and address of the manufacturer or distributor. The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if such street address is shown in a current city directory or telephone directory for the city listed on the label.

~~(b)~~ 12.2. When a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food or specialty pet food was manufactured or packaged or from where each package is to be distributed.

PART 13. ADULTERANTS

13.1. FOR THE PURPOSE OF SECTION 35-60-107(2)(A), C.R.S., OF THE COLORADO FEED LAW, THE TERMS "POISONOUS OR DELETERIOUS SUBSTANCES" INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:

13.1.1. PATHOGENIC BACTERIA, INCLUDING BUT NOT LIMITED TO *SALMONELLA SP.*

13.1.2. AFLATOXIN B1, B2, G1, G2 ABOVE 20 PARTS PER BILLION (PPB).

~~Section 13~~ PART 14. Material Incorporated by Reference

All materials incorporated by reference into these ~~r~~Rules may be examined at any state publications depository library. For further information on how the incorporated materials may be obtained or examined, please contact the Technical Services Section Chief at the Division of Inspection and Consumer Services, Department of Agriculture, 2331 West 31st Avenue, Denver, Colorado 80211.

PART 15. FALSE OR INCOMPLETE INFORMATION

ALL INFORMATION REQUIRED BY THE COMMISSIONER FROM ANY PERSON IN CONNECTION WITH ANY APPLICATION FOR A REGISTRATION, REPORT, OR RECORD REQUIRED UNDER THE COLORADO FEED LAW MUST BE ACCURATE AND COMPLETE. FAILURE TO PROVIDE ACCURATE AND COMPLETE INFORMATION IN CONNECTION WITH ANY SUCH DOCUMENT, INCLUDING BUT NOT LIMITED TO PROVIDING ALL DOCUMENTATION REQUIRED TO ESTABLISH AN INDIVIDUAL APPLICANT'S LAWFUL PRESENCE IN THE UNITED STATES PURSUANT TO SECTION 24-76.5-103,

C.R.S., SHALL BE GROUNDS FOR DENIAL OF AN APPLICATION FOR REGISTRATION OR FOR RENEWAL THEREOF, OR REVOCATION OR SUSPENSION OF AN EXISTING REGISTRATION.

PART 16. COMMERCIAL FEED REGISTRATION

NO PERSON SHALL MANUFACTURE COMMERCIAL FEED WITHIN THE STATE OR ALLOW HIS OR HER NAME TO APPEAR ON THE LABEL OF A COMMERCIAL FEED AS GUARANTOR, WITHOUT FIRST REGISTERING WITH THE DEPARTMENT AS REQUIRED BY SECTIONS 35-60-103, C.R.S., AND 35-60-104. SUCH REGISTRATION SHALL EXPIRE ON DECEMBER 31ST AND MAY BE RENEWED ANNUALLY.

PART 17. DISTRIBUTION FEES-REPORTS

17.1. A DISTRIBUTOR WHO IS SUBJECT TO A TONNAGE DISTRIBUTION FEE REQUIRED BY SECTION 35-60-105(1), C.R.S., SHALL FILE WITH THE COMMISSIONER, NO LATER THAN JANUARY 31ST EACH YEAR, A STATEMENT THAT SETS FORTH THE NUMBER OF NET TONS OF COMMERCIAL FEEDS DISTRIBUTED IN THE STATE.

17.2. A DISTRIBUTOR WHO IS SUBJECT TO THE DISTRIBUTION FEE FOR SMALL PACKAGES OF TEN POUNDS OR LESS SHALL FILE WITH THE COMMISSIONER, NO LATER THAN DECEMBER 31ST EACH YEAR, A LIST OF ALL SMALL PACKAGE PRODUCTS OF TEN POUNDS OR LESS THAT ARE DISTRIBUTED IN THIS STATE.

17.3. A DISTRIBUTOR WHO IS SUBJECT TO A TONNAGE DISTRIBUTION FEE REQUIRED BY SECTION 35-60-105(1), C.R.S., AND THE DISTRIBUTION FEE FOR SMALL PACKAGES OF TEN POUNDS OR LESS SHALL COMPLY WITH BOTH PARTS 17.1 AND 17.2 OF THESE RULES.

~~Section~~14 PART 18 . Statements of Basis, Specific Statutory Authority and Purpose

~~(a)~~18.1. Adopted April 10, 2001 – Effective May 30, 2001

STATUTORY AUTHORITY:

The Commissioner of Agriculture, Colorado Department of Agriculture, adopts these permanent rules pursuant to the provisions and requirements of the Colorado Commercial Feed Law, § 35-60- 109(1), C.R.S. (2000).

PURPOSE:

The purpose of these rules is to comply with the requirements of the Colorado Commercial Feed to provide specific guidelines for the manufacture, labeling and distribution of commercial feed.

These rules are designed to:

- Set standards for the correct labeling of livestock and pet food.

- Set standards for good manufacturing practices for medicated livestock feed.

FACTUAL AND POLICY ISSUES:

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

1. The Colorado Commercial Feed Law was repealed and reenacted effective January 1, 2000. That statute requires the Commissioner to adopt the Official Definitions of Feed Ingredients and Official Feed Terms adopted by the Association of American Feed Control Officials, Inc. AAFCO),

as published in the official publication of such association.

2. These new, revised rules are based upon national standard (model) regulations developed by AAFCO, a nation-wide group of regulatory officials. They are specifically for the purpose of promoting standardization between states for the animal feed industry.

3. Over 30% of the states have adopted the AAFCO model regulations. These rules are widely accepted by Colorado and national feed companies. Adoption of these rules would help to ensure uniform labeling requirements.

4. The Department met with the Colorado Grain and Feed Association's (CFGA) Feed Committee throughout the rule drafting process. The CGFA supports these new rules and regulations.

5. Two sets of rules are needed, one for livestock feed, the other for pet food. Livestock feed rules are specific to matters regarding production, animal growth and weight gain, and use of medications in feed. Pet food rules employ separate criteria for complete and balanced nutrition and provide regulatory guidance for advertising and claims frequently found on pet food labels.

~~(b)~~18.2. Adopted November 1, 2007 – Effective December 30, 2007

STATUTORY AUTHORITY

These amendments are proposed for adoption by the Commissioner pursuant to his authority in section 35-60-109(1), C.R.S.

PURPOSE

The purposes of these amendments are as follows:

(a) To amend the name of the Act used in the Rules to correspond with the new name adopted under Senate Bill 07-207.

(b) To amend the listing of guarantees from an "as fed" basis to an "as is" basis.

(c) Modify the definition of "pet."

(d) Update the references to the official publications of the Association of American Feed Control Officials (AAFCO) incorporated by reference to the 2007 version.

(e) To add section 14 to contain the Statements of Basis, Specific Statutory Authority and Purpose.

(f) To correct typographical errors.

FACTUAL BASIS

(a) On May 22, 2007, the Colorado Commercial Feed Law was amended by Senate Bill 07-207. The title of the law was amended to the Colorado Feed Law.

(b) The current rules require the guaranteed analysis to be listed on an "as fed" basis. The AAFCO national standard requires it to be listed on an "as is" basis.

(c) The AAFCO national standard definition of "pet" means dog or cat.

18.3. Adopted February 11, 2015 – Effective March 30, 2015

*Editing comments: Changes to this rule are indicated in **~~bold strikethrough~~** for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red.*

THE COMMISSIONER'S AUTHORITY FOR THE ADOPTION OF THESE PERMANENT RULE AMENDMENTS IS SET FORTH IN SECTION 35-60-109(1), C.R.S.

THE PURPOSE OF THIS RULEMAKING IS TO:

1. **EDIT PART 1 LEGAL AUTHORITY TO INCLUDE ALL RULEMAKING AUTHORITY IN 35-60, C.R.S.**
2. **UPDATE THE REFERENCES THROUGHOUT THE RULES TO THE OFFICIAL PUBLICATION OF THE ASSOCIATION OF AMERICAN FEED CONTROL OFFICIALS (AAFCO) INCORPORATED BY REFERENCE TO THE 2015 VERSION.**
3. **ADD PART 2.3 TO SPECIFY THE COMMODITIES THAT ARE EXEMPTED FROM THE DEFINITION OF "COMMERCIAL FEED", AND TO DEFINE WHEN THAT EXEMPTION DOES NOT APPLY.**
4. **EDIT PART 2.16 AND 2.19 FOR CLARITY.**
5. **ADD PART 3.9 TO SPECIFY RAW PET FOOD LABELING REQUIREMENTS TO INCLUDE SAFE HANDLING DIRECTIONS ON THE LABEL.**
6. **AMEND PART 4.2.1 PRODUCT NAME REQUIREMENTS FOR PET FOODS TO GIVE MANUFACTURERS MORE FLEXIBILITY WHEN USING THE "95% RULE."**
7. **AMEND PART 4.2.2 FOR CLARITY AND UNIFORMITY.**
8. **ADD PART 5.10 TO SPECIFY LABELING EXEMPTIONS FOR PET FOOD ITEMS MADE FROM ANIMAL SKIN AND/OR CARTILAGE TO ALLOW THESE PRODUCTS TO BE DISTRIBUTED WITHOUT A GUARANTEED ANALYSIS STATEMENT.**
9. **ADD PART 13 (ADULTERANTS), PART 15 (FALSE OR INCOMPLETE INFORMATION), PART 16 (COMMERCIAL FEED REGISTRATION), AND PART 17 (DISTRIBUTION FEES-REPORTS).**
10. **CORRECT TYPOGRAPHICAL ERRORS.**
11. **REFORMAT RULES TO MEET NEW RULEMAKING GUIDELINES.**

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 THESE RULES DID NOT INCLUDE THE RULEMAKING AUTHORITY UNDER SECTION 35-60-102(2), C.R.S.**
2. **NUMEROUS CHANGES TO THE AAFCO PUBLICATION HAVE OCCURRED SINCE THE PRINTING OF THE 2007 VERSION WHICH IS REFERENCED IN THE RULES. THIS CHANGE WILL MAKE OUR RULES MORE CONSISTENT WITH OTHER STATES' FEED RULES.**
3. **THIS RULE NEEDED TO BE ADDED TO MAKE THE PET FOOD RULES A STAND-ALONE SET OF RULES.**
4. **RAW PET FOOD SAFE HANDLING LABELING REQUIREMENTS ARE NEEDED TO ENSURE THE SAFE USE OF THESE TYPE PRODUCTS.**
5. **WHEN THE RULE WAS ORIGINALLY DRAFTED, MANUFACTURERS TYPICALLY ONLY USED MEAT INGREDIENTS IN THE PRODUCT NAME. CURRENT PET FOOD PRODUCTS INCORPORATE MANY**

ingredients that, under the current Rule, cannot be used as part of the product name. This change will allow manufacturers more flexibility with naming products.

6. The industry standard for labeling of rawhide pet treats does not include a guaranteed analysis statement. This eliminates the need for national distributors to re-label their products.

7. Parts 13, 15, 16 and 17 were previously sub-Rules under 1202-6 (Rules for Commercial Feed). Parts 13, 15, 16, and 17 have been copied from 8 CCR 1202-6 and duplicated in 8 CCR 1202-7 (Rules for Pet Food) in order to make the Pet Food Rules a stand-alone set of rules.

8. These amendments incorporate changes as a result of the Department's Regulatory Efficiency Review Process.

COLORADO
Department of Agriculture
00 F 303.466.2867
..ww.colorado.gov/ag

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

"Rules for Pet Food Under the Colorado Feed Law, Sections 35-60-101 through 115, C.R.S."

8 CCR 1202-7

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE:	Friday, January 23, 2015
TIME:	9:00 a.m.
LOCATION:	Colorado Department of Agriculture San Juan Conference Room 305 Interlocken Parkway Broomfield, Colorado 80021

The purpose of this rulemaking is to update statutory references; update references to the 2015 official publication of AAFCO; specify commodity and label exemptions; specify labeling and product name requirements; add rules for adulterants, false or incomplete information, commercial feed registration and distribution fees-reports. Amendments will also incorporate changes as a result of the Department's Regulatory Efficiency Review Process; add clarity, uniformity and correct typographical errors and formatting.

The statutory authority for these rules is § 35-60-102(2) and 35-60-109(1), C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 303-869-9002. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.

Notice of Rulemaking Hearing

Tracking number

2014-01257

Department

1200 - Department of Agriculture

Agency

1203 - Plant Industry Division

CCR number

8 CCR 1203-22

Rule title

RULES AND REGULATIONS PERTAINING TO THE COLORADO SEED POTATO ACT

Rulemaking Hearing

Date

01/15/2015

Time

04:00 PM

Location

Colorado Potato Administrative Committee, 1305 Park Avenue Monte Vista, CO 81144

Subjects and issues involved

The purpose of this rulemaking is to make amendments to provide and establish standards for diseases and viruses for all certified seed potatoes; establish record keeping and testing requirements; correct statutory references and include statutory citations; adjust the hourly fee for work conducted for the Colorado Seed Potato Act; and clarify the scope of the rule. These amendments incorporate changes as a result of the Departments Regulatory Efficiency Review Process.

Statutory authority

35-27.0-108 (1)(b)(II) and (IV), and 35-27.3-101 through 112

Contact information

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*Editing comments: Changes to this rule are indicated in **~~bold strikethrough~~** for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red.*

COLORADO DEPARTMENT OF AGRICULTURE

Plant Industry Division

RULES AND REGULATIONS PERTAINING TO THE COLORADO SEED POTATO ACT

8 CCR 1203-22

Part 1.0 Definitions:

These ~~r~~Rules incorporate the definitions set forth in § 35-27.3-103, C.R.S.

Part 2.0 Requirements for ~~Imported~~ ALL CERTIFIED Seed Potatoes

2.1.0 Pursuant to § 35-27.3-~~105(1)(b)~~108(1)(B)(II), C.R.S., all ~~lots of~~ CERTIFIED seed potatoes ~~imported into~~ PLANTED IN Colorado BEFORE AUGUST 1, 2015, IN LOTS SUFFICIENT TO PLANT ONE OR MORE ACRES AS SPECIFIED IN PART 9.0, must meet the following requirements:

2.1.1 The lot may contain no more than 1.5% tubers with Leafroll Virus;

2.1.2 The lot may contain no more than ~~10~~8% tubers with total virus based on post harvest testing;

2.1.3 The lot may contain no more than 1.5 % tubers with Necrotic viruses except that no tubers may contain any ~~PVY^{N}, PVY^{NTN},~~ Mop Top or Tobacco Rattle Virus;

2.1.4 The lot must be free of Bacterial Ring Rot (Clavibacter michiganensis subsp. sepedonicus) and Golden nematode (Globodera rostenchiensis),

2.1.5 All seed potatoes imported into the San Luis Valley must meet the requirements of the Quarantine for Late Blight, 8 CCR 1203-13.

2.2.0 ~~Growers must maintain documentation of compliance with these standards for a period of two years for each lot of seed potatoes planted.~~ PURSUANT TO § 35-27.3-108(1)(B)(II), C.R.S., ALL CERTIFIED SEED POTATOES PLANTED IN COLORADO ON OR AFTER AUGUST 1, 2015, IN LOTS SUFFICIENT TO PLANT ONE OR MORE ACRES AS SPECIFIED IN PART 9.0, MUST MEET THE FOLLOWING REQUIREMENTS:

2.2.1 BASED ON THE POSTHARVEST TEST, THE LOT MAY CONTAIN NO MORE THAN 5% TUBERS WITH VIRUS, INCLUDING NO MORE THAN 1% PVY^{N} SEROTYPE STRAINS.

2.2.2 SHOULD A POSTHARVEST TEST NOT BE USABLE DUE TO WEATHER OR GROWING CONDITIONS, THE LOT MAY CONTAIN NO MORE THAN 1% TOTAL VIRUS BASED ON THE SECOND FIELD INSPECTION OF PLANTS PERFORMED FOR SEED CERTIFICATION.

2.2.3 NO TUBERS MAY CONTAIN ANY MOP TOP OR TOBACCO RATTLE VIRUS;

2.2.4 THE LOT MUST BE FREE OF BACTERIAL RING ROT (CLAVIBACTER MICHIGANENSIS SUBSP. SEPEDONICUS) AND GOLDEN NEMATODE (GLOBODERA ROSTENCHIENSIS),

2.2.5 All seed potatoes imported into the San Luis Valley must meet the requirements of the Quarantine for Late Blight, 8 CCR 1203-13.

2.3.0 Growers must maintain documentation of compliance with these disease standards for a period of two years for each lot of seed potatoes planted.

Part 3.0 Requirements for Sampling, Testing and Inspection of Noncertified Seed Potatoes

3.1.0 Noncertified seed potatoes more than one year removed from certification may only be planted if the testing in 3.2.2 verifies the lot meets the disease standards in Part 4.0.

3.2.0 Pursuant to § 35-27.3-105(2)(b), C.R.S., noncertified seed potatoes more than one year removed from certification must be sampled and tested in the following manner prior to planting.

3.2.1 Sampling

3.2.1.1 The grower must provide a sample of 400 tubers for each lot along with name of the grower, cultivar name and source of the cultivar to the Colorado State University San Luis Valley Research Center Laboratory.

3.2.2 Testing

3.2.2.1 A 400 tuber sample for each lot to be planted must be analyzed by the Colorado State University San Luis Valley Research Center Laboratory for all disease standards specified in Part 4.0 of this Rrule.

3.2.3 The grower is responsible for all costs associated with sampling and testing.

Part 4.0 Quality and Disease Standards for Noncertified Seed Potatoes

4.1.0 Pursuant to § 35-27.3-108 (1)(b)(IV), C.R.S., Aall noncertified seed potatoes that are planted in lots sufficient to plant one or more acres as specified in Part 9.0 shall not exceed the following standards: disease standards specified in paragraph 16.f., "Postharvest Testing Disease Tolerances," of the "General Requirements that Apply to All Certified Seed Potatoes" set forth in the most current version of the "Colorado Rules and Regulations for the Certification of Seed Potatoes," established by Colorado State University in cooperation with the Colorado Certified Potato Growers Association. The most current version of Colorado Rules and Regulations for the Certification of Seed Potatoes may be downloaded from the following website http://potatoes.colostate.edu/potato-certification-service.

4.1.1 All of the tubers must be free from Bacterial Ring Rot (Clavibacter michiganensis subsp. Sepedonicus), Golden nematode (Globodera rostenchiensis), Late Blight (Phytophthora infestans), and Tobacco Rattle Virus (visual symptoms).

4.1.2 Growers must maintain documentation of compliance with the disease standards specified in this Part 4.0 for a period of two years for each lot of seed potatoes planted.

Part 5.0 Random Selection of Potato Growers for Records Review

5.1.0 Each year by April 1, the Colorado Potato Administration Committee offices for areas 2 and 3 shall submit a list of all potato growers to the Department.

5.2.0 The Department will select ten percent of the growers at random using computer based random number generating software.

5.3.0 The Department will conduct records inspections on the selected growers.

Part 6.0 Grower Requests for Exemptions under § 35-27.3-105(3), C.R.S.

6.1.0 The grower must apply to the Seed Potato Advisory Committee by completing and submitting the official form to the Colorado Potato Administrative Committee office for the area in which the grower is located.

6.2.0 The Commissioner shall notify the grower when an exemption is authorized.

Part 7.0 Requirements for seed potatoes planted under § 35-27.3-105(3) C.R.S.

7.1.0 Seed potatoes granted an exemption pursuant to § 35-27.3-105(3), C.R.S., may not be planted unless a 400 tuber sample from the lot is submitted for testing to the Colorado State University San Luis Valley Research Center Laboratory and is confirmed to meet the following requirements:

7.1.1 The lot submitted must be free from Bacterial Ring Rot (Clavibacter michiganensis subsp. Sepedonicus) and Late Blight (Phytophthora infestans).

Part 8.0 Fee schedule for services performed by the Department

8.1.0 The Department shall bill the CPAC area offices for services performed by the Department at the following rates:

8.1.1 Hourly fee: $~~35~~37.50;

8.1.2 Mileage: Cost charged by Colorado State Fleet Management for state vehicles, the state personal mileage rate when using private vehicles;

8.1.3 Per Diem: State rates;

8.1.4 Legal Services: Billed at the rate charged to the Department.

Part 9.0 Seed potatoes needed to plant one or more acres~~.~~

9.1.0 For the purposes of the Colorado Seed Potato Act and these **R**~~r~~ules, the amount of potatoes sufficient to plant one or more acres shall be up to fifty hundredweight of seed potatoes.

Part 10.0 – 12.0 Reserved

Part 13.0 Statement of Basis, Specific Statutory Authority and Purpose

13.1.0 June 14, 2011 – Effective January 1, 2012

Statutory Authority

These rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Colorado Seed Potato Act (the "Act"), §§ 35-27.3-101 through 112, C.R.S.

Purpose

The purpose of these proposed rules is to implement the Colorado Seed Potato Act.

Part 1.0 explains where the definitions for terms used in the rules can be found and states that the definitions in the Act are applicable to the rules.

Part 2.0 states the requirements of the State National Harmonization Program and lists which quarantines are applicable to seed potatoes.

Part 3.0 states the requirements for compliance verification, testing, sampling, and inspection.

Part 4.0 specifies the quality and disease standards that must be met for seed potatoes to be planted.

Part 5.0 specifies how the Commissioner will randomly select ten percent of potato growers for records inspections.

Part 6.0 specifies where the growers seeking an exemption pursuant to § 35-27.3.105(3), C.R.S. must submit their request and states that the Commissioner will notify the grower when an exemption is authorized.

Part 7.0 specifies the methods that must be used for determining that bacterial ring rot and late blight are not present in the seed potatoes requested for planting.

Part 8.0 specifies the fees the Department will charge for services provided.

Part 9.0 specifies the amount of seed potatoes that are sufficient to plant one or more acres.

Factual and Policy Basis Issues

The factual and policy issues encountered when developing these rules include:

1) The Colorado Seed Potato Act was passed by the General Assembly and signed into law by Governor Ritter in 2010. The Act requires the development of several rules for the implementation of the Act. The Act's requirements will be effective January 1, 2012, therefore all rules must be developed prior to this time.

2) Part 1.0: The definitions in the Act are referenced in this section so producers know where to find the definitions for terms used in the proposed rules

3) Part 2.0: Section 35-27.3.105(b), C.R.S. of the Act requires that seed potatoes imported into Colorado meet the requirements of the State National Harmonization Program and any applicable quarantine. Sections 2.1.1 through 2.1.5 of the proposed rules states the requirements as listed in the State National Harmonization Program. USDA developed the State National Harmonization program requirements as a means to establish minimum quality requirements for potato seed quality to facilitate international export of seed potatoes. These requirements are listed in USDA's program. Section 2.1.6 states the seed must meet the requirements of the late blight quarantine. The late blight quarantine is the only applicable quarantine at this time. The Colorado Department of Agriculture has not adopted any other quarantine for seed potatoes.

4) Part 3.0: Section 35-27.3.108(1)(b)(I), C.R.S. of the Act requires the Commissioner to establish requirements for compliance verification, testing, sampling, and inspection. Part 3.0 states the requirements. 400 tubers is the common quantity used for disease analysis in potatoes. These figures come from both certified seed potato regulations as well as requirements for disease monitoring on potato tubers for export. The Acts states that a

grower must submit seed stock to the certifying authority of Colorado for testing and the certifying authority of Colorado approves the seed stock for planting. Colorado State University is the certifying authority for seed potatoes in Colorado. Colorado State University operates the San Luis Valley Research Center Laboratory for potato testing so this is the best laboratory for potato disease testing.

5) Part 4.0: Section 35-27.3.108(1)(b)(II), C.R.S. of the Act requires the Commissioner to specify quality or disease standards for potatoes. Part 4.0 of the proposed rules states these requirements. These standards are based on seed certification requirements for potatoes. These are generally accepted standards for disease prevention and control.

   Section 35-27.3.108(1)(b)(IV), C.R.S. requires the Commissioner to set standards for uncertified seed stock that may be planted pursuant to § 35-27.3-105(2)(b), C.R.S. These standards are in Part 4.0 of the rules also mentioned above.

6) Part 5.0: Section 35-27.3.108(1)(b)(III) C.R.S. requires the Commissioner to adopt rules to allow for the random selection of ten percent of potato growers subject to the annual records review required under § 35-27.3-106(2), C.R.S. These proposed rules are stated in Part 5.0. The most objective manner to choose the ten percent is through a computer random number generator. The Department has the software to do this.

7) Part 6.0: The Commissioner also has the authority in § 35-27.3-108, C.R.S. to adopt rules necessary for the administration and enforcement of this article. Part 6.0 of the proposed rules was developed to provide guidance to growers seeking an exemption pursuant to § 35-27.3.105(3), C.R.S. This rule states where the grower must submit their request and also states that the Commissioner will notify the grower when an exemption is authorized.

8) Part 7.0: Section 35-27.3.108(1)(b)(V), C.R.S. requires the Commissioner to establish methods for determining that bacterial ring rot or an unacceptable level of community diseases is not present in seed potatoes planted under § 35-27.3-105 (3), C.R.S. These requirements are stated in part 7.0 of the rules. The number of tubers from each lot that must be submitted and who will do the testing are the same as previously described for Part 3.0 of the rules. This testing is the same process.

9) Part 8.0: Section 35-27.3.108(1)(b)(VII), C.R.S. requires the Commissioner to set a schedule of fees for services performed by the Department. These fees are stated in Part 8 of the proposed rules. The fees are based on actual costs of services from the Department.

10) Part 9.0: Section 35-27.3.104, C.R.S. requires the Commissioner to establish the amount of seed potatoes that are sufficient to plant one or more acres as this is the threshold for determining if a grower must be in compliance with the Act. This amount is stated in Part 9.0 of the proposed rules. Through discussion with the Seed Potato Act Advisory Committee it was determined that based on the variety of seed potatoes being planted the amount to plant one or more acres was up to fifty hundredweight of seed potatoes.

13.2.0 February 12, 2014 – Effective March 30, 2014

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture

pursuant to his authority under the Colorado Seed Potato Act, § 35-27.3-108(1)(b), C.R.S.

The purpose of these proposed Rule amendments are as follows:

1. To clarify in Parts 2.1.1, 2.1.2 and 2.1.3 that the disease percentage is based on the number of tubers with the various viruses or diseases.

2. To reduce the percentage of tubers allowed with necrotic viruses in Part 2.1.3 from 2% to 1.5%.

3. To clarify in 2.1.3 that PVY^{N} refers to all strains of PVY^{N}.

4. To clarify the language in 2.1.3 regarding the standard for PVY^{N}, PVY^{NTN}, mop top and tobacco rattle virus.

5. To require in Part 4.1.0 that the disease standards for seed potatoes to be replanted are the same as what is required in the Colorado Rules and Regulations for the Certification of Seed Potatoes established by Colorado State University in cooperation with the Colorado Certified Potato Growers Association.

Factual and policy basis issues encountered when developing these Rules include:

1. Adding the terminology, “tubers with,” clarifies how the percentage of a virus or disease is calculated for purposes of these Rules.

2. The potato industry is trying to reduce the amount of disease in seed potatoes. Colorado State University and the Colorado Certified Potato Growers Association are reducing their certified seed standards for necrotic diseases to 1.5%. Incorporating this standard into the Colorado Seed Potato Act Rules creates a consistent standard for the industry.

3. There are several strains of PVYN. The amendment to Part 2.1.3 recognizes this and clarifies that all of the strains are regulated.

4. The Colorado Rules and Regulations for the Certification of Seed Potatoes and the Colorado Seed Potato Act Rules both contain standards for the same diseases. Referencing the Colorado Rules and Regulations for the Certification of Seed Potatoes in these Rules is the simplest and most effective way to make the standards equivalent now and ensure consistency in the future if the standards change.

13.3.0 February 11, 2015 – Effective March 30, 2015

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Colorado Seed Potato Act (the “Act”) §§ 35-27.3-101 through 112, C.R.S., specifically, §§ 35-27.0-108(1)(b)(II) and (IV), C.R.S.

The purposes of these proposed Rule Amendments are as follows:

1. Amend Part 2.0 title to include all certified seed potatoes, not just imported seed potatoes.

2. Amend Rule 2.1.0 to correct the statutory reference and clarify the scope of the Rule.

*Editing comments: Changes to this rule are indicated in **~~bold strikethrough~~** for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red.*

3. AMEND RULE 2.1.2 TO LOWER THE STANDARD FOR TOTAL VIRUS FROM 10% TO 8% BASED ON POSTHARVEST TESTING.

4. AMEND RULE 2.1.3 TO REMOVE THE ZERO TOLERANCE FOR PVY^{N} AND PVY^{NTN} AND INCLUDE THOSE IN THE 1.5% TOLERANCE FOR NECROTIC VIRUSES.

5. ADD A NEW RULE 2.2.0 TO PROVIDE THE STATUTORY CITATION FOR THE AUTHORITY OF THIS RULE, CLARIFY WHICH SEED POTATOES ARE SUBJECT TO THE STANDARDS LISTED IN 2.2.1 THROUGH 2.2.5, AND ESTABLISH DISEASE STANDARDS IN 2.2.1 THROUGH 2.2.5 FOR SEED POTATOES PLANTED ON OR AFTER AUGUST 1, 2015.

6. ADOPT A NEW RULE 2.2.1 ESTABLISHING VIRUS STANDARDS FOR TOTAL VIRUS AS WELL AS PVY^{N} SEROTYPE STRAINS AS DETERMINED BY A POSTHARVEST TEST.

7. ADOPT A NEW RULE 2.2.2 ESTABLISHING AN ALTERNATIVE STANDARD FOR DISEASE LEVELS SHOULD A POSTHARVEST TEST NOT BE USEABLE.

8. ADOPT A NEW RULE 2.2.3 MAINTAINING THE CURRENT ZERO TOLERANCE FOR MOP TOP AND TOBACCO RATTLE VIRUS AFTER AUGUST 1, 2015.

9. ADOPT A NEW RULE 2.2.4 MAINTAINING THE CURRENT ZERO TOLERANCE FOR BACTERIAL RING ROT AND GOLDEN NEMATODE AFTER AUGUST 1, 2015.

10. ADOPT A NEW RULE 2.2.5 MAINTAINING THE REQUIREMENT THAT ALL IMPORTED SEED POTATOES BE FREE FROM LATE BLIGHT AND MEET THE REQUIREMENTS OF THE LATE BLIGHT QUARANTINE AFTER AUGUST 1, 2015.

11. ADOPT A NEW RULE 2.3.0 MAINTAINING THE CURRENT REQUIREMENT THAT RECORDS OF COMPLIANCE WITH THE DISEASE STANDARDS IN PART 2.0 MUST BE MAINTAINED FOR TWO YEARS.

12. AMEND RULE 4.1.0 TO INCLUDE THE STATUTORY CITATION THAT AUTHORIZES THIS RULE.

13. ADD A NEW RULE 4.1.2 CLARIFYING THE CURRENT REQUIREMENT THAT RECORDS OF COMPLIANCE WITH THE DISEASE STANDARDS IN PART 4.0 MUST BE MAINTAINED FOR TWO YEARS.

14. CHANGE THE HOURLY FEE CHARGED BY THE DEPARTMENT FOR WORK CONDUCTED FOR THE ACT TO REFLECT THE CURRENT NON-MANDATORY INSPECTION FEE CHARGED BY THE FRUIT AND VEGETABLE INSPECTION SERVICE.

FACTUAL AND POLICY BASIS ISSUES ENCOUNTERED WHEN DEVELOPING THESE RULES INCLUDE:

1. THE CURRENT RULES IN PART 2.0 APPLY ONLY TO IMPORTED SEED POTATOES, NOT POTATOES PRODUCED IN COLORADO, WHICH BY DEFAULT ARE THEREFORE SUBJECT ONLY TO THE SEED POTATO CERTIFICATION STANDARDS. PART 2.0 AS AMENDED NOW ESTABLISHES THE DISEASE STANDARDS FOR BOTH IMPORTED SEED POTATOES AND SEED POTATOES PRODUCED IN COLORADO. THESE STANDARDS NEED TO BE THE SAME TO CLARIFY PLANTING REQUIREMENTS.

2. THE STANDARD IS BEING LOWERED FOR TOTAL VIRUS TO MATCH THE RULES ENACTED BY THE COLORADO CERTIFIED SEED GROWERS ASSOCIATION. ALSO THE STANDARD FOR TOTAL VIRUS IS BEING LOWERED TO OFFSET THE INCREASE IN PVY^{N} STRAINS THAT ARE NOW BEING ALLOWED.

3. PVY^{N} and PVY^{NTN} are now widespread in the San Luis Valley and a zero tolerance is not realistic. As PVY^{N} and PVY^{NTN} are necrotic viruses, they are now included as part of the total virus tolerance.

4. A new Rule 2.2.0 is needed to ensure a smooth transition to the new standards that will apply to seed potatoes that are planted on or after August 1, 2015.

5. The standard for seed potato disease standards is a postharvest test. Rule 2.2.1 clarifies that this test is to be utilized to determine the disease level in each seed potato lot. This Rule sets a maximum of 5% total virus in the lot, which is a 3% reduction from the previous year in order to require seed potatoes to have lower levels of virus diseases and therefore hopefully diminish the disease levels in the crop produced by these seed potatoes. The Rule also establishes a maximum of 1% PVY^{N} strains for the lot as part of the total 5%. This reduces the tolerance by 0.5% from the previous year in order to require seed potatoes to have lower levels of necrotic disease and therefore hopefully diminish the disease levels in the crop produced by these seed potatoes.

6. A postharvest test requires the plants to sprout and grow to a sufficient size to be evaluated for disease levels. Many factors can contribute to this not being successful such as weather events and changes in the growing conditions. Rule 2.2.2 therefore provides an alternative method as a backup.

7. The industry wishes to maintain a zero tolerance for Mop Top and Tobacco Rattle Virus for production and trade purposes. As this is achievable the standard will remain at zero in Rule 2.2.3.

8. The industry wishes to maintain a zero tolerance for Bacterial Ring Rot and Golden Nematode for production and trade purposes. As this is achievable the standard will remain at zero in Rule 2.2.4.

9. The Late Blight Quarantine applies to all imported seed potatoes. Rule 2.2.5 clarifies that imported seed potatoes must meet those requirements apart from any requirements in the Seed Potato Act and associated Rules.

10. Two years is the longest a seed lot could be used without certification or other testing so the record retention requirement in Rule 2.3.0 aligns with the time frame to provide documents for verification of compliance.

11. The Fruit and Vegetable Inspection Service's current fee for non-mandatory inspections is $37.50. The Fruit and Vegetable Inspection Service conducts the inspections for compliance with the Act.

12. These amendments incorporate changes as a result of the Department's Regulatory Efficiency Review Process.

COLORADO
Department of Agriculture
FAX 303.466.2867
www.colorado.gov/ag

NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

"Rules and Regulations Pertaining to the Colorado Seed Potato Act"

8 CCR 1203-22

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE:	January 15, 2015
TIME:	4:00pm
LOCATION:	Colorado Potato Administrative Committee 1305 Park Avenue Monte Vista, Colorado 81144

The purpose of this rulemaking is to make amendments to provide and establish standards for diseases and viruses for all certified seed potatoes; establish record keeping and testing requirements; correct statutory references and include statutory citations; adjust the hourly fee for work conducted for the Colorado Seed Potato Act; and clarify the scope of the rule. These amendments incorporate changes as a result of the Department's Regulatory Efficiency Review Process.

The statutory authority for these rules is §§ 35-27.0-108 (1)(b)(II) and (IV), and 35-27.3-101 through 112, C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 303-869-9002. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.

Notice of Rulemaking Hearing

Tracking number

2014-01254

Department

1200 - Department of Agriculture

Agency

1203 - Plant Industry Division

CCR number

8 CCR 1203-23

Rule title

RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE INDUSTRIAL HEMP REGULATORY PROGRAM ACT

Rulemaking Hearing

Date

01/23/2015

Time

10:00 AM

Location

Colorado Department of Agriculture, 305 Interlocken Parkway Broomfield, CO 80021

Subjects and issues involved

The purpose of this rulemaking is to add and amend definitions and language. Amendments are proposed throughout the rule that will change registration, reporting, inspection, waiver, and violation/disciplinary sanction/civil penalty requirements. Amendments will also incorporate changes as a result of the Departments Regulatory Efficiency Review Process.

Statutory authority

35-61-104(5) and 35-61-105(2)

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*Editing comments: Changes to this rule are indicated in **~~bold strikethrough~~** for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red.*

COLORADO DEPARTMENT OF AGRICULTURE

Plant Industry Division

Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act

8 CCR 1203-23

Pursuant to the provisions and requirements of the Industrial Hemp Regulatory Program Act, Title 35, Article 61, C.R.S., the following Rules are hereby promulgated to regulate the registration of **I**~~i~~ndustrial **H**~~h~~emp cultivation:

Part 1 DEFINITIONS

1.1 "Act" means the Industrial Hemp regulatory Program Act, Title 35, Article 61, C.R.S.

1.2 "Commercial" means THE GROWTH OF INDUSTRIAL HEMP BY ANY PERSON OR LEGAL ENTITY OTHER THAN AN INSTITUTION OF HIGHER EDUCATION OR UNDER A PILOT PROGRAM ADMINISTERED BY THE DEPARTMENT FOR PURPOSES OF AGRICULTURAL OR ACADEMIC RESEARCH IN THE DEVELOPMENT OF GROWING INDUSTRIAL HEMP ~~engaged in commerce and having profit as a chief aim~~.

1.3 "Commissioner" means the Commissioner of Agriculture and any employee of the Department of Agriculture associated with the Industrial Hemp Regulatory Program.

1.4 "Composite Sample" means the combined total number of hemp samples taken from the plants in the growing area.

1.5 "Department" means the Colorado Department of Agriculture.

1.6 "Growing Area" means the land area on which **I**~~i~~ndustrial **H**~~h~~emp is grown.

1.7 "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.

1.8 "Law Enforcement" means the activities of the FEDERAL, STATE AND LOCAL agencies responsible for maintaining public order and enforcing the law~~, particularly the activities of prevention, detection, and investigation of crime and the apprehension of criminals~~.

1.9 "REGISTRANT" MEANS ANY INDIVIDUAL OR LEGAL ENTITY WHO HOLDS A VALID REGISTRATION TO GROW INDUSTRIAL HEMP UNDER THESE RULES.

1.10 "REGISTRATION' MEANS AUTHORIZATION BY THE COMMISSIONER FOR ANY INDIVIDUAL OR LEGAL ENTITY TO GROW INDUSTRIAL HEMP ON A DESIGNATED LAND AREA.

1.~~9~~11 "Research and Development" means growth of **I**~~i~~ndustrial **H**~~h~~emp EITHER BY AN INSTITUTION OF HIGHER EDUCATION OR UNDER A PILOT PROGRAM ADMINISTERED BY THE DEPARTMENT FOR PURPOSES OF AGRICULTURAL OR ACADEMIC RESEARCH IN THE DEVELOPMENT OF GROWING INDUSTRIAL HEMP ~~for increase of seed stock from parent material intended for varietal development,~~

~~phytoremediation, basic agronomic practices, and other activities for the purpose of discovering and enabling development of useful processes, information and products~~.

1.12 "VARIETY" MEANS A GROUP OR INDIVIDUAL(S) PLANT(S) THAT EXHIBITS THE SAME OBSERVABLE PHYSICAL CHARACTERISTICS OR HAVE THE SAME GENETIC COMPOSITION.

Part 2 REGISTRATION

2.1 Each applicant for a commercial I~~i~~ndustrial H~~h~~emp registration shall submit a signed, complete, accurate~~,~~ and legible application form provided by the Commissioner~~,~~ at least 30 days prior to planting~~,~~ which includes the following information:

2.1.1 The name and address of the applicant.

2.1.2 Type of business entity, such as corporation, LLC, partnership, sole proprietor, etc.

2.1.3 Business name(s) if different from (2.1.1) above.

2.1.4 The legal description (Section, Township, Range) in which the growing area~~(s) are~~ IS located.

2.1.5 The global positioning location coordinates taken at the approximate center of the growing area~~(s)~~.

2.1.6 A map of the land area on the which the applicant plans to grow the I~~i~~ndustrial H~~h~~emp, showing the boundaries and dimensions of the growing area~~(s)~~ in acres or square feet, and the location of different varieties within the growing area~~(s)~~, if applicable.

2.1.7 BY SUBMITTING AN APPLICATION ~~T~~The ~~applicant's acknowledgment~~ REGISTRANT ACKNOWLEDGES and agree~~ment~~S to the following terms and conditions:

2.1.7.1 Any information provided to the Department may be publicly disclosed and be provided to law enforcement agencies without further notice to the applicant or registrant.

2.1.7.2 The registrant agrees to allow any inspection and sampling that the Department deems necessary.

2.1.7.3 The registrant agrees to pay for any ~~sampling~~ INSPECTION and LABORATORY analysis costs that the Department deems necessary WITHIN 30 DAYS OF THE DATE OF THE INVOICE.

2.1.7.4 The registrant agrees to submit all required reports by the applicable due-dates specified by the Commissioner.

2.2 Each applicant for a research and development I~~i~~ndustrial H~~h~~emp registration shall submit a signed, complete, accurate~~,~~ and legible application~~, on a~~ form provided by the Commissioner~~,~~ at least 30 days prior to planting~~,~~ which includes the following information:

2.2.1 The name and address of the applicant.

2.2.2 Type of business or organization such as corporation, LLC, partnership, sole proprietor, etc.

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2.2.3 Business name(s) if different from (2.2.1) above.

2.2.4 The legal description (Section, Township, Range) of the growing area.

2.2.5 Global positioning system location taken at the approximate center of the growing area~~**(s); a map of the land area on the which the applicant plans to grow the industrial hemp, showing the boundaries and dimensions of the growing area(s) in acres or square feet, and the location of different varieties within the growing area(s), if applicable**~~.

2.2.6 A MAP OF THE LAND AREA ON WHICH THE APPLICANT PLANS TO GROW THE INDUSTRIAL HEMP, SHOWING THE BOUNDARIES AND DIMENSIONS OF THE GROWING AREA IN ACRES OR SQUARE FEET, AND THE LOCATION OF DIFFERENT VARIETIES WITHIN THE GROWING AREA, IF APPLICABLE.

2.2.**67** **BY SUBMITTING AN APPLICATION T**~~**T**~~he ~~**applicant's acknowledgment**~~ **REGISTRANT ACKNOWLEDGES** and agree~~**ment**~~**S** to the following terms and conditions:

2.2.**67**.1 Any information provided to the **D**~~**d**~~epartment may be publicly disclosed and be provided to law enforcement agencies without further notice to the applicant or registrant.

2.2.**67**.2 The registrant agrees to allow any inspection and sampling that the Department deems necessary.

2.2.**67**.3 The registrant agrees to pay for any ~~**sampling**~~ **INSPECTION** and **LABORATORY** analysis costs that the Department deems necessary **WITHIN 30 DAYS OF THE DATE OF THE INVOICE**.

2.2.**67**.4 The registrant agrees to submit all required reports by the applicable due-dates specified by the Commissioner.

2.3 REGISTRATIONS CANNOT BE ASSIGNED OR TRANSFERRED TO ANOTHER BUSINESS, INDIVIDUAL OR OTHER ENTITY.

2.4 NO PLANT SHALL BE INCLUDED IN MORE THAN ONE REGISTRATION.

2.5 NO REGISTERED LAND AREA MAY CONTAIN CANNABIS PLANTS OR PARTS THEREOF THAT THE REGISTRANT KNOWS OR HAS REASON TO KNOW ARE OF A VARIETY THAT WILL PRODUCE A PLANT THAT WHEN TESTED WILL PRODUCE MORE THAN 0.3% THC ON A DRY WEIGHT BASIS. NO REGISTRANT SHALL USE ANY SUCH VARIETY FOR ANY PURPOSE ASSOCIATED WITH THE CULTIVATION OF INDUSTRIAL HEMP.

2.6 IN ORDER TO MINIMIZE THE POSSIBILITY OF CROSS-POLLINATION WITH MARIJUANA PLANTS, NO REGISTRANT SHALL GROW ANY INDUSTRIAL HEMP PLANTS WITHIN ONE MILE OF ANY OTHER CANNABIS PLANT THAT ARE NOT INCLUDED IN AN INDUSTRIAL HEMP REGISTRATION AND ARE GROWING OUTDOORS, OR WITHIN ¼ MILE OF ANY CANNABIS PLANTS THAT ARE NOT INCLUDED IN AN INDUSTRIAL HEMP REGISTRATION AND ARE GROWING INDOORS, UNLESS SPECIFICALLY AUTHORIZED BY THE COMMISSIONER.

2.7 EACH NONCONTIGUOUS LAND AREA ON WHICH INDUSTRIAL HEMP IS GROWN SHALL REQUIRE A SEPARATE REGISTRATION. ANY ADDITION TO A REGISTERED LAND AREA SHALL ALSO REQUIRE A SEPARATE

REGISTRATION.

2.~~3~~8 In addition to the application form, each applicant for a registration shall submit the registration fee set by the Commissioner. If the registration fee does not accompany the application, the application for registration will be deemed incomplete.

2.~~4~~9 The annual registration fee for commercial production of I~~i~~ndustrial H~~h~~emp shall be $~~2~~500 plus $~~15~~.00/acre OUTDOORS AND/OR $.33/1000 SQ. FT. INDOORS.

2.~~5~~10 The annual registration fee for production of I~~i~~ndustrial H~~h~~emp for research and development shall be $~~15~~00 plus $5/acre OUTDOORS AND/OR $.33/1000 SQ. FT. INDOORS.

2.~~6~~11 All registrations shall be valid for one year from date of issuance.

2.12 ALL PLANT MATERIAL MUST BE PLANTED AND HARVESTED WITHIN THE REGISTRATION PERIOD.

2.13 AMENDMENTS TO AN EXISTING REGISTRATION ARE LIMITED TO CHANGES WITHIN THE ORIGINAL LAND AREA REGISTERED, INCLUDING VARIETY CHANGES, LOCATION(S) OF VARIETIES, AND ACTUAL ACREAGE OR SQUARE FEET OF EACH VARIETY PLANTED.

~~2.7 Any registrant that wishes to alter the growing area(s) on which the registrant will conduct industrial hemp cultivation for either commercial or research and development purposes shall, before altering the area, submit to the Department an updated legal description, global positioning system location, and map specifying the proposed alterations.~~

2.14 INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED AND APPLICATION FEES WILL NOT BE REFUNDED IF A REGISTRATION IS NOT GRANTED.

2.15 ANY CHANGES TO CONTACT INFORMATION MUST BE PROVIDED WITHIN 10 DAYS OF THE CHANGE.

Part 3 REPORTS

3.1 Prior to planting each commercial I~~i~~ndustrial H~~h~~emp registrant shall file a report with the Commissioner that includes:

3.1.1 A statement of verification on a form provided by the Commissioner that the crop the registrant will plant is of a type and variety of I~~i~~ndustrial H~~h~~emp that will produce a THC concentration of no more than 0.3% on a dry weight basis.

3.1.2 A description of the I~~i~~ndustrial H~~h~~emp varieties to be planted on the ~~growing area(s)~~ registered LAND AREA ~~to the registrant~~ and a map showing where they will be planted. ALL PLANT MATERIAL TO BE USED FOR CULTIVATION OF INDUSTRIAL HEMP WITHIN A REGISTERED LAND AREA MUST BE INCLUDED.

3.1.3 A STATEMENT OF INTENDED END USE FOR ALL PARTS OF ANY INDUSTRIAL HEMP PLANTS GROWN WITHIN A REGISTERED LAND AREA.

3.2 WITHIN 10 DAYS AFTER PLANTING, EACH COMMERCIAL REGISTRANT SHALL SUBMIT A REPORT WITH THE COMMISSIONER THAT INCLUDES:

3.2.1 A LIST OR DESCRIPTION OF ALL VARIETIES PLANTED WITHIN A REGISTERED LAND AREA.

3.2.2 THE LOCATION AND ACTUAL ACREAGE OR SQUARE FEET OF EACH VARIETY PLANTED WITHIN A REGISTERED LAND AREA.

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3.~~2~~3 At least 30 days prior to harvest, each commercial ~~i~~Industrial ~~H~~Hemp registrant shall file a report with the Commissioner that includes:

3.~~2~~3.1 Documentation that the commercial registrant has entered into a purchase agreement with an in-state ~~i~~Industrial ~~H~~Hemp processor. If the registrant has not entered into such an agreement, the registrant shall include a statement of intended disposition of its ~~i~~Industrial ~~H~~Hemp crop.

3.~~2~~3.2 The harvest date(s) AND LOCATION of each variety planted WITHIN A REGISTERED LAND AREA.

3.~~3~~4 Prior to planting, each research and development ~~i~~Industrial ~~H~~Hemp registrant shall file a report with the Commissioner that includes:

3.~~3~~4.1 A description of the hemp varieties to be planted on the ~~growing area(s)~~ registered LAND AREA ~~to the registrant~~ and a map showing where they are planted. ALL PLANT MATERIAL TO BE USED FOR CULTIVATION OF INDUSTRIAL HEMP WITHIN A REGISTERED LAND AREA MUST BE INCLUDED.

3.4.2 A STATEMENT OF INTENDED END USE FOR ALL PARTS OF ANY INDUSTRIAL HEMP PLANTS GROWN WITHIN A REGISTERED LAND AREA.

3.5 WITHIN 10 DAYS AFTER PLANTING, EACH RESEARCH AND DEVELOPMENT REGISTRANT SHALL SUBMIT A REPORT WITH THE COMMISSIONER THAT INCLUDES:

3.5.1 A LIST OR DESCRIPTION OF ALL VARIETIES PLANTED WITHIN A REGISTERED LAND AREA.

3.5.2 THE LOCATION AND ACTUAL ACREAGE OR SQUARE FEET OF EACH VARIETY PLANTED WITHIN A REGISTERED LAND AREA.

3.5.3 A STATEMENT OF VERIFICATION ON A FORM PROVIDED BY THE COMMISSIONER THAT THE CROP THE REGISTRANT WILL PLANT IS OF A TYPE AND VARIETY BELIEVED TO PRODUCE PLANT MATERIAL OF INDUSTRIAL HEMP WITH A THC CONCENTRATION OF NO MORE THAN 0.3% ON A DRY WEIGHT BASIS. ALL PLANT MATERIAL TO BE USED IN OR AS A PART OF AN INDUSTRIAL HEMP REGISTRATION MUST BE INCLUDED.

3.~~4~~6 At least 30 days prior to harvest, each research and development ~~i~~Industrial ~~H~~Hemp registrant shall file a report with the ~~C~~commissioner that includes:

3.~~4~~6.1 A statement of the intended use ~~or other disposition of the registrant's industrial hemp crop~~ OF ALL INDUSTRIAL HEMP PLANTED WITHIN A REGISTERED LAND AREA.

3.~~4~~6.2 The harvest date(s) AND LOCATION of each variety planted WITHIN A REGISTERED LAND AREA.

~~3.5 Registrants must report any subsequent changes to the purchase agreement or disposition statement to the Commissioner within ten days of the change.~~

3.7 EACH COMMERCIAL AND RESEARCH AND DEVELOPMENT REGISTRANT SHALL REPORT TO THE COMMISSIONER ANY CHANGES TO INFORMATION PROVIDED IN THE REGISTRATION OR ANY PREVIOUSLY SUBMITTED REPORTS, INCLUDING ANY CHANGES TO THE PURCHASE AGREEMENT OR STATEMENT OF INTENDED DISPOSITION, WITHIN

10 DAYS OF SUCH CHANGE.

Part 4 INSPECTION PROGRAM

4.1 All registra~~nts~~TIONS are subject to sampling ~~of their industrial hemp crop~~ to verify that the THC concentration OF THE CANNABIS PLANTED WITHIN A REGISTERED LAND AREA does not exceed 0.3% on dry weight basis. The Commissioner ~~shall~~ MAY select up to ~~33~~100% of the registrants to be inspected~~, except that no registrant may be selected more than two years in row without cause~~. The Commissioner shall ~~notify~~ SEND NOTIFICATION TO each registrant of their selection ~~by certified mail~~. The notification shall inform the registrant of the scope and process by which the inspection will be conducted and require the registrant to contact the Department within ~~30~~ 10 days to set a date and time for the inspection to occur. FAILURE TO CONTACT THE DEPARTMENT AS REQUIRED WILL RESULT IN THE INITIATION OF DISCIPLINARY PROCEEDINGS PURSUANT TO PART 6 OF THESE RULES AGAINST THE REGISTRATION.

4.2 During the inspection, the registrant or authorized representative shall be present at the growing operation. The registrant or authorized representative shall provide the Department's Inspector with complete and unrestricted access to all ~~industrial hemp~~ CANNABIS plants, PARTS and seeds WITHIN A REGISTERED LAND AREA whether growing or harvested, AND all land, buildings and other structures used for the cultivation and storage of Iindustrial Hhemp, and all documents and records pertaining to the registrant's Iindustrial Hhemp growing business.

4.3 ~~Sampling of industrial hemp plants will occur in the following manner:~~ ALL CANNABIS PLANTS WITHIN A REGISTERED LAND AREA MAY BE SAMPLED TO ENSURE COMPLIANCE WITH THE INDUSTRIAL HEMP PROGRAM.

4.3.1 INDIVIDUAL OR ~~C~~Ccomposite samples of each variety of ~~industrial hemp~~ CANNABIS may be sampled from the ~~growing area(s)~~ REGISTERED LAND AREA at the Department's discretion.

4.3.2 The sampled material will be PREPARED FOR TESTING USING PROTOCOLS APPROVED BY THE COMMISSIONER AND divided into two ~~equally sized~~ parts. One part will be used for testing. The other part will be retained for retesting.

4.3.3 Quantitative laboratory determination of the THC concentration on a dry weight basis will be performed according to protocols approved by the Commissioner.

4.3.4 A ~~composite~~ sample test result greater than 0.3% THC ~~will be considered~~ SHALL CONSTITUTE conclusive evidence that at least one cannabis plant or part of a plant in the ~~growing~~ REGISTERED LAND area contains a THC concentration over the limit allowed for Iindustrial Hhemp and that the registrant of that ~~growing~~ REGISTERED LAND area is therefore not in compliance with the Act. Upon receipt of such a test result, the Commissioner may summarily suspend ~~and~~ OR revoke the registration of ~~a commercial~~ AN Iindustrial Hhemp registrant in accordance with THE ACT, THESE RULES AND § 24-4-104 ~~(4)~~, C.R.S. SAMPLE TEST RESULTS FOR INDUSTRIAL HEMP REGISTRATIONS THAT ARE GREATER THAN 1.0% THC CONCENTRATION MAY BE PROVIDED TO THE APPROPRIATE LAW ENFORCEMENT AGENCIES.

~~4.3.4.1 SAMPLE TEST RESULTS FOR COMMERCIAL INDUSTRIAL HEMP REGISTRANTS THAT ARE GREATER THAN 1.0% THC CONCENTRATION WILL BE PROVIDED TO THE APPROPRIATE STATE LAW ENFORCEMENT AGENCY.~~

4.4 Fees

4.4.1 Registrants selected for inspection shall pay a charge of $35 dollars per hour per inspector for actual drive time, mileage, inspection and sampling time.

4.4.2 Registrants selected for inspection shall reimburse the Department for all laboratory analysis costs incurred by it **WITHIN 30 DAYS OF THE DATE OF THE INVOICE**.

Part 5 WAIVER

5.1 Notwithstanding the fact that a sample of a research and development registrant's **I~~i~~**industrial **H~~h~~**emp tests higher than 0.3% **BUT LESS THAN 1%**THC content the registrant shall not be subject to any penalty if:

5.1.1 The sampled **I~~i~~**industrial **H~~h~~**emp was grown solely for research and development purposes by an individual or entity holding a research and development registration, and the crop is destroyed or utilized on site in a manner approved of and verified by the Commissioner.

5.1.2 Test results from a research and development registrant may, at the Commissioner's discretion, be accepted in lieu of Department sampling.

5.2 Notwithstanding the fact that a sample of a commercial registrant's **I~~i~~**ndustrial **H~~h~~**emp tests higher than 0.3% but less than 1% THC content the registrant shall not be subject to revocation or suspension of their registration if the crop is destroyed or utilized in a manner approved of and verified by the Commissioner.

Part 6 VIOLATIONS/DISCIPLINARY SANCTIONS/CIVIL PENALTIES

6.1 In addition to any other violations of Title 35, Article 61, C.R.S., or these Rules, the following acts and omissions by any registrant or authorized representative thereof constitute violations for which civil penalties up to $2,500 **PER VIOLATION** and disciplinary sanctions, including **SUMMARY SUSPENSION OR** revocation of a registration, may be imposed by the Commissioner in accordance with §§ 35-61-107 and 24-4-104, C.R.S.:

6.1.1 Refusal or failure by a registrant or authorized representative to fully cooperate and assist the Department with the inspection process.

6.1.2 Failure to provide any information required or requested by the Commissioner for purposes of the Act or these Rules.

6.1.3 Providing false, misleading, or incorrect information pertaining to the registrant's cultivation of **I~~i~~**ndustrial **H~~h~~**emp to the Commissioner by any means, including but not limited to information provided in any application form, report, record or inspection required or maintained for purposes of the Act or these Rules.

6.1.4 Failure to submit any required report in accordance with **~~Rule 3.0~~ PART 3**.

6.1.5 Growing **~~industrial hemp~~ CANNABIS** that when tested is shown to have a THC concentration greater than 0.3% on a dry weight basis.

6.1.6 Failure to pay fees assessed by the Commissioner for inspection or laboratory analysis costs.

Parts 7 & 8 RESERVED

Part 9 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

9.1 Adopted November 12, 2013 – Effective December 30, 2013

Statutory Authority

These rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), §§ 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to:

1. Adopt a Part 1 setting forth definitions of specific terms used in these Rules.

2. Adopt Rules in Part 2 establishing a process for registering growers of industrial hemp and setting forth the information and fees required.

3. Adopt Rules in Part 3 establishing the information reporting requirements with which registrants must comply.

4. Adopt Rules in Part 4 establishing an inspection program to ensure compliance with the provisions of the Act and these Rules.

5. Adopt Rules in Part 5 creating conditional penalty waiver provisions for registrants whose industrial hemp crop THC content tests between 0.3% and 1.0% by dry weight.

6. Adopt Rules in Part 6 specifying violations of these Rules for which penalties may be imposed.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 13-241 authorized the creation of a program within the Department of Agriculture to regulate industrial hemp cultivation.

2. The bill created a nine-member advisory committee to work with the Department to develop rules establishing an Industrial Hemp Regulatory Program. This committee was appointed by Senator Gail Schwartz and Representative Randy Fischer.

3. The committee held three public meetings to determine what rules were necessary to implement this program and draft the appropriate language. The committee will continue to work with the Department to refine and update these Rules over the coming years, as well as review the testing protocols that Department staff is currently developing.

9.2 Adopted June 11, 2014 – Effective June 11, 2014

Statutory Authority

These emergency rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

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Purpose

The purposes of these proposed rules are to:

1. Adopt a registration time period of 30 days prior to planting with the elimination of the May 1 registration deadline.

2. Allow the Department to collect crop intended harvest date and disposition information 30 days prior to harvest, rather than 7 days prior to harvest.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 14-184 eliminated the May 1 deadline for program registration. The Department needs 30 days to process hemp applications.

2. The Department needs 3 -4 weeks to plan sampling.

9.3 Adopted August 5, 2014 – Effective September 30, 2014

Statutory Authority

These rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to make permanent emergency rules effective June 11, 2014. Specifically, these amendments:

1. Adopt a registration time period of 30 days prior to planting with the elimination of the May 1 registration deadline.

2. Allow the Department to collect crop intended harvest date and disposition information 30 days prior to harvest, rather than 7 days prior to harvest.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 14-184 eliminated the May 1 deadline for program registration. The Department needs 30 days to process hemp applications.

2. The Department needs 3 -4 weeks to plan sampling.

9.4 ADOPTED FEBRUARY 11, 2014 – EFFECTIVE MARCH 30, 2015

STATUTORY AUTHORITY

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed Rules are to:

1. Amend the definition of "Commercial" in Rule 1.2. to establish clear separation between the activities permitted under a Commercial registration and a Research and Development registration.

2. Amend the definition of "Law Enforcement" in Rule 1.8.

3. Adopt a new Rule 1.9 to define "Registrant."

4. Adopt a new Rule 1.10 to define "Registration."

5. Amend the definition of "Research and Development" in Rule 1.11 to follow the 2014 Farm Bill language.

6. Adopt a new Rule 1.12 to define "Variety."

7. Amend language referencing site and growing area(s) used throughout the Rules to reflect the above definition changes.

8. Amend language referencing sampling and analysis costs and add terms of payment used in Rules 2.1.7.3 and 2.2.7.3.

9. Separate language from Rule 2.2.5 and create Rule 2.2.6 for Rule language consistency between Commercial and Research & Development Rules format.

10. Create a new Rule 2.3 barring the transfer of ownership of a registration.

11. Create a new Rule 2.4 language barring registration of one plant under two registrations.

12. Create a new Rule 2.5 barring any cannabis plants other than Industrial Hemp on a registered land area.

13. Create a new Rule 2.6 setting limits on how close to a registered land area unregistered cannabis plants may be grown.

14. Create a new Rule 2.7 to define what can be included in a single registration.

15. Amend registration fees in Rules 2.9 and 2.10 to cover the cost of administering the program.

16. Adopt a new Rule 2.12 to require harvest of all plants within the registration period.

17. Adopt a new Rule 2.13 limiting amendments to a registration.

18. Adopt a new Rule 2.14 regarding processing of applications.

19. Adopt a new Rule 2.15 requiring registrants to maintain current contact information with

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THE DEPARTMENT.

20. AMEND RULES 3.1.2 AND 3.4.1 TO REQUIRE REPORTING OF ALL PLANT MATERIAL USED IN AN INDUSTRIAL HEMP REGISTERED LAND AREA.

21. ADOPT NEW RULES 3.1.3 AND 3.4.2 REQUIRING REGISTRANTS TO REPORT THE INTENDED USE OF ALL PARTS OF THE INDUSTRIAL HEMP CROP INCLUDED IN A REGISTERED LAND AREA.

22. ADOPT NEW RULES 3.2 AND 3.5 REQUIRING REPORTING OF THE VARIETIES AND LOCATION OF ALL INDUSTRIAL HEMP PLANTED IN A REGISTERED LAND AREA.

23. ADOPT A NEW RULE 3.5.3 REQUIRING RESEARCH AND DEVELOPMENT REGISTRANTS TO VERIFY THAT ALL THE VARIETIES PLANTED ARE INTENDED TO PRODUCE A CROP WITH A THC CONCENTRATION OF 0.3% OR LESS.

24. AMEND RULES 3.3.2 AND 3.6.2 TO REQUIRE REPORTING OF SPECIFIC CROP LOCATION INFORMATION AT LEAST 30 DAYS PRIOR TO HARVEST.

25. ADOPT A NEW RULE 3.7 TO REQUIRE REPORTING OF ANY CHANGES IN INFORMATION PREVIOUSLY SUBMITTED TO THE DEPARTMENT WITHIN 10 DAYS.

26. AMEND RULE 4.1 TO ALLOW SAMPLING OF ALL CANNABIS PLANTS ON A REGISTERED INDUSTRIAL HEMP LAND AREA, ALLOW SAMPLING OF UP TO 100% OF THE REGISTRANTS, ALLOW THE DEPARTMENT TO NOTIFY THE REGISTRANT OF INSPECTION BY METHODS OTHER THAN CERTIFIED MAIL, REQUIRE REGISTRANTS TO CONTACT THE DEPARTMENT WITHIN 10 DAYS OF INSPECTION NOTIFICATION AND EXPLAIN THE CONSEQUENCE FOR FAILING TO DO SO.

27. AMEND RULE 4.2 TO ALLOW ACCESS TO ALL CANNABIS MATERIAL ASSOCIATED WITH A REGISTRATION.

28. AMEND RULES 4.3 AND 4.3.1 TO ALLOW INDIVIDUAL OR COMPOSITE SAMPLING OF ALL CANNABIS PLANTS ON A REGISTERED INDUSTRIAL HEMP LAND AREA.

29. AMEND RULE 4.3.2 TO ALLOW MORE VALID SCIENTIFIC TESTING PROTOCOLS.

30. AMEND RULE 4.3.4 TO INCLUDE THE UPDATED LANGUAGE FROM EXISTING RULE 4.3.4.1 AND REMOVE THE TERM COMMERCIAL SO ANY REGISTRATION FOUND NOT IN COMPLIANCE COULD BE SUSPENDED OR REVOKED IN ACCORDANCE WITH C.R.S. 24-4-104.

31. AMEND RULE 4.4.2 TO SET TERMS OF PAYMENT TO 30 DAYS OF INVOICE.

32. AMEND RULE 5.1 TO INCLUDE THE SAME 1.0% THC LIMIT FOR A WAIVER FROM PENALTY AS APPLIED TO COMMERCIAL REGISTRATIONS.

33. AMEND RULE 6.1 TO CLARIFY SCOPE AND ADD SUMMARY SUSPENSION LANGUAGE FOR CLARITY PURPOSES.

34. AMEND RULE 6.1.5 TO INCLUDE PROPER TERMINOLOGY FOR CANNABIS EXCEEDING 0.3% THC.

FACTUAL AND POLICY BASIS

THE FACTUAL AND POLICY ISSUES ENCOUNTERED WHEN DEVELOPING THESE RULES INCLUDE:

1. The revised definitions for "Commercial" and "Research and Development" in Rules 1.2 and 1.11 are intended to establish a clear separation between the activities allowed under a Commercial registration and a Research and Development registration. All Industrial Hemp production activities not authorized by the 2014 Farm Bill Research and Development language, including all privately-conducted research and development, are covered by a commercial registration. In addition to private scientific research, this change in definitional language will allow research for competitive advantage or product development without limiting the sale or distribution of plant material used and produced under a commercial registration, similar to what commercial enterprises in other industries do for product development in a research division of a company. This Rule change meets the needs of registrants who have requested sale of material from their research and development registrations by aligning their research to be conducted under commercial registration without structurally changing their research practices.

2. Rule 1.8 is intended to clarify the broad scope of governmental agencies involved in law enforcement and eliminate unnecessary language about their activities.

3. Rules 1.9 and 1.10 are intended to define the difference between a person or entity who has been granted approval from and the authorization to grow Industrial Hemp on a specific site.

4. Rule 1.12 creates a definition for use in the Rules that clarifies registration, planting and harvest requirements. The definition is also necessary for delineation purposes during sampling.

5. The changes in Rules 2.1, 2.2, 3.1, and 3.4 are needed to make the language in those Rules consistent with other language in the Rules.

6. Amending the language in 2.1.7.3 and 2.2.7.3 is intended to standardize the terminology with that used in Part 4, clarify the costs for which a registrant is responsible, and set the terms of payment which are not currently specified . This clarification is necessary because some registrants have delayed payment of fees until another registration is granted or until they have negotiated individual payment terms, creating administrative confusion and increasing program costs.

7. Separating the requirements in Rule 2.2.6 and 2.2.5 improves consistency and ease of Rule readability.

8. The prohibition in Rule 2.3 on the transfer of registration is necessary to facilitate inspection and sampling and to prevent the transfer of registrations to persons or entities who would not otherwise qualify for a registration due to previous sanctions and penalties. This also closes a potential loophole through which a legally acquired Industrial Hemp registration could be transferred to another individual for purposes of evasion in growing or transporting of Marijuana.

9. Rule 2.4 is necessary to avoid confusion when a registrant holds multiple registrations. This Rule will enable the Department to accurately identify, inspect and sample all of the plants grown under a specific registration.

10. Under Article XVIII, Section 16 of the Colorado Constitution (Adopted by voters as "Amendment 64") "Industrial Hemp" is defined and regulated separately from "Marijuana". The Department therefore has no legal jurisdiction over cannabis that contains more than 0.3% THC on a dry weight basis because it is constitutionally defined as Marijuana and not Industrial Hemp. The Department thus does not have the authority to grant the possession or use of any cannabis material above 0.3% THC within its

INDUSTRIAL HEMP REGISTRATION PROGRAM; ALL SUCH MATERIAL IS REGULATED AS MARIJUANA UNDER THE AUTHORITY OF THE DEPARTMENT OF REVENUE. RULE 2.5 IS NECESSARY TO PREVENT THE USE OR PRESENCE OF PLANT MATERIAL IN A REGISTERED LAND AREA THAT WOULD BE OUTSIDE THE DEPARTMENT OF AGRICULTURE'S JURISDICTION. THE PROPOSED RULE LANGUAGE DOES NOT LIMIT THE RIGHT TO POSSESS OR CONDUCT MARIJUANA RESEARCH BUT DOES PREVENT MARIJUANA MATERIAL FROM KNOWINGLY BEING USED UNDER THE INDUSTRIAL HEMP PROGRAM BY EXCLUDING IT FROM THE AREA THE REGISTRANT HAS AGREED IS DEDICATED TO INDUSTRIAL HEMP.

11. THE PROVISIONS IN RULE 2.6 ARE NEEDED TO PREVENT POLLEN FROM MARIJUANA PLANTS FROM BEING EASILY CROSSED WITH INDUSTRIAL HEMP PLANTS GROWN BY THE SAME PERSON OR ENTITY. THE RULE PROVIDES FOR VARIANCES WHERE A REGISTRANT CAN DEMONSTRATE A LEGITIMATE NEED, AND ADEQUATE PROTECTIONS TO PREVENT CROSS POLLINATION ARE PROVIDED.

12. RULE 2.7 DEFINES WHAT MAY BE INCLUDED IN A SINGLE REGISTRATION. THE CHANGE IS NECESSARY TO TRACK REGISTRATION SITES, WHAT IS PLANTED ON A REGISTERED LAND AREA AND ENSURE ACCURATE TESTING CAN BE DONE. THE CURRENT SYSTEM HAS CREATED ADMINISTRATIVE ISSUES AS REGISTRANTS HAVE ADDED SITES MILES AWAY FROM EXISTING REGISTRATIONS DURING THE GROWING SEASON AND CANCELLED GROWING AREAS REGISTERED UNDER THE SAME REGISTRATION, CREATING SITUATIONS WHERE IT HAS BECOME DIFFICULT TO TRACK WHERE PLANT MATERIAL CURRENTLY IS BEING GROWN FOR INSPECTION PURPOSES. THESE CHANGES IN REGISTRATIONS HAVE ALSO INCREASED THE COST OF PROGRAM ADMINISTRATION AS THE DEPARTMENT ATTEMPTS TO TRACK SITES CURRENTLY REGISTERED TO GROW INDUSTRIAL HEMP. THE RULE DOES NOT LIMIT THE REGISTRANTS ABILITY TO STAGGER PLANTING WITHIN A REGISTERED LAND AREA. THE RULE IS ALSO INTENDED TO FACILITATE THE ESTABLISHMENT OF AN EQUITABLE FEE STRUCTURE TO SELF-FUND THE PROGRAM AS MANDATED IN THE ACT.

13. THE DEPARTMENT IS PROPOSING TO INCREASE THE FEES IN RULE 2.9 AND 2.10 TO COMPLY WITH THE SELF-FUNDING MANDATE SET FORTH IN SECTION 35-61-106 (2), C.R.S. CURRENT FEES HAVE GENERATED LESS THAN 20% OF THE NECESSARY REVENUE TO SUPPORT THE PROGRAM. SECTION 35-61-106 (2), C.R.S., LIMITS THE SOURCES OF REVENUE TO REGISTRATION FEES AND LAND AREA. LEAVING REGISTRATION FEES AT CURRENT LEVELS WOULD REQUIRE PER ACRE FEES TO EXCEED $55. THE NEW REGISTRATION FEE STRUCTURE WAS DEVELOPED TO EQUITABLY GENERATE SUFFICIENT REVENUE TO SELF-FUND THE PROGRAM AT CURRENT REGISTRATION LEVELS. THE FEES FOR COMMERCIAL AND RESEARCH & DEVELOPMENT REGISTRATIONS WERE SET AT THE SAME LEVEL SO AS NOT TO FAVOR EITHER TYPE OF REGISTRATION OR DISADVANTAGE RESEARCH FOR COMPETITIVE ADVANTAGE CONDUCTED UNDER A COMMERCIAL REGISTRATION.

14. SECTION 35-61-104(3), C.R.S. DEFINES THE EFFECTIVE PERIOD OF A VALID REGISTRATION TO ONE YEAR. TO REGULATE THE PROGRAM IT IS NECESSARY FOR PLANT MATERIAL TO BE REGISTERED BEFORE PLANTING AS REQUIRED IN RULES 2.1 AND 2.2. TO INSURE THAT ALL PLANT MATERIAL IS REGULATED UNDER A VALID REGISTRATION AND THEREFORE PROTECTED UNDER SECTION 35-61-102(2), C.R.S., RULE 2.12 WAS CREATED TO CLARIFY THE REQUIREMENT TO HARVEST BEFORE A REGISTRATION EXPIRES.

15. RULE 2.13 IS NECESSARY TO PROHIBIT THE EXPANSION OF A REGISTRATION OUTSIDE OF THE ORIGINAL LAND AREA DESCRIBED IN THE APPLICATION FOR REGISTRATION. WITHOUT THIS LIMITATION IT IS VERY DIFFICULT AND TIME CONSUMING FOR THE DEPARTMENT TO TRACK PLANT MATERIAL TO A REGISTRATION OR ENSURE COMPLIANCE WITH PLANTING REPORTS. REGISTRANTS HAVE USED THE CURRENT AMENDMENT LANGUAGE TO ESTABLISH NEW GROWING SITES AND ASSUME SITES ORIGINALLY REGISTERED TO ANOTHER REGISTRANT. THE CURRENT SYSTEM ALLOWING REGISTRANTS TO ADD NEW LOCATIONS THROUGH AMENDMENTS WITHOUT COST HAS SIGNIFICANTLY INCREASED THE ADMINISTRATIVE COSTS OF THE PROGRAM WHICH MUST BE PASSED ON TO ALL REGISTRANTS.

16. Rule 2.14 insures that the cost to process an application incurred by the Department prior and regardless of whether a registration is issued are not passed along to other registrants should a registration not be granted. Under Section 35-61-106(2), C.R.S., the Commissioner is required to collect fees to cover all of the program's costs, including those associated with applications that are denied.

17. The Department has spent considerable resources trying to contact the registrants after registration due to changes in contact information. This has increased administrative costs for the program. Rule 2.15 requires registrant contact information remain current so the Department can contact registrants regarding sampling and inspection without added administrative costs. Some registrants have changed their contact information including mailing address, e-mail address and phone numbers to evade requests by the Department to conduct inspections.

18. Rules 3.1.2 and 3.4.1 require a registrant to disclose all plant material intended for use in a registered land area to be disclosed. This is necessary to enable the Department to confirm that all plant material used within a land area registered with the Industrial Hemp program is of a type and variety that will produce plants with a THC content not to exceed 0.3% on a dry weight basis.

19. Rules 3.1.3 and 3.4.2 are necessary to facilitate the inspection and sampling of Industrial Hemp grown in the program. The Industrial Hemp inspection is done by a limited number of inspectors who also inspect multiple other programs for the Department. To accomplish inspections required for all the programs considerable planning and coordination occurs months prior to the need to facilitate optimum use of inspection staff and control costs.

20. The requirement of a planting report in Rules 3.2 and 3.5 is necessary for the Department to determine what fields have actually been planted so we can determine what fields may need inspection, allocate resources for inspection, collect variety information to support a seed certification program and collect agronomic data on the crop to determine economic value to the state.

21. Rule 3.5.3 is intended to ensure that research and development registrants do not knowingly plant material that will exceed 0.3% THC. and that all material used in the research project is included in the planting report.

22. Rules 3.3.2 and 3.6.2 are necessary for the Department to determine what will be harvested compared to what was actually planted, identify gaps, and schedule inspections appropriately. This will also allow the Department to collect harvest data to determine the size of the final crop and document crop size developments for economic purposes.

23. Rule 3.7 is necessary to ensure that the Department has the most current information on all registrants so that it can effectively plan inspection resources and monitor industry developments.

24. The change in Rule 4.1 allowing sampling of up to 100% of registrants is necessary to accommodate the July 1, 2014 statutory change allowing year round registration while still conducting an effective inspection program including testing in the event an unanticipated violation is reported or suspected. The amended language also eliminates the exemption from testing after two years which could prevent the Department from retesting registrants with prior violations in a timely or effective manner. The current language has the potential for abuse by registrants who have been tested for two years and thus could grow Marijuana without concern of inspection the third year.

The amended language in Rule 4.1 with respect to notice of inspection allows the

DEPARTMENT TO COMMUNICATE WITH THE REGISTRANTS IN A METHOD AGREED TO WITH THE REGISTRANT OR DEEMED EFFECTIVE FROM PREVIOUS COMMUNICATIONS WITH THE REGISTRANT. THE USE OF CERTIFIED MAIL HAS ALLOWED SOME REGISTRANTS TO SEE THE DEPARTMENT IS SENDING THEM COMMUNICATION AND AVOID SIGNING FOR IT IN AN EFFORT TO EVADE INSPECTION NOTIFICATION. IN OTHER CASES THE ADDRESS PROVIDED HAS BEEN RETURNED AS UNDELIVERABLE VIA CERTIFIED MAIL AND THE REGISTRANT HAS ASKED FOR AN E-MAIL OR PHONE CALL SO THEY CAN COMPLY.

THE TIME PERIOD FOR RESPONSE TO NOTIFICATION WAS CHANGED FROM 30 DAYS AFTER NOTIFICATION TO 10 DAYS TO ALLOW THE DEPARTMENT TO DETERMINE HARVEST TIMING AND ARRANGE FOR INSPECTIONS. THE 30 DAYS HAMPERED THE DEPARTMENTS ABILITY TO COORDINATE INSPECTIONS OF MULTIPLE SITES INCREASING THE INSPECTION TRAVEL COSTS FOR THE REGISTRANT AS HARVEST IN MANY CASES WAS MORE IMMEDIATE ONCE THE REGISTRANT REPLIED.

25. REGISTRANTS HAVE AGREED UNDER 2.5 AND 2.6 NOT TO INCLUDE PLANT MATERIAL KNOWN OR THAT SHOULD REASONABLY BE KNOWN WILL EXCEED 0.3% THC ON A REGISTERED LAND OR CLOSER THAN A DESIGNATED SET-BACK FROM A REGISTERED LAND AREA UNLESS APPROVED BY THE COMMISSIONER AS TERMS OF REGISTRATION. THIS AMENDED SECTION OF 4.2 IS NECESSARY TO SUPPORT, VERIFY AND ENFORCE RULES 2.5, 2.6, 3.1.2, 3.4.1, 4.1, 4.3, AND 4.3.1.

THE CHANGES TO RULE 4.2 ARE NECESSARY TO ALLOW THE DEPARTMENT TO INSPECT ALL PLANTS IN THE REGISTERED LAND AREA. REGISTRANTS HAVE USED THE CURRENT RULE LANGUAGE TO ASSERT THAT SOME PLANTS USED BY THEM FOR CULTIVATION OF INDUSTRIAL HEMP CANNOT BE TESTED BY THE DEPARTMENT BECAUSE THEY ARE MARIJUANA THAT IS BEING GROWN FOR PERSONAL USE OR UNDER A MEDICAL MARIJUANA CARD APPLICATION. THE AMENDMENTS TO RULE 4.2 ARE NECESSARY TO VERIFY COMPLIANCE WITH RULES 2.5, 2.6, 3.1.2, 3.4.1, 4.2, 4.3, AND 4.3.1 WHICH PROHIBIT THE PRESENCE OR USE OF MARIJUANA WITHIN A LAND AREA REGISTERED FOR THE CULTIVATION OF INDUSTRIAL HEMP.

26. THE AMENDED LANGUAGE IN RULES 4.3 AND 4.3.1 ALLOWS ALL CANNABIS MATERIAL GROWN IN A LAND AREA UNDER AN INDUSTRIAL HEMP REGISTRATION TO BE SAMPLED. IT ALLOWS THE DEPARTMENT OR REGISTRANT TO DETERMINE IF A SPECIFIC PLANT OR GROUP OF PLANTS IS TO BE SAMPLED. THIS AMENDED LANGUAGE ALLOWS THE DEPARTMENT TO WORK WITH INDUSTRIAL HEMP BREEDING PROJECTS WHERE SAMPLING EVERY INDIVIDUAL PLANT WOULD BE COST PROHIBITIVE TO A REGISTRANT AND COULD EFFECTIVELY DESTROY A BREEDING PROGRAM IF ALL PLANTS WERE SELECTED FOR INSPECTION.

27. THE AMENDED LANGUAGE IN RULE 4.3.2 CLARIFIES A PROCEDURAL PROCESS THAT INACCURATELY REPRESENTED SCIENTIFIC METHODOLOGY. SAMPLES ARE DIVIDED AFTER PREPARATION FOR TESTING SO THAT THE TWO SAMPLES ARE OF THE SAME COMPOSITE MAKE UP.

28. THE AMENDED LANGUAGE IN RULE 4.3.4 CLARIFIES THE LEGAL EFFECT OF TESTS RESULTS THAT EXCEED 0.3% THC FOR BOTH COMMERCIAL AND RESEARCH AND DEVELOPMENT REGISTRANTS.

29. THE AMENDED LANGUAGE IN RULE 4.4.2 IS FOR ADMINISTRATIVE PURPOSE. REGISTRANTS HAVE USED THE LACK OF CLEAR TERMS OF PAYMENT IN RULE AS A NEGOTIATION POINT TO MAKE PAYMENT PLANS FOR SERVICES OR DELAY PAYMENT UNTIL A NEW REGISTRATION IS NEEDED.

30. AMENDING RULE 5.1 TO INCLUDE AN UPPER THC LIMIT IN PLANT MATERIAL USED IN RESEARCH AND DEVELOPMENT IS NECESSARY TO ENSURE PROGRAMS ARE NOT KNOWINGLY USING MARIJUANA WITH A HIGH THC CONTENT UNDER AN INDUSTRIAL HEMP REGISTRATION.

31. THE AMENDMENT TO RULE 6.1 CLARIFIES THAT A REGISTRATION MAY BE SUMMARILY SUSPENDED IN APPROPRIATE CIRCUMSTANCES UNDER 35-61-107 AND 24-4-104, C.R.S.

32. The amendment to Rule 6.1.5 conforms with the changes to other Rules prohibiting the presence or use of plant material that exceeds 0.3% THC on a registered land area.

33. These amendments incorporate changes as a result of the Department's Regulatory Efficiency Review Process.

COLORADO
Department of Agriculture
FAX 303.466.2867
www.colorado.gov/ag

NOTICE OF PUBLIC RULEMAKING HEARING

FOR ADOPTION OF

"Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act"

8 CCR 1203-23

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE:	Friday, January 23, 2015
TIME:	10:00 a.m.
LOCATION:	Colorado Department of Agriculture San Juan Conference Room 305 Interlocken Parkway Broomfield, Colorado 80021

The purpose of this rulemaking is to add and amend definitions and language. Amendments are proposed throughout the rule that will change registration, reporting, inspection, waiver, and violation/disciplinary sanction/civil penalty requirements. Amendments will also incorporate changes as a result of the Department's Regulatory Efficiency Review Process.

The statutory authority for these rules is §§ 35-61-104(5) and 35-61-105(2), C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 303-869-9002. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.

Notice of Rulemaking Hearing

Tracking number

2014-01217

Department

1507 - Department of Public Safety

Agency

1507 - Colorado State Patrol

CCR number

8 CCR 1507-1

Rule title

MINIMUM STANDARDS FOR THE OPERATION OF COMMERCIAL VEHICLES

Rulemaking Hearing

Date

01/27/2015

Time

01:00 PM

Location

700 Kipling St., Lakewood, CO 1st Floor Conference Room

Subjects and issues involved

Minimum Standards for the Operation of Commercial Vehicles

Statutory authority

42-4-235(4) (a), CRS

Contact information

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Title

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DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL

RULES AND REGULATIONS CONCERNING MINIMUM STANDARDS FOR THE OPERATION OF COMMERCIAL VEHICLES

8 CCR 1507-1

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to §42-4-235(4) (a), CRS, the Chief of the Colorado State Patrol (CSP) has the authority to promulgate rules and regulations for the minimum standards for the operation of commercial vehicles within the State of Colorado.

Amendments are being proposed to 8 Colorado Code of Regulations 1507-1 to ensure compliance and consistency with state law and federal regulations. Specifically, these amendments incorporate the most recently promulgated Out of Service Criteria set forth by the Commercial Vehicle Safety Alliance (CVSA); the inclusion of pertinent sections of the October 2014 Federal Motor Carrier Safety Regulations required as a result of federal law, state law and grant requirements; clarification of surge brake requirements and procedures associated with the civil penalty process; and the correction of minor semantic and grammatical errors.

It has been declared by the General Assembly that the safe operation of commercial vehicles is a matter of statewide concern. The absence of implementing rules to carry out the purpose of the statutes would be contrary to the public health, peace, safety and welfare of the state. For these reasons, it is imperatively necessary that these proposed amendments be adopted.

_____ _____

Colonel Scott Hernandez — Date of Adoption
Chief, Colorado State Patrol

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL

RULES AND REGULATIONS CONCERNING MINIMUM STANDARDS FOR THE OPERATION OF COMMERCIAL VEHICLES

AUTHORITY TO ADOPT STANDARDS AND SPECIFICATIONS

The Chief of the Colorado State Patrol (CSP) is authorized by the provisions of §42-4-235(4) (a), ~~C.R.S.~~CRS, to adopt rules and regulations for safety standards and specifications for the operation of all commercial vehicles in Colorado, both in interstate and intrastate transportation.

I. APPLICABILITY

A. These rules and regulations shall apply to individuals, corporations, Colorado government or governmental subdivisions or agencies, or other legal entities who operate commercial vehicles as defined in §42-4-235(1) (a), ~~C.R.S~~CRS.

1. In addition to this rule, anyone who transports hazardous materials as defined in 49 CFR 171.8 §42-20-103 (3), ~~C.R.S.~~CRS and/or nuclear materials as defined in §42-20-402 (3) (a)~~(b)~~ (c), C.R.S.CRS, shall comply with the CSP Rules and Regulations Concerning the Permitting, Routing, and Safe Transportation of Hazardous and Nuclear Materials and the Intrastate Transportation of Agricultural Products in the State of Colorado found in 8 CCR 1507-25.

2. The CSP Motor Carrier Safety Section (MCSS) may consider and grant requests for temporary variance from the rules in 8 CCR 1507-1 for intrastate commercial motor carriers only, provided the variance is not in violation of §42-4-235, ~~C.R.S~~CRS.

3. The CSP MCSS may grant variances/waivers to drivers unable to satisfy the requirements of 49 CFR 391, Subpart E. Individual applications requesting a variance/waiver of specific requirements may be approved when the approval of the variance/waiver is based upon sound medical judgment combined with appropriate performance standards ensuring no adverse affect on safety.

II. GENERAL DEFINITIONS

A. Definitions relevant to these rules are found in Title 49 of the Code of Federal Regulations (CFR). These definitions are amended, where necessary, to conform to

the Colorado Revised Statutes (CRS). Those definitions controlled by the CRS that are applicable to these rules are referenced below:

1. Commercial Vehicle: The definition of commercial vehicle will be as it is set forth in §42-4-235 (1) (A), CRS.

2. Enforcement Official: The definition of enforcement official will be as it is set forth in §§ 16-2.5-101, 16-2.5-114, 16-2.5-115, and 16-2.5-143 and also as set forth in 42-20-103 (2), CRS.

3. Motor Carrier: The definition of motor carrier will be as it is set forth in §42-4-235 (C), CRS.

III. AUTHORITY TO INSPECT VEHICLES, DRIVERS, CARGO, BOOKS AND RECORDS

A. Enforcement officials, who are authorized to perform motor vehicle safety inspections on commercial motor vehicles and drivers, shall be required to meet the inspector qualifications set forth in §42-4-235(4), ~~C.R.S.~~CRS, while performing a Level I North American Standard Safety Inspection. All enforcement officials performing Level I-VI North American Standard Safety Inspections must maintain certification requirements prescribed in the Commercial Vehicle Safety Alliance (CVSA) Operations Manual.

B. Authorized enforcement officials shall at all times have the authority to inspect commercial vehicles, commercial vehicle drivers, cargo, and any required documents, set forth in 49 CFR, Subchapter B, Parts, 387, 390, 391, 392, 393, 395, 396 and 399 CFR, as revised October 1, ~~2013~~2014.

C. CSP Enforcement officials who are certified by the Federal Motor Carrier Safety Administration (FMCSA) ~~(~~PURSUANT TO 49 CFR 385, Subpart C~~)~~ to perform compliance reviews and safety audits shall have the authority to enter the facilities of and inspect any motor carrier, as defined in §42-4-235, ~~C.R.S.~~CRS, and any required records and supporting documents, set forth in 49 CFR, Subchapter B, Parts 40, 380, 382, 385, 387, 390, 391, 392, 393, 395, 396 and 399, and Appendix G, CFR, as revised October 1, ~~2013~~2014.

IV. INSPECTIONS STANDARDS AND REPORTS

A. Through a Memorandum of Understanding (MOU) with the CVSA, the CSP adopts the standards and procedures established for the inspection of commercial vehicles, collectively known as the North American Uniform Driver/Vehicle Inspection.

B. Authorized enforcement officials performing safety inspections on commercial vehicles, drivers, and cargo shall use as general guidelines the levels, methods of inspections and Out-of-Service criteria, found in the CVSA bylaws, as revised April 1, ~~2014~~ 2015.

C. Authorized enforcement officials shall, on completion of each inspection, prepare a report which at minimum fully identifies the inspector, the inspector's agency, the carrier's name and address, the date and time of the inspection, the location of the inspection, the vehicle, the driver, the defects found, if any, and the disposition of the vehicle. A copy of the inspection report shall be given to the driver or motor carrier.

V. REGULATIONS

A. All intrastate and interstate motor carriers, commercial vehicles and drivers thereof operating within the state of Colorado shall operate in compliance with the safety regulations contained in:

49 CFR 40	Procedures for Transportation Workplace Drug and Alcohol Testing Programs
49 CFR 380	Special Training Requirements
49 CFR 382	Controlled Substances and Alcohol Use and Testing
49 CFR 385 Subparts C & D	Safety Fitness Procedures
49 CFR 387	Minimum Levels of Financial Responsibility for Motor Carriers
49 CFR 390	General
49 CFR 391	Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
49 CFR 392	Driving of Commercial Motor Vehicles
49 CFR 393	Parts & Accessories Necessary for Safe Operation
49 CFR 395	Hours of Service of Drivers
49 CFR 396	Inspection, Repair, and Maintenance
49 CFR 399	Employee Safety and Health Standards
49 CFR Appendix G:	Minimum Periodic Inspection Standards

of the United States Department of Transportation's Motor Carrier Safety Regulations as the same were in effect on October 1, ~~2013~~2014 and published in Title 49 of the Code of Federal Regulations (CFR), subtitle B chapter III, Parts 200 through 399, with references therein, with the following modifications:

1. UNLESS OTHERWISE SPECIFIED, ~~A~~all references ~~only~~ to interstate commerce shall ~~also~~ include intrastate commerce.

2. 49 CFR 380.509 (a) shall be amended to read: "Each employer must ensure each entry level driver, who first begins operating a commercial motor vehicle requiring a commercial driver's license under §42-2-404, ~~C.R.S.~~CRS, receives the training required by 49 CFR 380.503."

3. 49 CFR 385.301 through 385.308 and 385.319 (b) through 385.337 shall not apply. 49 CFR 385.309 through 385.319 (a), hereafter referred to as the Intrastate New Entrant Safety Assurance Program, shall apply to intrastate motor carriers who are beginning in intrastate operations and are required to obtain aN INTRASTATE ~~Colorado~~ ~~assigned~~ USDOT identification number. A prior interstate safety audit or compliance review shall meet the requirement for an intrastate safety audit.
   a. All interstate motor carriers beginning operations in Colorado must submit to a Safety Audit as defined in 49 CFR 385.3.
      i. Safety audits on interstate carriers beginning operations in the State of Colorado will be conducted by the CSP MCSS.
   b. All intrastate motor carriers beginning operations in Colorado are eligible for the Colorado ~~i~~Intrastate ~~n~~New ~~e~~Entrant ~~s~~Safety ~~a~~Assurance ~~p~~Program. New intrastate carriers may schedule training by contacting the CSP MCSS.

4. Pursuant to §42-4-235(4) (A), CRS, the financial responsibility and insurance provisions of these rules do not apply to commercial vehicles regulated by the Colorado Public Utilities Commission (PUC). ~~Therefore,~~ 49 CFR 387.1 through 387.17, 387.303, 387.305 and 387.309 shall apply with the following exceptions:
   a. 49 CFR 387.7 (e) and (g) shall not apply.

   b. 49 CFR 387.9 (4) applies only to interstate and foreign commerce.

   c. Transportation carriers may obtain a certificate of self insurance issued pursuant to §42-7-501, ~~C.R.S.~~CRS, or part 387 of 49 CFR.

   d. Motor carriers subject to these rules shall carry a minimum level of cargo liability coverage of $10,000 for loss or damage to property carried on any one motor vehicle or an amount adequate to cover the value of the property being transported, whichever is less, unless the shipper and the property carrier otherwise agree by written contract to a lesser amount.

5. 49 CFR 390.3 (f), (1-2) and (6) shall not apply.

6. 49 CFR 390.5 Definitions:

   a. The definition of "Commercial Motor Vehicle" and "Motor Carrier" shall not apply.

b. The definition of an "Emergency" is amended by adding the following: "A governmental agency has determined that a local emergency requires relief from the maximum driving time in 49 CFR 395.3 or 395.5."

7. 49 CFR 390.19 (a) is amended to read: "Each motor carrier that conducts operations in intrastate commerce must apply for and receive AN INTRASTATE ~~Colorado assigned~~ USDOT identification number prior to beginning operations within the state. The motor carrier is required to update this information every 24 months."

   a. Identification numbers for intrastate motor carriers are PROCESSED BY~~issued through~~ the Colorado State Patrol, Motor Carrier Safety Section AND ISSUED THROUGH THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA).

   b. Only the legal name and/or a single trade name may be used on the application for the ~~Colorado assigned~~ USDOT identification number.

8. 49 CFR 390.21 (b) is amended by adding the following: "Intrastate carriers must mark their vehicles with the ~~Colorado a~~ssigned INTRASTATE USDOT identification number, preceded by the letters "USDOT" and followed by the suffix "CO" (e.g.: USDOT 1234567 CO).

   a. Motor carriers operating in intrastate commerce, not transporting 16 or more passengers (including the driver) or transporting placarded hazardous materials and having a GVWR or GCWR equal to or in excess of 10,001 lbs., but not in excess of 26,000 lbs, may meet the marking requirements of 49 CFR 390.21 by marking the trailer or secondary unit, if the GVWR of the self-propelled unit is 10,000 lbs. or less.

   b. In the interests of public safety, repossessors as defined within §42-6-146 (4), CRS, operating intrastate are not subject to the marking requirements of 49 CFR 390.21.

9. 49 CFR 391.11(b)(1) shall be amended to read: "Is at least 21 years old if engaged in interstate commerce or transporting hazardous materials of a type or quantity that would require the vehicle to be marked or placarded under 49 CFR 177.823. All other drivers must be at least 18 years of age."

10. 49 CFR 393.48 and 393.49 shall not apply to THE INTRASTATE OPERATION OF trailers equipped with hydraulic surge brakes HAVING EITHER A ~~GCWR~~ GROSS VEHICLE WEIGHT RATING OR GROSS COMBINATION RATING ~~does~~ not IN exce~~ed~~SS OF 26,000 pounds.

    a. TRAILERS EQUIPPED WITH HYDRAULIC SURGE BRAKES NOT HAVING EITHER A GROSS VEHICLE WEIGHT RATING OR

GROSS COMBINATION RATING EXCEEDING 26,000 POUNDS MUST COMPLY WITH THE RULES AND REGULATIONS CONCERNING THE USE OF SURGE BRAKES, 8 CCR 1507-18, ADOPTED PURSUANT TO §42-4-223 (2.5), CRS. ~~and they comply with the rules adopted pursuant to §42-4-223(2.5), C.R.S. (8CCR 1507-18), concerning the use of surge brakes in Colorado.~~

11. Public transit agency carriers and their drivers operating in intrastate commerce may meet the requirement in 49 CFR 395.1 (e) (1) (ii) by either meeting the existing regulation or by replacing 49 CFR 395.1 (e) (1) (ii) with "the driver is released from work within 12 consecutive hours."

12. 49 CFR 395.3 or 395.5 shall not apply to drivers of either Colorado governmental or tow trucks working an emergency, as defined in 49 CFR 390.

13. 49 CFR 395.3 shall not apply to tow drivers who are towing a vehicle from public roadway at the request of a police officer or other law enforcement purpose.

14. Drivers transporting livestock, poultry, slaughtered animals or the grain, corn, feed, hay etc. used to feed animals are eligible to use the agricultural operations exception in 49 CFR 395.1 (k).

15. 49 CFR 395.1 (k) (2) is amended to read: "Is conducted during the planting and harvesting seasons within Colorado as determined by the Department of Agriculture to be from January 1 to December 31."

16. All references to federal agencies and authorized personnel shall be construed to mean the CSP, PUC, and law enforcement agencies with a signed MOU with the CSP and their authorized personnel.

17. All reporting requirements referred to in 49 CFR 40, 368, 380, 382, 385, 387, 390, 391, 392, 393, 395, 396 and 399, upon request shall be filed with or provided to the CSP MCSS, 15075 S.~~outh~~ Golden R~~oad~~., Golden, CO ~~olorado~~ 80401.

B. These Rules and Regulations apply to all vehicles which meet the definition of a commercial vehicle set forth in §42-4-235 (1) (a), ~~C.R.S.~~CRS, and drivers which meet the definition of "Driver" as described in 49 CFR 390.5, with the following exceptions:

1. Drivers of intrastate vehicles and combination of vehicles with a gross vehicle weight rating (GVWR) or gross combined weight rating (GCWR) of not more than 26,000 pounds, and which do not require a commercial driver's license to

operate, are not subject to 49 CFR 391, Subpart E, Physical Qualifications and Examinations;

2. Vehicles owned and operated by the Federal Government or state government or political subdivision thereof not domiciled in Colorado, which are not transporting hazardous materials of a type and quantity that requires the vehicle to be marked or placarded under 49 CFR 172.504;

3. The operation of authorized emergency vehicles, as defined in §42-1-102 (6), ~~C.R.S.~~CRS, while in emergency and related operations;

4. The operations of snowplows when removing snow/ice from the roadway or related snow/ice removal operations;

C. **Traction Devices Required**:

Drivers operating a commercial vehicle as defined in Colorado Department of Transportation's rule 2 CCR 601-14, with the exception of mobile cranes, that are operated on Interstate 70 between milepost 133 to milepost 259 from September 1st to May 31st inclusive, must carry tire chains as defined in §42-4-106 (5) (A) (I), CRS. Alternative traction devices or tire cables may be used in lieu of tire chains as identified in 2 CCR 601-14.

VI. SAFETY FITNESS RATINGS AND INTRASTATE CIVIL PENALTIES

A. The ~~Department of Public Safety~~CDPS is authorized by the provisions of §42-4-235(2) (a), ~~C.R.S.~~CRS, to collect civil penalties levied against intrastate carriers found in violation of the rules pursuant to §42-4-235(4) (a), ~~C.R.S.~~CRS, as adopted by the CDPS~~olorado Department of Public Safety~~. The following procedure shall apply to the determination and issuance of those penalties.

B. The CSP must establish a Safety Fitness Rating for each motor carrier upon which it conducts a compliance review. The CSP shall use as general guidelines the procedures and definitions contained in 49 CFR 385.

1. Scope, Authority and Application

a. §42-4-235(2) (a), ~~C.R.S.~~CRS, Minimum Standards for Commercial Vehicles. No person shall operate a commercial vehicle on a public highway of this state unless such vehicle is in compliance with the rules adopted by CSP. Any person who violates such rules shall be subject to the civil penalties authorized pursuant to 49 CFR 386, Subpart G.

i. INTRASTATE MOTOR CARRIERS SHALL NOT BE SUBJECT TO ANY PROVISIONS IN 49 CFR 386, SUBPART G THAT RELATE THE

AMOUNT OF A PENALTY TO A VIOLATOR'S ABILITY TO PAY. SUCH PENALTIES SHALL BE BASED UPON THE NATURE AND GRAVITY OF THE VIOLATION, THE DEGREE OF CULPABILITY, AND SUCH OTHER MATTERS AS JUSTICE AND PUBLIC SAFETY MAY REQUIRE.

b. The CSP shall have exclusive enforcement authority to conduct safety compliance reviews, as defined in 49 CFR 385.3 and to impose civil penalties pursuant to such rules. ~~Intrastate motor carriers shall not be subject to any provisions in 49 CFR, part 386, subpart g that relate the amount of a penalty to a violator's ability to pay, and such penalties shall be based upon the nature and gravity of the violation, the degree of culpability, and such other matters as justice and public safety may require.~~

c. The Civil Penalty will be applied at the completion of a compliance review by a Motor Carrier Safety Investigator certified by the FMCSA as a compliance review investigator.

2. Definitions

a. CIVIL PENALTY PROCESS:~~*Civil Penalty Process* means~~ ~~t~~The process and proceedings to collect civil penalties by the CSP for violations of §42-4-235, ~~C.R.S.~~ CRS.

b. NOTICE OF CLAIM LETTER:~~*Claim Letter* means~~ ~~t~~The written order informing the motor carrier of their penalty, the rights associated with the penalty and the process for responding to the penalty. ALSO KNOWN AS A "NOC" LETTER.

c. COMMERCIAL VEHICLE:~~*Commercial Vehicle* s~~Shall have the same meaning as described in §42-4-235 (1) (a), ~~C.R.S~~CRS.

d. COMPLIANCE REVIEW:~~*Compliance Review* means a~~An examination of motor carrier operations, such as driver's hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard.

e. CONDITIONAL SAFETY RATING:~~*Conditional Safety Rating* m~~Means ~~a~~ A RATING INDICATING THAT A motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in 49 CFR 385.5.

f. MOTOR CARRIER:~~*Motor Carrier* s~~Shall have the same meaning as described in §42-4-235(1)(c), ~~C.R.S~~CRS.

g. SERVED/SERVICE:~~*Served/Service* means~~ SHALL INDICATE THAT the ~~n~~Notice OF CLAIM or service document was sent by first class mail to the last address furnished to the CSP MCSS by the motor carrier or ~~the notice or service document~~ was personally served by a uniformed member of the CSP.

i. Service of a notice or document by first class mail is considered complete when it is mailed, not when it is received.

h. SATISFACTORY SAFETY RATING:~~*Satisfactory Safety Rating* means~~ A RATING INDICATING that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in 49 CFR 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

i. UNSATISFACTORY SAFETY RATING: ~~*Unsatisfactory Safety Rating means*~~ A RATING INDICATING a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in 49 CFR 385.5.

3. Safety Fitness Rating

a. Upon completion of a compliance review the CSP shall assign a proposed safety fitness rating that shall be based on the degree of compliance with the federal motor carrier safety fitness standard for motor carriers found in 49 CFR 385.5. The safety rating will be determined using the factors prescribed in 49 CFR 385.7. A motor carrier may determine their degree of compliance with the safety fitness standard by reviewing ~~the standard in~~ 49 CFR 385.5 OR BY CONTACTING THE CSP MCSS FOR AN ELECTRONIC TRAINING PACKET.~~, at www.fmcsa.dot.gov. and clicking on "How To Comply (ETA Package)".~~

b. On the 61st day after the assignment of a proposed safety fitness rating the motor carrier's safety fitness rating will become a final safety fitness rating.

c. The final safety fitness rating of aN INTRASTATE ~~particular~~ motor carrier will be available to the public upon request by contacting the CSP MCSS office in writing or fax at:

Colorado State Patrol
Motor Carrier Safety Section
15075 S.~~outh~~ Golden R~~oa~~d.
Golden, CO 80401

303-273-1875
303-273-1939 Fax

d. If a motor carrier believes the CSP committed an error in assigning its safety rating they may request an administrative review ~~of that rating~~. The request must conform to the following provisions.

   i. The request must be in writing addressed to the Chief of the CSP or his/her designee within 30 days of the assignment of the proposed safety fitness rating.

   ii. The request must explain the error the motor carrier believes the CSP committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documentation that supports its argument.

   iii. The Chief/Designee may request more information and/or require the motor carrier to attend a conference to discuss the rating. If the motor carrier does not provide the information requested or attend the conference then the chief/designee may dismiss the request.

   iv. The Chief/Designee will serve the decision within 30 days of receiving the request.

   v. The proposed safety fitness rating will remain as a proposed safety fitness rating until the decision of the Chief/Designee.

   vi. The decision will include the assignment of a final safety fitness rating. The decision constitutes final action by the CSP.

e. IN THE EVENT A SAFETY FITNESS RATING IS ASSIGNED TO AN INTRASTATE MOTOR CARRIER, ~~T~~the motor carrier may request a change to their safety fitness rating based on corrective actions taken by the motor carrier. This request cannot be made, and will not be acted upon, sooner than 90 days after the assignment of a proposed safety fitness rating. The request must be in writing and addressed to the Chief of the CSP or his/her designee. The request must conform to the following provisions:

   i. The motor carrier must submit a description of corrective action taken, hereinafter referred to as the Safety Management Plan (SMP).

   ii. The SMP shall address each violation on the most recent compliance review that was an acute and/or critical violation. It shall also address factor six (crashes) of the compliance review when the rating for factor six is "unsatisfactory."

iii. The SMP must identify why the violation(s) cited as acute and critical were permitted to occur.

iv. The SMP must discuss the actions to be taken to correct the deficiency or deficiencies that allowed the acute and or critical violations to occur.

v. Actions taken to insure these critical and/or acute violations do not reoccur in the future.

vi. If factor six (crashes) is rated as unsatisfactory an accident countermeasure program must be included as part of the SMP. The program must include, but not limited to, defensive driving training.

vii. If the SMP includes actions taken in the near future, such as training, reorganization of departments, purchasing of computer programs etc., a schedule of when that activity is to occur must be included.

viii. Any additional documentation or information that relates to motor carrier safety and the prevention of crashes and hazardous materials incidents must be included.

ix. The SMP must include a written statement certifying that the motor carrier will operate in compliance with the motor carrier safety and hazardous materials regulations adopted by the CSP pursuant to §§42-4-235 and 42-20-108, ~~C.R.S.~~CRS, and all applicable state and local laws.

x. The SMP must be signed by a corporate officer in the case of a corporation, a member or manager in the case of a limited liability company, by the general partner of a limited partnership or by all partners or proprietors in the case of a general partnership or proprietorship.

f. The motor carrier may request a change in their safety fitness rating by requesting a follow up compliance review, as follows:

i. The request must be made to the Chief of the CSP or his/her designee. The request cannot be made and will not be acted upon, sooner than three months after the assignment of a proposed safety fitness rating.

ii. The compliance review investigator will review the corrective actions taken by the motor carrier since the last compliance review.

4. Civil Penalty

a. The compliance review may result in the assessment of a civil penalty as prescribed by §42-4-235(2) (a) and (b), ~~C.R.S.~~CRS, for violations discovered during the compliance review.

b. The amount of the civil penalty will be determined by taking into account the following factors:

   i. Nature and gravity of the violation;

   ii. Degree of culpability;

   iii. History of offenses within three years preceding the date of the compliance review;

   iv. Such other matters as justice and public safety may require, not to include any consideration of a violator's ability to pay the civil penalty.

c. The intrastate operation of implements of husbandry shall not be subject to the civil penalties provided in 49 CFR 386, Subpart G.

d. The compliance review investigator will use the Uniform Fine Assessment (UFA), as incorporated by the CSP, to determine the civil penalty levied upon the motor carrier.

5. Civil Penalty Process

a. **Notification** Upon determination of the civil penalty, the compliance review investigator will serve notification in the form of a claim letter.

b. **Payment or Administrative Review.** The motor carrier shall serve the CSP MCSS with their response to the claim letter within 30 days of service of the claim letter in one of the following ways:

   i. Pay the full amount of the civil penalty as instructed in the claim letter; or

   ii. Submit a written request for a payment plan to the Commander of the CSP MCSS; or

   iii. If a motor carrier believes the CSP committed an error in determining its civil penalty, they may request an administrative review of that penalty. The following provisions will govern the administrative review:

A. The request must be in writing addressed to the Chief of the CSP or his/her designee within 30 days of the service of the NOTICE OF ~~c~~Claim letter.

B. The request must explain the error the motor carrier believes the CSP committed in issuing the civil penalty. The motor carrier must include a list of issues in dispute, and any supporting information or documentation.

C. The Chief/Designee may request additional information and/or require the motor carrier to attend a conference to discuss the penalty. If the motor carrier does not provide the information requested or attend the conference then the Chief/Designee may dismiss the request.

D. The Chief/Designee shall serve the motor carrier with a written decision within 30 days after the Chief/Designee has determined that the administrative record is complete. This decision shall constitute final agency action.

E. The motor carrier has 30 days from the date of the service of the decision to pay the penalty, to arrange for a payment plan as described in 5 (b) (ii) or 35 DAYS FROM THE DATE OF FINAL AGENCY ACTION TO file an action in the appropriate district court AS PROVIDED BY §24-4-106 (4), CRS.

iv. If, after the 30 days the carrier does not pay the penalty, request a payment plan or file an action in the appropriate district court the carrier will be deemed to have failed to pay.

v. If a carrier has failed to pay the assessed or adjudicated penalty, the registrations of the carrier's vehicles shall be cancelled pursuant to §42-3-120, CRS.

VI. MISCELLANEOUS

A. All contact with the CSP regarding these rules or their applicability should be addressed to:

Colorado State Patrol
Motor Carrier Safety Section
15075 South Golden Road
Golden, CO 80401
303-273-1875
303-273-1939 Fax

B. The safety regulations hereby adopted are contained in the publication entitled Code of Federal Regulations 49 CFR 200 to 399 revised as of October 1, ~~2013~~2014. 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 MCSS, 15075 S.~~outh~~ Golden R~~oad~~., Golden, CO, 80401~~olorado~~. Materials incorporated by reference may be examined by any state publication depository library. This rule does not include later amendments to or additions of any materials incorporated by reference.

Notice of Rulemaking Hearing

Tracking number

2014-01216

Department

1507 - Department of Public Safety

Agency

1507 - Colorado State Patrol

CCR number

8 CCR 1507-18

Rule title

USE OF SURGE BRAKES

Rulemaking Hearing

Date

01/27/2015

Time

01:00 PM

Location

700 Kipling Street, Lakewood, Co 1st Floor Conference Room

Subjects and issues involved

Use of Surge Brakes

Statutory authority

42-4-223(2.5), CRS

Contact information

Name

Tim Hilferty

Title

Captain

Telephone

303-273-1875

Email

timothy.hilferty@state.co.us

DEPARTMENT OF PUBLIC SAFETY

RULES AND REGULATIONS

CONCERNING

THE USE OF SURGE BRAKES

8 CCR 1507-18

STATEMENT OF BASIS, STATUTORY AUTHORITY AND PURPOSE

Pursuant to §42-4-223(2.5), CRS, the Executive Director of the Colorado Department of Public Safety is specifically authorized to adopt rules regulating the use of surge brakes in the State of Colorado.

These rules are being amended to reflect changes in formatting and to correct or updates references to the Code of Federal Regulations, Colorado Revised Statutes and custodial location for these rules. These rules are also being amended to include additional definitions to more clearly communicate their applicability. The brake criteria of these rules remain unchanged.

It has been declared by the General Assembly that the safe use and operation of surge brakes on public roads is an important issue of statewide concern. The absence of rules implemented to carry out the purpose of the aforementioned statute would be contrary to public safety and welfare and therefore the public interest. For these reasons, it is necessary that these rules on the use of surge brakes be adopted.

_____ _____

Stan Hilkey
Executive Director

Date of Adoption

AUTHORITY TO ADOPT RULES RELATING TO THE USE OF SURGE BRAKES

The Colorado Department of Public Safety is SPECIFICALLY authorized by ~~the provisions of~~ §42-4-223(2.5), CRS, to adopt rules REGULATING~~relating to~~ the use of surge brakes on trailers in Colorado.

I. APPLICABILITY

A. These rules shall apply to any ~~individual who operates~~ PERSON OPERATING a trailer equipped with surge brakes WITHIN THE STATE OF COLORADO WITH THE EXCEPTION OF ~~except as follow~~:

1. Commercial vehicles OPERATING IN INTERSTATE COMMERCE MEETING THE DEFINITION OF A COMMERCIAL VEHICLE UNDER 49 CFR ~~,~~ ~~involved in interstate commerce, as defined in Title 49, Part~~ 390.5.
   i. COMMERCIAL VEHICLES OPERATING INTERSTATE ~~Code of Federal Regulations (CFR),~~ are subject to the brake regulations ~~in~~ OF 49 CFR 393.40 THROUGH 393.55.~~, Part 393,Subpart C.~~
2. Commercial vehicles AS DEFINED IN §42-4-235(1)(a), CRS, OPERATING~~,~~ ~~involved~~ in intrastate commerce~~, as defined in §42-4-235(1)(a),~~ are subject to the SURGE BRAKE REQUIREMENTS OF ~~rules~~ 8 CCR 1507-1~~adopted pursuant to §42-4-235(4), CRS~~.
3. Trailers ~~not required to be equipped with~~ EXCEPTED FROM BEING EQUIPPED WITH brakes ~~pursuant to~~ BY §42-4-223(1)(d), CRS.

II. DEFINITIONS

A. UNLESS OTHERWISE SPECIFIED, THE FOLLOWING DEFINITIONS APPLY TO THESE RULES.

1. SURGE BRAKE: AS DEFINED BY §42-1-102 (102.5), CRS, A SYSTEM WHEREBY THE BRAKES OF A TRAILER ARE ACTUATED AS A RESULT OF THE FORWARD PRESSURE OF THE TRAILER AGAINST THE TOW VEHICLE DURING DECELERATION.
2. TRAILER: AS IDENTIFIED BY §42-1-102(105), CRS, A TRAILER SHALL BE ANY WHEELED VEHICLE, WITHOUT MOTIVE POWER, DESIGNED TO BE DRAWN BY A MOTOR VEHICLE AND CARRYING ITS OWN CARGO LOAD WHOLLY UPON ITS OWN STRUCTURE AND USED TO CARRY AND TRANSPORT PROPERTY OVER PUBLIC HIGHWAYS. AS USED WITHIN THESE RULES:
   i. "TRAILER" SHALL ALSO INCLUDE:
      a. CAMPER TRAILER AS DEFINED BY §42-1-102(14), CRS;
      b. MULTI-PURPOSE TRAILER AS DEFINED BY §42-1-102(60.3), CRS;
      c. SEMITRAILER AS DEFINED BY §42-1-102(89), CRS; AND
      d. TRAILER COACH AS DEFINED BY §42-1-102(14), CRS.
   ii. "TRAILER" SHALL NOT INCLUDE:
      a. UTILITY TRAILER AS DEFINED IN §42-1-102(111), CRS.

~~B. Trailer- for purposes of these rules, the term "trailer" shall also include "semi-trailer," "utility trailer," "camper trailer," and "trailer coach" as defined in §42-1-102, CRS.~~

III. RULES

A. Surge brakes may be used on trailers provided they meet all of the following criteria:

1. The Gross Vehicle Weight Rating (GVWR) of the trailer does not exceed 10,000 pounds.
2. The actual gross weight of the trailer does not exceed the GVWR.
3. The GVWR of the trailer(s) cannot exceed 1 ½ times the GVWR of the towing vehicle.
4. EXCEPT AS EXEMPTED WITHIN §42-4-223 (1)(C), CRS, ~~B~~TRAILER brakes must be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied.
5. Brakes must apply to all wheelS of the trailer.
6. ~~Performance ability-~~ AS REQUIRED BY §42-4-223(2), CRS, the SERVICE brakes on the vehicle combination shall be adequate to stop such vehicle when traveling ~~twenty~~ 20 miles per hour within a distance of ~~forty~~ 40 feet when upon dry asphalt or concrete pavement surface free from loose material where the grade does not exceed one (1) percent.
   a) The braking distance specified shall apply whether such vehicle is not loaded or loaded to its maximum capacity.
   b) All surge brake systems shall be maintained in good working order and shall be so adjusted as to operate as equally as possible with respect to the wheels on opposite sides of the vehicle.

IV. MISCELLANEOUS

A. ALL COMMUNICATION REGARDING THESE RULES AND/OR THEIR APPLICABILITY SHOULD BE ADDRESSED TO:

COLORADO STATE PATROL
MOTOR CARRIER SAFETY SECTION
15075 S. GOLDEN RD.
GOLDEN CO. 80401

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 COLORADO STATE PATROL Motor Carrier Safety Section, ~~Colorado Department of Public Safety, Division of State Patrol, 710 Kipling Street, Suite 309, Denver, Colorado~~15075 S. GOLDEN RD., CO., 80401. MATERIALS INCORPORATED BY REFERENCE MAY BE EXAMINED BY ANY STATE PUBLICATION DEPOSITORY LIBRARY. THIS RULE DOES NOT INCLUDE LATER AMENDMENTS TO OR ADDITIONS OF ANY MATERIALS INCORPORATED BY

REFERENCE. ~~To the extent that any material is incorporated by reference herein, it may be examined at any publication library. This rule does not include later amendments to or additions of any materials incorporated by reference.~~

Notice of Rulemaking Hearing

Tracking number

2014-01215

Department

1507 - Department of Public Safety

Agency

1507 - Colorado State Patrol

CCR number

8 CCR 1507-25

Rule title

RULES AND REGULATIONS CONCERNING THE PERMITTING, ROUTING AND TRANSPORTATION OF HAZARDOUS AND NUCLEAR MATERIALS AND THE INTRASTATE TRANSPORTATION OF AGRICULTURAL PRODUCTS IN THE STATE OF COLORADO

Rulemaking Hearing

Date

01/27/2015

Time

02:00 PM

Location

700 Kipling Street, Lakewood, Co. 1st Floor Conference Room

Subjects and issues involved

Rules and Regulations Concerning the Permitting, Routing and Transportation of Hazardous and Nuclear Materials and Intrastate Transportation of Agricultural Products

Statutory authority

42-20-108 (1) and (2), CRS; 42-20-403, 504 and 508, CRS; and 42-20-108.5, CRS

Contact information

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DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL

RULES AND REGULATIONS CONCERNING THE PERMITTING, ROUTING & TRANSPORTATION OF HAZARDOUS AND NUCLEAR MATERIALS AND THE INTRASTATE TRANSPORTATION OF AGRICULTURAL PRODUCTS IN THE STATE OF COLORADO

8 CCR 1507-25

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to §42-20-108 (1) and (2), CRS, the Chief of the Colorado State Patrol has the authority to promulgate rules and regulations for the permitting, routing, and safe transportation of hazardous materials by motor vehicles within the State of Colorado. Pursuant to §§42-20-403, 504 and 508, CRS, the Chief of the Colorado State Patrol has the authority to promulgate rules and regulations for the permitting, routing, and safe transportation of nuclear materials by motor vehicles within the State of Colorado. Pursuant to §42-20-108.5, CRS, the Chief is authorized to adopt rules and regulations which exempt agricultural products from the hazardous materials rules.

The rules are being amended to update and confirm references to both federal regulations and state statute; to clarify requirements related to the transport of nuclear materials in the State of Colorado; to address grammatical errors; and to refine the format of these rules overall.

It was declared by the General Assembly that the permitting, routing, and transportation of vehicles transporting hazardous and nuclear materials is a matter of statewide concern. The absence of implementing rules to carry out the purpose of the statutes would be contrary to the public health, peace, safety and welfare of the state. For these reasons, it is necessary that these rule amendments 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 ~~CONCERNING THE~~ PERMITTING, ROUTING & TRANSPORTATION OF ~~HAZARDOUS AND~~ HAZARDOUS AND NUCLEAR MATERIALS ~~AND THE INTRASTATE TRANSPORTATION AND OF~~ THE INTRASTATE TRANSPORTATION OF~~AGRICULTURAL PRODUCTS~~ AGRICULTURAL PRODUCTS IN THE STATE OF COLORADO

AUTHORITY

The Chief of the Colorado State Patrol (CSP) is authorized by ~~the provisions of~~ §42-20-108 (1) and (2) and §§42-20-403, 504, and 508, ~~C.R.S.~~CRS, to promulgate rules and regulations for the permitting, routing and safe transportation of hazardous and nuclear materials by motor vehicle within the State of Colorado, both in interstate and intrastate transportation. Pursuant to §42-20-108.5, ~~C.R.S.~~CRS, the Chief is authorized to adopt rules and regulations which exempt agricultural products from the hazardous materials rules.

APPLICABILITY

THESE RULES AND REGULATIONS SHALL APPLY TO ALL PERSONS WHO TRANSPORT, SHIP OR CAUSE TO BE TRANSPORTED OR SHIPPED, A HAZARDOUS MATERIAL BY MOTOR VEHICLE OVER THE PUBLIC ROADS OF THIS STATE.

COMPLIANCE WITH 8 CCR 1507-1

ALL COMMERCIAL VEHICLES THAT TRANSPORT HAZARDOUS AND/OR NUCLEAR MATERIALS SHALL COMPLY WITH THE RULES AND REGULATIONS FOUND AT 8 CCR 1507-1, CONCERNING THE MINIMUM STANDARDS FOR THE OPERATION OF COMMERCIAL VEHICLES.

GENERAL DEFINITIONS

Unless otherwise specified, definitions of general applicability throughout these rules are:

ENFORCEMENT OFFICIAL: AS IDENTIFIED WITHIN §42-20-103 (2), CRS, THE DEFINITION OF ENFORCEMENT OFFICIAL IS LIMITED TO A PEACE OFFICER WHO IS AN OFFICER OF THE CSP AS DESCRIBED IN §§16-2.5-101 AND 114, CRS; A CERTIFIED PEACE OFFICER WHO IS A CERTIFIED PORT OF ENTRY (POE) OFFICER AS DESCRIBED IN §§16-2.5-101 AND 115, CRS; A PEACE OFFICER WHO IS AN INVESTIGATING OFFICIAL OF THE PUBLIC UTILITIES COMMISSION (PUC) TRANSPORTATION SECTION AS DESCRIBED IN §§16-2.5-101 AND 143, CRS; OR ANY PEACE OFFICER AS DESCRIBED IN §16-2.5-101, CRS.

HAZARDOUS MATERIALS: AS DEFINED WITHIN §42-20-103 (3), CRS, ARE THOSE MATERIALS LISTED IN TABLES 1 AND 2 OF TITLE 49, CODE OF FEDERAL REGULATIONS, 172.504 (49 CFR 172.504), EXCLUDING HIGHWAY ROUTE CONTROLLED QUANTITIES OF RADIOACTIVE MATERIALS AS DEFINED IN 49 CFR 173.403 (1),

EXCLUDING ORES, AND THE WASTES AND TAILING THERE FROM, AND EXCLUDING SPECIAL FIREWORKS WHERE THE AGGREGATE AMOUNT OF FLASH POWDER DOES NOT EXCEED FIFTY POUNDS.

MOTOR VEHICLE: AS DEFINED WITHIN §42-20-103(4), CRS, IS ANY DEVICE WHICH IS CAPABLE OF MOVING FROM PLACE TO PLACE UPON PUBLIC ROADS. THE TERM INCLUDES, BUT IS NOT LIMITED TO, ANY MOTORIZED VEHICLE OR ANY SUCH VEHICLE WITH A TRAILER OR SEMI-TRAILER ATTACHED THERETO.

~~**"Person"**~~: AS DEFINED WITHIN §42-20-103 (6), CRS, ~~means~~ IS an individual, a corporation, a government or governmental subdivision or agency, a partnership, an association, or any other legal entity; except that separate divisions of the same corporation may, at their request, be treated as separate persons. ~~[§42-20-103 (6), C.R.S.]~~

~~**"Hazardous materials"** : means those materials listed in Tables 1 and 2 of Title 49, Code of Federal Regulations, 172.504 (49 CFR 172.504), excluding highway route controlled quantities of radioactive materials s defined in 49 CFR 173.403 (1), excluding ores, the products from mining, milling, smelting and similar processing of ores, and the wastes and tailing there from, and excluding special fireworks when the aggregate amount of flash powder does not exceed fifty pounds. [§42-20-103 (3), C.R.S.]~~

~~**"Motor vehicle"** means any device which is capable of moving from place to place upon public roads. The term includes, but is not limited to, any motorized vehicle or any such vehicle with a trailer or semi-trailer attached thereto. [§42-20-103 (4), C.R.S.]~~

~~**"Enforcement official"** means, and is limited to, a peace officer who is an officer of the CSP as described in §§16-2.5-101 and 114, C.R.S,, a certified peace officer who is a certified port of entry officer as described in §§16-2.5-101 and 115, C.R.S., a peace officer who is an investigating official of the transportation section of the public utilities commission as described in §§16-2.5-101 and 143, C.R.S., or any other peace officer as described in section §16-2.5-101, C.R.S. [§42-20-103 (2), C.R.S.]~~

PART I

HAZARDOUS MATERIALS TRANSPORTATION

HMT 1

APPLICATION OF TITLE 49, CODE OF FEDERAL REGULATIONS

The transportation of hazardous materials by motor vehicle must comply with the ~~provisions~~ REGULATIONS CONTAINED IN:~~49 CFR 107 (excluding its definition of "person" in §107.1), 171, 172, 173, 177, 178, 180, 387, and 397, as revised October 1, 2012 which are the guidelines for the hazardous materials transportation rules and regulations promulgated by the Chief of the State Patrol pursuant to §42-20-108, C.R.S., and given force by the enforcement officials identified in §42-20-103 (2), C.R.S.~~

49 CFR 107	HAZARDOUS MATERIALS PROGRAM PROCEDURES
49 CFR 171	GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

49 CFR 172	HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS
49 CFR 173	SHIPPERS- GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS
49 CFR 177	CARRIAGE BY PUBLIC HIGHWAY
49 CFR 178	SPECIFICATIONS FOR PACKAGINGS
49 CFR 180	CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS
49 CFR 387	MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS
49 CFR 397	TRANSPORTATION OF HAZARDOUS MATERIALS DRIVING AND PARKING RULES

OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS REGULATIONS AS THE SAME WERE IN EFFECT ON OCTOBER 1, 2014. AS AUTHORIZED BY §42-20-108 (3), CRS, THESE FEDERAL REGULATIONS ARE USED AS GENERAL GUIDELINES BY THE CHIEF OF THE CSP IN PROMULGATING THESE RULES AND ARE ADOPTED FOR ENFORCEMENT BY LAW ENFORCEMENT OFFICIALS WITH THE FOLLOWING MODIFICATIONS:

1. THE DEFINITION OF PERSON PROVIDED WITHIN 49 CFR 107.1 DOES NOT APPLY.

2. 49 CFR 107.1 (D) (5) DOES NOT APPLY.

HMT 2

INSPECTION STANDARDS

A. On February 7, 2012, through a Memorandum of Understanding (MOU) with the Commercial Vehicle Safety Alliance (CVSA), the ~~Colorado State Patrol~~CSP, as a ~~D~~division of the Colorado Department of Public Safety (CDPS), adopted the CVSA inspection procedures, decal application policies, and out of service criteria~~, which have been~~ established for the inspection of commercial motor vehicles.

B. Enforcement officials performing safety inspections on motor vehicles transporting hazardous materials shall use the inspection procedures, decal application policies, and ~~out of service~~ OUT OF SERVICE criteria, found in the CVSA Operations Manual, ~~in~~ effectIVE ~~on~~ April 1, ~~2013~~2015.

HMT 3

NOTIFICATION OF INCIDENTS

A. The driver of a motor vehicle transporting hazardous materials as cargo ~~which is~~ involved in a hazardous material spill, whether intentional or unintentional, shall give immediate notice of the location of such spill and such other information as necessary to the nearest law enforcement agency AS REQUIRED BY §42-20-113 (3), CRS. ~~[§42-20-113 (3), C.R.S.]~~

B. The driver of a motor vehicle transporting hazardous materials as cargo ~~which is~~ involved in an incident that may result in a potential spill~~,~~ shall give immediate notice of the incident location and such other information as necessary to the nearest law enforcement agency.

C. The driver of a motor vehicle involved in a spill of hazardous material from a fuel tank that provides fuel for the motor vehicle and/or equipment thereon, shall give immediate notice of the location of such spill and such other information as necessary to the nearest law enforcement agency.

D. As it applies to the above paragraphs in this HMT 3, "…such other information as necessary…" includes, but is not ~~be~~ limited to, the following:

1. Name of the person reporting the incident;
2. Phone number where person reporting incident can be contacted;
3. Type of incident;
4. Type of motor vehicle involved;
5. Name of motor carrier involved, if applicable;
6. Extent of injuries, if any;
7. Classification, name, and quantity of hazardous materials involved; and~~,~~
8. ~~Whether~~ IF a continuing danger to public safety or the environment exists at the scene.

E. As soon as possible after ~~the~~ initial notification of ~~the~~ A HAZARDOUS MATERIAL spill/incident to the nearest law enforcement agency, the driver or a company representative shall provide the same required information to the:

1. ~~Colorado State Patrol~~ CSP at (303) 239-4501; and~~,~~
2. Colorado Department of Public Health and Environment (CDPHE) ENVIRONMENTAL SPILL REPORTING LINE at (877) 518-5608. ~~(Environmental spill Reporting Line)~~

HMT 4

AUTHORITY TO INSPECT MOTOR VEHICLES, BOOKS AND RECORDS

A. Enforcement officials who are ~~required~~ AUTHORIZED to perform motor vehicle safety inspections on commercial motor vehicles AS DEFINED BY §42-4-235 (A), CRS [42-4-235 (a), ~~C.R.S.~~CRS] and drivers THEREOF, shall be required to meet the inspector qualifications set forth in §42-4-235 (4), ~~C.R.S~~CRS.

B. Enforcement officials SHALL AT ALL TIMES have the authority to inspect~~, at any time,~~ motor vehicles, motor vehicle drivers, cargo, and any required documents, set forth in 49 CFR 368, 387, 390, 391, 392, 393, 395, 396 and 399, as revised October 1, ~~2012~~2014, whenever motor vehicles are transporting hazardous materials on ~~the~~ streets and public roads in the State of Colorado.

C. CSP Enforcement officials ~~of the Colorado State Patrol CSP~~ who are certified by the Federal Motor Carrier Safety Administration (FMCSA) (49 CFR 385, Subpart C) to perform compliance reviews and safety audits SHALL have the authority to enter the facilities of and inspect any motor carrier ~~[~~AS DEFINED BY§42-4-235 (c), ~~C.R.S.~~CRS,~~]~~ and any required records and supporting documents, as set forth in 49 CFR 40, 368, 380, 382, 385, 387, 390, 391, 392, 393, 395, 396, and 399, and Appendix G, as revised October 1, ~~2012~~2014.

HMT 5

MOTOR VEHICLE ~~OUT-OF-SERVICE~~ OUT OF SERVICE CRITERIA

A. The ~~Colorado State Patrol~~ CSP adopts and incorporates by reference the North American Uniform ~~Out-of-Service~~ OUT OF SERVICE Criteria, as revised April 1, ~~2013~~2014.

B. Enforcement officials shall use the North American Uniform Out-of-Service Criteria when determining whether a motor vehicle should be placed ~~out-of-service~~ OUT OF SERVICE pursuant to §42-20-110, ~~C.R.S~~CRS.

HMT 6

VIOLATION PENALTY

Any person shipping or transporting hazardous materials in violation of any of the rules of this part is guilty of a misdemeanor and upon conviction thereof shall be punished by such fine and/or imprisonment as provided in §42-20-109, ~~C.R.S~~CRS.

PART II

HAZARDOUS MATERIALS PERMITS

DEFINITIONS

FOR PURPOSES OF THIS PART II, THE FOLLOWING DEFINITIONS SHALL ALSO APPLY:

"Liability Insurance or Surety": AS USED IN THESE RULES means insurance or surety for public liability.

LONGER VEHICLE COMBINATION: ABBREVIATED AS "LVC," IS ANY OF A NUMBER OF VEHICLE CONFIGURATIONS INCLUDING A TRUCK TRACTOR AS A POWER UNIT AND MULTIPLE TRAILER COMBINATIONS IDENTIFIED WITHIN §42-4-505(2) (A)-(D), CRS.

PEACE OFFICER: SHALL BE AS DEFINED IN §16-2.5-101, CRS.

"Public Liability": ~~means l~~Liability for bodily injury or property damage, ~~and~~ includING~~es~~ liability for environmental restoration AS DEFINED WITHIN ~~.(~~49 CFR 387.5.~~)~~

~~**"Longer Vehicle Combination"** means any of a number of vehicle configurations including a truck tractor as a power unit and multiple trailer combinations. §42-4-505 (2) (a), (b), (c), and (d), C.R.S.~~

~~**"Peace Officer"** as defined in §16-2.5-101, C.R.S~~.

HMP 1

ANNUAL PERMIT APPLICATION AND FEES

A. All Hazardous Materials Transportation Permit applications and fees shall be submitted to the COLORADO Public Utilities Commission (PUC), P.O. Box 2327, Englewood, CO 80150-2327, telephone: (303) 894-2000, or in person at 1560 Broadway, ~~Suite~~ STE. 250, Denver, Colorado.

B. ~~Make c~~Checks SHOULD BE MADE payable to the "Colorado Public Utilities Commission."

C. The ANNUAL HAZARDOUS MATERIAL TRANSPORT permit fee schedule is based on the number of motor vehicles ~~the~~ AN applicant operates within Colorado and may be found at §42-20-202 (1) (b), ~~C.R.S~~CRS.

HMP 2

PERMIT CONDITIONS

A. Hazardous materials transporters operating within the State of Colorado are required to obtain a motor carrier identification number pursuant to the provisions of 49 CFR 390.19 prior to submission of their annual permit application.
B. The PUC shall, upon review and approval of a permit application, issue an annual permit pursuant to the provisions of §42-20-201, ~~C.R.S~~CRS.

C. When the number of vehicles indicated on ~~the~~ A motor carrier's annual permit application is 300 or less, the PUC shall issue to a motor carrier a number of non-transferable original permits equal to the number of vehicles indicated.

D. When the number of vehicles indicated on ~~the~~ A motor carrier's annual permit application is 301 or more, the PUC shall issue a maximum fee permit to the motor carrier. The maximum fee permit shall contain written authorization for a motor carrier to make as many copies of the permit as necessary to facilitate placing one copy in each of their vehicles that operate within or through the State of Colorado.

E. The required permits are to be placed in each motor vehicle operated within or through the State of Colorado except that, if a peace officer or any other enforcement official may determine that the hazardous materials transportation permit can be electronically verified at the time of contact, a copy of the permit need not be carried by the person transporting hazardous materials. Lost or destroyed permits will be replaced by the PUC upon receipt of a written request from the motor carrier. A motor carrier requesting replacement of a lost or destroyed non-transferable original permit shall supply the PUC with the vehicle identification number (VIN) for each vehicle that a permit is to be RE-issued.

F. Any increase in the total ~~declared~~ number of DECLARED vehicles operating within or through the State of Colorado must be communicated IMMEDIATELY ~~in writing~~ to the PUC ~~immediately~~ IN WRITING.

G. No annual permit is to be altered, amended or copied unless authorized in writing by the PUC, or, in the case of a single trip permit (HMP 3), by any enforcement official.

HMP 3

SINGLE TRIP PERMITS

A. PURSUANT TO §42-20-202 (1) (C), CRS, ~~S~~Single trip permits may be obtained at all ~~port of entry~~ PORT OF ENTRY (POE) weigh stations and from the CSP~~olorado State Patrol~~. Each person transporting hazardous materials in, to, from, or through this state who has not obtained an annual permit from the PUC shall apply at the closest possible ~~port of entry~~ POE weigh station or to an officer or office of the CSP~~olorado State Patrol~~ for a single trip permit.

1. Each single trip permit shall be valid for a single continuous business venture, but in no event shall the permit be valid for more than seventy-two hours, unless extended by any enforcement official for any reason the official deems advisable, including mechanical difficulties and road and weather conditions.

2. The single trip permit shall be issued upon the approval of the permit application and upon the payment of a twenty-five dollar permit fee. ~~[§42-20-202 (1) (c), C.R.S.]~~

B. Persons making application for a hazardous materials transportation single-trip permit ARE REQUIRED BY §42-20-202 (3) (A), CRS, TO ~~must, at the time of the application,~~ supply proof of liability insurance or surety or sign a verification AT TIME OF PERMIT APPLICATION.~~as required by §42-20-202 (3) (a), C.R.S.~~

C. Applicants who sign a verification in lieu of supplying acceptable proof~~,~~ shall, within 30 days following the date of issuance of the permit:

1. Return their copy of the single-trip permit to the PUC hazardous materials permitting section; and,

2. Applicants must also include a copy of the acceptable proof of financial responsibility~~, as~~ required by ~~the provisions of~~ §42-20-202, ~~C.R.S.~~CRS, and as defined in paragraph HMP 4 (B) below.

HMP 4

LIABILITY INSURANCE (§42-20-202 (2) (a) and (3) (a), C.R.S.)

A. Persons making application for aN ANNUAL hazardous materials transportation ~~annual~~ permit must obtain and keep in force ~~at all times~~ public liability insurance or surety AT ALL TIMES ~~which~~ THAT shall not be less than the minimum limits set forth in 49 CFR 387 with schedules and endorsements covering all vehicles ~~which~~ THAT may be operated by, ~~or~~ for, or ~~which~~ may be under the control of the carrier.

B. The carrier shall cause to be filed with the PUC one of the following:

1. A ~~"~~National Association of Regulatory Utility Commission (NARUC) "Form E,"~~,~~ Uniform Major Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, executed by a duly authorized agent of the insurer. Also required with this filing is the MCS-90, "Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980," issued by an insurer(s), and signed by an authorized representative of the insurance company.~~; or,~~

2. A form MCS-82, "Motor Carrier Surety Bond for Public Liability under Section 30 of the Motor Carrier Safety Act of 1980," issued by a surety, and signed by an "Attorney In Fact" with a copy of the Power of Attorney attached; or~~,~~

3. A copy of a written decision, order, or authorization of the Federal Motor carrier Safety Highway Administration authorizing the motor carrier to self-insure under 49 CFR 387.309.

C. All insurance and surety forms coverage must be filed with the exact name, initial, corporate and trade name (if any), and address as shown in the application ~~of~~ records of the PUC.

D. Subsequent name or policy number changes shall be reflected by the insurer filing an endorsement with the PUC.

E. Every insurance certificate or surety bond required by and filed with the PUC shall be kept in full force and effect, unless and until canceled by a 30-day written notice or not renewed by a 90-day written notice~~,~~ on a NARUC "Form K,"~~,~~ Uniform Notice of Cancellation of Motor Carrier Insurance Policies; "Form BMC 35,"~~,~~ Notice of Cancellation of Motor Carrier Insurance; or "Form BMC 36," Notice of Cancellation of Motor Carrier Surety Bond, as

applicable, from the insurer or surety to the PUC. The 30-day and 90-day notice shall commence from the date the notice is received by the PUC and the insurance certificate or surety bond shall contain a statement to this effect.

HMP 5

LONGER VEHICLE COMBINATIONS

A. Motor vehicles defined as "Longer Vehicle Combinations" OR "LVCs" operating under the provisions of the Colorado Department of Transportation (CDOT) Rules and Regulations promulgated pursuant to the provisions of ~~section~~ §43-4-505, ~~C.R.S.~~CRS, are prohibited from transporting the following specified hazardous material types and quantities:

1. Any quantity of hazardous material within the hazard classes specified in 49 CFR 172.504, Table 1.

2. Any material, unless otherwise specified herein, within the hazardous classes specified in 49 CFR 172.504, Table 2, that:

    a. Exceeds 55 gallons per package.

    b. Is transported in bulk quantities (containment system in excess of 3500 water gallons), except as provided in paragraph (B), 1 through 5.

    c. Is classified as a "Material Poisonous by Inhalation"- as defined in 49 CFR, Part 171.8.

    d. Requires evacuation of populated areas as specified in the 2012 North American Emergency Response Guidebook.

B. The prohibition in subparagraph A (2) (b) above, does not apply to the following petroleum based products when transported in bulk quantities in a ~~longer vehicle combination~~ LVC of the type described in §42-4-505 (c) and (d), ~~C.R.S.~~CRS:

1. Gasoline, UN1203

2. Diesel Fuel, NA1993

3. Crude Oil, UN1267

4. Liquefied Petroleum Gas, UN1075

5. Aviation Fuel, UN1863

C. Persons operating ~~longer vehicle combinations~~ LVCs must comply with all other provisions of state law, rules and regulations as applicable.

HMP 6

VIOLATION PENALTY

Any person shipping or transporting hazardous materials in violation of any rule in this part shall be punished as provided in §42-20-204, ~~C.R.S~~CRS.

PART III

HAZARDOUS MATERIALS ROUTE DESIGNATION

DEFINITIONS

The definitions provided in §§42-20-103~~,~~ and §29-22-101, ~~C.R.S.~~CRS, shall apply to these rules and regulations. The following additional definitions shall also apply:

~~"~~Petition~~"~~ : AS USED WITHIN THESE RULES means the ~~Colorado State Patrol~~ CSP Hazardous Material Route Designation Petitioning Packet, including the route analysis process, worksheets, and petition resolution.

HMR 1

APPLICATION FOR ROUTE DESIGNATION

A. Local governmental authorities and ~~the Colorado Department of Transportation (~~CDOT~~)~~, ~~hereinafter~~ HEREAFTER referred to as "petitioning authorities," making application to the ~~Patrol~~CSP for a new hazardous materials route designation or for a change in an existing route designation pursuant to ~~the procedures established in~~ §42-20-302, ~~C.R.S.~~CRS, may submit a petition for such route designation to the ~~Patrol~~CSP, no more than once a year.

B. Entities seeking to petition for a hazardous materials route designation should contact CDOT for consultation and guidance regarding the format and substance of the route petition. The CDOT point of contact for route petitions can be reached at:

Colorado Department of Transportation
Division of Transportation Development
Mobility Analysis Section
4201 E. Arkansas Ave
Denver, CO 80222
(303) 757-9425

C. Prepared Petitions should be forwarded by registered mail TO:

Colorado State Patrol
Hazardous Materials ~~Unit~~SECTION
15065 S.~~outh~~ Golden R~~oa~~d
Golden, CO 80401-3990

D. All petitions received by the ~~Patrol~~CSP~~,~~ will be considered ~~as having been~~ TO BE "submitted" ~~in accordance with the provisions of~~AS REQUIRED BY §42-20-302 (1), ~~C.R.S~~CRS.

E. ~~However, t~~The filing date for a "complete petition" as ~~referred to~~ REFERENCED ~~in~~ by §42-20-302 (4), ~~C.R.S.~~CRS, shall be ~~considered~~ the date of its acceptance by the ~~Patrol~~CSP. Applicants will be notified in writing ~~as to~~ OF the date of acceptance.

HMR 2

ROUTE DESIGNATION SIGNS

A. Local governmental authorities electing to use signs to give notice of approved route designations within their jurisdiction pursuant §42-20-303, ~~C.R.S.~~CRS, shall use the hazardous materials route designation and/or restriction sign standards adopted by CDOT.

B. ~~Within 60 days of route designation approval, l~~Local governmental authorities must specify ~~in writing to the Patrol's Hazardous Materials Unit,~~ the location of each sign erected to mark ~~the~~ AN approved route IN WRITING TO THE CSP HAZARDOUS MATERIALS SECTION WITHIN 60 DAYS OF THE APPROVAL OF THE ROUTE DESIGNATION

HMR 3

PROFESSIONAL QUALITY MAPS

A. Local governmental authorities electing to use professional quality maps to ~~indicate~~ IDENTIFY approved route designations within their jurisdiction pursuant to §~~42-20-303~~42-20-302 (8), ~~C.R.S.~~CRS, shall meet the following minimum requirements:

1. Scale~~-~~: THE MAP SCALE should be of sufficient proportions to clearly show the passage of a designated route within or through the jurisdiction.

2. Colors~~-~~: ~~d~~Designated routes or other approved route restrictions must be printed in red on a white background. All other printing should be in black.

3. Legend~~-~~: THE MAP LEGEND should clearly describe the graphic representations used within the map.

4. Map Graphics~~-~~: THE MAP should use graphic symbols that clearly represent the difference between designated routes, other highways, and jurisdiction boundaries.

5. Route ~~i~~Information~~-~~: ~~t~~The map should include a telephone number where the operator of a motor vehicle transporting hazardous materials can obtain ~~assistance in an emergency, and~~ additional information on routes, ~~or~~ GUIDANCE REGARDING other restrictions within the jurisdiction OR EMERGENCY ASSISTANCE~~,~~ on a 24 hour basis.

B. ~~Within 60 days of the route designation approval, l~~Local governmental authorities must submit copies of their professional quality maps ~~to the Patrol Hazardous Materials Unit for approval~~ WITHIN 60 DAYS OF AN APPROVED ROUTE DESIGNATION TO THE CSP HAZARDOUS MATERIALS SECTION FOR APPROVAL.

HMR 4

DESIGNATED ROUTE REVIEWS/SURVEYS

A. Petitioning authorities must communicate changes in the original data and/or information used to evaluate the risk level associated with an approved route to the ~~Patrol's~~CSP Hazardous Materials ~~Unit~~SECTION immediately, or as soon as is practicable, following the change. A change would be considered to be, but not limited to, the following:

1. a change in the accident rate;

2. a change in the mandatory or subjective factors affecting the route.

B. The ~~Patrol~~CSP will periodically review the status of designated routes to determine ~~whether~~ IF the approval terms ~~specified in~~ OF §42-20-302 (8) (a) (I-IV), ~~C.R.S.~~CRS, ~~are~~ continuE~~ing~~ to be met. UPON REVIEW, ~~R~~Routes ~~that, after review,~~ demonstratING~~e~~ a change in the risk level OF THE ROUTE toward a higher risk factor~~,~~ or are impacted significantly by a change in a mandatory or subjective factor~~,~~ may be subject to reevaluation by the ~~Patrol~~ CSP at any time.

C. The ~~Patrol~~ CSP will notify petitioning authorities in writing, if after reevaluation, any designated route within their jurisdiction no longer meets the acceptance terms specified in §42-20-302 (8) (a) (I-IV), ~~C.R.S~~CRS.

D. If a designated route no longer meets the above referenced acceptance terms, the ~~Patrol~~ CSP will consult with the petitioning authority to coordinate the submission of a revisED~~ion~~ petition~~,~~. PETITIONS SUBMITTED FOR A CHANGE IN AN EXISTING ROUTE DESIGNATION ARE subject to the conditions and procedures ~~specified in~~ OF §42-20-302, ~~C.R.S~~CRS.

E. The ~~Patrol~~ CSP~~, on an as needed basis~~, will conduct route surveys on designated routes ON AN AS-NEEDED BASIS. These surveys will be conducted to determine the type and quantity of materials being transported and the frequency of such transportation. Surveys conducted in incorporated areas will only be done after consultation with the appropriate local governmental agency.

F. There will be no exceptions and/or exemptions to designated hazardous materials routes other than those already specified within ~~the provisions of~~ Title 42, Article 20, ~~C.R.S~~CRS.

HMR 5

EMERGENCY ROAD CLOSURE

A. The closing of a public road that is designated as a hazardous materials route, or restrictions on the movement of traffic over the same, due to highway construction, severe weather, or other factors, must be immediately communicated to the ~~Patrol's~~CSP Hazardous Materials ~~Unit~~SECTION during normal business hours at ~~telephone number~~ (303) 273-1900. ~~Otherwise, contact t~~The ~~Patrol's~~ CSP Denver Regional Communications Center MUST BE CONTACTED WHERE THESE EVENTS OCCUR OUTSIDE OF NORMAL BUSINESS HOURS ~~,~~ at ~~telephone number~~ (303) 239-4501.

B. When a hazardous materials route is restricted and/or closed, the ~~Patrol~~ CSP will determine if a temporary alternate route should be identified.

C. The ~~Patrol~~ CSP will notify the appropriate local law enforcement agencies regarding any temporary closure and whether or not an alternate route has been temporarily designated.

HMR 6

EMERGENCY RESPONSE CAPABILITIES

A. Local governmental authorities petitioning for a route designation must provide the ~~Patrol's~~CSP Hazardous Materials ~~Unit~~ SECTION with the following information on hazardous materials emergency response services within their jurisdiction:

1. ~~what~~ THE agencies WHO provide emergency services along the proposed route(s) and available alternatives identified in the analysis;

2. ~~o~~Of these, which AGENCIES respond to hazardous materials incidents and DURING what ~~are the~~ periods of time service is available;

3. ~~w~~Which agencies have emergency response teams and ~~how many~~ THE TOTAL NUMBER OF teams ~~do~~ they have;

4. THE TOTAL NUMBER OF~~how many~~ emergency response personnel does FOR each agency ~~have~~ and ~~what is~~ their level of hazardous materials training; and~~,~~

5. AN INVENTORY, LIST OR OTHER INFORMATION IDENTIFYING THE ~~what~~ hazardous materials response equipment ~~is~~ available from each agency ~~(inventory list)~~.

B. Provide the following information for each agency identified above:

1. Response agency name~~.~~;

2. Agency address~~.~~;

3. Name of contact person and AN alternate~~.~~;

4. 24-hour emergency phone number~~.~~;

5. Non-emergency phone number~~.~~; AND

6. Radio frequencies and call signs.

C. Any changes to the above information should be communicated in writing, as soon as possible but no later than 45 days following the change, to the following address:

Colorado State Patrol

Hazardous Materials ~~Unit~~ SECTION
15065 S.~~outh~~ Golden R~~oa~~d
Golden, CO 80401-3990

HMR 7

COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)

CDOT is not required to meet the reporting requirements of Rule HMR 6. However, where CDOT, by agreement, ~~is~~ submit~~S~~ting a petition for a local governmental authority~~,~~ pursuant to §42-20-302 (9), ~~C.R.S.~~CRS, provision must be made within the agreement for compliance with the above reporting requirements.

HMR 8

ROUTES TO BE USED FOR THE TRANSPORTATION OF HAZARDOUS MATERIALS PURSUANT TO §42-20-305, ~~C.R.S.~~CRS

A. North – South Routes:

1. Colorado 9 from US 40 in Kremmling to Interstate 70 in Silverthorne.
2. Colorado 13 from Wyoming to Moffat County Road 183 North of Craig.
3. Colorado 13 from US 40 West of Craig South to US 6 West of Rifle.
4. Colorado 17 from US 285 near Mineral Hot Springs to US 160 near Alamosa.
5. Interstate 25 from Wyoming to New Mexico.
6. Colorado 47 from Interstate 25 to the junction of US 50.
7. Colorado 71 from Colorado 14 to US 24 in Limon (East junction).
8. Colorado 71 from US 24 in Limon (West junction) to US 50 near Rocky Ford.
9. Colorado 79 from Colorado 52 to Interstate 70 at Bennett.
10. Colorado 83 from US 24 to Colorado 115.
11. Colorado 91 from Interstate 70 to US 24 near Leadville.
12. Colorado 113 from Nebraska to US 138.
13. Colorado 115 from Colorado 83 to US 50.

14. Colorado 119 from Colorado 157 to Colorado 52.

15. Colorado 125 from Wyoming to US 40 West of Granby.

16. Colorado 127 from Wyoming to Colorado 125.

17. US 138 from Colorado 113 to ~~U.S.~~US 6 (Chestnut St.) in Sterling.

18. Colorado 139 from Colorado 64 in Rangely to Interstate 70 near Loma.

19. Colorado 141 from Interstate 70 business loop near Grand Junction to US 50.

20. Colorado 141 from US 50 to US 491.

21. Colorado 157 from US 36 to Colorado 119.

22. Interstate 225 from Interstate 70 to Interstate 25.

23. US 287 from US 40 in Kit Carson to Oklahoma.

24. US 285 from US 160 in Alamosa to New Mexico.

25. US 285 from Colorado 470 to Colorado 112.

26. US 491 from Utah to New Mexico.

27. US 285 from Colorado 112 to US 160.

28. US 85 from Wyoming to Interstate 76.

29. Colorado 71 from Nebraska to Colorado 14.

30. US 385 from Interstate 76 in Julesburg to US 40 in Cheyenne Wells.

31. The City of Lamar's Second Street from US 50/385 to Maple Street.

32. The City of Lamar's Maple Street from Second Street to US 50/287.

33. The City of Craig's Great Divide Road from US 40 North to the city limits.

34. Moffat County Road 7 (Great Divide Road) from the Craig City limits ~~n~~North to Moffat County Road 183.

35. Moffat County Road 183 from Moffat County Road 7 (Great Divide Road) East to Colorado 13.

B. East – West Routes:

1. US 6 (Loveland Pass) from Interstate 70 just East of the Eisenhower/Johnson Tunnels to Interstate 70 at Silverthorne.

2. US 6 from Colorado 13 West of Rifle ~~w~~West to exit/entrance number 87 on Interstate 70.

3. US 6 from State Highway 14 (Main St.) in Sterling to Nebraska.

4. Colorado 10 from Interstate 25 in Walsenburg to US 50 in La Junta.

5. Colorado 14 from US 40 to Colorado 125.

6. Colorado 14 from interstate 25 to ~~U.S.~~US 6 in Sterling.

7. US 24 from Colorado 91 at Leadville to Interstate 25 in Colorado Springs.

8. US 24 from Colorado 83 to Interstate 70 at West Limon (Exit 359).

9. US 24 business route from US 24 on the West side of Limon to the West junction of Colorado 71.

10. US 24 business route from the East junction of Colorado 71 (in Limon) to I-70 (Exit 363).

11. US 34 from Interstate 25 to Interstate 76.

12. US 34 from the West junction of Colorado 71 to Nebraska.

13. US 36 from Interstate 25 to Colorado 157.

14. US 36 from Interstate 70 in Byers to Kansas.

15. US 40 from Utah to the intersection of Colorado 13 West of Craig.

16. US 40 from Moffat County Road CG 2 (First Street) just East of Craig to Interstate 70.

17. US 40 from I-70 (Exit 363) in Limon to Kansas.

18. US 50 from the North junction of Colorado 141 near Grand Junction to Kansas.

19. Colorado 52 from Colorado 119 to Colorado 79.

20. Colorado 64 from US 40 in Dinosaur to Colorado 13.

21. Interstate 70 from Utah to US 6 at Silverthorne (Loveland Pass).

22. Interstate 70 from US 6 just East of Loveland Pass to Interstate 25.

23. Interstate 70 from Interstate 270 to Kansas.

24. Interstate 70 business route from Interstate 70 East of Grand Junction to Colorado 141.

25. Interstate 76 from Interstate 25 to Nebraska.

26. Colorado 112 from US 285 to US 160.

27. US 160 from New Mexico to INTERSTATE -225 business route in Walsenburg, South to Exit 49 on Interstate 25.

28. Interstate 270 from Interstate 70 to Interstate 76.

29. Colorado 470 from US 285 to Interstate 70.

30. US 550 from Us 160 to New Mexico.

31. The City of Craig's 1st Street from Colorado 13 East to the city limits at Colorado 394.

32. Moffat County Road CG 2 (First Street) from the Craig City limits at Colorado 394 East to US 40.

C. While generally required to employ designated state, federal and interstate roadways, transporters of Gasoline, Diesel Fuel and Liquefied Petroleum Gas may routinely travel on the following state and federal highways:

1. US 160 from INTERSTATE -25 to the Kansas border.

2. US 350 from US 160 to US 50.

3. US 385 from US 50 to US 40.

4. SH 96 from SH 71 to the Kansas Border, and

5. SH 109 from US 160 to East 3rd Street in La Junta.

HMR 9

PARKING REGULATIONS AND ORDINANCES

A. Local governmental jurisdictions requiring approval of parking regulations or ordinances pursuant to the provisions of §42-20-302, ~~C.R.S.~~CRS, must submit a copy of the proposed regulations or ordinances to the following address:

Colorado State Patrol
Hazardous Materials ~~Unit~~ Section
15065 S. Golden R~~oa~~d
Golden, CO~~olorado~~ 80401-3990

B. The criteria for approval of regulations or ordinances concerning the parking of motor vehicles transporting hazardous materials contained herein apply only to those parking regulations and ordinances submitted by local governmental jurisdictions which affect such vehicles operating in conjunction with the use of a designated hazardous material route or routes.

C. The ~~Patrol~~ CSP will use the ~~following~~ criteria OF THIS HMR 9 when reviewing regulations or ordinances for approval~~:~~.

D. Parking regulations or ordinances adopted by local governmental jurisdictions pursuant to the authority provided in ~~section~~ §42-20-302 (2), ~~C.R.S.~~CRS, as amended, must not unreasonably limit parking:

1. ~~o~~On or near a designated hazardous material route; ~~or,~~

2. ~~f~~For the purpose of pick up or delivery of hazardous materials; ~~or,~~

3. ~~i~~In an emergency, i.e., breakdown or accident; or~~,~~

4. for the purpose of a rest stop, i.e., meals, restroom breaks, or to comply with the driver's hours-of-service requirements as defined in 49 CFR 395 as revised October 1, ~~2013~~2014.

E. For the purposes of this Rule HMR 9, parking regulations or ordinances may be deemed to "unreasonably limit" when they are at variance with and more stringent than the regulations of the United States Department of Transportation as published in 49 CFR 397, as revised October 1, ~~2013~~2014.

F. No parking regulation or ordinance shall require a permit or payment of a fee for parking which is necessary and incident to the transportation of hazardous materials on or near a hazardous materials route. This provision does not apply where fees are collected from all motor vehicles, regardless of the type of commodity being transported, i.e. metered parking.

HMR 10

VIOLATION PENALTY

Any person shipping or transporting hazardous materials in violation of any of the rules of this part shall be punished as provided in §42-20-305, ~~C.R.S~~CRS.

PART IV

TRANSPORTATION OF NUCLEAR MATERIALS

DEFINITIONS

The definitions provided in §§42-20-103 and §42-20-402, ~~C.R.S.~~CRS, shall apply to these rules and regulations. The following definition will also apply:

"Complaint": ~~is a~~A written document stating the essential facts and supporting documentation regarding any offense(s) charged.

NMT 1

APPLICATION OF 10 AND 49 C.F.R.

A. The transportation of nuclear materials AS DEFINED WITHIN ~~[~~§42-20-402 (3) (a)~~- (b)~~ (c), ~~C.R.S.]~~CRS, by motor vehicle must comply with the REGULATIONS CONTAINED IN:~~provisions of 49 CFR 107 (excluding its definition of "person" in §107.1), 171,172,173, 177, 178, 180, 387, and 397, as revised October 1, 2013~~2014., ~~which are the guidelines for the nuclear materials transportation rules and regulations promulgated by the Chief of the State Patrol CSP pursuant to §42-20-108, C.R.S. CRS, and given force by enforcement officials.~~

49 CFR 107	HAZARDOUS MATERIALS PROGRAM PROCEDURES
49 CFR 171	GENERAL INFORMATION, REGULATIONS AND DEFINITIONS
49 CFR 172	HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS
49 CFR 173	SHIPPERS- GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS
49 CFR 177	CARRIAGE BY PUBLIC HIGHWAY
49 CFR 178	SPECIFICATIONS FOR PACKAGINGS
49 CFR 180	CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

49 CFR 387 MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

49 CFR 397 TRANSPORTATION OF HAZARDOUS MATERIALS DRIVING AND PARKING RULES

OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS REGULATIONS AS THE SAME WERE IN EFFECT ON OCTOBER 1, 2014. AS AUTHORIZED BY §42-20-403, CRS, THESE RULES ARE PROMULGATED BY THE CHIEF OF THE CSP FOR THE SAFE TRANSPORTATION OF NUCLEAR MATERIALS WITH THE FOLLOWING MODIFICATIONS:

1. THE DEFINITION OF PERSON PROVIDED WITHIN 49 CFR 107.1 DOES NOT APPLY.

B. Licensees shipping a Highway Route Controlled Quantity of nuclear material, as defined in 49 CFR 173.403 within or through the state and not otherwise required to comply with the provisions of 10 CFR 71.97 or 73.27, must provide advanced notification of shipment to the Governor or his designee in accordance with the requirements of 10 CFR 71.97 (c).

NMT 2

INSPECTION REQUIREMENTS

A. Shipments entering the state: All motor vehicles carrying nuclear materials and entering the state on public roads shall be inspected by officers of the ~~Colorado State Patrol~~ CSP nearest to the point at which the shipment enters the state or at a location specified by the ~~Colorado State Patrol~~CSP.

B. Shipments originating within the state: All motor vehicles carrying nuclear materials shipments which originate within the state shall be inspected by the ~~Colorado State Patrol~~CSP at the point-of-origin.

C. Inspection procedures by the ~~Colorado State Patrol~~CSP shall be in accordance with the CVSA inspection procedures, decal application policies, and out-of-service criteria, found in the CVSA Operations Manual, as were in effect on April 1, ~~2013~~2014.

D. Before being authorized to continue its journey after being involved in a crash, the motor vehicle and shipping container shall be inspected by a qualified inspector in accordance with the procedures identified in paragraph C above.

NMT 3

ANNUAL PERMIT APPLICATION AND FEES

A. All annual nuclear materials transportation permit application and fees shall be submitted to the Colorado Public Utilities Commission, P.O. Box 2327, Englewood, Colorado 80150-2327, or in person at 1560 Broadway, ~~Suite~~STE 250, Denver, Colorado 80203.

B. The annual permit fee shall be $500 and each permit will be valid for one year from the date of issuance.

C. In addition to the annual permit fee, each carrier shall pay a $200 fee for each shipment that is transported.

1. Shipment fees shall be paid by mail and postmarked seven days prior to the date the shipment is made or at the time the shipment enters the state (at the ~~Port of Entry~~POE weigh station nearest the point at which the shipment enters the state), if a regularly scheduled shipment is to be made, the carrier may make arrangements with the PUC to pay shipment fees on a monthly basis.

2. If the shipment originates within the state, payment shall be made at the ~~Port of Entry~~POE weigh station nearest the point of shipment origination, or mailed as provided in C (1) above.

3. Make checks payable to the "Colorado Public Utilities Commission."

D. No person shall transport nuclear materials into~~,~~; within, through, or out of the State of Colorado until a permit authorizing such transportation has been issued in accordance with provisions of NMT 3.

E. Each person transporting nuclear materials within this state shall carry a copy of the shipping papers required in 49 CFR 172, Subpart C, as revised October 1, ~~2013~~2014 and a copy of the nuclear materials transportation permit in the motor vehicle.

F. **Permit Conditions**

1. Nuclear materials transporters operating within the State of Colorado are required to obtain a motor carrier identification number pursuant to the provisions of 49 CFR 390.19, prior to submission of their nuclear materials transportation permit application.

2. The PUC shall, upon review and approval of a nuclear materials transportation permit application, issue a nuclear materials transportation permit pursuant to ~~the provisions of~~ §42-20-501, ~~C.R.S~~CRS.

3. A copy of the nuclear materials transportation permit shall be placed in each motor vehicle operated within or through the State of Colorado except that, if a peace officer or any other enforcement official may determine that the nuclear materials transportation permit can be electronically verified at the time of the contract, a copy of the permit need not be carried by the person transporting nuclear materials.

4. No nuclear materials transportation permit is to be altered, amended or copied unless authorized in writing by the PUC, or, in the case of a single permit, by any law enforcement official.

NMT 4

AUTHORITY TO INSPECT MOTOR VEHICLES, BOOKS AND RECORDS

A. Personnel of the ~~Colorado State Patrol~~CSP may at any time inspect any vehicle driver, cargo, shipping papers, nuclear materials transportation permit and any other papers as required by law or rule TO BE carried when transporting nuclear materials on ~~the streets and~~ public roads in the State of Colorado.

B. Personnel of the ~~Colorado State Patrol~~CSP and the PUC may inspect any and all books and records connected with the shipment of nuclear materials by any carrier, shipper, or person who transports, ships or who causes to be transported or shipped any nuclear materials within the State of Colorado.

NMT 5

VIOLATIONS- CIVIL PENALTIES

A. Any person who violates any provision of Article 20, Title 42, Parts 4 and 5, ~~C.R.S.~~CRS, or these rules and regulations, except for the violations enumerated in subsection (3) of §42-20-406, ~~C.R.S.~~CRS, and of §42-20-505, ~~C.R.S.~~CRS, shall be subject to a civil penalty of not more than 10,000 per day for each day during which he violation occurs. The penalty shall be assessed by the Chief of the ~~State Patrol~~ CSP upon receipt of a complaint by any investigative personnel of the commission, ~~port of entry~~ POE personnel, or ~~Colorado State Patrol~~ CSP officer and after written notice and opportunity for a hearing pursuant to §24-4-105, ~~C.R.S~~CRS.

B. Any person who commits any acts enumerated in §42-20-406 (3), ~~C.R.S.~~CRS, shall be subject to the civil penalties listed in §42-20-406 (3) (a) through (w), ~~C.R.S~~CRS.

C. Any person who violates any of the provisions of NMT 3 or 4 of these rules, shall be subject to the civil penalties listed in §42-20-505, ~~C.R.S~~CRS.

D. Any person who violates a compliance order of the Chief which is not subject to a stay pending judicial review and which has been issued pursuant to §42-20-208, ~~C.R.S.~~CRS, shall be subject to a civil penalty of not more than $10,000 per day for each day during which the violation occurs.

NMT 6

CIVIL PENALTY ASSESSMENT PROCEDURES

A. All violations of statutes cited in NMT 5(A)~~.~~, (C)~~.~~, and (D)~~.~~ shall be investigated and summarized in a complaint filed by an authorized investigator of the Commission or the ~~Colorado State Patrol~~CSP. The investigation shall include, as applicable, the nature and gravity of any violations, the degree of culpability, any history of violations, and other public safety concerns.

B. Civil penalties for violations of §42-20-406 (3), ~~C. R. S.~~CRS, and §42-20-505 (2), ~~C.R.S.~~CRS, shall be assessed pursuant to statute and shall appear on the complaint prior to service.

C. The complaint shall be served in person or by first class mail at the motor carrier's last known address on file at the ~~Colorado State Patrol~~CSP.

D. Complaints containing violations of NMT 5 (A)~~.~~ and §42-20-505 (1), ~~C. R. S.~~CRS, shall provide notice of an opportunity to appear before the Chief, or designee, of the ~~Colorado State Patrol~~CSP for the purpose of contesting the violation or for providing mitigating factors to be considered in determining the amount of civil penalty to be assessed.

1. Within 30 days of service of the complaint, the carrier shall file a written response containing:

   a. A request for a formal hearing before the chief or a designee pursuant to §24-4-105, ~~C. R. S~~CRS; ~~or~~

   b. A request for an informal hearing before the chief or designee; ~~or~~AND

   c. A waiver of the right to a hearing before the chief or designee.

2. A request for an informal hearing before the chief or designee shall constitute a waiver of the right to a hearing pursuant to §24-4-105, ~~C. R.S~~CRS.

3. Failure to timely file a written response shall constitute a default. Upon entry of a default, the chief or designee shall assess a civil penalty against the carrier. For good cause shown, the entry of default may be set aside by the chief or any designee within 10 days of the default.

4. Within 30 days of receiving all relevant information, the chief or designee shall issue a final written agency decision to include the specific violations and assessed civil penalties. The final agency decision shall be served upon the carrier in person or by first class mail at the motor carrier's last known address on file at the ~~Colorado State Patrol~~CSP.

NMT 7

MISCELLANEOUS REQUIREMENTS

A. Motor vehicles transporting nuclear materials shall schedule trips through all Colorado municipalities of over 50,000 in population so as to avoid rush-hour traffic~~ whenever possible. Rush hour is defined as 6 to 9 am and 3 to 6 pm, Monday through Friday. As a practical matter, this applies to the cities of Fort Collins, Denver (Greater Metropolitan Area), Colorado Springs, and Pueblo. However, motor vehicles transporting nuclear materials may access the port of entry weigh station on Interstate 25 in Fort Collins during rush hour periods, for the purpose of being inspected as required by the provisions of §42-20-404, C.R.S.~~

1. FOR PURPOSES OF THESE RULES, RUSH HOUR IS DEFINED TO BE 6 TO 9 AM AND 3 TO 6 PM, MONDAY THROUGH FRIDAY.

2. AS A PRACTICAL MATTER, THIS APPLIES TO THE CITIES OF FORT COLLINS, DENVER (GREATER METROPOLITAN AREA, COLORADO SPRINGS, AND PUEBLO.

3. MOTOR VEHICLES TRANSPORTING NUCLEAR MATERIALS MAY ACCESS THE POE WEIGH STATION ON INTERSTATE 25 IN FORT COLLINS DURING RUSH HOUR PERIODS FOR THE PURPOSE OF BEING INSPECTED AS REQUIRED BY §42-20-404, CRS.

NMT 8

ESCORT REQUIREMENT

A. The ~~Colorado State Patrol~~CSP, based on security and/or emergency response concerns, may require motor vehicles transporting nuclear materials to be escorted by a ~~Colorado State Patrol~~CSP Hazardous Materials Team, when traveling within or through the state. When it is required, the Hazardous Materials Team escort will supplement, but not replace, the escort(s) required for a shipment of irradiated reactor fuel under the provisions of 10 CFR 73.37 (b) and (c).

B. A licensee (10 CFR 2.4) will be notified that an Hazardous Materials Team escort is required following receipt of the shipment notification by the Governor or Governor's Designee, in accordance with the provisions of 10 CFR 73.37 (f).

NMT 9

NOTIFICATION OF INCIDENTS

A. The driver of a motor vehicle transporting nuclear materials as cargo ~~which is~~ involved in a spill or potential spill of nuclear/hazardous materials~~,~~ shall comply with the incident notification provision contained in HMT 3.

B. The driver of a motor vehicle transporting nuclear materials as cargo ~~which is~~ involved in a motor vehicle crash, regardless of whether there is damage to the transporting motor vehicle, shall immediately notify the ~~Colorado State Patrol~~CSP at (303) 239-4501.

PART V

NUCLEAR MATERIAL ROUTE DESIGNATION

NMR 1

ROUTES TO BE USED FOR THE TRANSPORTATION OF NUCLEAR MATERIALS

A. In order to ensure safe and environmentally acceptable transportation of nuclear materials within the State of Colorado, motor vehicles transporting nuclear materials shall travel only on those state highway segments as follows:

1. For vehicles traveling ~~n~~North on Interstate Highway 25 and then going ~~e~~East on Interstate Highway 70, the following route will be used. Vehicles following the opposite direction will use the same routing in the opposite direction:

    a. ~~o~~On Interstate Highway 25 between the Colorado-New Mexico state line and the junction with Interstate Highway 225; then,

    b. ~~o~~On ~~i~~Interstate Highway 225 between the junction with Interstate Highway 25 and the junction with Interstate Highway 70; then,

    c. ~~o~~On Interstate Highway 70 between the junction with Interstate Highway 225 and the Colorado-Kansas state line.

2. For vehicles traveling ~~w~~West on Interstate Highway 70 and then going ~~n~~North on Interstate Highway 25, the following route will be used. Vehicles following the opposite direction will use the same routing in the opposite direction:

    a. ~~o~~On Interstate Highway 70 between the Colorado-Kansas state line and the junction with Interstate Highway 270; then,

    b. ~~o~~On Interstate Highway 270 between the junction with Interstate Highway 70 and the junction with Interstate Highway 25; then,

    c. ~~o~~On Interstate Highway 25 between the junction with Interstate Highway 270 and the Colorado-Wyoming state line.

3. For vehicles traveling north on Interstate Highway 25 between the Colorado-New Mexico state line and the Colorado-Wyoming state line the following route will be used. Vehicles following the opposite direction will use the same routing in the opposite direction:

    a. On Highway 25 between the Colorado-New Mexico state line and the Colorado-Wyoming state line.

4. For vehicles traveling north on Interstate Highway 25 and then going north on Interstate Highway 76, the following route will be used. Vehicles following the opposite direction will use the same routing in the opposite direction:

    a. On Interstate Highway 25 between the Colorado-New Mexico state line and the junction with Interstate Highway 76; then,

    b. On Interstate Highway 76 between the junction with Interstate Highway 25 and he Colorado-Nebraska state line.

B. Motor vehicles transporting nuclear materials shall under no circumstances travel on those state highway segments designated as follows:

1. On Interstate Highway 70 between the Colorado-Utah state line and the junction with U.S. 40, at milepost 361.630.

2. On Interstate Highway 70 between the junction with Interstate Highway 25 at milepost 274.039 and the junction with State Highway 2 at milepost 276.572.

~~C.~~ No carrier shall deviate from the routes designated in this rule except: ~~to make local pickups and deliveries and in cases of emergency conditions which would make continued use of the designated route unsafe, or to refuel, or when the designated route is closed due to road conditions, road construction, or maintenance operations. When making local pickups and deliveries or when refueling, the carrier shall minimize the distance traveled on non-designated routes.~~

1. In cases of emergency conditions making continued use of the designated route unsafe;

2. When the designated route is closed due to road conditions, road construction, or maintenance operations.

3. To make local pickups and deliveries; or

4. To refuel. When making local pickups and deliveries or when refueling, the carrier shall minimize the distance traveled on non-designated routes.

NMR 2

EMERGENCY ROAD CLOSURE

A. The closing of a public road that is designated as a nuclear materials route, or restrictions on the movement of traffic over the same~~,~~ due to highway construction, severe weather, or other factors~~,~~ must be immediately communicated to the ~~Patrol's~~CSP Hazardous Materials ~~Unit~~SECTION~~,~~ during normal business hours at ~~telephone number~~ (303) 273-1900. ~~Otherwise, contact t~~The ~~Patrol's~~CSP Denver Regional Communication Center~~,~~ MUST BE CONTACTED WHERE THESE EVENTS OCCUR OUTSIDE OF NORMAL BUSINESS HOURS at ~~telephone number~~ (303) 239- 4501.

B. When a nuclear materials route is restricted and/or closed, the ~~Patrol~~ CSPwill determine if a temporary alternative route should be identified.

C. The ~~Patrol~~CSP will notify the appropriate local law enforcement agencies regarding any temporary closure and ~~whether or not~~ IF an alternate route has been temporarily designated.

D. Vehicles transporting nuclear materials are required to be escorted while traveling off a designated nuclear materials route due to an emergency road closure or other condition that restricts the movement of traffic over the same. The escort will be provided by the ~~Patrol~~CSP, or when previously arranged by the ~~Patrol~~CSP, by the local law enforcement agency in whose jurisdiction the closure or restriction occurs.

PART VI

INTRASTATE TRANSPORTATION OF AGRICULTURAL PRODUCTS

AUTHORITY

The ~~Colorado State Patrol~~CSP is mandated by the provisions of §42-20-108.5, ~~C.R.S.~~CRS, to adopt rules and regulations concerning the intrastate transportation of agricultural products in the ~~s~~State of Colorado.

APPLICABILITY

These rules and regulations shall apply to any person transporting an agricultural product in accordance with 49 CFR 173.5, as revised October 1, ~~2012~~2013.

DEFINITIONS

~~"~~**Agricultural Product**~~"~~: AS DEFINED BY §42-20-108.5 (2) (A), CRS, ~~means~~ a hazardous material, other than hazardous waste, whose end use directly supports the production of an agricultural commodity including, but not limited to, a fertilizer, pesticide, soil amendment, or fuel. An agricultural product is limited to a material in class 3, 8, or 9, division 2.1, 2.2, 5.1, 6.1 or an ORM-D material as set forth in 49 CFR 172 and 173. ~~[§42-20-108.5 (2) (a), C.R.S.]~~

~~"~~**Farmer**~~"~~ **:** AS DEFINED BY §42-20-108.5 (2) (B), CRS, ~~means~~ a person or such person's agent or contractor engaged in the production or raising of crops, poultry, or livestock. ~~[§42-20-108.5 (2) (b), C.R.S.]~~

HMA 1

EXEMPTIONS FROM THE FEDERAL RULES IN 49 CFR 173.5

The Chief of the ~~Colorado State Patrol~~CSP hereby adopts by rule and regulation the exemption provisions authorized in the federal rules, found at 49 CFR 173.5 and ~~granted~~AUTHORIZED by ~~statute, specifically~~ §42-20-108.5, ~~C.R.S~~CRS.

PUBLICATIONS AND RULES INCORPORATED BY REFERENCE

A. 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 ~~Colorado State Patrol~~CSP, Hazardous Materials ~~Unit~~SECTION, 15065 S. Golden Rd., Golden, CO~~olorado~~ 80401-3990. This rule does not include later amendments to or editions of any materials incorporated by reference. All publications and rules adopted and incorporated by reference in these regulations may be examined at any state publications depository library.

B. Additionally these rules are available FROM THE HAZARDOUS MATERIALS SECTION WEBPAGE OF THE CSP WEBSITE AT ~~on the Internet, and can be found at the following address: http://~~WWW.csp.state.co.us.

Notice of Rulemaking Hearing

Tracking number

2014-01218

Department

1507 - Department of Public Safety

Agency

1507 - Colorado State Patrol

CCR number

8 CCR 1507-28

Rule title

PORT OF ENTRY RULES FOR COMMERCIAL MOTOR CARRIER SIZE, WEIGHT AND CLEARANCE

Rulemaking Hearing

Date

01/27/2015

Time

01:00 PM

Location

700 Kipling St., Lakewood, CO 1st Floor Conference Room

Subjects and issues involved

Port of Entry Rules for Commercial Motor Carrier size, weight and clearance

Statutory authority

42-8-104(1), CRS

Contact information

Name

Angelina Page

Title

Administrative Operations Manager

Telephone

303-273-1864

Email

angelina.page@state.co.us

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL

PORT OF ENTRY RULES FOR COMMERCIAL MOTOR CARRIER SIZE, WEIGHT AND CLEARANCE

8 CCR 1507-28

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to §42-8-104(1), CRS, the Chief of the Colorado State Patrol has authority to promulgate rules necessary to implement the enforcement of applicable statutes and regulations concerning commercial motor carriers, owners and operators through the operation of Port of Entry weigh stations on public highways within the State of Colorado.

Amendments are being proposed to 8 Colorado Code of Regulations 1507-28 to ensure compliance and consistency with state law and federal regulations. Specifically, these amendments correct inadvertent omissions; correct statutory references and minor grammatical errors; and revise minor formatting inconsistencies.

It has been declared by the General Assembly that the safe operation of commercial vehicles is a matter of statewide concern. It has also been declared, by the General Assembly, that ensuring compliance with and the equal distribution of fee payments, licenses, and taxes on motor carriers and the owners and operators of motor vehicles, is an important state interest. The absence of implementing rules to carry out the purpose of the statutes would be contrary to the public health, peace, safety and welfare of the state. For these reasons, it is necessary that these proposed amendments be adopted.

_____ _____

Colonel Scott Hernandez, Chief
Colorado State Patrol

Date of Adoption

DEPARTMENT OF PUBLIC SAFETY
COLORADO STATE PATROL- PORT OF ENTRY

PORT OF ENTRY RULES FOR COMMERCIAL MOTOR CARRIER SIZE, WEIGHT AND CLEARANCE

I. AUTHORITY TO ADOPT STANDARDS AND SPECIFICATIONS

A. The Chief of the Colorado State Patrol (CSP) is authorized by the provisions of §42-8-104 (1), CRS, to adopt rules and regulations deemed necessary to enforce applicable statutes and regulations regarding commercial motor carriers, owners and operators through the operation of Port of Entry (POE) weigh stations on public highways within the State of Colorado.

II. GENERAL DEFINITIONS

A. With respect to these rules, the following definitions are applicable unless otherwise specified:

1. AFFECTED POE: An affected POE is a permanent weigh station that is identified within a Special Revocable Permit (SRP). An SRP may affect more than one POE weigh station.

2. APPURTENANCE: a piece of equipment that is affixed or attached to a motor vehicle or trailer and is used for a specific purpose or task. Includes awnings, support hardware and extractable equipment. Does not include any item or equipment that is temporarily affixed or attached to the exterior of a motor vehicle for the purpose of transporting such vehicle.

3. CARGO: The goods carried as freight by a commercial vehicle.

4. HIGH-RISK MOTOR CARRIER: A "High-Risk Motor Carrier" is a carrier that has:

   a. A ranking in excess of 85 in the unsafe driving, hours of service (HOS) compliance, or crash indicator behavior analysis safety improvement categories (collectively referred to as "BASICs") in addition to having a ranking above the intervention/alert threshold in one other "BASIC"; or

   b. ~~r~~Rankings above intervention/alert thresholds in four (4) or more "BASICs".

5. OVER-THE-ROAD BUS: a bus characterized by an elevated passenger deck located over a baggage compartment and typically operated on the interstate highway system or on roads previously designated as making up the federal-aid primary system.

6. PERMIT HOLDER: a carrier, owner or operator to whom a permit is issued is a permit holder. Permit holders are responsible for any violations received by vehicle operators who operate vehicles affected by a permit on behalf of the permit holder.

7. PORT OF ENTRY (POE) OFFICER: A POE officer is a law enforcement officer and a uniformed member of the CSP who is not a trooper nor a civilian member. The scope of authority and the duties of a POE officer are described within §42-8-104 (2), CRS.

8. PROBATIONARY SPECIAL REVOCABLE PERMIT: A probationary SRP is an SRP that may be issued for a period of 12 months or less to a carrier, owner or operator who is:

    a. Determined eligible, but unsatisfactory following review of their application, and violation, safety and/or port clearance records;

    b. An SRP permit holder applying for a new SRP following the revocation of a prior SRP.

9. REGULARLY SCHEDULED ROUTE: A regularly scheduled route is a route provided to the CSP POE by an applicant for an SRP. Factors considered in determining the existence of and whether the route is traveled regularly by an SRP applicant include times or places of repeated normal departure; arrival; delivery; and/or loading activity. To be eligible for an SRP, a regularly scheduled route provided by an applicant to the CSP POE must be within five (5) road miles of a permanent weigh station.

10. SINGLE AXLE: A single axle is defined as all wheels, whose centers may be included within two (2) parallel transverse vertical planes not more than 40 inches apart, extending across the full width of the vehicle.

11. SINGLE AXLE WEIGHT: The total weight transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes not more than 40 inches apart, extending across the full width of the vehicle.

12. SPECIAL REVOCABLE PERMIT (SRP): A Special Revocable Permit (SRP) is a permit that a carrier, owner or operator may apply for pursuant to §42-8-105 (4), CRS. An SRP waives the requirement of §42-8-105 (1), CRS, to seek and obtain clearance at a POE station that is not directly located on a carrier or operator's regularly scheduled route. Eligibility for an SRP is based, in part, on the applicant's or permit holder's safety record and "BASICs" scores reported by the Federal Motor Carrier Safety Administration (FMCSA).

13. SPECIALIZED AUTOMOBILE TRANSPORTER: A Specialized Automobile Transporter is any vehicle combination designed and used specifically for the transport of assembled highway vehicles, including truck camper units. The Specialized Automobile Transporter will be designed to carry vehicles on the power unit behind the cab or on an over-cab rack.

14. TANDEM AXLE: A tandem axle is defined as two or more consecutive axles, the centers of which may be included between parallel vertical planes, spaced more than 40

inches and not more than 96 inches apart, extending across the full width of the vehicle, all of which are in contact with the ground.

a. If only one of a set of multiple axles is in contact with the ground, the configuration is not a tandem axle until it is actually used as such.

15. TANDEM AXLE WEIGHT: The total weight transmitted to the road by two (2) or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

III. PORT OF ENTRY OPERATIONS AND AUTHORITY

A. DELEGATION OF AUTHORITY

Delegation of any authority held by the Branch Commander OF THE CSP Motor Carrier Services Branch relevant to POE Operations will occur in conformity with CSP policies.

B. PERMANENT AND MOBILE POE OPERATIONS

1. The Chief of the CSP shall authorize the establishment and operation of permanent weigh stations.

   a. Permanent POE weigh stations shall be established and operated at such points along public highways of this state as are determined necessary.

   b. The location or relocation of permanent weigh stations shall be determined by the Chief of the CSP.

   c. All permanent POE weigh stations shall be operated at times determined by the Chief of the CSP as to reasonably allow owners and operators of motor vehicles subject to fees, licenses, taxes, or to rules imposed by the State of Colorado, to comply with all such laws and rules by clearance at a POE weigh station.

2. The Chief of the CSP shall authorize the establishment and operation OF mobile POE weigh stations.

   a. Mobile POE weigh stations shall be established and operated at such points along public highways of this state as are determined necessary.

      i. Mobile POE weigh stations will post signs giving notice of their operations. This notice shall inform owners and operators of vehicles required to stop and obtain clearance of their need to clear the mobile weigh station.

   b. Mobile POE weigh stations have the same duties and authority as permanent POE weigh stations.

C. AUTHORITY OF POE OFFICERS

1. PEACE OFFICERS

   A POE officer, during the time that he or she is actually engaged in performing his or her duties and while acting under proper orders or rules issued by the Chief of the CSP, shall have and exercise all powers invested in peace officers in connection with the enforcement of §42-8-101, et al., CRS; Articles 2, 3, and 20 of Title 42, CRS; §42-4-501, ~~ET AL.~~ET AL., CRS; §42-4-209, CRS; §42-4-225 (1.5), CRS; §42-4-235, CRS; §42-4-1407, CRS; §42-4-1409, CRS; and §42-4-1414, CRS.

2. DETENTION OF OPERATORS, VEHICLES AND VEHICLE IMPOUND
   Within the scope of their authority, POE officers may restrain or detain persons~~,~~ AND/OR vehicles, impound vehicles or collect outstanding taxes on behalf of the State of Colorado.

   a. POE officers may also restrain or detain persons~~,~~ AND/OR vehicles, impound vehicles or collect outstanding taxes pursuant to a lawful request from any other law enforcement agency recognized by this state.

      i. AN AGENCY requesting DETENTION ~~agency~~ must provide sufficient verifiable information that can be reliably used to identify the person or vehicle to be restrained, detained or impounded in addition to providing a reasonable basis by rule of law for the detention, restraint or impoundMENT.

      ii. Information supplied by a requesting agency for the detention or impoundMENT of any person or vehicle may be communicated verbally or in writing and must include:

         1. The name of the agency requesting the detention or impoundMENT;

         2. The name of the agency official requesting the detention or impoundMENT;

         3. The rule of law that is being violated or suspected of being violated; and

         4. The maximum time that a vehicle or operator is to be detained.

   b. Motor vehicles detained or impounded by POE officers at the request of the Department of Revenue (DOR) may be released promptly:

      i. ~~u~~Upon payment of taxes and fees due; or

      ii. ~~u~~Upon making a deposit sufficient to pay the same in full, after proper computations and adjustments have been made.

   c. ~~t~~The cargo of any impounded vehicle may be transferred to any properly licensed and qualified motor vehicle and permitted to proceed.

IV. REGULATIONS

A. POE CLEARANCE

1. DUTY TO STOP AND WEIGH

   a. Owners or operators of motor vehicles required to obtain clearance ~~by §42-8-105 (1), CRS,~~ from the CSP~~olorado~~ POE PURSUANT TO §42-8-105 (1), CRS, include:

      i. ~~o~~Owners or operators of motor vehicles that are subject to payment of registration fees pursuant to §42-3-306 (5) (b), CRS;

      ii. Owners or operators of motor vehicles displaying apportioned or GVW license plates; or

      iii. ~~o~~Owners or operators of motor vehicles or motor vehicle combinations having a Gross Vehicle Weight Rating (GVWR) or Gross Combined Weight Rating (GCWR) in excess of 26,000 pounds.

   b. Owners or operators of motor vehicles may obtain required clearance by:

      i. ~~s~~Securing a valid clearance from a CSP officer or POE weigh station before operating or causing the operation of the vehicle or combination of vehicles on the public highways of this state; or

      ii. If a previous clearance or SRP has not be secured, by obtaining clearance from the first POE weigh station located within five (5) road miles of the route that the owner or operator would normally follow from their point of departure to the point of destination. To be valid, clearance must occur prior to arriving at the point of destination ~~or~~AND before removing the load from the motor vehicle.

         ~~a.~~ 1. The route which a reasonable commercial vehicle owner or operator would take from the same points of departure and destination is considered to be the "route that an owner or operator would normally follow."

         ~~b~~. 2. Any owner or operator is in violation of §42-8-105, CRS, if they fail to seek out a permanent POE weigh station that is located within five (5) road miles of the route that the owner or operator would normally follow.

   c. Every owner or operator of a motor vehicle required to obtain clearance must stop at every POE weigh station located within five (5) road miles of their route of travel.

      i. ~~The vehicle is a v~~VehicleS with a seating capacity of 14 or more passengers registered under the requirements of §§42-3-304 (13) or 42-3-306 (2) (c) (~~i~~I), CRS~~.~~, ARE NOT REQUIRED TO SECURE A VALID CLEARANCE.

B. VEHICLE WEIGHT REQUIREMENTS

1. WHEEL AND AXLE LOADS

   a. Vehicles having a single drive-axle configuration and equipped with pneumatic tires are not subject to the axle weight limitations set forth within §42-4-507 (2) (b), CRS, and may operate in excess of 20,000 pounds axle weight when:

      i. The single drive-axle vehicle is equipped with a self-compactor;

      ii. Is used solely for the transporting of trash; and

      iii. Is not being operated on an interstate highway.

      iv. ~~The vehicle is equipped with but not using a tandem drive-axle configuration.~~ Vehicles equipped with but not using a tandem drive-axle configuration will not be permitted to operate in excess of aN AXLE weight of 20,000 pounds and must comply with the axle weight limitations set forth within §42-4-507 (2) (b), CRS.

2. AUXILIARY POWER UNITS (APU) AND IDLE REDUCTION TECHNOLOGY UNITS

   a. Any vehicle that uses an APU or idle reduction technology unit in order to reduce fuel use and emissions resulting from engine idling shall have the actual weight of the APU or idle reduction technology unit exempted from the calculation of the actual axle and Gross Vehicle Weight (GVW), up to 550 pounds. To be eligible for this weight exemption, the operator of the vehicle must provide:

      i. Written certification of the actual weight of the APU or idle reduction technology unit; and

      ii. Written certification or demonstration that confirms the idle reduction technology unit is fully functional at all times.

3. BUSES

   a. Any over-the-road bus, or any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus, is exempted from compliance with the axle limits set forth within §42-4-507 (2) (b), CRS.

C. GROSS VEHICLE WEIGHT (GVW)

1. DETERMINATION OF GVW

   a. The legal GVW or Gross Combined Weight (GCW) limit for any vehicle or combination of vehicles specified within §42-4-508 (1), CRS, shall be determined by the actual number of axles in contact with the road surface.

i. Except where otherwise provided by §§42-4-508 or 42-4-510, CRS, vehicles or vehicle combinations operating on any highway or bridge that is part of the national system of interstate and defense highways (otherwise known as the interstate highway system) must:

1. ~~h~~Have their total weight distributed so that no axle exceeds the legal axle weight limit for the highway traveled;

2. ~~c~~Comply with the federal bridge formula set forth within §42-4-508 (1) (c), CRS; and

3. Not exceed a maximum of 80,000 pounds in the calculation of the federal bridge formula.

ii. Except where otherwise provided by §§42-4-508 or 42-4-510, CRS, vehicle or vehicle combinations operating on any highway other than a highway identified as part of the interstate highway system must:

1. Have their total weight distributed so that no axle exceeds the legal axle weight limit for the highway traveled;

2. Comply with the state bridge formula set forth within §42-4-508 (1) (b), CRS; and

3. Not exceed a maximum of 85,000 pounds in the calculation of the state bridge formula.

D. VEHICLE WIDTH

1. MEASUREMENT OF COMMERCIAL MOTOR VEHICLE WIDTH

a. Vehicle width will be measured from the point farthest from the center of the motor vehicle or combination of motor vehicles on each side.

b. Vehicle components not excluded by law or regulation shall be included in the measurement of commercial motor vehicle width. Components that are excluded from the measured width of a commercial motor vehicle include but shall not be limited to:

i. Rear view mirrors, turn signal lamps, handholds for cab entry/egress, splash and spray suppressant devices, load induced tire bulge; and

ii. All non-property carrying devices, or components thereof, that do not extend more than three (3) inches beyond each side of the vehicle.

E. VEHICLE LENGTH

1. MEASUREMENT OF COMMERCIAL MOTOR VEHICLE LENGTH

   a. Vehicle length is generally measured from the front-most fixed point (generally the front bumper) to the rear-most fixed point (generally where the brake lights are located).

      i. Any truck with any permanently mounted appurtenance that extends beyond the front or rear of the vehicle to which it is mounted becomes part of the vehicle. A permanently mounted appurtenance is included in the overall measurement of vehicle length.

   b. Vehicle components not excluded by law or regulation shall be included in the measurement of the length of commercial motor vehicles. Components that are excluded from the measured length of a commercial motor vehicle include but shall not be limited to:

      i. Rear view mirrors, turn signal lamps, handholds for entry/egress, splash and spray suppressant devices;

      ii. All non-property-carrying devices, or components thereof that do not exceed dimensional limitations;

      iii. Resilient bumpers that do not extend more than six (6) inches beyond the front or rear of the vehicle;

      iv. Lamps or flags on projecting loads pursuant to §42-4-209, CRS, or devices exempted from length are not considered a projection or overhang.

2. LENGTH MEASUREMENT OF SPECIALIZED AUTOMOBILE TRANSPORTERS

   a. The overall length measurement of a specialized automobile transporter is calculated exclusive of:

      i. Front and rear cargo overhang;

      ii. Safety devices not designed or used for carrying cargo; or

      iii. Any extension device (ramp or "flippers") that may be used for loading beyond the extreme front or rear end of a vehicle or combination of vehicles.

         1. Extendable ramps "or flippers" on specialized automobile transporters that have not been retracted and are not supporting vehicles will be included in the measurement of vehicle length.

3. MEASUREMENT OF TRAILERS

a. TRAILER DRAWBAR OR TONGUE LENGTH

i. Where the drawbar or tongue is of rigid construction, the measurement will be taken from the rear-most point of the power unit's cargo box to the front-most point of the trailer's main frame.

ii. Where the drawbar is hinged, the measurement will be taken from the rear-most of the power unit's cargo box to the front-most point of the hinge.

iii. A tool or accessory box that is welded or attached to the drawbar or tongue is not included in the calculation of the drawbar or tongue length of a trailer because a tool or accessory box is not considered cargo nor is it used to carry cargo.

iv. A drawbar may not exceed 15 feet between two (2) vehicle units except when:

1. The connection between any two (2) vehicles transporting poles, pipe, machinery or other objects of a structural nature which cannot be readily dismembered; or

2. Connections between vehicles where the connection is of rigid construction, is included as part of the structural design of the towed vehicle, and the overall combined length of the vehicles and the connection does not exceed 55 feet.

a. Adjustable pole trailers that are primarily designed for the transportation of cargo must have the connection between vehicles reduced to 15 feet or less when operating without cargo if the overall vehicle combination exceeds 55 feet.

F. VEHICLE HEIGHT

1. Maximum height limits shall be as designated on the Colorado Department of Transportation Height Restriction Map.

V. PERMITS

A. SPECIAL REVOCABLE PERMITS (SRP)

1. AUTHORITY TO ISSUE AND LEGAL EFFECT OF AN SRP

A~~N~~N SRP may be issued to an owner or operator of any vehicle being operated over a regularly scheduled route within five (5) road miles of a permanent POE weigh station pursuant to §42-8-105 (1), CRS.

a. AN SRP waives the requirement that an owner or operator seek out and secure a valid clearance at a permanent POE that is located within five (5) road miles of an identified regularly scheduled route.

b. The use or issuance of any SRP is contingent upon an applicant or permit holder's compliance with any applicable rules, laws (federal, state, county and local) and the requirements set forth within Part V (A) of these rules.

2. APPLICATION FOR SRP

Application for an SRP is made by completing and submitting an application to the CSP POE.

a. SRP applications are provided by the CSP POE.

b. THE~~HE~~ CSP POE shall collect any information identified as necessary to determine an applicant's eligibility for an SRP. Information necessary to determine an applicant's eligibility includes:

i. The legal name of the applicant and the name under which the applicant conducts business, if applicable;

ii. The physical and mailing addresses of the applicant;

iii. The USDOT# assigned and used by the applicant;

iv. The number of vehicles proposed to be subject to the SRP if it is issued and copies of vehicle registrations for each vehicle identified;

v. The POE weigh stations location(s) the applicant would like the SRP to affect;

vi. The names and signature of the person submitting the SRP application on behalf of the applicant;

vii. A detailed description of the applicant's regularly scheduled route. This description should at minimum identify the points of origin and destination(s) for the route.

1. If the information initially provided by the applicant is insufficient to determine that the applicant is or is not operating within five (5) road miles of the requested affected POE weigh station(s), additional information regarding the regularly scheduled route information may be requested from the applicant.

3. SRP APPROVAL

Where an application for SRP is issued, it shall be issued by the CSP POE upon the recommendation and with the approval of the POE Director or designee.

a. THE~~HE~~ CSP POE reserves the right TO, and within its discretion, may attach special conditions to the issuance of any SRP where the CSP POE determines that it is necessary or advisable to include specific conditions beyond those a permit holder must comply with to maintain the SRP.

b. Any SRP issued to an applicant/permit holder must:

   i. Be carried at all times in any authorized vehicle when being operated over the approved regularly scheduled route; and

   ii. Be available upon demand for inspection by the CSP, POE or any other state or law enforcement officer.

c. An SRP issued to an eligible SRP applicant by the CSP POE shall be valid for a maximum of 36 months, except where:

   i. An otherwise eligible SRP applicant is determined unsatisfactory following a review of their violation, safety and/ or port clearance records.

      1. Eligibility for an SRP is based in part on the applicant's safety record and "BASICs" reported by the FMCSA.

      2. The number and type of violation convictions received by drivers operating vehicles for the applicant within the State of Colorado is considered when determining applicant eligibility.

      3. The number of port clearances during the 12 month period prior to the SRP application date is relevant in determining eligibility.

      4. THE PERMIT HOLDER'S COMPLIANCE WITH THE CONDITIONS OF ANY PREVIOUSLY ISSUED SRP WILL FACTOR IN THE DECISION TO ISSUE ANY SUBSEQUENT SRP TO THE APPLICANT.

d. An SRP applicant determined to be an unsatisfactory applicant may be eligible for a Probationary SRP where:

   i. The applicant does not meet the definition of a "High-Risk MOTOR Carrier"; or

ii. The applicant meets the definition of "High-Risk MOTOR Carrier" but the applicant's carrier snapshot confirms a conditional or satisfactory rating for the applicant.

e. An SRP applicant who is issued a Probationary SRP:

i. Must demonstrate that corrective actions are being made to continue to be eligible for an SRP.

ii. May apply for an SRP at the conclusion of the Probationary SRP period.

1. The permit holder's compliance with the conditions of the Probationary SRP will factor in the decision to issue any subsequent SRP to the applicant.

2. An SRP applicant applying for an SRP following the revocation of their prior SRP will first be eligible to apply to apply for a Probationary SRP.

f. The issuance of an SRP to an applicant or permit holder:

i. Is not transferrable;

ii. Does not affect the right of any lawful authority to stop a vehicle to check for:

1. Operating credentials;

2. Applicable oversize or overweight violations; or

3. For violations of other motor vehicle laws.

iii. Is valid only when used by an authorized vehicle operating within the scope of the approved regularly scheduled route.

g. The CSP POE will respond to all complete SRP applications with a decision to either issue or deny an SRP within 30 calendar days of receiving the completed SRP application.

4. DENIAL OF SRP

a. An application for an SRP may be denied if:

i. The applicant has failed to pay taxes or registration fees when due;

ii. The applicant is subject to the payment of recurrent distraint penalties as set forth within §39-21-114 (7), CRS;

iii. In the 12 month period prior to the ~~date the applicant submits a complete~~ SRP application DATE, any vehicle operator of the applicant demonstrates a pattern of non-compliance with the duty to stop and weigh or the duty to obtain clearance imposed by §§42-4-509 (3) and 42-8-105, CRS, respectively;

iv. In the 12 month period prior to THE ~~date the applicant submits a complete~~ SRP application DATE, any vehicle operator of the applicant has been convicted of three (3) or more violations of size and weight requirements set forth within §42-4-501, et seq., CRS;

v. The applicant meets definition of a "High-Risk MOTOR Carrier" and the company snapshot does not have a carrier rating or has a rating of "unsatisfactory";

vi. In the 12 month period prior to the ~~date an applicant submits a complete~~ SRP application DATE, violation convictions received by any vehicle operator for an applicant demonstrates a pattern of non-compliance with applicable laws;

vii. Following suspension or revocation of an SRP, vehicle operators for an applicant continue to violate the laws that resulted in the suspension or revocation of the SRP;

viii. The applicant has misused, or used in a fraudulent manner, OR HAS OTHERWISE FAILED TO COMPLY WITH THE CONDITIONS OF any previously issued valid permit or license;

ix. The application for the SRP misrepresents or provides inaccurate information regarding the regularly scheduled route; or

x. A request for additional information deemed necessary to consider the eligibility of an SRP applicant by the CSP POE is not responded to within 30 calendar days.

1. An applicant whose SRP application is denied due to the applicant's failure to respond to a request from CSP POE to provide additional information may resubmit their application without prejudice.

2. The CSP POE will have 30 calendar days to respond to the resubmitted SRP application.

5. PERMIT SUSPENSION AND REVOCATION

a. A permit holder's SRP(s) may be suspended when:

i. A permit holder fails to pay taxes or registration fees when due;

ii. A permit holder is subject to the payment of recurrent distraint penalties as described within §39-21-114 (7), CRS;

iii. A permit holder used the permit for the purposes of evading any law;

iv. In a 12 month period during which an SRP has been issued, any vehicle operator of a permit holder has been convicted of three (3) or more violations of the size and weight requirements of §42-4-501, et seq., CRS;

v. In a 12 month period during which an SRP has been issued, any vehicle operator of a permit holder demonstrates a pattern of non-compliance with either the duties to stop and weigh or obtain clearance as set forth within §§ 42-4-509 (3) and 42-8-105, CRS, respectively;

vi. In a 12 month period during which an SRP has been issued, violation convictions received by any vehicle operator for a permit holder demonstrates a pattern of non-compliance with applicable laws;

vii. Any authorized vehicle subject to an SRP for a permit holder does not obtain port clearance from the affected POE weight station(s) at least once per quarter during the period the SRP is valid;

viii. The approved regularly scheduled route for which an SRP is issued to a permit holder is altered or discontinued;

ix. A permit holder is identified as a "High-Risk MOTOR Carrier" and their company snapshot does not have a carrier rating or reports an "unsatisfactory" carrier rating;

x. A permit holder violates any conditions applicable to an SRP; or

xi. The permit holder misuses any permit or license.

b. A Permit holder's SRP(s) may be revoked when:

i. A permit holder who has been subject to SRP suspension continues to demonstrate a pattern of non-compliance with applicable laws and rules;

ii. A permit holder fails to comply with the terms of any Probationary SRP; and/or

iii. A permit holder fails to take any steps as may be directed by the CSP POE to improve or achieve compliance within a prescribed time period.

6. **APPEAL OF SRP APPLICATION DENIAL, SRP SUSPENSION OR REVOCATION**

a. WRITTEN NOTICE

Denial, suspension or revocation of any SRP will be by written notice from the CSP POE.

b. RIGHT TO APPEAL AND REQUEST A HEARING

Within 30 days or receiving written notice from the CSP POE denying, suspending or revoking an SRP, an applicant or permit holder may request a hearing.

i. Hearing requests by applicants or permit holders must be:

1. Made in writing; and

2. Addressed to the Branch Commander of the CSP Motor Carrier Services Branch AT 15075 S. Golden Rd., Golden CO, 80401.

c. HEARING AND REVIEW

The Branch Commander or his/her delegate will hold the hearing.

i. The scope of the hearing will be limited to whether an applicant or permit holder has complied with these rules.

ii. The Branch Commander or his/her delegate will issue a written decision within 20 business days of the completed hearing.

1. If the Branch Commander or his/her delegate finds that evidence of non-compliance and ineligibility is sufficient, the SRP application denial, suspension or revocation will be sustained.

2. If the Branch Commander or his/her delegate finds that evidence of non-compliance and ineligibility is not sufficient, the SRP application denial,

suspension or revocation will be immediately overturned and the SRP application or previous SRP(s) will be issued or reinstated.

3. If the Branch Commander or his/her delegate finds that evidence of non-compliance and ineligibility is not sufficient to support application denial, permit suspension or revocation but is sufficient to find an SRP applicant or permit holder to be unsatisfactory, it is within the discretion of the Branch Commander or his/her delegate to issue or reinstate any SRP as a Probationary SRP for a period not to exceed one (1) year.

iii. The decision by the Branch Commander or his/her delegate shall constitute a final agency action and is subject to judicial review as described by §24-4-106, CRS.

VI. MISCELLANEOUS

A. All contact with the CSP POE with regard to these rules or their applicability should be delivered to:

Colorado State Patrol
Port of Entry
15075 S Golden Rd
Golden, CO 80401
303-273-1870 (Main Phone)
303-273-1939 (Fax)

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-10

Rule title

1 CCR 204-10 TITLES AND REGISTRATIONS 1 - eff 01/14/2015

Effective date

01/14/2015

DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Section

1 CCR-204-10

RULE 7. MOTORIST INSURANCE IDENTIFICATION DATABASE (MIIDB)

Basis: The statutory bases for this regulation are part 6, article 4 of title 10, 42-1-204 42-7-103, 42-7-604, C.R.S., and 1 CCR 204-10 Rule 46. Application for Registration – Proof of Insurance.

Purpose: The following rules and regulations are promulgated to establish Motorist Insurance Identification Database (MIIDB) reporting requirements for insurance companies issuing vehicle insurance policies in Colorado.

1.0 Definitions

1.1 "Division" means the Division of Motor Vehicles in the Department of Revenue.

1.2 "File Transfer Protocol" (FTP) means a protocol for exchanging files over the internet.

1.3 "Personal Motor Vehicle" means any vehicle for which non-commercial types of license plates are issued.

2.0 Reporting Requirements

2.1 Each insurer shall report the following policy information to the designated agent:

a. Name, date of birth, driver's license number and address of each named insured owner or operator

b. The make, year, and vehicle identification number or each insured motor vehicle.

c. The policy number, effective date and expiration date of each policy.

i. For the purposes of this regulation, expiration date is defined as the final expiration date or the date on which insurance coverage is canceled or terminated by the insurance company. Reporting the expiration date to the designated agent is not required for intervening dates on policies on which coverage has been continued on receipt of payment. Upon the final expiration of a policy, the expiration date must be reported to the designated agent during the first normal weekly reporting period following the expiration date.

d. The National Association of Insurance Commissioners (NAIC) code, and the policy cancelation date if applicable.

2.2 The required information shall be reported in a form or manner acceptable to the designated agent.

2.3 Policy Data Refreshes. Initially and every six months thereafter, each insurer shall provide bi-annual policy data refreshes to the MIIDB that contain all active Colorado policies.

2.4 Reporting of Issuance of New Policies and Changes to Existing Policies. Except as provided in 2.5 below, each insurer who has issued complying policies shall provide to the designate agent the policy information set forth in 2.1 above for each policy issued, canceled, or changed. Such information shall be reported every week for the immediately preceding week, no later than the seventh working day after the last day of the week during which each policy was issued, canceled, or changed.

2.5 Error Reporting

a. The designated agent will make error reports available to insurers via FTP.

b. Each insurer must retrieve the error reports and develop an error correction process for policy information that is rejected and returned.

c. Each insurer must correct rejected and returned policy information and resubmit corrected policy information via the agreed upon transmission mode before update reporting. Until it is corrected, a rejected record may be disclosed as uninsured to law enforcement upon request for insurance status.

d. Each insurer is responsible for any costs incurred in complying with the MIIDB program.

3.0 Commercial Vehicles

3.1 Commercial vehicles are exempt from MIIDB reporting requirements. The designated agent is authorized to flag commercial vehicles exempt from tracking insurance information based on plate types that are distinct to commercial vehicles. These plate types are:

a. Buses: the first three character of the plate type field are BUS.

b. Dealers: the first three characters of the plate type field are DLR.

c. Farm Vehicles: the first three characters of the plate type field are FTK or FTR.

d. Special Mobile Equipment: the first three characters of the plate

type field are SME or SMM.

e. Special Use Vehicle: the first three characters of the plate type field are SVW.

f. Trailers: the first three characters of the plate type field are TRL.

g. Truck Tractor: the first three characters of the plate type field are TTR.

h. Gross Vehicle Weight: the first three characters of the plate type field are GVW or TVW.

i. The following vehicle registration types will also be exempt if the last three characters of the plate type field are:

i. FLT (Fleet)

ii. CNY (County)

iii. CTY (City)

iv. RNT or RTL (Rental)

v. SOC (State of Colorado)

vi. CCL (TV/radio)

vii. GVT (Government)

j. A “C” in the Carrier Type field on any plate indicates the vehicle is used for commercial purposes and will be flagged as exempt from insurance tracking under the MIIDB.

John W. Suthers
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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00980

Opinion of the Attorney General rendered in connection with the rules adopted by the
Division of Motor Vehicles

on 11/24/2014

1 CCR 204-10

TITLES AND REGISTRATIONS

The above-referenced rules were submitted to this office on 11/24/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 10, 2014 10:28:41

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Rule title

1 CCR 207-1 GAMING REGULATIONS 1 - eff 01/14/2015

Effective date

01/14/2015

BASIS AND PURPOSE FOR RULE 1

The purpose of Rule 1 is to present definitions of various terms used throughout the rules of the Colorado Limited Gaming Control Commission so that the rules can be uniformly applied and understood. The statutory basis for Rule 1 is found in sections 12-47.1-102 C.R.S., 12-47.1-103, C.R.S., 12-47.1-104, C.R.S., 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., and 12-47.1-302, C.R.S. *Amended 2/14/14*

RULE 1 GENERAL RULES AND REGULATIONS

47.1-101 Purpose and statutory authority.

These Rules and Regulations are adopted by the Colorado Limited Gaming Control Commission governing the establishment and operation of limited gaming in Colorado pursuant to the authority provided by article 47.1, title 12, C.R.S. The Commission will, from time to time, promulgate, amend and repeal such regulations, consistent with the policy, objects and purposes of the Colorado Limited Gaming Act, as it may deem necessary or desirable in carrying out the policy and provisions of that Act.

47.1-105 Unauthorized gambling.

47.1-106 Definitions.

(1) "Agent or Employee of the Commission" shall include all employees of the Division.

(2) "Association" means two or more persons united and acting together without a corporate charter.

(3) “Background investigation” means the personal history, character, reputation, associations, record, criminal history, and financial check of an applicant for a license to establish the suitability of such applicant to become a licensee.

(4) "Building" means a common structure that is built or constructed or any piece of constructed work artificially built up or composed of parts joined together in some definite manner.

(5)

(6) "Chip" means a nonmetal or partly metal representative of value issued and/or sold by a licensee for use at gaming. *Amended 11/30/2012*

(a) Cashable chips are issued and/or sold by the licensee for gaming and are redeemable for cash.

(b) Non-cashable chips are issued by the licensee for gaming and are not redeemable for cash.

(7) "Convicted of a Crime" shall include any ultimate finding of fact in a criminal proceeding that an individual is guilty of a crime, whether the judgment rests on a verdict of guilty, a plea of guilty, or of nolo contendere, and irrespective of whether entry of judgment or imposition of sentence is suspended or deferred by the court.

(8) "Costs" means sums of money to be paid to the Commission.

(8.5)

(a) "Credit" means allowing any person any length of time in which to make payment or otherwise honor a financial obligation, whether express or implied and includes lending of cash or cash equivalent.

(c) "Credit" does not include:

(i) Transactions in the ordinary course of business which are both disclosed to the Division and approved by the Commission as authorized interests, pursuant to sections 12-47.1-808, 835, C.R.S, or regulations 47.1-308, 309, 310, 405, 420;

(ii) Lawful transactions in the ordinary course of business in which licensees share resources with each other for business purposes and in which licensees have no ability to attempt to exert control over the affairs of other licensees; and

(iii) Pre-paid magnetized strip cards used in lieu of cash, chips, or tokens.

(9) “Drop" means the total amount of money, chips, tickets, coupons, Mobile ATM Receipts and tokens removed from the drop boxes. *Amended 7/1/13*

(10) "Drop box" means a locked container permanently marked with the game and a number corresponding to a permanent number on the table for blackjack, poker, craps, and roulette tables. For slot machines, a container in a locked portion of the machine or its cabinet used to collect the money and tokens retained by the machine that is not used to make automatic payouts from the machine.

(11) "Financial institution" means a bank, savings and loan association, credit union, trust company, or other similar entity chartered by the United States, a state, or a territory or commonwealth of the United States.

(12) [Free play - Repealed eff. 05/15/2014]

(13) "Gaming contract" means an agreement in which a person does business with or on the premises of an entity licensed under article 47.1 of title 12, C.R.S.

(13.5) "Gaming device" or "gaming equipment" includes, in addition to the definition set forth in section 12-47.1-103(10), C.R.S., any progressive system, slot monitoring or control system, ticket redemption kiosk, or cashless system, and also includes any "physical or electronic versions," pursuant to section 12-47.1-103(10), (19), C.R.S., to the extent such physical or electronic versions function in the manner of: *Eff 04/30/2007, Amended 2/14/14*

(a) Slot machines;

(b) The games of blackjack, craps, poker, or roulette as defined in section 12-47.1-103(4), (5.7), (22), (25.5), (26), C.R.S.;

(c) Tables used for blackjack, craps, poker, and roulette;

(d) Cards used to play blackjack or poker; or

(e) Dice used to play craps.

(14) "Gaming employee" means, in addition to the definition set forth in section 12-47.1-103(11):

(15) "Imprest bank" means a predetermined dollar amount of chips, tokens, or cash kept by the licensee.

(16) "Jackpot verification mode" means the period of time between the progressive jackpot activation of a progressive slot machine and the resetting of the device which caused its activation.

(17) "Lammer" or "lammer button" means a chip-like implement with a numeral.

(19) "Link" means one or more progressive slot machines that are connected to a progressive controller and that may be played in order to achieve the stated progressive amount.

(20) "Matched play" means the use of a coupon at table games that is issued to a patron by an establishment for play that must be accompanied by a bet. *Eff 11/30/2006*

(21) "Moral turpitude" means an act done contrary to honesty and good morals; it is an act of baseness, vileness, or depravity in the private and social duties which a person owes to a fellowperson or to society in general.

(22) "Normal mode" means the mode of a progressive slot machine at all times other than when it is in the jackpot verification mode.

(22.2) "Physical skill" means an individual's physical coordination, agility, or nimbleness, or lack thereof. *Eff 11/30/2007*

(24) "Proposition player" means a person in a poker game paid a fixed sum by the licensee for the specific purpose of playing in a card game, who uses personal funds and who retains the winnings and absorbs the losses.

(24.7) "Slot Coupon" means an encoded credit certificate which, when inserted into a slot machine, is validated by a computerized system which causes redeemable credits on the face amount to be placed on the machine. A slot coupon has no value unless inserted into a slot machine or redeemed by the casino in another approved manner.

(26) "Substantial interest" means the lesser of: as large an interest in a corporation, partnership, or association as that of any other shareholder, partner, or principal; or any financial or equity interest equal to or greater than five percent.

(27) "Support licensee" means a gaming employee licensed by the Commission, but does not include licensed key employees.

(27.3) "Ticket" means an encoded credit ticket produced by a slot machine ticket printer system when cashing out redeemable credits. (47.1-106(8.3) added perm. 10/30/99)

(30) "Wireless" means a wireless handheld validation unit used with a supporting Wireless Local Area Network (WLAN) as part of an approved gaming system.

BASIS AND PURPOSE FOR RULE 2

The purpose of Rule 2 is to delegate certain authority to the Director or other Division agent; provide for the review of any action taken pursuant to such authority; provide for the reference by the Director of matters delegated to the Director back to the Commission; and to establish procedures for Commission actions and hearings. Rule 2 also empowers the Commission to contract for legal counsel, and directs the Licensee to obtain moneys owed to a deceased patron and properly distribute such moneys. The statutory basis for Rule 2 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-301,

C.R.S., 12-47.1-302, C.R.S., 12-47.1-501, C.R.S., 12-47.1-503, C.R.S., 12-47.1-508, C.R.S., 12-47.1-1103, C.R.S., and 24-4-105, C.R.S.

RULE 2 POWERS AND DUTIES OF COMMISSION AND DIRECTOR

47.1-201 Commission action.

In addition to meeting in person, the Commission may take action by telephone or video conferencing. If telephone or video conferencing is used, the Director must participate in the meeting and take minutes of the Commission's action. Telephone or video conferencing is a meeting of the Commission.

47.1-205 Right of reference.

The Director, with approval of the Commission, may refer any matters delegated to the Director back to the Commission for its decision.

47.1-207 Authority of Director.

(4) The director may approve the suitability of officers and directors of a licensee, without necessity for commission approval, provided such officers or directors have less than five percent ownership equity in the licensee.

(6) The director may approve ownership changes in a licensee, without necessity for commission approval, when:

(b) When no person will attain a total effective ownership equity of five percent or greater, when such person previously held less than five percent equity.

(8) The Director may authorize a retail gaming license applicant to own, possess, or own and possess slot machines in this state before obtaining a retail gaming license. In order for a retail applicant to own, possess, or own and possess slot machines before licensure, the following conditions must be met:

(a) The retail gaming license applicant will submit a request to own, possess, or own and possess slot machines to the Director; and

(b) The Director determines if significant progress has been made in the background investigation, and is satisfied that the investigation of the applicant conducted thus far, and the application in its entirety, indicate that the applicant and its gaming business: meet all the requirements of article 47.1 of title 12, C.R.S.; do not present any danger to the public or to the reputation of limited gaming in this state; and that further investigation most likely will not uncover any derogatory information about the applicant; and

(c) All other requirements to possess slot machines have been met.

47.1-210 Enforcement powers.

(3) At any time when business is being conducted, inspect, examine and photocopy, or remove and impound all records of applicants and licensees;

(4) Investigate the conduct of all licensees, their employees, and other persons having any involvement with a licensee or licensed establishment, to assist in the enforcement of article 47.1 of title 12, C.R.S., and to ensure that there is no involvement in or with a licensee or a licensed establishment by unqualified or unsuitable persons.

47.1-211 Filing or notice.

47.1-214 Death of a gaming patron.

All coins, chips, tokens, gaming coupons, or tickets in the possession of a gaming patron who dies before such coins, chips, tokens, gaming coupons, or tickets are surrendered by such patron, shall be paid by the licensee by check drawn upon a financial institution, chartered by the State of Colorado or any other state or the United States Government, to the estate of the deceased patron unless the licensee is directed otherwise pursuant to an appropriate judicial order.

BASIS AND PURPOSE FOR RULE 3

The purpose of Rule 3 is to establish and provide the specific information required on license applications; to establish yearly license fees for each type of license; to establish nonrefundable application fees; to establish investigation fees for certain applicants and deposit procedures for investigation fees; to establish procedures for conducting background checks on applicants and other interested persons and assessing the costs of such background checks; to require certain information regarding the premises the applicant wishes to be licensed, and to provide a procedure for approval of modifications of such premises; and to provide for the issuance of conditional, temporary, and duplicate licenses. The statutory basis for Rule 3 is found in sections 12-47.1-102 C.R.S., 12-47.1-103, C.R.S., 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., and part 5 of article 47.1 of title 12, C.R.S.

RULE 3 APPLICATIONS, INVESTIGATIONS AND LICENSURE

47.1-301 Qualifications for licensure.

(4) Comply with all specific laws, rules and regulations regulating limited gaming in Colorado, and any other regulatory or taxing authority.

47.1-302 Applications.

(2) Renewal applications for manufacturer-distributor, associated equipment supplier, operator, and retail license must be received by the Division 120 days before the expiration of the current license. Renewal applications for support employee and key employee licenses must be received by the Division 30 days before the expiration of the current license. Renewal applicants who fail to submit their completed applications when due shall not be considered to have made a timely and sufficient application for renewal, as such term is used in 24-4-104(7) C.R.S. (47.1-302(2) Perm. 10/30/96) *Amended 2/14/14*

47.1-303 License fees.

47.1-305 Investigation fees.

(2) Before any such investigations are conducted, each applicant shall pay a deposit by check made out to the Colorado Division of Gaming to the gaming fund as follows: *Eff 04/01/2007*

(a) For each Type 1 original applicant, the deposit shall be $5,000.00. For purposes of the deposit requirement, a Type 1 Applicant consists of either a single person, or an organization where the total number of all officers, directors, general partners, and five percent or more stockholders or equity owners totals 6 or less. In addition, all the aforementioned persons must reside in Colorado. *Eff 04/01/2007*

(c) For each person who applies for a key employee license, and who is not an officer, director, general partner or five percent equity owner of an applicant, the deposit shall be $1,000.00. *Eff 04/01/2007*

(d) For each officer, director, general partner or five percent equity owner of an applicant who applies for suitability separate from the original application or a change of ownership application, the deposit shall be $1,000.00. *Eff 04/01/2007*

(e) For each change of ownership application involving more than an aggregate five percent effective ownership change, the deposit shall be $2,500.00. (47.1-305 amended perm. 10/30/99) *Eff 04/01/2007*

(f) For each variation game applicant and table game with electronic betting terminal (EBT) applicant, the deposit shall be $2000.00. The Director may waive the background investigation and accompanying deposit for an applicant who has already been found suitable by the Commission or by the Division.

(6) No license, finding of suitability, or other approvals sought, shall be issued until payment for the full amount of any negative deposit balance has been received from the applicant. *Eff 04/01/2007*

47.1-305.5 Table game review fees.

(Paragraphs 47.1-305.5 (1), (2), and (3) relocated to 47.1-325 and renumbered to paragraphs (1), (2), and (4).)

47.1-306 Background checks.

Applicants for licenses, finding of suitability, or other approvals sought, shall provide all information requested by their application forms and all other information which the Division may deem necessary. The Division shall examine the backgrounds, personal history, financial associations, character, record, and reputation of applicants, and persons associated with applicants, to the extent the Division in its discretion determines is necessary to evaluate the qualifications and suitability of applicants for licensure.

47.1-307 Waiver of privilege.

An applicant may claim any privilege afforded by the Constitution of the United States, or of the State of Colorado in refusing to answer questions by the Division and the Commission. However, a claim of privilege with respect to any testimony or evidence pertaining to an application may constitute sufficient grounds for denial of an application or revocation of a license.

47.1-309 Property report.

(2) The applicant or licensee shall report to the Division or Commission all leases to which it is a party not later than 30 days after the effective date of the lease and shall include the following information:

(a) The name, address, and a brief statement of the nature of the business of the lessor;

(b) A brief description of the material terms of the lease;

(c) A brief description of any business relationships between the operating licensee and the lessor other than by the lease; and

47.1-313 Licensed premises – location.

(2) Each application shall include a diagram, outlined in red, of the proposed licensed premises on each floor within the building. No limited gaming shall be conducted or permitted outside of the licensed premises. All persons participating in limited gaming must stand or sit within the licensed premises; and no licensee shall permit any person to conduct or participate in limited gaming who

is not within the licensed premises. All slot machines, poker tables, blackjack tables, craps tables and roulette tables offered for use by the public, and all dealers and patrons playing such devices, must be located within the licensed premises. The total square footage comprising the licensed premises:

(a) Shall not exceed 35 percent of the total square footage of the building as determined in subparagraph (1) above; and

(b) Shall not exceed 50 percent of the square footage of any one floor; and

(c) All square footage utilized in the computation of these percentages must be confined to the commercial districts of Central City, Black Hawk or Cripple Creek as defined in Article XVIII, Section 9 (3)(a) of the Colorado Constitution.

47.1-314 Licensed premises – safety requirements.

47.1-316 Notice of meeting.

Notice will be given by the Division to all applicants for slot machine manufacturer or distributor licenses, associated equipment supplier licenses, operator licenses, or retail gaming licenses of the time and place when their applications for gaming licenses will come before the Commission for consideration. Such applicants may attend the meetings of the Commission. The Commission will notify each applicant of the disposition of the application. (47.1-316 temp. 9/30/91, perm. 11/30/91) *Amended 2/14/14*

47.1-318 Licenses premises – modification.

47.1-325 Variation games of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with electronic betting terminals. *Amended 3/16/2012*

(1) Persons requesting approval of variation games of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with EBTs, shall pay a fee of $2,000.00 for costs of inspection, examination, and evaluation of the game and for drafting regulations and Internal Control Minimum Procedures governing play and control of such game. *Amended 3/16/2012*

(2) The Division will conduct an investigation into the background and suitability of a person seeking approval of a variation game of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with EBTs. Such person shall be required to pay the fees specified by Rule 47.1-305.

(a) The Director may require a periodic re-investigation.

(b) None of these games shall be approved until payment for the full amount of any negative deposit balance has been received from the person seeking approval of the variation game. (47.1-305.5 perm 10/30/97) *Amended 11/30/2012*

(3) Requests for approval of new variation games of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with EBTs shall be made on such forms and processed in such manner as the Director shall prescribe. *Amended 3/16/2012*

(4) The Director may authorize a brief review of each application for approval of a variation game of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with EBTs to be conducted, at no cost to the applicant, to determine whether or not it is likely that the proposed game could lawfully be played in this state. After such determination has been made, the applicant shall be advised of the finding, which shall not be binding on the Director or the

Commission. The applicant shall then be required to submit the required fee to the Division before the Division conducts any further review of the application. *Amended 11/30/2012*

The application must be in writing and must include, in addition to such other information as the Director may require:

(5) The Director may approve temporary rules of play and a temporary formula for calculation of adjusted gross proceeds received from the game, and may authorize the proposed game to be field tested by at least one retail licensee. (amended perm. 04/30/04)

(6) The test period for new variation games shall not exceed 180 days, from the date offered for public play, during which time the Director or designee may amend the rules of play and may make minor modifications to the trial game. The Director may order termination of the test period at any time prior to the end of 180 days if, in the Director's or designee's discretion, the Director or designee determines: *Amended 11/30/2012*

(6.5) EBTs, when utilized with approved games, are deemed in a field trial status for 90 days from the date offered for public play. Unless the Director or designee terminates the field trial of such equipment for cause, authorization and approval for use of EBTs shall become effective at the conclusion of field trial. The Division shall determine field trial testing criteria specific to various EBTs or equipment. Where applicable, Colorado Gaming Regulations 47.1-1202 and 47.1-1203 shall apply to EBTs. *Eff/ 3/16/2012, Amended 11/30/2012*

(7) Retail licensees offering a proposed game during a test period shall be responsible for calculation of adjusted gross proceeds from the game, and shall include such adjusted gross proceeds in their calculation of gaming tax liability.

(8)

(b) In the event the applicant disagrees with any determination of the Director pursuant to this paragraph (8), the applicant may petition for review before the Commission pursuant to Rule 47.1-208.

(9) While a new variation game is in field trial testing, the Division's table games committee shall make a preliminary determination as to the legality of the game, no later than 90 days from when the game is offered for public play. If in the Division's determination the game is lawful, the Division will notice and post rules for a rule making hearing. Any licensee, who agreed to field trial the game, may retain and play the game throughout the rule making hearing and final approval process, not to exceed 180 days. When rules are approved by the Commission and become effective, only then shall the game become available to all retail licensees to pursue acquisition of rights to offer the game. *Eff. 3/16/2012, Amended 11/30/2012*

(10) If the proposed game is in the public domain, the Director may waive the requirements of paragraphs (1) and (9) above, either in whole or in part. (47.1-325 perm. 10/30/97, amended perm. 4/30/04)

BASIS AND PURPOSE FOR RULE 8

The purpose of Rule 8 is to establish playing rules for blackjack and procedures for conducting blackjack games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 8 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., 12-47.1-816, C.R.S., and 12-47.1-818, C.R.S.

RULE 8 RULES OF BLACKJACK

47.1-834.11 The play – Royal Match 21.

Royal Match 21 is a copyrighted and trademarked blackjack variation game the rights to which are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned.

Royal Match 21 is an optional bonus bet for blackjack that considers the first two cards a player receives. If the player's first two cards are suited or a suited Royal Match (King-Queen suited), the player wins. This optional bet also includes a Crown Treasure bonus payout. If the player places a Royal Match bet and both the player and the dealer have a Royal Match, then the player wins a Crown Treasure bonus payout in addition to the Royal Match payout. Operators can also offer the optional Royal Match 21 Progressive wager. Unlike most Bally Technologies progressives, Royal Match 21 Progressive offers some progressive pay tables with odds pay for the progressive wager amount PLUS a possible progressive meter pay (see below approved pay tables). Royal Match 21 uses a standard 52-card deck. Follow standard house procedures for the total number of decks to be used. Royal Match 21 must be played according to the following rules:

47.1-834.13 The play – Bet the Set 21 and Progressive.

Bet the Set 21 and Bet the Set 21 Progressive are copyrighted and patent-protected blackjack variation games, the rights to which are owned by Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Bet the Set 21 and Bet the Set 21 Progressive must be played according to the following rules:

47.1-834.14 The play – Hit and Run. ***Eff 4/14/2014***

Hit and Run is a copyrighted and patent-protected blackjack variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Hit and Run Blackjack must be played according to the following rules:

47.1-834.17 The play – War Blackjack.

War Blackjack is a trademarked and patent-pending blackjack variation game, the rights to which to distribute are owned by Aces Up Gaming, Inc. of Wheat Ridge, Colorado and which may be transferred or assigned. War Blackjack shall be dealt and played following the standard rules of blackjack, except as follows:

(1) War Blackjack is an optional wager for blackjack.

(2) War Blackjack must be played only on tables displaying the War Blackjack styled table layout. The game shall be played using six or more decks of standard 52 playing cards and is dealt from a dealing shoe.

(3) At the same time a player makes his/her standard blackjack wager, the player has an opportunity to make an additional optional wager in an even dollar amount, known as the War Blackjack bet. All bets will be in an amount between the table minimum and the table maximum, as posted at the table, up to the $100 maximum wager limit determined by the house and in accordance with applicable law.

(4) At the discretion of the retail licensee, players may also place dealer tip bets on their blackjack and/or War Blackjack bets by placing the dealer tip bets in front of their blackjack and/or War Blackjack bets. If such tip bets are accepted, winning tip bets must be paid at the same odds as the player's winning bets. The retail licensee may require tip bets to be in an even dollar amount, and may limit the maximum amount of such tip bets.

(5) Card values are as follows: Aces are either 1 or 11; cards from 2 through 9 are counted at the respective face value; the 10, Jack, Queen, and King are each valued at 10. However, in the play of the War Blackjack hand, an Ace is counted as a 1 only.

(6) After all bets have been placed, the dealer will deal each player one (1) card face up, beginning with the player on the dealer's left and lastly one (1) card face up to the dealer. This card will act as the card for the player's War Blackjack hand and will also count as the first card for the player's blackjack hand.

(7) A player who has placed the War Blackjack bet will win if his/her card is of a higher value. A winning War Blackjack wager pays 1 to 1.

(8) Players that have won their War Blackjack wager will be given the following options:

(a) Player may collect his/her winnings;

(b) Player may collect the amount he/she wagered and choose to have dealer place the amount won on top of his/her pending blackjack bet; and

(c) Players may only have the dealer place that amount won on their blackjack bet that brings the total amount of his/her pending blackjack bet to the table maximum, as posted at the table, up to the $100 maximum wager limit determined by the house and in accordance with applicable law.

(9) Once all War Blackjack bets have been settled, the dealer will deal a second card to each player and finally one card face down for the dealer. At the discretion of the licensee, this second card to each player may be dealt either face up or face down. The dealer will then complete the game by following house procedures for dealing blackjack.

47.1-834.18 The play – Lucky Lucky.

Lucky Lucky is a trademarked and patent-pending blackjack variation game, the rights to which to distribute are owned by Aces Up Gaming, Inc. of Wheat Ridge, Colorado and which may be transferred or assigned. Lucky Lucky shall be dealt and played following the standard rules of blackjack, except as follows:

(1) Lucky Lucky is an optional wager for blackjack.

(2) Lucky Lucky must be played only on tables displaying the Lucky Lucky styled table layout. At the discretion of the retail licensee, the game shall be played using one to eight decks of standard 52 playing cards.

(3) At the same time a player makes his/her standard blackjack wager, the player has an opportunity to make an additional optional wager in an even dollar amount, known as the Lucky Lucky bet. All bets will be in an amount between the table minimum and the table maximum, as posted at the table, up to the $100 maximum wager limit determined by the house and in accordance with applicable law.

(4) At the discretion of the retail licensee, players may also place dealer tip bets on their blackjack and/or Lucky Lucky bets by placing the dealer tip bets in front of their blackjack and/or Lucky Lucky bets. If such tip bets are accepted, winning tip bets must be paid at the same odds as the player's winning bets. The retail licensee may require tip bets to be in an even dollar amount, and may limit the maximum amount of such tip bets.

(5) The dealer will follow standard house procedures for dealing blackjack.

(6) After each player has received two cards, the dealer settles the Lucky Lucky bet. The combination of the player's two cards and the dealer's up card will determine whether the player has won this bet. Winning Lucky Lucky bets will be paid according to the posted pay table.

(i) Player hands that qualify for more than one Lucky Lucky payout will only be paid the highest payout as determined by the posted pay table.

	Table 1	Table 2	Table 3
Hand	Pays	Pays	Pays
Suited 777	200 to 1	200 to 1	200 to 1
Suited 678	100 to 1	100 to 1	100 to 1
777	50 to 1	50 to 1	50 to 1
678	30 to 1	30 to 1	30 to 1
Suited 21	10 to 1	15 to 1	10 to 1
total of 21	3 to 1	3 to 1	3 to 1
total of 20	2 to 1	2 to 1	2 to 1
total of 19	2 to 1	1 to 1	1 to 1

(7) After all Lucky Lucky bets have been settled, the dealer will then complete the game by following house procedures for the game of blackjack.

BASIS AND PURPOSE FOR RULE 10

The purpose of Rule 10 is to establish playing rules for authorized types of poker and management procedures for conducting poker games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 10 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., and 12-47.1-818, C.R.S

RULE 10 RULES FOR POKER

47.1-1002 Definitions for poker.

The following definitions apply to all the rules of poker and to all games of poker conducted by licensees:

(4.75) "Burn" means to remove one or more cards from the top of the deck or the front of a shoe and place it, or them, in the discard rack.

47.1-1003 Types of poker authorized.

(48) Double Draw Poker;

(49) Six Card Poker; and

(50) High Card Flush Poker.

47.1-1017.10 The play – Caribbean Stud Poker.

Caribbean Stud Poker is the copyrighted, trademarked, and patented poker variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Caribbean Stud Poker must be played according to the following rules:

47.1-1017.14 The play – Let it Ride and Let it Ride Bonus with the option of a 3 Card Bonus and Progressive Bet.

Let it Ride and Let it Ride Bonus with the option of a 3 Card Bonus are copyrighted, trademarked, and patented poker variation games, the rights to which are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. Let it Ride and Let it Ride Bonus with the option of 3 Card Bonus and Progressive bets must be played according to the following rules:

47.1-1017.24 The play – Three Card Poker.

Three Card Poker is a copyrighted, trademarked, and patented poker variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Three Card Poker must be played according to the following rules:

(17) The retail licensee may offer the game using any one of the following seventeen pairs of pay schedules along with either Progressive pay schedule. Pay schedules 5 through 17, when used with their respective table layouts, are to be used only as per written agreement between each licensee and Bally Technologies of Las Vegas, Nevada. The pay schedules in use, or payouts derived from the pay schedules, must be displayed on the table layout or on signage at the table:

47.1-1017.39 The play – Texas Hold'Em Bonus Poker.

Texas Hold'Em Bonus Poker is a trademarked poker variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. Texas Hold'Em Bonus Poker must be played according to the following rules:

47.1-1017.44 The play – Crazy 4 Poker.

Crazy 4 Poker is a copyrighted and patented poker variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. Crazy 4 Poker must be played according to the following rules:

(16) The retail licensee may offer either of the below "Nexus" pay tables if it wishes to connect other Bally Technologies progressive games that also have these pay schedules approved.

47.1-1017.45 The play – High Five Poker and High Five Poker Progressive.

High Five Poker and High Five Poker Progressive are copyrighted, patent pending poker variation games, the rights to which are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. High Five Poker and High Five Poker Progressive must be played according to the following rules:

47.1-1017.46 The play – Mississippi Stud.

Mississippi Stud is a copyrighted and trademarked poker variation game the rights to which are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned.

(13) The retail licensee may offer either of the below "Nexus" pay tables if it wishes to connect other Bally Technologies progressive games that also have these pay schedules approved.

47.1-1017.47 The play – Ultimate Texas Hold 'Em.

Ultimate Texas Hold 'Em is a copyrighted and patented poker variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. Ultimate Texas Hold 'Em must be played according to the following rules:

(1) Ultimate Texas Hold 'Em may be played only on tables displaying the Ultimate Texas Hold 'Em layout. A single deck of cards will be used. Each player may play only one hand following each shuffle of the deck. The rank of hands in Ultimate Texas Hold 'Em, from highest to lowest, is: royal flush, straight flush, four of a kind, full house, flush, straight, and three of a kind.

(2) Each player will make initial bets in the amount specified at the table by the retail licensee, and will place the bets in the "ante" and the "blind" with an optional "trips" and an optional "ultimate pairs bonus" bet in the wagering areas in front of the player's position. The player may also place an optional progressive wager as long as the ante and blind wagers are in place. The trips and blind bets are placed to play for hand value only and the blind bet hands must beat the dealer; the ante bet is placed to play against the dealer. Once all players place their bets, the dealer will press the appropriate button on the keypad to indicate a progressive wager. The sensors will light up. The dealer will then remove all progressive bets from the table and place them in the tray. The dealer then follows house procedures for dealing the regular game.

(13) The Ultimate Pairs Bonus wager wins if the player's two hole cards match one of the hands listed on the posted pay table and the dealer will pay the player accordingly. If a player folds his/her hand, the Ultimate Pairs Bonus wager (if played) remains in action. The dealer will remove the losing wagers and tuck the player's two hole cards under the Ultimate Pairs Bonus wager.

(14) Progressive Winners:

(15) The retail licensee may offer the game using any one of the following pay schedules. The pay schedules in use, or payouts derived from the pay schedules, must be displayed on the table layout or on signage at the table:

Note to publisher: Add the following new pay tables after existing pay table in 47.1-1017.47 (15).

Ultimate Pairs Bonus Pay tables	1	2
A-A (Player) / A-A (Dealer)	N/A	1000 to 1
A-A	30 to 1	30 to 1
A-K (Suited)	25 to 1	25 to 1
A-Q or A-J (Suited)	20 to 1	20 to 1
A-K (Unsuited)	15 to 1	15 to 1
K-K or Q-Q or J-J (High Pairs)	10 to 1	10 to 1
A-Q or A-J (Unsuited)	5 to 1	5 to 1
10-10 through 2-2 (Low Pairs)	3 to 1	3 to 1

Ultimate Pairs Bonus Pay tables	3	4	5	6
Ace Hearts / Ace Diamonds	N/A	100 to 1	50 to 1	N/A
Pair of Aces	30 to 1	30 to 1	25 to 1	25 to 1
Ace / Face Suited	20 to 1	20 to 1	20 to 1	20 to 1
Ace / Face	10 to 1	10 to 1	10 to 1	10 to 1

Pair	5 to 1	4 to 1	5 to 1	5 to 1

(16) The retail licensee may offer either of the below "Nexus" pay tables if it wishes to connect other Bally Technologies progressive games that also have these pay schedules approved.

47.1-1017.50 The play – Fortune Pai Gow Poker.

Fortune Pai Gow Poker is a patented and trademarked poker variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. Fortune Pai Gow Poker must be played according to the following rules:

Note to publisher: Add the following pay table after existing pay tables in 47.1-1017.50 (14)

Hand	3-Level Progressive	2-Level Progressive
7 Card Straight Flush	100% of Mega Progressive Meter	100% of Major Progressive Meter
5 Aces	100% of Major Progressive Meter	100% of Minor Progressive Meter
Royal Flush	100% of Minor Progressive Meter	500 for 1
5 Card Straight Flush	100 for 1	100 for 1
Four of a Kind	75 for 1	75 for 1
Full House	4 for 1	4 for 1

47.1-1017.52 The play – Straight Edge Poker. ***Eff 4/14/14***

Straight Edge Poker is a copyrighted and patent-protected poker variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Straight Edge Poker must be played according to the following rules:

47.1-1017.53 The play – Big Raise Stud Poker.

Big Raise Stud Poker is a copyrighted and patent-protected poker variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Big Raise Stud Poker must be played according to the following rules:

(23) The retail licensee may offer either of the below "Nexus" Multi-Game Link Pay tables if it wishes to connect other Bally Technologies progressive games that also have these pay schedules approved.

47.1-1017.54 The play – Double Draw Poker.

Double Draw Poker is a copyrighted and patent-protected poker variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Double Draw Poker must be played according to the following rules:

47.1-1017.55 The play – Six Card Poker.

Six Card Poker is a copyrighted and patent-protected poker variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Six Card Poker must be played according to the following rules:

47.1-1017.56 The play – High Card Flush.

High Card Flush is a patent-pending poker variation game, the rights to which are owned by Galaxy Gaming, Inc., of Las Vegas, Nevada, and which may be transferred or assigned. High Card Flush must be played according to the following rules:

(1) High Card Flush may be played only on tables displaying the High Card Flush layout. A single deck of 52 cards will be used. At the discretion of the licensee, each player may play up to two hands following each shuffle of the deck.

(2) Before receiving cards, each player must place a wager in the designated "ante" wagering area in front of the player's position. The amount of each Ante shall be within the table minimum and maximum, as posted at the table, up to the $100 maximum wager limit determined by the house and in accordance with applicable law.

(3) At the discretion of the retail licensee, players may also place a dealer tip bet on their Ante bet by placing the dealer tip bet next to their Ante bet. If such tip bets are accepted, winning tip bets must be paid at the same odds as the player's winning Ante bet. The retail licensee may require tip bets to be in an even dollar amount, and may limit the maximum amount of such tip bets.

(4) Immediately prior to each round of play, the dealer shall shuffle the cards. Following the shuffle and cut, the dealer will deal seven cards to each player and to the dealer, one at a time face down, starting with the player to his/her left, or in a seven card group dispensed by a mechanical shuffling device.

(5) An incorrect number of cards dealt to a player constitutes a misdeal to that player only and that player retains his/her Ante and any other bets. An incorrect number of cards dealt to the dealer constitutes a misdeal for the hand, and all players retain their Antes and any other bets.

(6) Players will then examine their cards. Each player who wants to remain in the hand must place a Raise wager. The Raise wager must be equal to the Ante wager unless the player's hand consists of five (5) or more cards of the same suit. Players with five (5) or more cards of the same suit may place a Raise wager that is up to double their Ante wager. Players with six (6) or seven (7) cards of the same suit may increase their Raise wager up to three times their Ante wager. Players also have the option of folding their hand and surrendering their ante wager.

(7) The object is for the player to have more cards of the same suit (a "flush") than the dealer, regardless of suit.

(8) Once all players have acted on their hands, the dealer will turn over the dealer cards. The dealer's hand must qualify by having at least a three card, 9-high flush:

(a) If the dealer does not possess a qualifying hand, all players with an active Ante wager will be paid even money on their Ante Wager and their Raise wagers will be a push.

(b) If the dealer does possess a qualifying hand, the dealer's hand is compared to each player's hand, and;

(i) If the player's hand ranks higher than the dealer's hand, the player's Ante and Raise wagers win and are paid even money.

(ii) If the player's hand ranks lower than the dealer's hand, the player's Ante and Raise wagers lose and are collected.

(iii) If the player's and dealer's hand tie, the Ante and Raise wagers push.

(c) In the event both the player and the dealer have the same number of cards in their flush, the winning hand is determined by the highest ranking card (Ace – 2) of the flush in each hand. If the highest ranking card is the same in both hands, the second highest card is used, then the third, etc. If both the player's and the dealer's number of cards and values are identical, the ante wager and Raise wagers are a push.

(9) At the same time that the Ante wager is placed, each player may also place two additional optional wagers, the Flush Bonus wager and the Straight Flush Bonus wager.

(a) Players win the Flush Bonus wager if their hand contains a four (4) card flush or better. See posted pay table.

(b) Players win the Straight Flush Bonus wager if their hand contains a three (3) card straight flush or better. See posted pay table.

(i) If a player has made the Straight Flush Bonus wager and his/her hand contains at least a three (3) card straight flush but he/she wishes to fold his/her hand for consideration in the Ante and/or Raise wagers, player should turn his/her straight flush cards face up on top of the remaining cards in his/her hand and place all seven (7) cards in the discard area. Dealer should verify the hand qualifies for a Straight Flush Bonus wager payout, pay the player according to the posted Straight Flush Bonus wager pay table and then place all seven cards in the discard rack. This should be completed before picking up the discards of players who are remaining in the hand.

(ii) If the licensee chooses pay table 5 (see below), a patron will also win this wager if they hold a "4 of a kind."

(10) Pay tables:

(a) Flush Bonus Wager

Result	Pay tables						
	V01	V02	V03	V04	V05	V06	V07
7 Card	300 to 1	100 to 1	200 to 1	300 to 1	200 to 1	500 to 1	400 to 1
6 Card	100 to 1	20 to 1	20 to 1	75 to 1	60 to 1	50 to 1	60 to 1
5 Card	10 to 1	10 to 1	10 to 1	5 to 1	12 to 1	12 to 1	12 to 1
4 Card	1 to 1	2 to 1	2 to 1	2 to 1	1 to 1	1 to 1	1 to 1

Result	Pay tables							
	V08	V09	V10	V11	V12	V13	V14	V15
7 Card	1000 to 1	150 to 1	150 to 1	400 to 1	300 to 1	500 to 1	500 to 1	250 to 1
6 Card	50 to 1	20 to 1	25 to 1	100 to 1	80 to 1	80 to 1	100 to 1	100 to 1
5 Card	10 to 1	10 to 1	10 to 1	10 to 1	11 to 1	11 to 1	10 to 1	10 to 1
4 Card	1 to 1	2 to 1	2 to 1	1 to 1	1 to 1	1 to 1	1 to 1	1 to 1

(b) Straight Flush Bonus Wager

Result	Pay tables					
	V01	V02	V03	V04	V06	V07
7 Card Straight Flush	8000 to 1	500 to 1	500 to 1	1000 to 1	500 to 1	1000 to 1
6 Card Straight Flush	1000 to 1	200 to 1	200 to 1	500 to 1	200 to 1	500 to 1
5 Card Straight Flush	100 to 1	100 to 1	100 to 1	100 to 1	100 to 1	100 to 1
4 Card Straight Flush	60 to 1	50 to 1	75 to 1	75 to 1	60 to 1	60 to 1
3 Card Straight Flush	7 to 1	9 to 1	7 to 1	7 to 1	8 to 1	8 to 1

Pay Table 5	
Result	Pay
7 Card Straight Flush	500 to 1
6 Card Straight Flush	200 to 1
5 Card Straight Flush	100 to 1
4 Card Straight Flush	50 to 1
4 of a Kind	25 to 1
3 Card Straight Flush	8 to 1

BASIS AND PURPOSE FOR RULE 21

The purpose of Rule 21 is to establish playing rules for authorized types of games which combine the play of blackjack with the play of poker, and management procedures for conducting blackjack-poker combination games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 21 is found in sections 12-47.1-201, C.R.S., 12-47.1-302, C.R.S, and 12-47.1-818, C.R.S.

RULE 21 RULES FOR BLACKJACK-POKER COMBINATION GAMES Effective 9/14/2012

47.1-2109 The play – Straight Jack.

Straight Jack is a trademarked, copyrighted blackjack/poker variation game, the rights to which to distribute are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. Straight Jack must be played according to the following rules:

47.1-2110 The play – Straight Jack Progressive.

Straight Jack Progressive is a trademarked and copyrighted blackjack/poker variation game the rights to which to distribute are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. Straight Jack Progressive must be played according to the following rules:

(4) Unlike most Bally Technologies progressive wagers, Straight Jack Progressive offers Odds Pays for the progressive wager amount, PLUS a possible progressive meter pay as reflected in the pay tables shown below.

BASIS AND PURPOSE FOR RULE 22

The purpose of Rule 22 is to establish playing rules for authorized types of roulette and management procedures for conducting roulette games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 22 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., and 12-47.1-302, C.R.S., and 12-47.1-818, C.R.S.

RULE 22 RULES OF ROULETTE

47.1-2215.01 The play – Roulette with Back2Back.

Back2Back is a trademarked and patent-pending roulette variation game, the rights to which are owned by Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. Back2Back shall be played according to the following rules:

(1) Players may place an optional wager in the Back2Back wager area.

(2) The Back2Back wager will be placed at the same time as other roulette wagers are being placed.

(3) The dealer will spin the ball and wave for no more bets.

(4) The Back2Back wager will win if the number that hit on the previous spin hits again. If the previous number does not hit, the Back2Back wager will lose.

(5) The amount the wager will win is determined randomly and will be displayed on the reader board. The payout on this wager will be between 10x and 1000x times the player wager.

(6) Winning Back2Back wagers will be paid at the same time the dealer is paying all other winning roulette wagers.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01093

Opinion of the Attorney General rendered in connection with the rules adopted by the
Division of Gaming - Rules promulgated by Gaming Commission

on 11/20/2014

1 CCR 207-1

GAMING REGULATIONS

The above-referenced rules were submitted to this office on 11/20/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:45:50

John W. Suthers
Attorney General
by Daniel D. Domenico
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 01/15/2015

Effective date

01/15/2015

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 waiversshall 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 90 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) Data necessary for school accountability reports, pursuant to 22-7-601, et seq., C.R.S.

2.06(d) Assessments, pursuant to 22-7-409, et seq., C.R.S.

2.06(e) Duties of the president and vice president of a school district board of education, pursuant to 22-32-105, C.R.S.

2.06(f) 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(g) Requirements governing a school district board of education planning to conduct a complete educational program outside the territorial limits of the district, pursuant to 22-32-109(2), C.R.S.

2.06(h) 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.

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)(b), C.R.S. Local board duties concerning competitive bidding

3.01 (B) 22-32-109(1)(f), C.R.S. Local board duties concerning selection of staff and pay

3.01 (C) 22-32-109(1)(n)(II)(A), C.R.S. Determine teacher-pupil contact hours

3.01 (D) 22-32-109(1)(t), C.R.S. Determine educational program and prescribe textbooks

3.01 (E) 22-32-110 (1)(h), C.R.S. Local board powers-Terminate employment of personnel

3.01 (F) 22-32-110(1)(i), C.R.S. Local board duties-Reimburse employees for expenses

3.01 (G) 22-32-110(1)(j), C.R.S. Local board powers-Procure life, health, or accident insurance

3.01 (H) 22-32-110(1)(k), C.R.S. Local board powers-Policies relating the in-service training and official conduct

3.01 (I) 22-32-110(1)(y), C.R.S. Local board powers-Accepting gifts, donations, and grants

3.01 (J) 22-32-110(1)(ee), C.R.S. Local board powers-Employ teachers' aides and other non-certificated personnel

3.01 (K) 22-32-126, C.R.S. Employment and authority of principals

3.01 (L) 22-33-104(4), C.R.S. Compulsory school attendance-Attendance policies and excused absences

3.01 (M) 22-63-301, C.R.S. Teacher Employment Act- Grounds for dismissal

3.01 (N) 22-63-302, C.R.S. Teacher Employment Act-Procedures for dismissal of teachers

3.01 (O) 22-63-401, C.R.S. Teacher Employment Act-Teachers subject to adopted salary schedule

3.01 (P) 22-63-402, C.R.S. Teacher Employment Act-Certificate required to pay teachers

3.01 (Q) 22-63-403, C.R.S. Teacher Employment Act-Describes payment of salaries

3.01 (R) 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 signed contract including any request for release from state statutes and/or regulations, as well as the duration of the waiver requested, must be submitted to the State Board of Education by the charter school authorizer and a charter school on a form provided by the department of education and obtainable from the department's internet web site. Specific statutory and regulatory citations must be included.

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) Assessments required to be administered pursuant to section 22-7-209, C.R.S.; or

3.05(b) Assessments necessary to prepare the school accountability reports pursuant to C.R.S. 22-7-601, et seq.

3.05(c) Any statute or rule relating to the Children's Internet Protection Act, C.R.S. 22-87-101 to 107.

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. _____

Editor's Notes

History

Sections 2.04(a), 3.06(b) – (w), 4.05 eff. 01/14/2013.

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State of Colorado
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Office of the Attorney General

Tracking number: 2014-00948

Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado State Board of Education

on 11/12/2014

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 11/13/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:47:11

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-71

Rule title

1 CCR 301-71 RULES FOR THE ADMINISTRATION, CERTIFICATION AND OVERSIGHT OF COLORADO ONLINE PROGRAMS 1 - eff 01/15/2015

Effective date

01/15/2015

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION, CERTIFICATION AND OVERSIGHT OF COLORADO ONLINE PROGRAMS

1 CCR 301-71

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

1.0 Statement of Basis and Purpose.

Following passage of HB14-1382, in August of 2014, the State Board of Education found that to meet the timeline therein, it was necessary to adopt emergency rules amending Rule 8.00 concerning documentation for the October count date. Additionally, in so doing, the State Board also found it necessary to amend the definitions of online program and online school to align with HB14-1382. In December 2014, the State Board of Education needed to establish permanent rules. In the permanent rules, language throughout the rules was changed to be consistent with definition changes in HB14-1382. The permanent rules also describe the permanent process by which authorizers of online schools and programs will establish their student count policies and procedures.

Sections 2.03.2 and 8.01 of these rules were amended to incorporate new statutory requirements established by H.B. 12-1090 (concerning the annual count date for establishing total pupil enrollment of each public school) in section 22-54-103 (10.5) (a), C.R.S.

Section 2.09 of these rules was amended and section 2.10 was added to incorporate new definitions of an online program and online school as established by HB 12-1240 (concerning statutory changes to K-12 education) in section 22-2-130, C.R.S.

Section 2.12 of these rules was amended to incorporate a revised definition of a single-district online program as established by HB 12-1212 (concerning the designation of an online program as a multi-district program) in section 22-30.7-102, C.R.S.

These rules were amended to incorporate changes to financial reporting and accountability required by HB 11-1277 (concerning statutory changes involving K-12 education).

These rules were amended to align the evaluation criteria for Online Programs with the evaluation criteria established by SB 09-163 (the Education Accountability Act of 2009).

The statutory basis for these rules is found in sections 22-30.7-105(3)(b), 22-30.7-106(4), 22-30.7-106(5), and 22-30.7-106(6),C.R.S.

Pursuant to these statutes, the State Board of Education shall promulgate rules to achieve the following purposes, including but not limited to:

(a) Establishing quality standards for online programs;

(b) Promoting Online Program student participation in statewide assessments;

(c) Establishing criteria to be used by the Online Division in certifying Multi-District Online

Programs; (d) Establishing processes and timelines by which a prospective Authorizer may apply to

the Online
Division for certification of a Multi-District Online Program;

(e) Establishing an expedited procedure for the approval or denial of certification for Multi-District Online Programs that were operating as of January 1, 2007;

(f) Establishing a timeline by which an Authorizer of an online program shall submit a report to the Online Division;

(g) Establishing a process for responding to a corrective action notice resulting from an audit of annual reporting;

(h) Providing a process for notification to the State Board with recommendations for actions the State Board may take to address a situation of non-response to a corrective action notice; and

(i) Establishing a process and timeline for continual review of the Multi-District Online Program after certification.

2.0 Definitions

2.01 "Authorizer" means an entity that authorizes an online program. "Authorizer" shall include a school district, any group of two or more school districts, a board of cooperative services created pursuant to §22-5-104 C.R.S., or the state Charter School Institute established pursuant to §22-
30.5-503, C.R.S.

2.02 This definition of "complete educational program" is applicable to all public school educational programs that derive their support, in whole or in part, from moneys raised by a general state, county, or School District tax.

2.02.1 "Complete Educational Program" means for the purposes of §22-32-109(2) C.R.S., only, a sequential k-12 program of instruction, managed and operated by a local school district, for the education of a child that is intended to qualify for per pupil revenues under the Public School Finance Act of 1994 and, for children under seventeen years of age, qualifies the child by his or her attendance to be in compliance with Colorado compulsory school attendance laws.

2.02.2 For purposes of §22-32-109(2) C.R.S., the term "Complete Educational Program" shall exclude an online education program as defined by rule 2.10 and which is not delivered in a Learning Center as defined in rule 2.06.

2.02.3 For purposes of §22-32-109(2) C.R.S., the term "Complete Educational Program" shall also exclude a Learning Center as defined by rule 2.06, which is operating in the district pursuant to an MOU negotiated with the district, or pursuant to an order of the State Board of Education under rule 10.07.

2.03 "Course Completion Requirements," for the purposes of transcript recording and statistical enrollment reporting, means the student completion of a course based on meeting the Authorizer's approved academic content work and testing requirements.

2.03.1 The course may be counted as having been completed when academic content work, as based upon authorizer accreditation curriculum standards, has been completed.

2.03.2 Any student counted as an enrollment for the pupil enrollment count date, as defined in section 22-54-103 (10.5) (a), C.R.S., must be included in the course completion rate data.

2.03.3 For calculation purposes, any student who leaves the course within the first 25% of said course shall not be counted in course completion rates.

2.03.4 Mastery or passing a course is not a requirement of course completion, but mastery levels should be consistent with the Authorizer.

2.04 "Department" means the Department of Education created and existing pursuant to §24-1-115, C.R.S.

2.05 "Learning Center" means a facility in which a consistent group of students meets more often than once per week under the supervision of a Teacher or Mentor for a significant portion of a school day for the purpose of participating in an Online School or Program. A group of Parents and students meeting repeatedly, occasionally, and informally, even if facilitated by a school, shall not constitute a "Learning Center", and a private home shall not be considered a "Learning Center" under any circumstances pursuant to §22-30.7-102 C.R.S.

2.05.1 For purposes of these rules, a "significant portion of the school day for the purpose of participating in an online program" means that students of the Learning Center must be actively participating in the curricula of the certified online program for more than fifty- percent of the school day.

2.05.2 A curriculum that is not part of the certified Online School or Program must be non-religious and non- sectarian and may only be offered for less than fifty-percent of the school day.

2.05.3 In no event shall the parents or guardians of the students enrolled in the Online School or Program be required to pay tuition on behalf of such students for the Online School or Program at such Learning Center.

2.06 "Mentor" means an individual who is responsible for providing supervision at a Learning Center. A "Mentor" shall not be required to be a licensed Teacher but shall, at a minimum, satisfy the requirements specified for a paraprofessional as such requirements are described in the federal law "No Child Left Behind Act of 2001", 20 U.S.C. §6301 et seq.

2.07 "Multi-District Online School" means an Online School that serves a student population drawn from two or more school districts.

2.08 "Online Division" means the division of online learning created in the Department pursuant to §22-30.7-103, C.R.S

2.09 "Online Program" means a full-time education program authorized pursuant to Title 22 of the Colorado Revised Statutes that delivers a sequential program of synchronous or asynchronous instruction directed by a teacher -primarily through online digital learning strategies that provide students choice over time, place, and path, and teacher-guided modality of learning. "Online Program" does not include a supplemental program. Accountability for each student in an online program is attributed back to a designated school that houses the online program. An Online Program with one hundred or more students is an Online School and not an Online Program

2.10 "Online School" means a full-time, education school authorized pursuant to Title22 of the Colorado Revised Statutes that delivers a sequential program of synchronous or asynchronous instruction directed by a teacher-primarily through online digital learning strategies that provide students choice over time, place, and path, and teacher- guided modality of learning. An Online School has an assigned school code and operates with its own administrator, a separate budget, and a complete instructional program. An Online School is responsible for fulfilling all reporting requirements and is held to state and federally mandated accountability processes.

2.11 "Parent" means a biological parent, adoptive parent, or legal guardian.

2.12 "Single-District Online Program" means an Online Program that serves only students who reside within a single school district.

2.13 "Standard MOU Form" means the standard Memorandum of Understanding Form adopted by the State Board pursuant to section §22-30.7-111 (5) C.R.S.

2.14 "State Board" means the State Board of Education created and existing pursuant to section 1 of Article IX of the Colorado State Constitution.

2.15 "Supplemental Program" means a program that offers one or more online courses to students to augment an educational program provided by a school, school district, charter school, or board of cooperative services.

2.16 "Teacher" means any person who holds a Teacher's license issued pursuant to the provisions of article 60.5 of Title 22, CRS and who is employed to instruct, direct, or supervise the instructional program, "Teacher" includes those persons employed by a charter school as a Teacher pursuant to a waiver granted to the charter school by the State Board pursuant to §22-30.5-105(3), C.R.S., or who are employed by a school district as a Teacher pursuant to a waiver granted to a school district pursuant to §22-2-117, C.R.S.

2.17 "Teacher-pupil contact and teacher-pupil instruction" means that time when a pupil is actively engaged in the educational process of a district.

2.17(1) Each local board of education shall define "educational process".

3.0 Quality Standards for Online Schools and Programs.

3.01 In supporting and, evaluating Online Schools and Programs, and in certifying Multi-District Online Schools, the

Online Division will provide guidance related to, and use the following Quality Standards.

3.02 Consistent with its Authorizer or school district, Online Schools and Programs shall meet or exceed the following quality standards in the administration of program and delivery of curriculum:

3.02.1 The Online School or Program involves representatives of the Online School or Program's community, as well as staff, in a collaborative process to develop and communicate the Online School or Program's vision, mission, goals and results, in a manner appropriate to the online model for that school or program. The Online School or Program provides leadership, governance, and structure to support this vision and these supports are used by all staff to guide the decision-making.

3.02.2 [Expired 05/15/2011 per Senate Bill 11-078]

3.02.3 The Online School or Program has, or has a plan and timeline in place to accomplish, the technological infrastructure capable of meeting the needs of students and staff, and of supporting teaching and learning. The Online School or Program uses a variety of technology tools and has a user-friendly interface. The Online School or Program meets industry accepted accessibility standards for interoperability and appropriate access for learners with special needs. Technological support structures and programs are in place to reduce barriers to learning for all students.

3.02.4 The Online School or Program has, and implements, a technology plan that includes (but is not limited to) documentation that all students and Parents know and understand acceptable use of the internet in accordance with all federal and state statutes. When providing direct services (for example, ISP, computer equipment or "at location") to students, the Online School or Program will use filtering software to prevent access to inappropriate materials.

3.02.5 Online Schools and Programs must comply with all statutory requirements, including the existing budgetary reporting procedures under state law, as well as being consistent with the format required by the authorizing entity. Budgets and accounting records must be transparent, open to the public, and demonstrate support of student academic achievement.

3.02.6 Online School or Program demonstrates levels of attainment of statewide performance indicators that meet expectations established by the Department's annual performance review as described in §22-11-210, C.R.S.

3.02.7 The Online School's or Program's Teachers use ongoing, research based formative and summative assessments to measure student academic performance. Students have varied opportunities to demonstrate mastery of skills, show academic progress, and receive meaningful feedback on their learning.

3.02.8 An Online School or Program has a policy regarding course completion.

3.02.9 An Online School or Program follows policies for tracking enrollment, attendance, participation, and truancy. The policy includes documentation of Teacher / student interaction.

3.02.10 The Online School or Program has a policy, and the infrastructure to store, retrieve, analyze and report, required student, Teacher, financial, and other required data collections.

3.02.11 The Online School or Program has a policy providing guidance counseling services as appropriate to grade level and student need.

3.02.12 The Online School or Program has a policy guiding school/home communication about student and program progress, program governance, and program accountability that is relevant, regular, and available in native language where reasonable.

3.02.13 Instructional strategies, practices, and content address various learning needs and styles of students. The Online School or Program uses a body of evidence to identify advanced, under- performing, economically disadvantaged, or other special needs students. The Online School or Program will work with its Authorizer to ensure that support structures and programs, including but not limited to, Title I, ESL, Special Ed., and Gifted and Talented, are integrated into the school's instructional program to promote and support student learning.

3.02.14 The Online School or Program evaluates the degree to which it achieves the goals and objectives for student learning. There is a systematic process for collecting, disaggregating, managing, and analyzing data that enables the Online School's or Program's leadership, Teachers, Parents, students, community members and other stakeholders to determine areas of strength and challenge. The data collected are analyzed using a systems approach, and the analysis includes the use of the school performance reports required pursuant to §22-11-503, C.R.S
.

3.02.15 The Online School or Program shall ensure that background checks in accordance with law are performed on all volunteers and paid staff, including but not limited to Mentors, Teachers, Administrators, or any other persons in unsupervised contact with the student, except Parents supervising their children's educational program.

4.0 Multi-District Online School Application Criteria

4.01 The Certification of the Online School does not constitute approval of operations for the Online School. The approval of the Online School is the responsibility of the Authorizer. The Online School may begin student instruction and operations only after approval by the Authorizer and receipt of certification from the Department.

4.02 The Authorizer of the Multi-District Online School must include in its application evidence of adequate resources and capacity to oversee the Online School, or evidence of a plan and timeline demonstrating that adequate resources and capacity for oversight of the Online School will be in place by the beginning of student instruction. Capacity will be determined based upon the following components:

4.02.1 Curriculum and instruction;

4.02.2 Use of software applications and technology;

4.02.3 Data gathering analysis and reporting;

4.02.4 Human resources management;

4.02.5 Financial management, facilities management, and risk management.

4.02.6 Other relevant public education administrative functions as submitted by the Multi-district Online School, to be reviewed as appropriate by the Unit of Online Learning of CDE.

4.03 The Authorizer, in its application, will document and verify an acceptable level of compliance by the Online School to the quality standards as listed in §3.02 of these rules.

4.03.1 For new Online Schools the Authorizer, in its application, will provide evidence of a plan and timeline that the quality standards will be met as listed in §3.02 of these rules.

4.04 The plan for operating and monitoring the Online School must be agreed to by the Authorizer and the principal, director, charter school governing board, or other chief administrator of the Multi-District Online School, and must be included with the application. The plan must include specific information on how the following items are addressed in the delivery of the Online School:

4.04.1 A statement of the Online School's vision, mission and goals;

4.04.2 The organizational structure and governance of the Online School, including governing board and School policies and procedures, including procedures for public access to records;

4.04.3 Equitable access for all students, within the parameters for operating and monitoring the Multi-District Online School;

4.04.4 Guidance counseling services for all students enrolled in the Multi-District Online School in accordance with Authorizer policy;

4.04.5 Student academic credit policies consistent with the Authorizer;

4.04.6 Student achievement and attendance policies, including the monitoring of graduation and dropout rates as well as Course Completion rates pursuant to the policy referenced in §3.02.8 of these rules and the definition as defined in rule 2.04;

4.04.7 Student records policies and procedures consistent with the Authorizer pursuant to SB-07-215;

4.04.8 Student admission and placement policies and procedures;

4.04.9 Staff development plans;

4.04.10 Student services including tutorial support consistent with the Authorizer;

4.04.11 Staff, student, and parent handbooks;

4.04.12 Employment and contractor policies and procedures;

4.04.13 Annual budgeting and finance practices;

4.04.14 Facility plans, including any contemplated physical sites;

4.04.15 Risk management, including school safety, staff policies, and background checks for all employees as required by law;

4.04.16 Data development analysis and reporting; and

4.04.17 Policies and procedures for facilitating communication between the Multi-District Online School, Parents, community, and school districts in which students that are enrolled in the Multi-District Online School reside.

4.05 The Authorizer will include in its application a list of the Learning Centers for which an MOU has been agreed upon by the local school district and the Online School, including the name, address, facility contact, and telephone number for each, and evidence of compliance by the Learning Center with section §2.06 of these rules.

5.0 Procedure and Timeline for Multi-District Online School Certification by the State Board.

5.01 Authorizers must submit applications for certification of Multi-District Online Schools to the Online Division at the Department.

5.02 For Multi-District Online Schools intending to begin operations on or after the 2009-2010 school year, submissions will be reviewed twice a year, with submissions accepted no later than January 2nd and April 1st (or closest business day thereafter) of each year. A decision will be made based upon rubrics established by the Online Division.

5.03 The response will be given to the Authorizer within sixty days of January 2nd and April 1st (or closest business day thereafter) with detailed reasons for denial if applicable.

6.0 Procedure and Timeline for Submitting Annual Financial and Accounting Report

6.01 Pursuant to § 22-30.7-109.5, C.R.S., each Online School that is not a charter school shall submit to its Authorizer an annual financial and accounting report, which the Authorizer shall submit to the Department on or before December 31st of each year, or up to sixty days later, if an extension is requested pursuant to § 29-1-606 (4), C.R.S. Said report shall be submitted in accordance with 1CCR 301-39, Amended Rules for Administration of Public School Finance, in section 2254-R-7.00.

6.02 Online Schools that are charter schools and already submit the financial information required pursuant to § 22-30.5-112(7), C.R.S., may submit a single financial report to satisfy requirements of § 22-30.7-109.5, C.R.S.

7.0 Timeline and Procedure for the Amendment of a Certification of a Multi-District Online School

7.01 A Multi-District Online School shall notify its authorizer and the Online Division within the Department of any intent to amend the program's application for certification, which shall include any intent to expand grade levels served by the program, any intent to change education service providers, or other intended changes, as defined by the State Board.

7.02 If the Department concludes that the Online School should not be permitted to amend its application for certification, based on the Quality Standards for Online Schools and Programs outlined in section 3.02 of these rules, the Department shall notify the Authorizer of the Online School of its decision within thirty (30) days of receiving the

notification from the Online School. The Authorizer shall then have thirty (30) days to appeal the Department's decision to the State Board, pursuant to the State Board's administrative policies.

8.0 Process for Documenting Students Enrolled in an Online Program or Online School

8.01 Pursuant to HB14-1382,.a student participating in an Online program or Online school is subject to the compulsory attendance requirements as provided in article 33 of the Colorado Revised Statutes and is deemed to comply with the compulsory attendance requirements through participation in an online program or online school. Each online program and online school must document a student's compliance with compulsory attendance requirements during the official count window.

8.01.1 For the 2015-16 school year and thereafter, Authorizers must adopt policies tracking student enrollment, attendance, and participation as set forth in 3.02.9 above and may document students' attendance and participation in educational activities in a manner the Authorizer deems appropriate to support student learning. Acceptable forms of documentation include, but need not be limited to, assessment, orientation, and induction activities, in-person educational instruction; and synchronous and asynchronous internet-based educational activities. On a form provided by the Department, the Authorizer must provide Assurances to the Department of the Authorizer's verification of the students' attendance and participation in the Online Program or Online School. Beginning in the 2015-16 school year, authorizers of online schools or programs need to provide these assurances to the Colorado Department of Education no later than two weeks prior to the first day of the October count window. Once an authorizer has provided these assurances, the department will assume the authorizer plans to continue to use the policies identified in their assurance form. Annual submission is not required, however, resubmission to the department per the above timeline is required if/when the authorizer wishes to change their count policy.

8.02 Thereafter, the determination of full-time or part-time status is based upon the minimum number of hours provided for a student to receive instruction. Minimum hours can be based on the number of hours per day (or week) required to earn an equivalent number of credits in a traditional classroom setting

8.03 The Online School or Program must have a calendar that reasonably aligns with the beginning date of the school year of the Authorizer that operates it or has been approved for an alternative calendar by the Authorizer and the Department.

8.04 A full time student must have a schedule that provides for a minimum of three hundred and sixty (360) hours of teacher-pupil instruction per semester to receive full-time funding pursuant to 2254-R-5.04(3).

8.05 A part time student must have a schedule that provides for a minimum of ninety (90) hours of teacher-pupil instruction per semester to receive part-time funding pursuant to 2254-R-5.06(3).

8.06 An Online School or Program must verify and document student residency in the State of Colorado upon enrollment and annually thereafter and retain a copy of the document or written statement offered as verification in the student's mandatory permanent record. Colorado residency is determined by the student and Parent or legal guardian currently residing within the State of Colorado boundaries, except for students of military families pursuant to §8.06.5 of these rules. Reasonable evidence of residency may be established by documentation including, but not limited to, any of the following:

8.06.1 Property tax payment receipts;

8.06.2 Rent payment receipts;

8.06.3 Utility service payment receipts; or

8.06.4 Written Statement of Residency executed by the student's parent/guardian. The written statement of residency should follow §1-2-102(a) and (b) C.R.S. and may be satisfied by a statement such as: "I, _____, swear and affirm under penalty of perjury that I am a resident of the State of Colorado."

8.06.5 A member or dependent of a member of the United States Armed Services shall be eligible to participate in an Online Program, notwithstanding the length of his or her residency, upon moving to Colorado on a change of station basis.

8.06.6 A member or dependent of a member of the United States Armed Services shall be eligible to participate in an Online Program, upon moving out of Colorado on a change of station basis as long as the member of the United States Armed Services qualifies for Colorado residency.

8.06.7 In order to meet residency requirements, a member or dependent of a member of the United States Armed Services must maintain Colorado as their state of legal residence for tax purposes, and voters must maintain Colorado voter registration.

9.0 (Reserved)

10.0 Notice and Right of Appeal for Refusal to Enter into an MOU agreement.

10.01 A school board may refuse to enter into a memorandum of understanding with a Multi-District School only on the following grounds:

10.01.1 If the Standard MOU Form provided by the Multi-District School failed to satisfy the requirements of §22-30.7-111(1)(b), C.R.S.; or

10.01.2 If the school board reasonably determines that the Multi-District School is contrary to the best interests of the pupils, parents, community, or school district.

10.01.3 The school district shall be required to state its reasons for determining that the Multi-District School is contrary to the best interests of the pupils, parents, community or school district.

10.02 If a school board refuses to enter into a memorandum of understanding for the operation of a Learning Center, it must provide the applicant with a detailed statement of refusal. The applicant may appeal the decision of the school board to the State Board by submitting a notice of appeal to the State Board within fourteen days after receipt of notice of the school board's decision. The applicant shall include a brief statement in the notice of appeal of the reason(s) it contends the school board’s denial was in error. The appeal will proceed in accordance with the scheduling order to be issued by the Department on behalf of the State Board.

10.03 Pursuant to the timeline set forth by the State Board order,

1. The applicant shall submit a brief in support of the appeal to the State Board and the school board shall submit a brief in opposition to the appeal.

2. The applicant may submit a reply brief to the State Board after the school board submits its brief in opposition to the appeal.

3. The State Board, in its sole discretion, may request an oral presentation on the matter.

10.04 Within forty-five days after receipt of the notice of appeal by the State Board, and after reasonable public notice, the State Board shall review the decision of the local board of education and make its findings. The State Board’s review of the decision shall be without a hearing; except that the State Board may, in its discretion, choose to request oral presentations from the parties.

10.05 If the State Board finds that the local board's decision was contrary to the best interests of the pupils, parents, community, or school district, the State Board shall issue an order directing the school district to enter into a final memorandum of understanding with the Multi-District Online School regarding the placement of one or more Learning Centers within the school district and to use the Standard MOU Form provided pursuant to §22-30.7-111 C.R.S.

10.06 The Memorandum of Understanding must be entered into by the District within thirty days after receipt of the State Board's order.

10.07 If the State Board finds that the local board's decision was in the best interest of the pupils, parents, community, or school district, the State Board will issue a notice to uphold the decision of the local board.

10.08 The decision of the State Board shall be final and not subject to further agency appeal.

10.09 For each new Learning Center operated by the Multi-District Online School, within thirty days of acceptance, the Authorizer or Online School will submit to the Online Division the name, address, facility contact, and telephone number and evidence of compliance by the Learning Center with section §2.06 of these rules.

Editor's Notes

History

Entire rule emer. rule eff. 03/06/2008.

Entire rule eff. 04/30/2008.

Entire rule eff. 03/01/2012.

Sections 1.0, 2.03.2, 2.09 – 2.16, 8.01 eff. 12/30/2012.

Annotations

Rule 3.02.2 (adopted 06/03/2010) was not extended by Senate Bill 11-078 and therefore expired 05/15/2011.

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Office of the Attorney General

Tracking number: 2014-00947

Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado State Board of Education

on 11/12/2014

1 CCR 301-71

RULES FOR THE ADMINISTRATION, CERTIFICATION AND OVERSIGHT OF COLORADO ONLINE PROGRAMS

The above-referenced rules were submitted to this office on 11/14/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:49:27

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-95

Rule title

1 CCR 301-95 Rules for the Administration of the School Turnaround Leaders Development Program 1 - eff 01/15/2015

Effective date

01/15/2015

COLORADO STATE BOARD OF EDUCATION

Department of Education

1 COLORADO CODE OF REGULATION 301-97

RULES FOR THE ADMINISTRATION OF

THE SCHOOL TURNAROUND LEADERS DEVELOPMENT PROGRAM

Authority: Article IX, Section 1, Colorado Constitution. 22-2-106(1)(a) and (c); 22-2-107(1)(c); 22-7-409(1.5); 22-13-103 of the Colorado Revised Statutes (C.R.S.).

1.00 Statement of Basis and Purpose.

The statutory basis for these emergency rules adopted on September 11, 2014 is found in 22-2-106(1)(a) and (c), State Board Duties; 22-2-107(1)(c), State Board Powers; and 22-13-103, C.R.S., School Turnaround Leaders Development Program – Rules.

The School Turnaround Leaders Development Program, 22-13-103, C.R.S., requires the State Board of Education to promulgate rules to implement and administer the program. At a minimum, the rules must include: Criteria for identifying approved providers from among those that respond to the request for proposals pursuant to section 22-13-104, C.R.S.; Timelines for the design grant application and approval process; Criteria for awarding design grants to identified providers to partially offset the design and development costs of creating or expanding high-quality turnaround leadership development programs; Timelines for the school turnaround leader grant application and approval process; The requirements for a school turnaround leader grant application, including but not limited to the goals that the applicant expects to achieve through the grant; and Criteria for selecting school turnaround leader grant recipients.

2.00 Definitions.

2.00 (1) Charter School: A charter school authorized by a school district pursuant to part 1 of article 30.5 of title 22 or an institute charter school authorized by the state charter school institute pursuant to part 5 of article 30.5 of title 22 of the Colorado Revised Statutes.

2.00 (2) Department: The Department of Education created and existing pursuant to section 24-1-115, C.R.S.

2.00 (3) Institute: The State Charter School Institute established in section 22-30.5-503, C.R.S.

2.00 (4) Program: The School Turnaround Leaders Development program created in section 22-13-103.

2.00 (5) Provider: A public or private entity that offers a high-quality turnaround leadership development program for Colorado educators.

2.00 (6) School District: A school district organized pursuant to article 30 of title 22, C.R.S.

2.00 (7) School Turnaround Leader: A principal or teacher leader in a school that is required to adopt a priority improvement plan or turnaround plan pursuant to section 22-11-210, C.R.S. or a district-level administrator or employee of the State Charter School Institute that coordinates and supports turnaround efforts in schools of the School District or Institute Charter schools that implement priority improvement plans or turnaround plans.

2.00 (8) Turnaround plan: The lowest plan type assigned to a school in Colorado based on the percentage of points earned on the School Performance Framework. A Turnaround plan puts a school on the "five-year accountability clock" per the Education Accountability Act of 2009.

2.00 (9) Priority Improvement plan: The second-lowest plan type assigned to a school in Colorado based on the percentage of points earned on the School Performance Framework. A Priority Improvement plan puts a school on the "five-year accountability clock" per the Education Accountability Act of 2009.

2.00 (10) State Board: The State Board of Education created pursuant to Section 1 of Article IX of the Colorado Constitution.

2.01 Turnaround Leadership Development Programs Request for Proposals

The Department will issue a request for proposals (RFP) from providers who seek to participate in the program. Based on the criteria outlined below, the Department will identify one or more providers to provide turnaround leadership development programs for school districts, the Institute, and charter schools that receive School Turnaround Leader Grants. Providers that respond to the RFP may request a one-time design grant to offset the costs incurred in creating or expanding the provider's Turnaround Leadership Development Programs.

2.01 (1) **Criteria for Identifying Approved Providers for Design Grant.**

The Department will develop an RFP, according to the Department's competitive grants and awards RFP process, which consists of: use of a

standard grant application and scoring rubric template; and a fair and equitable application review. The following criteria will be considered for identifying providers from among those that respond to the RFP:

2.01 (1) (a) Each Provider's experience in developing successful, effective leadership in low-performing schools and School Districts;

2.01 (1) (b) The leadership qualities that each Provider's turnaround leadership development program is expected to develop;

2.01 (1) (c) A Provider's capacity to implement identified program components that make up a comprehensive leadership development experience; and

2.01 (1) (d) The availability of turnaround leadership development programs for School Turnaround Leaders in public schools throughout the state. The grant program shall seek to ensure approved providers are available for leaders in all regions of the state.

2.01 (2) **Timeline for RFP.** During the 2014-15 school year, the Department will provide funding to identified providers to offset the costs incurred in creating or expanding the provider's Turnaround Leadership Development Programs. Applications will be due to the Department on or before January 1, 2015. Application decision notification will occur on or before February 1, 2015. For the 2015-16 school year and each year thereafter, subject to available appropriations, Turnaround Leadership Development Program Design Grant applications will be due by September 1.

2.01 (3) **Duration of Design Grant Awards.** During the first three years that the program receives appropriations, an identified provider may apply as provided by rule for a one-time design grant to offset the costs incurred in creating or expanding the Provider's turnaround leadership development programs.

2.01 (4) **Reporting Requirements for All Identified Providers.** Each identified provider shall track the effectiveness of persons who complete a turnaround leadership development program and report the effectiveness to the department on or before July 1 of the year following the training. The report must use department rubrics to measure the effectiveness of persons who complete the turnaround leadership development program. Each grant recipient must report on the following:

2.01 (4) (a) Number of participants in program;

2.01 (4) (b) Schools served; and

2.01 (4) (c) Change in principal or aspiring leaders actions/behavior (as data is available).

2.02 **School Turnaround Leader Grants.** Subject to available appropriations, the State Board shall award School Turnaround Leader Grants to one or more School Districts or Charter Schools or the Institute to use in: identifying and recruiting practicing and aspiring School Turnaround Leaders; subsidizing the costs incurred for School Turnaround Leaders and their staff, if appropriate, to participate in turnaround leadership development programs offered by identified providers (both funded and non-funded); and reimbursing the School Turnaround Leaders for costs they incur in completing turnaround leadership development programs offered by identified providers (both funded and non-funded).

2.02 (1) **Timeline for School Turnaround Leader Grants.** During the 2014-2015 school year, the Department will conduct an initial School Turnaround Leader Grant competition. Applications will be due to the Department on or before February 1, 2015. Application decision notification will occur on or before, April 1, 2015. For the 2015-16 school year and each year thereafter, subject to available appropriations, School Turnaround Leader Grant applications will be due by September 1.

2.02 (2) **Application Procedures for School Turnaround Leader Grants.** The Department will develop an RFP, according to the Department's competitive grants and awards RFP process, which consists of: use of a standard grant application and scoring rubric template; and a fair and equitable application review. The following criteria will be considered for identifying School Turnaround Leader grants:

2.02 (2) (a) The goals that the applicant expects to achieve through the grant;

2.02 (2) (b) The number of individuals to participate in leadership programs, including: existing leaders, aspiring leaders, district managers or support staff;

2.02 (2) (c) A clear plan for leadership development, implementation, and application of skills in the schools and district; and

2.02 (2) (d) A plan to evaluate impact of program.

2.02 (3) **Criteria for Selecting Recipients of School Turnaround Leader Grants.** The following criteria will be considered in selecting School Turnaround Leader Grant recipients:

2.02 (3) (a) For applying school districts, the concentration of schools of the school district or, for the Institute, the concentration of Institute Charter Schools, that must implement priority improvement or turnaround plans. For applying Charter Schools that are implementing priority improvement or turnaround plans will be prioritized.

2.02 (4) **Duration of School Turnaround Leader Grant Awards.** Each school turnaround leader grant may continue for up to three budget years. The Department shall annually review each grant recipient's use of the grant moneys and may rescind the grant if the Department finds that the grant recipient is not making adequate progress toward achieving the goals identified in the grant application.

2.02 (5) **Reporting Requirements for School Turnaround Leader Grant.** Each grant recipient will annually track the effectiveness of persons who complete a turnaround leadership development program and report the effectiveness to the department on or before July 1 of the year following the training. The report must use department rubrics to measure the effectiveness of persons who complete the turnaround leadership development program. Each grant recipient must report on the following:

2.02 (5) (a) Number of people who participated and in which programs;

2.02 (5) (b) Schools served;

2.02 (5) (c) Impact on student achievement; and

2.02 (5) (d) Change in principal or aspiring leaders actions/behavior.

2.02 (6) **Evaluation of School Turnaround Leader Grant Program.** The Department will analyze and summarize the reports received from grant recipients and annually submit to the State Board, the Governor, and the Education Committees of the Senate and the House of Representatives, or any successor committees, a report of the effectiveness of the School Turnaround Leader Grants awarded pursuant to this section. The Department will also post the annual report on its web site.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00969

Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado State Board of Education

on 11/12/2014

1 CCR 301-95

RULES FOR THE ADMINISTRATION OF THE SCHOOL TURNAROUND LEADERS DEVELOPMENT PROGRAM

The above-referenced rules were submitted to this office on 11/13/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:48:21

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - State Electrical Board

CCR number

3 CCR 710-1

Rule title

3 CCR 710-1 STATE ELECTRICAL BOARD RULES AND REGULATIONS 1 - eff 01/30/2015

Effective date

01/30/2015

Division of Professions and Occupations
State Electrical Board

RULES AND REGULATIONS

JULY 1, 2014

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1.0 STATEMENT OF BASIS AND PURPOSE

1.1. Following are the adopted changes to the Rules and Regulations of the Colorado State Electrical Board ("the Board") for general clarification, for efficient management and expeditious procedures of the Board, and for the safeguarding of the general public in compliance with Title 12, Article 23, of the Colorado Revised Statutes.

1.2. The Board adopts the following rules pursuant to the authority granted to the Board by § 12-23-104(2)(a), C.R.S. and hereby repeals all previous rules with the same number.

1.3. These Rules shall be binding on every person and legal entity authorized to practice, offer to practice, or perform electrical or electrical contracting in Colorado. All licensees and registrants under Title 12, Article 23 of the Colorado Revised Statutes are charged with having knowledge of the existence of these rules and shall be deemed to be familiar with their provisions and to understand the rules. In these Rules, the word "licensee" shall mean any person holding a master electrician license, journeyman electrician license, or residential wireman license. In these Rules, the word "registrant" shall mean any person registered as an electrical apprentice and any person or legal entity registered with the Board as an electrical contractor.

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

2.0 STANDARDS

2.1 The Board hereby adopts the National Fire Protection Association standard number 70, hereafter known as the National Electrical Code, 2014 Edition, and as may be amended by the Board. These standards are adopted as the minimum standards governing the planning, laying out, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power in this state. This rule does not include later amendments to or editions of the National Electrical Code, 2014 Edition. The effective date shall be July 1, 2014.

2.2 A copy of the provisions of the National Electrical Code, 2014 edition is available for public inspection during regular business hours at the Board office at the Division of Professions and Occupations, Department of Regulatory Agencies, 1560 Broadway, Suite 1350, Denver, Colorado, 80202, and at any state publications depository library. For further information regarding how this material can be obtained or examined, contact the Program Director for the Board ("Program Director") at 1560 Broadway, Suite 1350, Denver, Colorado, 80202, (303) 894-2300. The National Electric Code, 2014 Edition, is available directly from the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy MA 02169-7471, phone 1-800-344-3555. Copies are also available from the NFPA website at NFPA.org, as well as most online and retail book vendors.

3.0 APPRENTICE REGISTRATION AND RECORDKEEPING

3.1 **Registration.**

3.1.1 The Board may require the employer of an electrical apprentice to provide information verifying the apprentice's record of employment and practical experience, including but not limited to a written attestation from the responsible master electrician verifying that the apprentice has been performing electrical work during any period the apprentice was not registered. Employers of apprentices shall cooperate with any request from the Board pursuant to this rule and furnish such information or assistance as the Board may request.

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

3.1.3 An employer who fails to timely register an apprentice as required by section 12-23-110.5(3)(a), C.R.S. and this rule shall be subject to disciplinary action pursuant to section 12-23-118, C.R.S.

3.2 **Recordkeeping.** Electrical Contractors shall maintain employment records or work reports for their apprentices in order to provide experience verification. Such records or reports should accurately document the number of hours and months the apprentice performed electrical work as defined by § 12-23-101, C.R.S. and should specifically reflect:

A. Exact dates of employment;

B. Number of hours and months of residential electrical experience; and,

C. Number of hours and months of commercial, industrial, or substantially similar electrical experience.

4.0 APPLICATION FOR LICENSURE

4.1 All applications shall be submitted to the Division of Professions and Occupations in a form and manner approved by the Board.

4.2 **Experience.**

4.2.1 Applicants cannot verify their own experience.

4.2.2 **General Documentation Requirements.** Applicants shall provide documented written evidence of all in state and out of state experience on experience verification forms prepared and furnished by the Board which shall include all of the following:

A. Exact dates of employment.

B. Breakdown of electrical work performed in:

1. Commercial, residential, industrial and/or maintenance/service; and,

2. Increments of hours and months.

C. Signature of the master electrician for, or a signatory authority of, the electrical contractor or employer.

4.2.3 **Maintenance Experience.** Maintenance experience shall be submitted for evaluation on experience verification forms prepared and furnished by the Board.

4.2.3.1 A maximum of two (2) years experience credit may be granted for work performed under the supervision, and verified by, a Colorado (or equivalent) licensed electrician.

4.2.3.2 A maximum of one (1) year of experience credit may be granted for work not required to be performed under the supervision of a licensed electrician, and verified by the employer.

4.2.4 **Foreign Experience.**

4.2.4.1 Applicants shall have one (1) year of in-country electrical construction experience and familiarity with the National Electrical Code.

4.2.4.2 A maximum of three (3) years of out-of-country experience may be applied towards credit for a journeyman license.

4.2.4.3 A maximum of four (4) years out-of-country experience may be applied towards credit for a master license.

4.2.4.4 Applicants who have electrical experience from a foreign country for which they wish to receive experience credit are required to submit the documentation accompanied by an English language translation and a certification signed by the translator that must be printed legibly or typed. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities.

4.2.4.4.1 This evaluation will be performed at the applicant's expense and the applicant will be responsible for submitting all the necessary information to the evaluating institution.

4.2.5 **Calculating Years of Experience.** This rule is intended to clarify the term "years" of experience earned as referenced in the statutes and does not negate any other requirement set forth in the Board's rules or statutes for requirements for licensure.

4.2.5.1 When evaluating experience earned by an applicant pursuant to § 12-23-106, C.R.S., the minimum practice experience required for examination is calculated in "years" as follows:

A. Residential Wireman – 4000 hours earned in no less than 2 years.

B. Journeyman Electrician – 8000 hours earned in no less than 4 years.

C. Master Electrician – 10,000 hours earned in no less than 5 years.

4.3 **Education.**

4.3.1 **Community College Degree.** Applicants that are graduates from an accredited community college shall hold a degree in the electrical field to receive credit pursuant to 12-23-106, C.R.S.

4.3.2 **Trade School.**

4.3.2.1 Apprenticeship training programs are not equivalent to trade schools.

4.3.2.2 A trade school shall meet the following criteria:

A. Provide training in the following areas as it relates to the electrical trade:

1. Maintenance and new construction wiring in residential and commercial buildings;
2. Basic math related to the electrical industry;
3. Basic use of hand tools and materials;
4. Basic electrical resistive theory, wire sizing, circuit construction, and troubleshooting;
5. Basic to advanced study in motor control, motor theory and maintenance, installation and maintenance of equipment, designing electrical systems, blueprint reading, estimating, and electrical codes;
6. Electrical theory and practical application; and,
7. OSHA curriculum based safety training.

B. Provide official transcripts noting credit hours.

1. Graduate must obtain no less than 165 credit hours.
2. Each credit hour shall represent no less than 19 classroom hours.

4.3.3 **Transcripts.** Applicants providing documentation of education must submit an official transcript from the school with the application. The transcript must be provided with the application in an official envelope sealed by the granting institution.

4.3.4 **Foreign Education.**

4.3.4.1 Applicants who have an electrical engineering degree or electrical engineering courses from foreign colleges, universities, or their equivalents for which they wish to receive educational credit are required to have the transcripts evaluated by an electrical engineering department in an accredited university to determine if the curriculum is substantially equivalent.

4.3.4.2 This evaluation will be performed at the applicant's expense and the applicant will be responsible for submitting all the necessary information to the evaluating institution.

4.3.4.3 Applicants providing documentation of education must submit the evaluation from the evaluating institution with the application.

4.3.5 **Other Education Credit.** Applicants for licensure with electrical apprenticeship training, other electrical training, non-accredited electrical education, or other electrical education not addressed in statute or Board Rules may be granted a maximum of one (1) year of experience credit provided the applicant meets and provides the following documentation:

A. Course curriculum with the number of classroom hours completed; and,

B. Certification of completed hours.

4.3.5.1. Credit may be awarded as follows:

A. Credit for the successful completion of non-accredited electrical courses or program shall be credited one (1) month of experience for two (2) months of schooling up to a maximum of one (1) year.

B. Education without a certificate of completion may replace actual field experience under a licensed master at the rate of one (1) month credit for every six (6) months training or experience up to maximum of one (1) year.

4.4 **Training.**

4.4.1 **Apprenticeship Training Requirements.** Persons who, on or after January 1, 2011, either, enter an apprenticeship program or register as an apprentice, must comply with the following requirements. Pursuant to § 12-23-106(2)(a)(III) C.R.S., during the last four (4) years of apprenticeship, an applicant for a journeyman electrician's license shall provide documented written evidence of at least two hundred eighty-eight (288) hours of electrical training conducted in compliance with rules promulgated by the Board.

4.4.1.1 One (1) hour of approved training shall consist of not less than fifty (50) minutes of instruction, presentation, or activity spent in structured education.

4.4.1.2 The 288 hours of approved training is in addition to any stipulated on-the-job training requirement and shall include technical and professional subjects related to the practice of electrical work which the Board deems necessary to safeguard the public. Such subjects include:

A. Grounding/bonding;

B. National Electrical Code changes;

C. Wiring methods;

D. Theory/calculations; and,

E. A minimum of ten (10) and a maximum of forty (40) hours of OSHA curriculum based safety training.

4.4.1.3 **288 Hours Training Criteria.** To qualify for credit, training activities must be structured educational efforts meeting all of the following criteria:

A. Include technical and practical applications which impact criteria listed in Board Rule 4.1.1.1;

B. Be current and presented by qualified and technically competent instructors; and,

C. Provide certificates of completion or other documentation for the apprentice electrician and maintain records of attendance.

4.4.1.4 **No Pre-Approval of 288 Hours Training Activities.** The Board will not pre-approve courses or programs. It is within the discretion of the Board to deny credit for any activity that does not meet the training criteria in Board Rule 4.4.1.2.

4.4.1.5 **Acceptable 288 Hours Training Activities.** The Board deems the following types of activities to be acceptable. On-line delivery and participation in Board Rule 4.4.1 may be acceptable if in compliance with these rules, including but not limited to Board Rule 6.4.8

A. Not-for-credit academic course;

B. For-credit academic course; and,

C. Industry training programs.

4.4.1.6 **Non-Acceptable 288 Hours Training Activities.** The Board deems the following types of activities not acceptable training for this requirement:

A. Serving on federal, state, or municipal boards or commissions;

B. Rendering pro bono services;

C. Faculty at college, university, or other educational institution shall not receive credit for teaching their regularly-assigned courses beyond the initial class;

D. Participation on a public, professional, or technical society board;

E. Attendance at licensing or registration board meetings or any other professionally relevant board or committee meeting; and,

F. Participating in or attending exhibit poster sessions or trade shows.

4.4.1.7 **Recordkeeping.** The applicant shall track and document training hour requirements in a process approved by the Board. The applicant shall retain the documentation for a minimum of three (3) years following completion of the activity. Documentation shall contain, at a minimum the following information:

A. Apprentice electrician name;

B. Activity type;

C. Activity location and date(s);

D. Activity title and description of content and objectives;

E. Name and contact information of the sponsor or training provider (e.g. organization, institution, association, employer, vendor, or publication);

F. Instructor or speaker name(s), as applicable;

G. Name and contact information of the monitor, facilitator, or mentor, as applicable;

H. Certificate of completion; and,

I. Number of classroom hours.

4.4.1.8 Training earned under this requirement shall not qualify for any other education, training, or experience credit.

4.5 **License by Endorsement.**

4.5.1. Applicants may qualify for licensure by endorsement, providing that the applicant has:

A. An active residential wireman's license, journeyman electrician's license, or master electrician's license in another state, respective to the license you are applying for;

B. Successfully completed a state or federally-approved apprenticeship program, or obtained the required years and type of experience for the comparable license; and,

C. Successfully completed a comparable written state electrical examination based on the current edition of the National Electrical Code in effect at the time the application is submitted to the Board.

4.5.2 Proof of successful completion of the requirements in 4.5 shall be submitted on the verification forms prepared and furnished by the Board, as part of the application for endorsement.

4.5.3 Qualification may be accumulated in multiple states, provided the qualifications meet the requirements of 4.5.1.

4.6 **License by Reciprocity.**

4.6.1 Conditions for reciprocity. Applicants must:

4.6.1.1 Hold, from the licensing state, a journeyman license or a master electrician license, that allows the individual to work as a journeyman electrician, that is current, active, and in good standing;

4.6.1.2 Possess a journeyman electrician's license, or master electrician's license from a state that is a member in good standing of the National Electrical Reciprocal Alliance (NERA), or from any entity or jurisdiction that has a reciprocity agreement with the Board.

4.6.2 Applicants will not be granted a reciprocal license where the license in the licensing state was granted by grandfathering without having passed a state-administered examination.

4.7 **Military.** Education, training, or service gained in military services outlined in §24-34-102(8.5), C.R.S. to be accepted and applied towards receiving a license, must be substantially equivalent, as determined by the Board, to the qualifications otherwise applicable at the time of receipt of application. It is the applicant's responsibility to provide timely and complete evidence for review and consideration. Satisfactory evidence of such education, training, or service will be assessed on a case by case basis.

4.8 **Reconsideration.** An applicant requesting reconsideration of a Board action or requesting a personal interview before the Board, shall submit the request in writing, accompanied by additional information or documentation. This request shall be submitted within forty-five (45) days of the date on which the Board made the decision. Any request filed after forty-five (45) days will not be considered by the Board.

4.9 **Temporary Work Permits**

4.9.1 Pursuant to § 12-23-110, C.R.S., a temporary work permit may be issued at the time of approval for an examination. The temporary permit will be valid for a period of no more than thirty (30) days after the date of approval or as otherwise limited in § 12-23-110, C.R.S.

4.9.2 A temporary work permit shall not be accepted to meet the requirements for obtaining a new electrical contractor registration.

4.9.2.1 A temporary master electrician work permit may be issued to a qualified applicant of an existing electrical contractor pursuant to § 12-23-110, C.R.S.

4.10 **Application Retention**

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

4.10.2 **Approved Applications without Activity.** Effective November 30, 2012, an approved applicant for licensure by examination who does not take the examination within three (3) years from the date of the original approval date will be required to begin the application process again including payment of the application fee.

4.10.3 **Approved Applications with Activity.** Effective November 30, 2012, an approved applicant for licensure by examination who takes the examination but does not pass the examination within five (5) years from the date of the original approval date will be required to begin the application process again including payment of the application fee.

5.0 EXAMINATIONS

5.1 The candidate must present positive photo identification in order to be admitted to the examination area.

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

5.3 Examination results will be provided in writing to each examinee in a pass or fail format. Results will not be given in any other manner.

5.4 Examinations shall not be subject to review by candidates.

6.0 RENEWAL AND REINSTATEMENT

6.1 **Renewal.** Board issued licenses and electrical contractor registrations shall be renewed every three (3) years to correspond with the Board's adoption of the National Electrical Code.

6.1.1 A licensee or registrant shall have a sixty (60) day grace period to renew such license or registration without the imposition of a disciplinary sanction for practicing on an expired license or registration. During this grace period, a delinquency fee shall be charged for late renewal.

6.1.2 A licensee or registrant who does not renew such license or registration within the sixty (60) day grace period shall be deemed as having an expired license or registration and shall be

ineligible to practice until such license or registration is reinstated. If the licensee or registrant practices with an expired license or registration, the Board may impose disciplinary actions.

6.2 **Reinstatement.** An expired license may be reinstated by submitting a reinstatement application, paying the current reinstatement fee, and meeting the appropriate requirements below.

6.2.1 **Expired for Less Than Three (3) Years.** To reinstate a license that has expired for less than three (3) years the licensee must comply with the continuing competency requirements contained in Board Rule 6.4.

6.2.1.1 If the licensee's performance on the Continuing Competency Assessment necessitates a Learning Plan pursuant to Board Rule 6.4.6, the holder shall satisfactorily complete the Professional Development Units (PDUs) prior to the expiration of the current Continuing Competency Assessment Cycle.

6.2.1.2 Demonstration the licensee has maintained their continuing competency by completion of the PDUs assigned during the assessment cycle immediately preceding application, if any were assigned.

6.2.2 **Expired for More Than Three (3) Years.** If the license has been expired for more than three (3) years, pursuant to §24-34-102(8)(d)(II), C.R.S. the licensee must demonstrate competency to practice by any of the following:

A. Satisfactorily pass the state electrical examination;

B. Provide verification of an active license with a state where a reciprocal agreement for an equivalent license exists;

C. Provide verification of active licensure in a non-reciprocal state as follows:

1. Verify an active residential wireman's license, journeyman electrician's license, or master electrician's license in non-reciprocal state, respective to the license being reinstated; and,

2. Comply with the continuing competency requirements contained in Board Rule 6.4.

a. If the licensee's performance on the Continuing Competency Assessment necessitates a Learning Plan pursuant to Board Rule 6.4.6, the holder shall satisfactorily complete the PDUs prior to the expiration of the current Continuing Competency Assessment Cycle.

D. By other means approved by the Board.

6.3 An individual who has acquired both a master and a journeyman electrician license by examination issued by the state of Colorado, and who has allowed the journeyman license to expire, and holds an active master license, may reinstate the journeyman license after meeting the requirements of Board Rule 6.0.

6.4 **Continuing Competency Requirements.**

6.4.1 **Statutory Basis.** Pursuant to § 12-23-106(4)(d)(II), C.R.S., the Board shall adopt rules establishing requirements for continuing competency that a licensee shall demonstrate in order to renew a license on or after January 1, 2011. These rules shall require the licensee to participate in an assessment and a process or procedure that demonstrates whether the licensee obtained the required knowledge and skills to address any areas needing improvement or development through participation in the continuing competency activity.

6.4.2 **Basis of Requirements.** As established by the Colorado General Assembly, the regulatory authority of the Board is to establish continuing competency standards that shall include

assessment of knowledge and skills required to renew a license, the methods to obtain the required knowledge and skills, and the documentation necessary to demonstrate compliance.

6.4.3 **Definitions.**

6.4.3.1 *Acceptable Level of Performance:* Acceptable Level of Performance shall be a value assigned by the Board to evaluate a licensee's rating on the Individual Assessment for compliance with the Continuing Competency requirements. Marks below the Acceptable Level of Performance shall indicate one or more areas needing improvement and requiring professional development activity or activities and documentation of required PDUs to demonstrate continuing competency.

6.4.3.2 *Core Competencies:* Core Competencies are technical and professional subjects, related to the practice of electrical work, which the Board deems necessary to safeguard the public. Such subjects include:

A. Grounding and bonding;

B. National Electrical Code changes;

C. Wiring methods; and,

D. Theory and calculations.

6.4.3.3 *Continuing Competency Assessment Cycle*: The Continuing Competency Assessment Cycle shall be a three (3) year period corresponding to the adoption of the National Electrical Code by the Board.

6.4.3.4 *Inactive Status:* A licensee is not required to comply with continuing competency requirements to renew a license in inactive status. An individual whose license is in inactive status is prohibited by law from practicing as a licensed electrician.

6.4.3.5 *Individual Assessment:* An instrument or process approved by the Board to evaluate the knowledge and/or skills of the licensee in each of the Core Competencies determined by the Board to be essential for practice.

6.4.3.6 *National Electrical Code:* The National Electrical Code shall refer to the code for the safe installation of electrical wiring and equipment, as amended, published by the National Fire Protection Association and approved by the American National Standards Institute, or its successor organization.

6.4.3.7 *Personal Learning Plan:* The Personal Learning Plan shall be the plan of professional development activities undertaken to demonstrate continuing competency especially in the event of an area identified as needing improvement in one (1) or more Core Competency areas, as evaluated by the licensee's performance on the Individual Assessment in relation to the Acceptable Level of Performance.

6.4.3.8 *Professional Development Unit (PDU):* One PDU shall consist of not less than fifty (50) minutes of instruction, presentation, or activity, spent in structured educational efforts intended to increase the licensee's knowledge and competence in Core Competencies identified by the Board.

6.4.4 **Requirements.** Licensees shall demonstrate compliance with the continuing competency requirements and documenting professional development units in order to renew a license to perform electrical work in Colorado. Licensees shall complete an Individual Assessment of Core Competencies. Core Competencies shall be identified and defined by the Board. An Acceptable Level of Performance in all four (4) core competencies shall result in the award of twenty-four (24) PDUs. A maximum of twenty-four (24) PDUs shall be required per assessment cycle.

6.4.4.1 Upon the beginning of an assessment cycle, an Individual Assessment must be completed by the licensee, addressing Core Competency areas identified by the Board.

6.4.4.2 A performance rating will be assigned for each licensee in each of the Core Competency areas of the Individual Assessment. A rating below the Acceptable Level of Performance will indicate an area for professional development in a Core Competency area.

6.4.4.3 If a rating at or above the Acceptable Level of Performance is assessed in all Core Competency areas, the licensee will be awarded twenty-four (24) PDUs, as defined in these rules, for his or her demonstrated competency.

6.4.4.4 A Personal Learning Plan in the Board-prescribed format will be required of any licensee earning a rating below the Acceptable Level of Performance on the Individual Assessment.

6.4.4.4.1 In the event of a rating below the Acceptable Level of Performance in one (1) Core Competency area of the Individual Assessment, sixteen (16) PDUs shall be awarded to the licensee and eight (8) PDUs will be required addressing the area of low rated Core Competency.

6.4.4.4.2 In the event of a rating below the Acceptable Level of Performance in two (2) Core Competency areas of the Individual Assessment, eight (8) PDUs shall be awarded to the licensee and sixteen (16) PDUs will be required addressing the low rated Core Competency areas.

6.4.4.4.3 A low assessment will be indicated by a rating below the Acceptable Level of Performance in three (3) or more Core Competency areas of the Individual Assessment. In this event twenty-four (24) PDUs addressing three (3) areas of Core Competency will be required by the licensee over the corresponding assessment cycle.

6.4.4.4.4 A maximum of twenty-four (24) PDUs shall be required during any single assessment cycle.

6.4.4.4.5 PDU completion in accordance with the Individual Assessment and documentation requirements of the Board will indicate compliance with the continuing competency requirements and shall comprise the elements of the learning plan for each licensee.

6.4.4.4.6 PDUs need not be acquired within Colorado.

6.4.5 **Credit Required for License Renewal.** Licensees shall have acquired PDUs during the period prior to the expiration of each Continuing Competency Assessment Cycle.

6.4.6 **Individual Assessment.** This is an assessment that demonstrates proficiency in core competencies by means of an examination approved by the Board. The Individual Assessment shall be completed by each licensee no later than one hundred fifty (150) days after the adoption of the most recent National Electrical Code. The results of the assessment shall be utilized to identify the need and nature of a Personal Learning Plan for each licensee.

6.4.7 **Learning Plan.** The Personal Learning Plan shall be defined by the licensee's performance on the Individual Assessment. Refer to requirements of Board Rule 6.4.4.4 to determine how many PDUs are needed. The licensee must demonstrate compliance by completing continuing competency activities as defined in Board Rule 6.4.10.

6.4.8 **Continuing Competency Activity Criteria.** To qualify for PDU credit, continuing competency activities must be structured educational efforts meeting all of the following criteria:

A. Include technical and practical applications which impact Core Competency areas identified by the Board;

B. Improve, expand or enhance the quality of the licensee's existing technical knowledge; or develop new and relevant professional skills and knowledge;

C. Have clear purposes and objectives;

D. Be well-organized and provide evidence of pre-planning;

E. Be current and presented by qualified and technically competent instructors; and,

F. Provide certificates of completion or other documentation for the licensee and maintain records of licensee attendance.

6.4.9 **No Pre-Approval of Continuing Competency Activities.** The Board will not pre-approve courses or programs. It is within the discretion of the Board to deny credit for any activity that does not meet the continuing competency criteria in Board Rule 6.4.10 or the definition of a core competency subject in Board Rule 6.4.3.2.

6.4.10 **Acceptable Continuing Competency Activities.** The Board deems the following types of activities to be acceptable. On-line participation in training programs or courses may be acceptable if in compliance with these rules, including but not limited to Board Rule 6.4.8:

A. Not-for-credit academic course;

B. For-credit academic course; and,

C. Industry training programs.

6.4.11 **Non-Acceptable Continuing Competency Activities.** The Board deems the following types of activities are not acceptable:

A. Serving on federal, state, or municipal boards or commissions;

B. Rendering pro bono services;

C. Faculty at college, university, or other educational institution shall not receive credit for teaching their regularly-assigned courses beyond the initial class;

D. Participation on a public, professional, or technical society board;

E. Attendance at licensing or registration board meetings or any other professionally relevant board or committee meeting; or,

F. Participating in or attending exhibit poster sessions and tradeshows.

6.4.12 **Recordkeeping.** The licensee shall track and document PDUs in a process approved by the Board. The licensee shall retain the documentation for a minimum of seven (7) years and contain, at a minimum, the following information:

A. Licensee name;

B. Activity type;

C. Activity location and date(s);

D. Activity title and description of content and objectives;

E. Name and contact information of the sponsor or Continuing Competency provider (e.g. organization, institution, association, employer, vendor, publication);

F. Instructor or speaker name, as applicable;

G. Monitor/Facilitator/Mentor name and contact information, as applicable;

H. Certificate of Completion;

I. Number of classroom hours or PDUs.

6.4.13 **Exemptions.** The Board may grant exemptions from the Individual Assessment, development of the Personal Learning Plan and demonstration of Continuing Competency requirements set out in Board Rules 6.4.4 and 6.4.5, for the reasons specified herein. It is within the sole discretion of the Board to decide in particular cases whether good cause has been shown in order to grant exemptions. A licensee shall not be eligible for an exemption under this section for two (2) consecutive renewal periods except in the case of an exemption for military service. In the event a licensee cannot complete continuing competency requirements following an exemption, the license will remain expired until the licensee meets all continuing competency requirements unless the licensee applies to place the license on inactive status. Requests for exemptions must be in writing and provide the following information:

A. Evidence that during the renewal period prior to the expiration of the license, the licensee was working at a location outside of the country, reasonably preventing completion of the continuing competency requirements;

B. Evidence that the licensee was called to Federally funded active duty for more than one hundred twenty days for the purpose of serving in a war, emergency, or contingency during the renewal cycle for which the exemption is requested or within six months following the completion of the service in a war, emergency, or contingency;

C. Evidence and written explanation of any other cause citing in as much detail as possible the inability of the licensee to comply with the continuing competency requirements for the renewal period and why the license should remain in active status.

6.4.14 **Audits.** The Board may audit documentation of PDUs for verification of compliance with these requirements at any time. The Board may, at its discretion, disallow any continuing competency activity.

6.4.15 **Compliance with Continuing Competency Requirements.**

6.4.15.1 Compliance with the continuing competency requirements, including Individual Assessment, development of a Personal Learning Plan, and demonstration of continuing competency, along with other requirements, must be completed before the last day of the Continuing Competency Assessment Cycle.

6.4.15.2 Licensees shall cooperate with the Board to determine compliance with the continuing competency requirements.

6.4.15.3 Licensees shall provide all documentation requested for audit within thirty (30) days of the request.

6.4.16 **Multiple Licenses.** Licensees holding multiple licenses issued by the Board shall complete the continuing competency requirements for the most advanced license they hold including the Individual Assessment, Learning Plan and any PDUs required based on their performance on the Individual Assessment. Completion of the continuing competency requirements for the most advanced license shall satisfy the requirements for all lesser licenses.

6.5 **Inactive License Status and Reactivation.**

6.5.1 **Inactive License.** Pursuant to § 12-70-101, C.R.S., any licensee may apply to the Board to transfer his or her license to inactive status. Such application shall be in the form and manner

designated by the Board. The holder of an inactive license shall not be required to comply with the continuing competency requirements for renewal so long the license remains inactive.

6.5.1.1 Each holder of an inactive license shall renew once every three (3) years with the Board in the same manner as active license holders and pay a fee pursuant to § 12-23-112, C.R.S.

6.5.1.2 During such time as a license remains in an inactive status, the licensee shall not perform any acts restricted to active licensed electricians pursuant to § 12-23-118, C.R.S. The Board shall retain jurisdiction over an inactive license for the purposes of disciplinary action pursuant to § 12-23-119, C.R.S.

6.5.2 **Reactivation of Inactive License.** An inactive license may be reactivated by submitting the proper application, paying the current reactivation fee, and meeting the appropriate requirements below.

6.5.2.1 **Inactive for Less Than Three (3) Years.** To reactivate a license that has been inactive for less than three (3) years, the licensee must comply with the continuing competency requirements contained in Board Rule 6.4.

6.5.2.1.1 If the licensee's performance on the Continuing Competency Assessment necessitates a Learning Plan pursuant to Board Rule 6.4.6, the holder shall satisfactorily complete the PDUs prior to the expiration of the current Continuing Competency Assessment Cycle.

6.5.2.1.2 Demonstration the licensee has maintained their continuing competency by completion of the PDUs assigned during the assessment cycle immediately preceding application, if any were assigned.

6.5.2.2 **Inactive for More Than Three (3) Years.** Pursuant to § 12-23-106(4)(c), C.R.S., a licensee whose license has been inactive for more than three (3) years must demonstrate competency to practice by any of the following:

A. Satisfactorily pass the state electrical examination;

B. Provide verification of an active license with a state where a reciprocal agreement for an equivalent license exists;

C. Provide verification of active licensure in a non-reciprocal state as follows:

1. Verify an active residential wireman's license, journeyman electrician's license, or master electrician's license in non-reciprocal state, respective to the license you are reinstating; and,

2. Comply with the continuing competency requirements contained in Board Rule 6.4.

a. If the licensee's performance on the Continuing Competency Assessment necessitates a Learning Plan pursuant to Board Rule 6.4.6, the holder shall satisfactorily complete the PDUs prior to the expiration of the current Continuing Competency Assessment Cycle.

D. By other means approved by the Board.

6.5.3 **Practicing with an Inactive License.** Practicing electrical work with a license in inactive status shall constitute practice without an active license and, therefore, may be grounds for injunctive or disciplinary action, up to and including revocation.

6.6 **Loss of Responsible Master.** An electrical contractor who loses the services of the responsible master electrician, for any reason, will be allowed twenty (20) days in which to hire another master

electrician. If the electrical contractor has not hired another master electrician during that period, the Board shall place the electrical contractor registration into inactive status until such time that the contractor submits evidence that a master electrician has been hired, and the appropriate fee has been paid.

6.7 Any licensed or registered individual working as an electrician shall be required to carry on their person the appropriate license, temporary work permit, or registration.

6.8 **Name and Address Change.**

6.8.1 A licensee or registrant shall inform the Board in a clear, explicit, and unambiguous written statement of any name, address, telephone, or email change within thirty (30) days of the change. The Board will not change the licensee or registrant information without explicit written notification from the licensee or registrant. Notification by any manner approved by the Board is acceptable.

6.8.1.1 The Division of Professions and Occupations maintains one (1) contact address for each licensee or registrant, regardless of the number of licenses or registrations the licensee or registrant may hold.

6.8.1.2 Address change requests for some, but not all, communications or for confidential communications only are not accepted.

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

6.8.2.1 Marriage license;

6.8.2.2 Divorce decree;

6.8.2.3 Court order; or

6.8.2.4 A driver's license or social security card with a second form of identification may be acceptable at the discretion of the Division of Professions and Occupations.

7.0 PERMITS AND INSPECTIONS

7.1 Wiring permit applications shall be issued in the name of the qualified applicant (see § 12-23-111 (2), C.R.S.) or registered electrical contractor performing the electrical work. The qualified applicant is defined as a homeowner performing work in accordance with statutory requirements.

7.2 A permit shall be required for all systems supplying power that may normally be supplied by an electrical utility, such as, but not limited to, solar, wind, hydroelectric and other generated sources. (The Board or its administrative officer may revoke a permit that was issued in error or on the basis of incorrect information supplied by the applicant.)

7.3. Any permit issued as a result of fraudulent or incorrect information supplied on the application shall be cancelled.

7.4 Any work commencing prior to the purchase of a permit is subject to twice the prescribed permit fee.

7.5 **Stop Work Order**

7.5.1 **Notice to owner**. Upon notice from the electrical inspector that work on any building or structure is being installed contrary to the provisions of this code or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work, or posted at the job site and shall state the conditions under which work will be permitted to resume.

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

7.6 Additions, alterations or repairs may be made to any electrical system and equipment without requiring the existing electrical system and equipment to comply with all the requirements of the Board standards, provided that the addition, alteration or repair conforms to that required for a new electrical system and equipment, and provided further that no hazard to life, health or safety will be created by such additions, alterations or repairs.

7.7 Existing electrical wiring systems may continue to be energized provided that they were lawfully installed and that they present no hazard to life, health or property.

7.8 Services to moved buildings shall comply with the standards of the Board for new installations. The existing electrical wiring may be re-energized provided that a registered electrical contractor gives written verification to the Board that the existing electrical installation presents no hazard to life, health or property. Permits and inspections shall be required.

7.9 An inspection request will only be accepted from the permit owner or their agent.

7.10 An individual requesting an electrical inspection shall provide reasonable access to the inspection area during the normal working hours of the Board office.

7.11 Article 110.2, "Approval", in the National Electrical Code, provides that conductors and equipment required or permitted by this code shall be acceptable only when "approved". The Board will accept conductors and equipment that have been tested and approved by a recognized testing agency such as Underwriters Laboratories, Inc., or field-evaluated by a certified Field Evaluation Body (FEB) in accordance with NFPA 790 and 791. FEB certification is to be provided by International Accreditation Service (IAS) or equal. The Board reserves the right of its inspectors to reject any conductors or equipment that in their opinion may be unsafe or injurious to life or property.

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

7.12.1 The job is not ready for an inspection and an extra trip is required for the inspector (a job with multiple code violations may be considered "not ready" by the inspector).

7.12.2 Corrections have not been made to all code violations cited from previous inspection.

7.12.3 No access to the job site for reasons including but not limited to; locked gate or door, snow not plowed, no escort into an occupied structure, etc. (inspectors may not enter an occupied residence without an escort at least 18 years or older).

7.12.4 Hazardous construction site as determined by the inspector or OSHA guidelines (may include loose dogs, etc.)

7.12.5 Address not posted so as to be visible from the street or road.

7.12.6 Improper directions to jobsite given on permit or inspection requests.

7.13 A reinspection shall not be performed until the reinspection fee has been paid.

7.14 A final inspection shall not be performed until a permanent electrical load consistent with the type of structure is connected.

7.15 As used in § 12-23-118(1)(c), C.R.S., the term "reasonable time" shall mean thirty (30) calendar days.

8.0 ENFORCEMENT

8.1 **Cooperation with Board Investigations.** Licensees and registrants having knowledge of, and/or involvement in, any alleged violation of Title 12, Article 23, and/or Board rules, shall cooperate with any investigation initiated by the Board and timely furnish such information or assistance as may be requested.

8.2 **Report Convictions, Judgments, and Administrative Proceedings**

8.2.1 A licensee or registrant, as defined in § 12-23-101(1)(2)(3) and (4), C.R.S., including but not limited to registered electrical apprentices, registered electrical contractors, or licensed electricians (residential wireman, journeyman electricians, or master electricians, herein after known collectively as "electricians") shall inform the Board, in a manner set forth by the Board, within forty-five (45) days of any of the following occurrences: the conviction of the registrant or licensee of a felony under the laws of any State or of the United States.

8.2.2 A licensee or registrant convicted of a felony under the laws of any State or of the United States is grounds for discipline pursuant to § 12-23-118, C.R.S.

8.2.3 For purposes of this rule, a "conviction" includes:

A. A guilty verdict;

B. A plea of guilty accepted by the court; or

C. A plea of nolo contendere (no contest) accepted by the court.

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

A. The court;

B. The jurisdiction;

C. The case name;

D. The case number; and,

E. A description of the matter or copy of the indictment or charges.

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

A. The imposition of a sentence for a felony conviction; and,

B. The completion of all terms of a sentence for a felony conviction.

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

8.2.7 This rule shall apply to any conviction or plea as described in Board Rule 9.2.3.

8.3 **Citations.**

8.3.1 The citation form shall be completed by the state electrical inspector. Citations will be served by certified mail or in person by a state electrical inspector. Completed, served citation forms will be mailed to the Board for review. The Board maintains the discretion to dismiss the citation at any time.

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

A. Pay the fine; or

B. Submit a written request to negotiate a stipulated settlement agreement with the Program Director; or

C. Submit a written request for a formal administrative hearing.

8.3.3 **Fines.**

8.3.3.1 If one of the following actions has not been taken by the citation recipient within ten (10) working days following the service of the citation, the recipient shall be deemed to have failed to comply with the citation and the fine shall become a final Board action:

A. Full payment of the fine;

B. Written request for negotiation of a stipulated settlement agreement; or,

C. Written request for a formal administrative hearing.

8.3.3.2 In any action to collect a fine, the Board shall seek reasonable attorney fees and costs.

8.3.4 **Negotiations.**

8.3.4.1 A written request and explanation for negotiation of a stipulated settlement agreement shall be submitted to the Program Director or designee and may include information in mitigation of the violation. The date the request for negotiation of a stipulated agreement is received by the Program Director constitutes the submittal date. After reviewing the requested settlement information, the Program Director has the option to authorize the following actions:

A. Issue a letter of admonition;

B. Dismiss the citation;

C. Reduce the fine;

D. Arrange a payment schedule;

E. Permit a personal appearance before the Board; and/or,

F. Refer the matter for a formal administrative hearing.

8.3.4.2 Negotiations may terminate for reasons including but not limited to:

A. The recipient admits to committing the violation;

B. The recipient does not conduct settlement negotiations timely and in writing;

C. The recipient does not present reasonable mitigating or extenuating information in writing;

D. The Program Director determines the settlement negotiations are not being conducted in good faith or are being conducted for the purpose of delay;

E. It appears unlikely the parties will reach a negotiated resolution; and/or,

F. The recipient has prior violations that need to be brought to the Board's attention prior to attempting settlement negotiations.

8.3.4.3 A stipulated settlement agreement shall be considered a violation for the purpose of determining the fine amount in subsequent violations. The stipulated settlement agreement may contain an admission of the violation(s). A stipulated settlement agreement shall be signed and dated by both the Program Director or Board chair or designee and the citation recipient. A stipulated settlement agreement shall be approved by the Board in order to become a final agency order.

8.3.4.4 A written request from the citation recipient to proceed to a formal hearing may be submitted at any time during settlement negotiations. If the negotiations are subsequently deemed futile, the citation recipient shall be notified that payment of the fine or request a formal administrative hearing shall be submitted within ten (10) calendar days. Written settlement information may be used against the licensee, registrant, applicant or respondent at the hearing when unsuccessful settlement negotiations proceed to a formal hearing.

8.3.4.5 When the citation recipient retains an attorney for assistance during stipulated settlement negotiations, the Board or Program Director may request the Attorney General to assist with settlement negotiations.

8.3.4.6 **Hearings**. Hearings shall be conducted in accordance with the Administrative Procedure Act. The hearings shall be conducted by an administrative law judge at the Office of Administrative Courts. The citation recipient may be represented by counsel of his or her choosing.

8.3.4.6.1 At the formal administrative hearing, the Board may pursue the award of the maximum fine allowed by statute. At the formal administrative hearing, the Board may also pursue the award of any other disciplinary sanctions such as revocation, suspension or probation. The Board shall review the entire citation history of a licensee, as found in the Board's records, in any disciplinary action against a licensee.

8.3.4.7 Inspectors shall not negotiate settlements or accept payment of fines.

8.4 **Fine Schedule.** The following is the current fine schedule adopted by the Board pursuant to § 12-23-118(5)(a), C.R.S.

Violation	Statutory Provision	1st Offense	2nd Offense	Subsequent Offense
Engaging in the business, trade, or calling of a journeyman electrician without a license	12-23-105(1)	$225	$600	Up to $2,000 per day
Engaging in the business, trade, or calling of a master electrician without a license	12-23-105(1)	$300	$600	Up to $2,000 per day
Engaging in the business, trade, or calling of a residential wireman without a license	12-23-105(2)	$150	$375	Up to $2,000 per day
Performing electrical work beyond the authorization of a residential wireman license	12-23-105(1)	$375	$750	Up to $2,000 per day
Failure of an electrical contractor to register an apprentice	12-23-110.5(3) 12-23-118(1)(a)	$225	$600	Up to $2,000 per day

Failure of an apprentice to work under the supervision of a licensed electrician	12-23-110.5(1)	$50	$200	Up to $2,000 per day
Employment by an electrical contractor of unlicensed persons doing electrical work	12-23-118(1)(k)	$300	$600	Up to $2,000 per day
Engaging in the business of an electrical contractor without obtaining registration from the Board	12-23-106(5)(a)	$750	$1,500	Up to $2,000 per day
Failure of a licensed electrician to supervise an apprentice	12-23-110.5(1), 12-23-110.5(3)(b) 12-23-118(1)(j)	$375	$600	Up to $2,000 per day
Failure of an electrical contractor to maintain a supervisory ratio of one licensed electrician to three apprentices	12-23-110.5(1)	$375	$600	Up to $2,000 per day
Failure to obtain a permit and/or failure to obtain an inspection	12-23-116 12-23-118(1)(a)	$375	$900	Up to $2,000 per day
Failure to remove a cause for disapproval of any electrical installation within a reasonable time	12-23-118(1)(c)	$450	$900	Up to $2,000 per day
Advertising by a licensee or registrant which is false or misleading	12-23-118(1)(h)	$375	$750	Up to $2,000 per day
Deception, misrepresentation or fraud in obtaining or attempting to obtain a license (includes loaning a license)	12-23-118(1)(i)	$1,000	$2,000	Up to $2,000 per day
Failure to comply with other state or federal law (safety, health, insurance, tax)	12-23-118(1)(p)	$375	$750	Up to $2,000 per day
Other violations of the state electrical statutes, rules, or Board orders.	12-23-118(1)	Up to $1,000	Up to $2,000	Up to $2,000 per day

8.5 Compliance. Payment of a fine assessed from a citation does not relieve the receiver of the citation from correcting the situation, installation, statute or code violation noted in the citation.

9.0 DECLARATORY ORDERS

9.1 Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Board.

9.2 The Board will determine, in its discretion and without notice to the petitioner, whether to rule upon any such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such action.

9.3 The Board shall consider the following matters, among others in determining whether to rule upon a petition filed pursuant to this rule:

A. If a rule on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Board.

B. If the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the petitioners.

C. If the petition involves any subject, question or issue that is the subject of a formal or informal matter of investigation currently pending before the Board or a court but not involving any petitioner.

D. If the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

E. If the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colo. R. Civ.P., that will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

9.4 A petition filed pursuant to this rule shall set forth the following:

A. The name and address of the petitioner and whether the petitioner is licensed pursuant to the organic act.

B. The statute, rule or order to which the petition relates; and,

C. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

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

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

1. Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.

2. The Board may order the petitioner to file a written brief, memorandum or statement of position.

3. The Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.

4. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.

5. The Board may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.

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

B. The Board may, in its discretion, set the petition for hearing upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Board to consider.

9.6 The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be

granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by section 7.4. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.

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

10.0 STATE ELECTRICAL INSPECTORS

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

10.2 **Electrician License.** Electrical inspectors must maintain a current Colorado journeyman or master electrician license.

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Department of Law

Office of the Attorney General

Tracking number: 2014-00996

Opinion of the Attorney General rendered in connection with the rules adopted by the
Division of Professions and Occupations - State Electrical Board

on 11/24/2014

3 CCR 710-1

STATE ELECTRICAL BOARD RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/26/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 10, 2014 10:27:42

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Personnel and Administration

Agency

State Personnel Board and Division of Human Resources

CCR number

4 CCR 801-1

Rule title

4 CCR 801-1 PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES 1 - eff 01/14/2015

Effective date

01/14/2015

[PUBLISHING INSTRUCTIONS: Publish to replace previous preamble; precede Chapter 1]

Preamble

Unless otherwise noted in a specific provision, the State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 5, 2005, pursuant to a Statement of Basis and 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 Procedure 5-19 and Procedure 5-20 effective January 14, 2015 to align with the Family Care Act.

[PUBLISHING INSTRUCTIONS: Publish to replace Procedures 5-19 and 5-20]

Family/Medical Leave (FML)

5-19. The state is considered a single employer under the Family and Medical Leave Act (FMLA) and complies with its requirements, the Family Care Act, and the following rules for all employees in the state personnel system. Family/medical leave cannot be waived. (1/14/15)

5-20. FML is granted to eligible employees for: (1) birth and care of a child and must be completed within one year of the birth; (2) placement and care of an adopted or foster child and must be completed within one year of the placement; (3) the serious health condition of an employee's parent, child under the age of 18 or an adult child who is disabled, spouse, partner in a civil union, or registered domestic partner for physical care or psychological comfort; (4) an employee's own serious health condition; (5) active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or, (6) military caregiver leave for a parent, child, spouse, or next of kin who suffered a serious injury or illness in the line of duty while on active duty. Military caregiver leave includes time for veterans who are receiving treatment within 5 years of the beginning of that treatment. Definitions of a serious health condition and health care provider are in the "Definitions" section of the "Organization, Responsibilities, Ethics, and Definitions" chapter. (1/14/15)

John W. Suthers
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State Personnel Board and Division of Human Resources

on 11/14/2014

4 CCR 801-1

PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES

The above-referenced rules were submitted to this office on 11/14/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:51:41

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Law

Agency

Peace Officer Standards and Training Board

CCR number

4 CCR 901-1

Rule title

4 CCR 901-1 PEACE OFFICER TRAINING PROGRAMS AND PEACE OFFICER CERTIFICATION 1 - eff 01/14/2015

Effective date

01/14/2015

COLORADO DEPARTMENT OF LAW
PEACE OFFICER STANDARDS AND TRAINING BOARD

RULES CONCERNING FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK, CERTIFICATION RECORDS, VEHICLE IDENTIFICATION NUMBER INSPECTOR PROGRAMS, BASIC AND RESERVE TRAINING ACADEMIES, AND IN-SERVICE TRAINING PROGRAM

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to sections 24-31-303 (1) (g), (l) and (m), C.R.S., the Colorado Peace Officer Standards and Training Board (POST) has the authority and duty to promulgate rules and regulations deemed necessary by such board for the certification of applicants to serve as peace officers or reserve officers in the state, to promulgate rules deemed necessary by such board concerning annual in-service training requirements, and to promulgate rules as the board may deem necessary or proper to carry out the provisions and purposes of article 4 of Title 24.

Amendments are proposed to Rule 14 to include a municipal ordinance as a basis for not obtaining certification if the municipal ordinance is the equivalent of any enumerated felony or misdemeanor in section 24-31-305 (1.5) and to change the required fingerprint card for certification criminal history checks to a POST Applicant Fingerprint Card.

Amendments are proposed to Rule 17 to require POST certificate holders to maintain records on his or her certification and to use the POST portal in doing so.

Amendments to Rule 20 concern the use of the National Insurance Crime Bureau Passenger and Commercial Vehicle Identification Manual for a Vehicle Identification Number Inspector Program and requiring the program director to submit a roster of passing students to POST.

Amendments to Rule 21 change the required documentation from videotapes or DVDs to a video in a digital media format approved by POST and implements document retaining requirements for academic and skills instructors.

Rule 28 is created to give minimum requirements for annual in-service training and govern in-service reporting requirement by law enforcement agencies.

It has been declared by the General Assembly that certification and training standards of peace officers is a matter of statewide concern. The absence of implementing rules to carry out the purpose of the statutes would be contrary to the public health, peace, safety and welfare of the state. For these reasons, it is imperatively necessary that these proposed amendments be adopted.

Rule 14 – Fingerprint-Based Criminal History Record Check

Effective January 14, 2015

(a) Definitions.

(I) The fingerprint-based criminal history record check is a computerized search of a person's fingerprints that have been taken on a POST Applicant Fingerprint Card and processed by the Colorado Bureau of Investigation (CBI) and Federal Bureau of Investigation (FBI) for the purpose of determining a person's eligibility for certification as a peace officer in the State of Colorado.

(II) The enrollment date of a training academy is the first day of instruction at an approved basic or reserve training academy. The enrollment date shall be synonymous with the first day of instruction as reflected on the approved academy schedule.

(III) As used in this Rule, to enroll in an academy means that a person has applied and been accepted for admission into an academy and is physically present at the academy to receive instruction.

(b) Eligibility for certification. No person shall be eligible for certification as a Colorado peace officer if he or she has been convicted of a felony or any misdemeanor as referenced in § 24-31-305(1.5), C.R.S., or any misdemeanor in violation of federal law or the law of any state or any local municipal ordinance that is the equivalent of any of the offenses specified in § 24-31-305(1.5), C.R.S.

(c) Enrollment. Pursuant to § 24-31-304, C.R.S. and POST Rules, all persons seeking to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant shall submit their fingerprints to CBI prior to enrolling in the training academy or prior to participating in the testing process as a provisional or renewal applicant.

(d) POST Applicant Fingerprint Card.

(I) The POST Applicant Fingerprint Card is the only authorized fingerprint card that shall be submitted for the fingerprint-based

criminal history record check.

(II) The Board recommends that a person's fingerprints be taken on the POST Applicant Fingerprint Card at a law enforcement agency. Any fee that may be charged by the agency for this service is the responsibility of the applicant.

(III) Payment of a fee to cover the cost of processing the POST Applicant Fingerprint Card must be submitted to CBI with each completed POST Applicant Fingerprint Card. Remittance of this fee to CBI is the responsibility of the applicant.

IV) For provisional and renewal applicants, the POST Applicant Fingerprint Card will be provided by POST. The applicant is responsible for having his or her fingerprints taken and for ensuring that the completed POST Applicant Fingerprint Card and fee are submitted to CBI prior to the applicant's participation in the testing process as a provisional or renewal applicant.

(V) For persons seeking to enroll in a basic or reserve training academy, the POST Applicant Fingerprint Card will be provided by the academy. The person's fingerprints shall be taken in accordance with the academy's policies and procedures. The academy is responsible for ensuring that the completed POST Applicant Fingerprint Card and fee are submitted to CBI prior to the person's enrollment in the academy.

(e) Results from completed criminal history record checks.

(I) The Board shall be the authorized agency to receive the results from all POST Applicant Fingerprint Cards that have been processed for the state and national fingerprint-based criminal history record checks.

(II) All results from the completed criminal history record checks will be provided to the Board. Notice of subsequent arrests and convictions will also be provided to the Board.

f) Basic and reserve training academies.

(I) A training academy shall not enroll any person who has been convicted of an offense that would result in the denial of certification pursuant to § 24-31-305(1.5), C.R.S. The only exception shall be if the Board has

granted the person an exemption from denial of enrollment pursuant to § 24-31-304(4)(a), C.R.S. and POST Rule 7, *Variances*.

II) No person shall be enrolled in a training academy unless the person has been fingerprinted on a POST Applicant Fingerprint Card and an academy has submitted the person's completed POST Applicant Fingerprint Card and fee to CBI prior to enrolling the person in the academy.

III) A POST Form 11-E, *Enrollment Advisory Form*, shall be completed on the first day of the academy by both the person enrolled in the academy and the academy director or designee. The completed *Enrollment Advisory Form* shall be maintained at the academy.

(IV) The academy director shall ensure that an accurate enrollment roster for each academy class is received at POST no later than 5:00 p.m. on the next business day following the first day of the academy. Each enrollment roster shall contain the following information:

(A) Name of the academy; and

(B) Start and end dates of the academy; and

(C) Alphabetical list of the full names of all persons enrolled in the academy; and

D) Date of birth for each person; and

(E) Social Security Number for each person.

(V) If the results of a criminal history record check reveal that a person currently enrolled in an academy is prohibited from enrolling pursuant to § 24-31-304(2), C.R.S., the Board or its designated representative(s) shall notify the academy. The academy shall take appropriate measures to immediately dismiss the person from the academy.

(g) Exemption from denial of enrollment.

I) If a person anticipates that he or she will be prohibited from either enrolling in a training academy or participating in the testing process as

a provisional or renewal applicant because he or she has been convicted of any misdemeanor described in § 24-31-305(1.5), C.R.S., the person may submit a request for exemption from denial of enrollment under POST Rule 7, *Variances*.

II) Only if the person has, in fact, submitted a request for exemption from denial of enrollment under POST Rule 7, *Variances*, and the request has been granted by the Board, will the person be permitted to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant.

III) No person convicted of a felony may request an exemption from denial of enrollment.

Rule 17 – Certification Records

Effective January 14, 2015

a) Every POST certificate holder shall keep current his or her name, home address, mailing address, email address**,** home telephone number, or cell phone number through the POST portal.

b) When any person is appointed or separated as a certified peace officer, as per Rules 10, 11 and 12, such agency shall submit an update through the POST portal within fifteen (15) days of such appointment or separation.

c) By the 31st of January of each year, each agency shall verify the accuracy of the certified peace officers associated with the law enforcement agency listed on the POST portal by submitting an email to POST.

Rule 20 – Vehicle Identification Number Inspector Programs

Effective January 14, 2015

(a) Every vehicle identification number (VIN) inspector program must contain a minimum of seventeen (17) hours, and be approved prior to the start of instruction.

(b) The program director must submit all of the following documentation to the Board at least sixty (60) days prior to the start of instruction:

(I) A narrative of performance objectives for the program (new programs only);

(II) A list of courses to be taught and the time allocated for each course (new programs only); and

(III) A completed POST Form 9A, *VIN Inspector Training Program Approval***,** and a list of instructors and their qualifications. Instructors shall be approved only for a specific program under this rule (all programs).

(c) To be approved, a program must include all of the following:

(I) Legal aspects of VIN inspection;

(II) Use of the National Insurance Crime Bureau (NICB) *Passenger* and *Commercial Vehicle Identification Manuals*;

(III) How to conduct a VIN inspection; and

(IV) How to meet the reporting requirements of a VIN inspection.

(d) The program director must submit a roster of passing students to POST within thirty (30) days of the end of the program.

Rule 21 – Basic and Reserve Training Academies

Effective January 14, 2015

(a) Academy approval.

(I) All aspects of an academy must be in compliance with POST Rules and Program requirements before academy approval will be considered.

(II) Only an academy that is approved by the Board may provide training required for certified peace officer status; and

(III) Each scheduled academy class of an approved training academy must be approved prior to the start of instruction.

(b) Continuing academies.

(I) A continuing academy is an approved basic or reserve academy that conducts and completes at least one approved academy class every three (3) years and operates in compliance with these Rules.

(II) If a continuing academy does not complete at least one approved academy class in any consecutive three (3) year period, approval of the academy shall expire. An expired academy must reapply for approval as a new academy and be approved prior to providing any academy instruction.

(III) Other than as referenced in the preceding paragraph (II), a continuing academy may remain approved until its status is surrendered, suspended or revoked.

(IV) The academy director must ensure that the following documents are received at POST at least thirty (30) days**,** but no more than sixty (60) days, prior to the start of instruction for each scheduled academy class:

(A) A completed POST Form 7, *Application for Academy Approval*; and

(B) A completed "*Scheduling Request for POST Exam*" form (basic academies only); and

(C) A complete and accurate academy schedule with the following information clearly noted on the schedule.

(1) All courses, dates and times in chronological order for each course, major exams and the name of the primary instructor for each course; and

(2) All dates and times when arrest control drill training, night driving and dim light shooting will be instructed; and

(3) For arrest control and firearms training, if the schedule shows more than eight (8) hours of instruction in any one day, then the schedule must denote lab or lecture hours, as appropriate; and

(4) If multiple courses are listed within the same block of time on the schedule, then either the schedule itself or accompanying documents must specify the amount of time that will be instructed for each course.

(V) No later than 5:00 p.m. on the next business day following the first day of each approved academy class, the academy director shall ensure that an accurate enrollment roster is received at POST. See also POST Rule 14, *Fingerprint-Based Criminal History Record Check*.

(VI) The academy director shall notify POST prior to the occurrence of any change of the academy's start date or end date, to include cancellation of the academy, as submitted to POST on the Form 7, *Application for Academy Approval*.

(VII) Each college academy and private occupational school academy shall establish an advisory committee that consists of law enforcement officials and administrators to assist with providing logistical support and validation of training.

(c) New academies.

(I) A new academy is either a basic or reserve academy that has never conducted approved training, or a basic or reserve academy that has not conducted approved training within the previous three (3) years.

(II) The academy director of a proposed new academy shall contact POST at least six (6) months prior to the anticipated start date of the new academy to ascertain application procedures and deadlines for submitting documents for new academy approval.

(III) The following types of academies are considered separate academies that must be individually approved:

(A) Basic and reserve academies even if operated by the same agency, organization or academic institution.

(B) Academies located either on a satellite campus, or at a different physical location than the primary academy.

(IV) The proposed formal name of an academy must neither misrepresent the status of the academy, nor mislead law enforcement or the public.

(V) Required documentation that must be submitted for new academy approval includes, but is not limited to, a video in a digital media format approved by POST of all proposed sites where academic

instruction and skills training will take place, site safety plans, lesson plans for all academic courses and all skills training programs that are required by the Basic or Reserve Academic Training Program, resumes for all academic instructors, and documentation of qualifications for all skills instructors.

(VI) Once a proposed new academy begins the approval process by submitting any of the required documentation listed in the preceding paragraph (V) to POST, the proposed new academy shall have a maximum of twelve (12) months to complete the new academy approval process.

(VII) The director of a proposed new academy shall also ensure that the documents required to be submitted by continuing academies, as listed in paragraph (b)(IV) of this Rule, are received at POST at least thirty (30) days, but no more than sixty (60) days, prior to the start of instruction.

(VIII) Prior to approval, the proposed new academy must pass an on-site pre-approval inspection conducted by the Board or its designated representative(s).

(d) Training sites, site safety plans and equipment.

(I) An academy shall have the following training sites and facilities:

(A) For academics: A classroom with adequate heating, cooling, ventilation, lighting, acoustics and space, and a sufficient number of desks or tables and chairs in the classroom for each trainee; and

(B) For firearms: A firing range with adequate backstop and berms to ensure the safety of all persons at or near the range, and some type of visual notification (range flag, signs, lights, or other) whenever the range is being utilized for live fire; and

(C) For driving: A safe driving track for conducting law enforcement driving; and

(D) For arrest control: An indoor site for instructing arrest control training with sufficient space and mats to ensure trainee safety;

and

E) For practical exercises and wellness training: Appropriate and safe locations for conducting all practical exercises and wellness lab training.

(II) Approval of training sites.

(A) All new training sites for academic classroom instruction and skills training must be approved by POST in consultation with the appropriate subject matter expert committee prior to conducting any training at the site.

(B) Each academy is responsible for obtaining approval for all of its training sites of academic instruction and skills training.

(C) Academy directors shall ensure that all sites for practical exercises and wellness lab training are safe and that appropriate training can be accomplished at the site to achieve the course objectives or performance outcomes.

(D) Presumed approval or use of a specific site by one academy does not extend to automatic approval of the site for use by other academies.

(E) If an approved site is not utilized during any consecutive three (3) year period by any academy for the type of training for which the site was initially approved, then site approval expires. In order to resume training at an expired site, the site must be resubmitted for approval and approved.

(F) The following items must be submitted to POST in order for approval of a new or expired training site to be considered:

(1) Video in a digital media format approved by POST that accurately depicts the site where instruction is to take place; and

(2) A detailed description of the site must be included, either as verbal narrative on the video or as a written

supplement; and

(3) An up-to-date written site safety plan.

(G) If an approved site has been in continuous use by at least one approved academy for at least the previous three (3) consecutive years and an additional academy seeks approval of the same site, then the director of the additional academy may submit a written request to POST that includes the location and/or description of the site, in lieu of the video, along with an up-to-date written site safety plan.

(III) Site safety plans.

(A) Each site of skills training and academic or classroom instruction must have an up-to-date and approved written site safety plan present on site during any academy training at the site; and

(B) Copies of all site safety plans must also be on file at the academy at all times; and

(C) Each site safety plan shall include procedures for managing medical emergencies, injuries, or accidents that are probable or likely to occur at the site; and

(D) All academy staff members, instructors and trainees shall be familiar with the content of each site safety plan as it pertains to the nature and scope of their involvement with the academy.

(IV) Equipment.

(A) An academy shall have and maintain the necessary equipment and instructional aids in sufficient quantities for conducting all aspects of the required academy training program; and

(B) All training sites and facilities, equipment, books, supplies, materials and the like shall be maintained in good condition.

(C) The following items shall be present at each training site during any academy training at the site:

(1) An effective means of summoning emergency medical assistance; and

(2) A first aid kit that contains appropriate supplies to treat medical emergencies or injuries that are likely to be sustained at the site.

(e) Academy directors.

(I) Qualifications. Each academy shall designate an on-site academy director whose qualifications, based upon education, experience and training, demonstrate his or her ability to manage the academy.

(II) Compliance. The academy director shall ensure that the academy operates in compliance with all POST Rules.

(III) Records. The academy director shall be responsible for establishing and maintaining a records management system that includes, but is not limited to, enrollment rosters, POST Form 11-E's, trainee files, trainee manuals, attendance records, lesson plans, source material, instructor files, instructor/course evaluations and site safety plans.

(IV) Change of director. The academy director or authorized representative of an academy shall notify POST as soon as practicable of any change of academy director or any change of the academy director's electronic mailing address.

(f) Curriculum requirements.

(I) Academic standards.

A) All training academies shall meet or exceed the required course content and minimum number of hours for each academic course of instruction and for each of the skills programs as required by the Basic Academic Training Program or Reserve Academic Training Program.

(B) Successful completion required.

(1) Trainees must successfully complete the Basic Academic Training Program or Reserve Academic Training Program with a minimum score of seventy percent (70%); and

(2) Trainees must successfully complete all skills training as required by the Arrest Control Training Program, Law Enforcement Driving Program and Firearms Training Program.

(3) If an academy applies a higher standard than what is required by the preceding paragraphs (1) and (2), the higher standard must be described in the Trainee Manual and in the respective skills lesson plans or course materials, as applicable.

(II) Attendance.

(A) For all hours of all skills training programs, 100% attendance and participation are required except as specified in Rule 24(b)(VIII).

(B) Attendance is required for all hours of all academic classes. Any trainee who is absent for any portion of an academic class shall make up the missed class content in accordance with the academy's rules and regulations.

(C) Written attendance records are required.

(1) For trainees: Written daily attendance records that are accurate and up-to-date shall be kept for all trainees enrolled in all academic classes and all skills training classes.

(2) For skills instructors: Written attendance records that are accurate and up-to-date shall be kept for all instructors who teach any portion of a skills training program.

(3) For skills training, the format of the attendance records

must clearly substantiate that the minimum ratios required by Rule 24, Skills Training Safety and Skills Program Requirements for Basic and Reserve Academies, have been met.

(III) Lesson plans.

(A) All basic and reserve training academies shall develop and maintain up-to-date lesson plans that are on file for each academic course of instruction and for each of the skills training programs.

(B) Each academic and skills lesson plan must include at least the following information, as applicable:

(1) Course title as specified in the POST Academic Training Program (Basic or Reserve) or the POST skills training program; and

(2) Number of hours for the course required by the POST Academic Training Program and the number of actual course hours that will be instructed; and

(3) Learning goals, course objectives and/or performance outcomes for the course; and

(4) Method of instruction; and

(5) Instructional content of the course that substantiates the stated goals, objectives and/or outcomes of the course; and

(6) A copy of any handouts, multimedia and/or PowerPoint presentations that will be used during the instruction; and

(7) A list of source material utilized for the course.

(C) Skills lesson plans must additionally include the program-specific documentation referenced within the applicable POST skills training program.

(IV) Daily schedules.

(A) For all skills training programs, daily schedules are required that contain the information referenced in each of the skills training programs.

(B) The format, number of pages and organization of information on the daily schedules shall be at the discretion of the primary skills instructor and/or academy director.

(V) Source material.

(A) For source material identified as required source material in the current POST Curriculum Bibliography, at least one (1) copy of each of the publications or sources must be maintained at the place of academic instruction. For those sources that are referenced with a website address, providing the trainees with readily available Internet access is acceptable in lieu of maintaining at least one (1) copy of each of the publications or sources.

(VI) Academy examinations.

(A) All academies shall administer written, oral or practical examinations periodically during each academy in order to measure the attainment of course objectives or performance outcomes as specified in the Basic Academic Training Program or Reserve Academic Training Program.

(B) The academy director shall prescribe the manner, method of administration, frequency and length of academy examinations.

(C) The time allotted for academic examinations shall be in addition to the number of Required Minimum Hours for each course as specified in the Basic Academic Training Program or Reserve Academic Training Program.

(VII) Academy certificates of completion.

(A) The academy director shall issue a certificate of completion to each trainee who successfully completes all requirements of the

approved academy within two (2) years of enrollment.

(B) Only a trainee who has attended and successfully completed all academic classes and all three (3) skills training programs shall be issued an academy certificate of completion.

(C) Each academy certificate of completion shall contain the following information:

(1) Trainee's name; and

(2) Name of the approved academy; and

(3) Type of academy (basic or reserve); and

(4) Date of academy completion (month, day, year); and

(5) Total number of hours of the completed academy; and

(6) Signature of the academy director and/or agency or academic representative.

(7) Reserve academy certificates of completion shall additionally state whether the total number of academy hours does or does not include the approved law enforcement driving program.

(g) Instructors.

(I) Minimum qualifications.

(A) Academic instructors shall possess the requisite education, experience and/or training necessary, as determined by the academy director, to competently instruct specific academic courses or blocks of instruction.

(B) Skills instructors shall meet the minimum qualifications as described in Rule 23, *Academy Skills Instructors*.

(II) Instructor files.

(A) A file shall be maintained for each instructor who teaches any portion of an academic class or skills training class.

(1) For academic instructors, the file must contain a current resume and/or other documentation that substantiates the instructor's qualifications.

(2) For skills instructors, the file must contain copies of the relevant certificates of completion referenced in Rule 23, *Academy Skills Instructors*, and/or a copy of the applicable skills instructor approval letter issued by POST.

(B) The academy shall maintain current contact information for each instructor.

(C) Exception. Licensed attorneys from the same office or firm may be included in one instructor file, as long as the file contains the names of all attorneys from that office or firm who provide instruction at the academy.

(III) Instructor/course evaluations.

(A) Trainees shall complete written evaluations for each instructor and/or course of instruction for all academic courses and skills training programs of the approved academy.

(B) Either the POST Form 10, *Instructor/Course Evaluation*, or comparable academy forms and/or documents may be used for this purpose.

(C) The academy director shall determine the most meaningful format and method of administration of the instructor/course evaluations in order to monitor instructor quality and course content and to meet the needs of the individual academy.

(h) Duty to report.

(I) In addition to any notifications that may be required administratively or under federal, state or local law, it shall be the duty of every academy director or the academy director's designee to report the

following events to POST immediately or as soon as practicable after the event:

(A) Any death, gunshot wound or serious bodily injury that occurs to any person whose death, gunshot wound or serious bodily injury was either caused by, or may have been caused by, any training or activity associated with the academy; or

(B) Any bodily injury that occurs to any person who is not affiliated with the academy, i.e., an innocent bystander, whose bodily injury was either caused by, or may have been caused by, any training or activity associated with the academy.

(II) Training to cease.

(A) In the event of any death or gunshot wound as described in paragraph (h)(I)(A) of this section, all training shall immediately cease at the training site where the death or gunshot wound occurred.

(B) Training may resume only after the Board or its designated representative(s) have ensured that the program is operating in compliance with POST Rules.

(III) Serious bodily injury means those injuries as defined in § 18-1-901(3)(p), C.R.S.

(IV) Bodily injury means those injuries as defined in § 18-1-901(3)(c), C.R.S.

V) All instructors shall be familiar with the information contained in this Section (h) as it pertains to the nature and scope of their involvement with the academy.

(i) Academy records requirements.

(I) Trainee files. During the academy, a file shall be maintained for each trainee or a systematic filing system must exist that contains at least the following records:

(A) Trainee's full legal name and date of birth; and

(B) Photocopy of the trainee's high school diploma or high school equivalency certificate; and

(C) Photocopy of the trainee's valid driver's license; and

(D) Form 11-E, *Enrollment Advisory Form.*

(II) Trainee manual.

(A) Each academy shall maintain an up-to-date trainee manual that contains relevant and accurate information. At a minimum, the trainee manual shall contain the academy's rules and regulations, academic requirements, attendance policies and site safety plans.

(B) Upon entry into the academy, each trainee should be issued a copy of the trainee manual and acknowledge receipt of the manual in writing.

(III) The following records shall be maintained at the academy and shall be readily available for inspection at any reasonable time by the Board or its designated representative(s).

(A) A completed Form 11-E, *Enrollment Advisory Form*, for each trainee enrolled in the academy in progress; and

(B) Current trainee manual; and

(C) Current lesson plans; and

(D) Current source material; and

(E) Instructor files for current instructors; and

(F) Copies of all site safety plans; and

(G) Trainee files for the academy in progress and the previously completed academy; and

(H) Attendance records for the academy in progress and the

previously completed academy; and

(I) Instructor/course evaluations for the academy in progress and the previously completed academy.

(IV) Academy records must be retained for at least the three (3) year period as referenced in the Uniform Records Retention Act, § 6-17-101, et seq., C.R.S.

Rule 28 - In-Service Training Program

Effective January 14, 2015

The purpose of in-service training is to provide continuing education to certified peace officers to develop their knowledge and/or skills. The annual in-service training program is defined in Colorado Revised Statutes §24-31-303 (l) and states that the POST Board can "promulgate rules deemed necessary by the Board concerning annual in-service training requirements for certified peace officers, including but not limited to evaluation of the training program and processes to ensure substantial compliance by law enforcement agencies and departments." In-service training is mandatory for certified peace officers who are currently employed in positions requiring certified peace officers as defined in Colorado Revised Statutes section 16-2.5-102. This includes certified fulltime, part-time and reserve peace officers.

a) Annual Hour Requirement

The in-service training program requires certified peace officers to complete a minimum of 24 hours of in-service training annually. Of the 24 hours, a minimum of 12 hours shall be perishable skills training as specified below.

b) Training Period

The training period shall be the calendar year, from January 1 to December

31, of each year. In-service training in excess of 24 hours each year shall not be credited towards any future or prior training period.

c) Approved Training for POST Credit

All training that is POST approved is authorized for in-service credit. The authority and responsibility for other forms of training shall be with the chief executive of each law enforcement agency. The chief executive accepts responsibility and liability for the course content and instructor qualification. Legislatively mandated training may be used for credit towards the training requirement.

The following are examples of training that would qualify for in-service credit:

(I)Training received during the Basic Academic Training Program (Basic Academy).

(II)Computer or web-based courses that have been approved by POST or the chief executive officer may be used for in-service credit.

(III)The viewing of law enforcement related audiovisual material (DVD, video, etc.) or material related to the viewer's position or rank can be used in conjunction with a facilitated discussion or other presentation. This could include roll call or lineup briefings where the session is dedicated to training and not for the purpose of information exchange.

(IV)For each class hour attended at an accredited college or university in any course that is required to earn a degree, one hour of in-service credit may be awarded.

d) Perishable Skills Training

Perishable skills training shall consist of a minimum of 12 hours each calendar year. It is recommended that officers complete a minimum of four hours of firearms, arrest control and driving. Examples of perishable skills training could include:

(I)Firearms-live or simulator exercises and scenarios, firearms fundamentals, use of force training or discussions, classroom

training requiring student interaction and/or decision making, classroom discussion on agency policies and/or legal issue.

(II)Arrest Control-live or simulator exercises and scenarios, classroom discussion followed by interactive scenario events. Arrest control fundamentals, agency policies and/or legal issues.

(III)Driving-behind-the-wheel or simulator training, classroom discussion regarding judgment/decision making in driving, agency policies and/or legal issues.

e) Agency Maintenance of Training Records

The chief executive of each agency is responsible for the accurate tracking of training attendance into the POST records management system.

At the end of each calendar year, agencies shall have accurately entered all training for the certified peace officers employed at any time during the year regardless of current employment status. This information shall be entered into the POST records management system.

(I)Waiver of In-Service Requirements

All certified peace officers shall meet the minimum annual hours. However, under circumstances listed below, an agency may request a waiver for a portion of the annual in-service training requirement. Any waiver of the annual training request must be made in writing to the POST Director prior to the end of the calendar year (December 31).

(A)Perishable Skills Waiver

Agency executives may request an exemption from the perishable skills training requirement. This request shall be in writing to the POST Director. This request shall state that either their certified peace officers do not carry firearms, or they infrequently interact with or effect physical arrests, or they do not utilize marked emergency vehicles as part of their normal

duties.

(B)Partial Year Employment Waiver

The 24 hours of in-service training is required if a certified peace officer is employed for the entire calendar year. Certified peace officers who are employed after the start of the calendar year only need to complete a prorated number of training hours. Therefore, one hour per month of regular training and one hour a month of perishable skills training shall be required. (Example: If a certified peace officer is hired in July, six hours of regular training and six hours of perishable skills training should be completed for that calendar year).

(C)Long Term Disability, Medical Leave or Restricted Duty

If a certified peace officer is unable to complete the in-service annual hours due to long term disability, medical leave or restricted duty, the agency must obtain a letter from a physician stating that participation in any type of training including audiovisual or online training would be detrimental to the officer's health. The letter should define the time that the officer is unable to attend any training. Those granted a waiver will be on a prorated basis for the time stated in the physician's letter. The agency does not need to forward the physician's letter to POST but only reference it in a waiver request.

(D)Military Leave

Those certified peace officers deployed in military service only need to complete a prorated number of training hours.

(II)Compliance

(A)Agencies are required to be in compliance with the in-service program.

(B)POST will send out a preliminary compliance report following each training period. The

report will provide the compliance status of each agency and its certified peace officers. Agencies shall have thirty (30) days from the date of the preliminary report to dispute the POST data and provide additional training information. Following the thirty-day period, POST will distribute the final compliance reports to all agencies.

(C)Agencies that are out of compliance in the final compliance report will be suspended from receiving any POST funds until compliance is reached. Agencies may appeal this by following the process in Rule 5-*Hearings*. If an agency seeks an appeal within 30 days of being notified that they are out of compliance, funding shall not be eliminated until the agency has completed the Rule 5 process.

(D)The POST Board shall evaluate the program annually following the release of the final compliance reports. Such evaluation will include a review and evaluation of the program. The evaluation may be based on the compliance rate, agency survey and other performance metrics. Agencies shall complete an annual training evaluation survey as part of the substantial compliance measurement by February 1 of each year.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01090

Opinion of the Attorney General rendered in connection with the rules adopted by the
Peace Officer Standards and Training Board

on 11/21/2014

4 CCR 901-1

PEACE OFFICER TRAINING PROGRAMS AND PEACE OFFICER CERTIFICATION

The above-referenced rules were submitted to this office on 11/24/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 10, 2014 10:25:50

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-5

Rule title

5 CCR 1001-5 REGULATION NUMBER 3 STATIONARY SOURCE PERMITTING AND AIR POLLUTANT EMISSION NOTICE REQUIREMENTS 1 - eff 01/14/2015

Effective date

01/14/2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 3

STATIONARY SOURCE PERMITTING AND AIR POLLUTANT EMISSION NOTICE REQUIREMENTS

5 CCR 1001-5

Outline of Regulation

PART A CONCERNING GENERAL PROVISIONS APPLICABLE TO REPORTING AND PERMITTING

I. Applicability

I.A. The provisions of this Part A shall apply statewide to all sources of air pollutants except as otherwise provided herein.

All sources of air pollutants that have previously obtained an emissions permit (prior to July 1, 1992) or a construction permit, and are subject only to the Part B Construction Permit Program, may choose to reapply for a new construction permit pursuant to Part B of this Regulation Number 3 in order to obtain the operational flexibility provided in Section IV. of this Part A, or to obtain federally enforceable limitations to limit the source's potential to emit ("synthetic minor"). Sources of air pollutants that are subject only to the Part B Construction Permit Program may voluntarily apply for an Operating Permit pursuant to Part C.

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 Technical Secretary of 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 of this regulation as promulgated or revised by the Commission and references do not include later amendments to or editions of the incorporated materials.

I.B. Definitions

I.B.1. Administrative Permit Amendment.

I.B.1.a. A permit revision that:

I.B.1.a.(i) Corrects typographical errors;

I.B.1.a.(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

I.B.1.a.(iii) Requires more frequent monitoring or reporting by the permittee;

I.B.1.a.(iv) Allows for a change in ownership or operational control of a source where the Division determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Division;

I.B.1.b. An administrative permit amendment for purposes of the acid rain portion of a permit shall be governed by regulations promulgated under Title IV of the Federal Act, found at Code of Federal Regulations Title 40, Part 72.

I.B.2. Administrator

The administrator of the U.S. Environmental Protection Agency (U.S. EPA).

I.B.3. Adverse Environmental Effect

As a term used in the context of regulating hazardous air pollutants, any significant and widespread adverse effect, that may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

I.B.4. Affected States

All states whose air quality may be affected by issuance of an operating permit, operating permit modification, or operating permit renewal and that are contiguous to Colorado; and/or all states that are within fifty miles of a permitted source.

I.B.5. Affected Unit

A unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation pursuant to Title IV of the Federal Act or regulations promulgated there under, in the Code of Federal Regulations Title 40, Part 72.

I.B.6. Air Pollutant

Means carbon monoxide, nitrogen oxides, sulfur dioxide, PM10, PM2.5, total suspended particulates, ozone, volatile organic compounds, lead, all pollutants regulated under Section 111 of the Federal Act (Regulation Number 6), all hazardous air pollutants, and all class I and class II ozone depleting compounds as defined and referenced in Section 602 of the Federal Act.

I.B.7. Allowable Emissions

The emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable or enforceable as a practical matter, permit conditions that restrict the operating rate or hours of operation, or both) and the most stringent of the following:

I.B.7.a. The applicable standards promulgated pursuant to the Federal Act for new source performance or hazardous air pollutants;

I.B.7.b. The applicable Colorado Emission Control Regulation; or

I.B.7.c. The emissions rate specified as a federally enforceable, or enforceable as a practical matter, permit condition, including those with a future compliance date.

I.B.8. Annual Actual Emissions

The actual rate of emissions of a pollutant, excluding excess emissions from a malfunction, or startups and shutdowns associated with a malfunction. Annual actual emissions shall be calculated using the source's actual operating rates, and types of materials processed, stored, or combusted during the calendar year.

I.B.9. Applicable Requirement

Means all of the following as they apply to emissions units in a source subject to operating permit requirements of this regulation (including requirements that have been promulgated or approved by the U.S. EPA through rulemaking at the time of permit issuance but have future effective compliance dates);

I.B.9.a. Any term or condition of any construction permit issued pursuant to Part B of this Regulation Number 3, or any such term or condition as modified by procedures authorized by the operating permit program pursuant to Parts B and C of this Regulation, or any permit issued under Part C or Part D of the Federal Act, except that state-only permit terms or conditions shall remain enforceable solely pursuant to state law;

I.B.9.b. Any standard or other requirement provided for in the state implementation plan;

I.B.9.c. Any standard or other requirement under Section 111 of the Federal Act (New Source Performance Standards), including Section 111(d) of the Federal Act (Standards of Performance for existing sources) (Regulation Number 6);

I.B.9.d. Any standard or other requirement under Section 112 of the Federal Act (hazardous air pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Federal Act) (Regulation Number 8) but not including the contents of any risk management plan required under Section 112(r) of the Federal Act;

I.B.9.e. Any requirements for monitoring and compliance assurance monitoring methods and procedures to ensure compliance with permit requirements, including periodic monitoring and testing, and compliance certifications, established pursuant to Sections 504(b) or 114(a)(3) of the Federal Act;

I.B.9.f. Any standards or other requirement under the Code of Federal Regulations Title 40, Part 72 (acid deposition control);

I.B.9.g. Any standard or other requirement governing solid waste incineration;

I.B.9.h. Any standard or other requirement for consumer and commercial products;

I.B.9.i. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Federal Act, except where the Administrator has determined such requirement need not be contained in an operating permit (Regulation Number 15);

I.B.9.j. Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Federal Act, but only as it would apply to temporary sources permitted pursuant to Part C of this Regulation Number 3.

I.B.10. Carbon Dioxide Equivalent (CO_2e)

A metric used to compare the emissions from various GHG classes based upon their global warming potential (GWP). The CO_2e is determined by multiplying the mass amount of emissions (tons per year), for each GHG constituent by that gas's GWP, and summing the resultant values to determine CO_2e (tons per year). The applicable GWPs codified in 40 CFR Part 98, Subpart A, Table A-1 – Global Warming Potentials are hereby incorporated by reference as in effect as of November 29, 2013, but not including later amendments.

I.B.11. Commence, also Commence Construction

When the owner or operator has obtained all necessary pre-construction approvals or permits required by federal, state, or local air pollution and air quality laws and regulations and has either; (a) begun, or caused to begin, a continuous program of physical onsite construction of the source, or (b) entered into binding agreements or contractual obligation that cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time. The following activities do not require the owner or operator to obtain a permit: 1) planning; 2) site clearing and grading; 3) ordering of equipment and materials; 4) storing of equipment; 5) setting up temporary trailers to house construction management staff and contractor personnel; 6) engineering and design; and 7) geotechnical investigation. In the event that the source does not qualify for issuance of a permit, the owner or operator accepts the financial risk of commencing these activities.

I.B.12. Commencement of Operation

A new source commences operation when it first conducts the activity that it was designed and permitted for (i.e., producing cement or generating electricity).

I.B.13. Construction Permit

Means the same as an emission permit as required under Part B of this regulation as it existed prior to July 1, 1992, and is the permit required under Colorado Revised Statutes Section 25-7-114.2 after July 1, 1992.

I.B.14. Continuous Emissions Monitoring System (CEMS)

All of the equipment that is required to meet the data acquisition and availability requirements of Part D of this Regulation or of a permit issued in accordance with Parts B or C of this regulation, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

I.B.15. Continuous Emissions Rate Monitoring Systems (CERMS)

The total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

I.B.16. Continuous Parameter Monitoring System (CPMS)

All of the equipment necessary to meet the data acquisition and availability requirements of Part D of this Regulation, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O2 or CO2 concentrations), and to record average operational parameter value(s) on a continuous basis.

I.B.17. Criteria pollutants

Those pollutants for which the U.S. EPA has established national ambient air quality standards, including: carbon monoxide, nitrogen dioxide (direct emissions and as a precursor to ozone and PM2.5), sulfur dioxide (direct emissions and as a precursor to PM2.5), PM10, PM2.5, total suspended particulate matter, ozone, volatile organic compounds (as a precursor to ozone), and lead.

For the purposes of Air Pollutant Emission Notice reporting, criteria pollutants shall also include nitrogen oxides, fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, reduced sulfur compounds, municipal waste combustor organics, municipal waste combustor metals, and municipal waste combustor acid gases.

I.B.18. Designated Representative

Means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of Code of Federal Regulations, Title 40, Part 72, to represent and legally bind each owner and operator, as a matter of law, in matters pertaining to the acid rain program. Whenever the term responsible official is used, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

I.B.19. Draft Permit

Means a proposed form of a permit that is released to the public for an opportunity for public comment and hearing, and for affected state review prior to the Division's final decision on a permit application.

I.B.20. Existing Source

An air pollutant source that has been constructed, is in operation, or has received an initial approval of a construction permit prior to the effective date of applicable requirements.

I.B.21. Fugitive Dust

For purposes of this Regulation Number 3, fugitive dust means soil or other airborne particulate matter (excluding particulates produced directly during combustion) resulting from natural forces or from surface use or disturbance, including, but not limited to, all dust from agriculture, construction, forestry, unpaved roads, mining, exploration, or similar activities in which earth is either moved, stored, transported, or redistributed; except that fugitive dust shall not include any fraction of such soil or other airborne particulate matter that is of a size or substance to adversely affect public health or welfare.

I.B.22. General Permit

Means a single permit issued to cover numerous similar sources.

I.B.23. Greenhouse Gas (GHG)

Means the aggregate group of the following six greenhouse gases: carbon dioxide (CO2), nitrous oxide (N2O), methane (CH4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF6). These gases are treated in aggregate based on the total carbon dioxide equivalent (CO2e) as the pollutant GHG. See definition for carbon dioxide equivalent (CO2e).

For purposes of a GHG PAL, these gases shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements of Part D, Section XV., and complies with the PAL permit containing the GHG PAL.

I.B.24. Indirect Source

A facility, building, structure, or installation, or any combination thereof, excluding dwellings, which can reasonably be expected to cause or induce substantial mobile source activity that results in emissions of air pollutants that might reasonably be expected to interfere with the attainment and maintenance of National Ambient Air Quality Standards.

I.B.25. Major Source

Any stationary source or group of stationary sources belonging to the same industrial grouping (see Section I.B.43. of this Part A), that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control) that:

I.B.25.a. Directly emits, or has the potential to emit considering enforceable controls, in the aggregate, ten tons per year or more of any hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants, or such lesser quantity of hazardous air pollutants as may be established pursuant to the Federal Act. Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this provision. Fugitive emissions shall be considered in determining whether a stationary source of hazardous air pollutants is a major source.

I.B.25.b. Directly emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation. Fugitive emissions shall not be considered in determining whether a source is a major source for purposes of this Section I.B.25.b., unless the source belongs to one of the following categories of stationary sources:

I.B.25.b.(i) Coal cleaning plants (with thermal dryers);

I.B.25.b.(ii) Kraft pulp mills;

I.B.25.b.(iii) Portland cement plants;

I.B.25.b.(iv) Primary zinc smelters;

I.B.25.b.(v) Iron and steel mills;

I.B.25.b.(vi) Primary aluminum ore reduction plants;

I.B.25.b.(vii) Primary copper smelters;

I.B.25.b.(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

I.B.25.b.(ix) Hydrofluoric, sulfuric, or nitric acid plants;

I.B.25.b.(x) Petroleum refineries;

I.B.25.b.(xi) Lime plants;

I.B.25.b.(xii) Phosphate rock processing plants;

I.B.25.b.(xiii) Coke oven batteries;

I.B.25.b.(xiv) Sulfur recovery plants;

I.B.25.b.(xv) Carbon black plants (furnace process);

I.B.25.b.(xvi) Primary lead smelters;

I.B.25.b.(xvii) Fuel conversion plants;

I.B.25.b.(xviii) Sintering plants;

I.B.25.b.(xix) Secondary metal production plants;

I.B.25.b.(xx) Chemical process plants;

I.B.25.b.(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

I.B.25.b.(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

I.B.25.b.(xxiii) Taconite ore processing plants;

I.B.25.b.(xxiv) Glass fiber processing plants;

I.B.25.b.(xxv) Charcoal production plants;

I.B.25.b.(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

I.B.25.b.(xxvii) Any other stationary source categories regulated by a standard promulgated as of August 7, 1980 under Section 111 or 112 of the Federal Act, but only with respect to those air pollutants that have been regulated for that category.

I.B.25.c. Meets any of the definitions of major stationary source set forth in Section II.A.25. of Part D of this Regulation Number 3.

I.B.26. Minor Source

Any stationary source that does not qualify as a major source (as defined in Section I.B.25. above).

I.B.27. Mobile Source

Motor vehicles and other sources of air pollution that emit pollutants while moving and that commonly do not remain at one site (one or more contiguous or adjacent properties owned or operated by the same person or by persons under common control), but does not include portable sources.

I.B.28. Modification

Any physical change in, or change in the method of operation of, a stationary source that does not meet the definition of major modification (as defined in Section II.A.23. of Part D of this regulation), and that increases the emission rate of any pollutant for which a federal or state emission standard has been promulgated or that results in the emission of any such pollutant previously not emitted. The following exceptions apply:

I.B.28.a. Routine maintenance, repair, and replacement shall not be considered a physical change;

I.B.28.b. Unless previously limited by enforceable permit terms and conditions, the following shall not be considered to be a change in the method of operation:

I.B.28.b.(i) An increase in the production rate if such increase does not exceed the design capacity of the source and does not lead to emissions in excess of the emission standards;

I.B.28.b.(ii) An increase in the hours of operation that does not lead to emissions in excess of the emission standards.

I.B.28.b.(iii) Use of an alternative fuel or raw material by reason of an order in effect under Sections 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), a prohibition under the Federal Power Plan and Industrial Fuel Act of 1978 (or any superseding legislation) or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

I.B.28.b.(iv) Use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Act; or

I.B.28.b.(v) Change in ownership of the source.

I.B.28.c. Emissions resulting from construction and exploration shall be excluded in determining whether a modification will occur. Emissions from ongoing construction, and emissions from natural gas flaring are not considered to be temporary emissions, and are included in determining whether a modification will occur.

I.B.28.d. This definition shall not be used as a definition of major modification or minor permit modification (as defined in Section I.A.2. of Part C of this regulation)-- these are distinct and separate definitions.

I.B.28.e. Any physical change or change in the method of operation at a source with an operating permit issued pursuant to Part C of this Regulation Number 3, that does not constitute a major modification (as defined in Part D, Section II.A.23. of this Regulation Number 3) and that does not trigger new source performance standards or hazardous air pollutant requirements under the Federal Act is not considered to be a modification; except that any such change shall trigger the provisions of Part B, Section III.D.1.a. through III.D.1.g., and Part C, Sections X.A., and Part C Sections XII.A. or XII.B., as appropriate.

for Administrative Permit Amendment see Section I.B.1. of Part A
for Minor Permit Modification, see Section I.A.2. of Part C
for Major Modification, see Section II.A.23. of Part D
for Permit Modification, see Section I.A.3. of Part C
for Permit Revision, see Section I.B.34. of Part A
for Significant Permit Modification, see Section I.A.7. of Part C

I.B.29. New Source

A stationary air pollution source, other than an existing source; or any source that resumes operation after being inactive for more than one year after having been shut down for the purpose of eliminating emissions that violated any applicable emission control regulation or regulation for the control of hazardous air pollutants.

I.B.30. Non-criteria Reportable Pollutants

The list of pollutants set forth in Appendix B and those ozone-depleting compounds listed in Section 602 of the Federal Act.

I.B.31. Non-Road Engine

I.B.31.a. Except as discussed in Section I.B.31.b. of this definition, a non-road engine is an internal combustion engine:

I.B.31.a.(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

I.B.31.a.(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

I.B.31.a.(iii) That, by itself or in or on a piece of equipment is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to wheels, skids, carrying handles, dolly, trailer or platform.

I.B.31.b. An internal combustion engine is not a non-road engine if:

I.B.31.b.(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under Section 202 of the Federal Act; or

I.B.31.b.(ii) The engine is regulated by a federal New Source Performance Standard promulgated under Section 111 of the Federal Act; or

I.B.31.b.(iii) The engine otherwise included in Section I.B.31.a.(iii) of this definition remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located as a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at a single location approximately three months (or more) each year. This Section does not apply to an engine after the engine is removed from the location.

I.B.31.c. (State-only Requirements) Non-road engines not co-located at an existing major source

An operator of a non-road engine as defined in Section I.B.31.a.(iii), above, with a manufacturer's site-rated horsepower of 1,200 or greater, or an aggregation of such non-road engines each with a manufacturer's site-rated horsepower of 1,200 or greater, that operate more than 4,380 hours per year at the same location are subject to the following state-only requirements:

I.B.31.c.(i) Submit an air pollutant emission notice and pay the appropriate fees pursuant to Section VI. of Part A of this regulation;

I.B.31.c.(ii) Submit an application for a site-specific, temporary, non-road engine permit on forms supplied by the Division if the estimated annual actual emissions reported on the Air Pollutant Emission Notice, as required by Section I.B.31.c.(i), are equal to or exceed one hundred tons per year or more of nitrogen oxides, 100 tons per year or more of carbon monoxide, or forty tons per year or more of sulfur dioxide. After receipt and review of a complete application, the Division shall issue a state-only non-road engine permit containing such terms and conditions as are necessary to protect the ambient air quality standards.

I.B.31.c.(iii) The operator of a non-road engine that is exempt based on hours of operation or the annual emissions thresholds described above, must maintain sufficient records to verify that the engine or engines are exempt from the state-only reporting and permit requirements. Such records shall be made available for Division review upon request.

I.B.31.d. (State-only Requirements) Non-road engines co-located at an existing major source of nitrogen oxides or sulfur dioxide

An operator of a non-road engine or aggregation of engines each with a manufacturer's site-rated horsepower of 1,200 or greater, and are non-road engines under Section I.B.31.a.(iii) of this definition, are subject to the following state-only requirements:

I.B.31.d.(i) Submit an air pollutant emission notice and pay the fees required by Section VI. of this Part;

I.B.31.d.(ii) Submit an application for a site-specific, temporary, state-only non-road engine permit on forms supplied by the Division if the estimated

annual actual emissions reported on the air pollutant emission notice, as required by Section I.B.29.d.(i), are equal to or exceed forty tons per year or more of nitrogen oxides, one hundred tons per year or more of carbon monoxide, or forty tons per year or more of sulfur dioxide. After receipt and review of a complete application, the Division shall issue a temporary state-only non-road engine permit containing such terms and conditions as are necessary to protect the ambient air quality standards.

I.B.31.d.(iii) The operator of a non-road engine that is 1,200 horsepower or greater, but is exempt on the basis of the annual emissions thresholds described above, must maintain sufficient records to verify that the engine or engines are exempt from the state-only reporting and permit requirements. Such records shall be made available for Division review upon request.

I.B.32. Operating Permit

Unless the context suggests otherwise, any permit or group of permits covering an operating permit source that is issued, renewed, amended or revised pursuant to Part C of this Regulation Number 3.

I.B.33. Operating Permit Source

Any source subject to the permitting requirements of Part C of this regulation.

I.B.34. Permit Revision

Any permit modification, minor permit modification, or administrative permit amendment. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program provided that such increases do not require a permit revision under any other applicable requirement.

I.B.35. Pollution Prevention

Any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. This definition does not include recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.

I.B.36. Portable Source

A source such as, but not limited to, asphalt batch plants and aggregate crushers that commonly and by usual practice is moved from one site to another. A source will not be considered portable if it remains on one site for more than two years.

I.B.37. Potential to Emit

The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state enforceable and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

I.B.38. Predictive Emissions Monitoring System (PEMS)

All of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O2 or CO2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

I.B.39. Regulated Air Pollutant

Nitrogen oxides or any volatile organic compounds, except as listed in the definition of negligibly reactive volatile organic compounds in the Common Provisions regulation; any pollutant for which a national or state ambient air quality standard has been promulgated; any pollutant that is subject to any standard promulgated under Section 111 of the Federal Act (Regulation Number 6); any class I or II substance subject to a standard promulgated under or established by Title VI of the Federal Act; any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Federal Act, including Sections 112(g), (j), and (r) of the Federal Act; and any pollutant subject to a standard promulgated pursuant to Colorado Revised Statutes Section 25-7-109.3(5)(a), (state-only hazardous air pollutants listed in Section 25-7-109.3(5)(a) are subject to state enforcement only and do not trigger enforcement by the Administrator or by citizens under Section 304 of the Federal Act.)

Once a source becomes subject to the operating permit requirements, regulated air pollutants must be addressed in the permit application and in the permit.

I.B.40. Responsible Official

One of the following:

I.B.40.a. For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

I.B.40.a.(i) The facilities employ more than two hundred and fifty persons or have gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars); or

I.B.40.a.(ii) The delegation of authority to such representative is approved in advance by the Division;

I.B.40.b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

I.B.40.c. For a municipality, state, federal, or other public agency; either a principal executive officer, or ranking elected official. For the purposes of this section, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or

I.B.40.d. For affected sources:

I.B.40.d.(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Federal Act or the

regulations, found at Code of Federal Regulations Title 40, Part 72, promulgated there under are concerned; and

I.B.40.d.(ii) The designated representative under Title IV of the Federal Act or the Code of Federal Regulations Title 40, Part 72 for any other purposes under the Code of Federal Regulations Title 40, Part 70.

I.B.41. Schedule of compliance

A schedule of required measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable state implementation plan, emission standard, emission limitation, emission prohibition, or emission control regulation.

I.B.42. State-only Condition

Means any standard, term or condition that is not required by Part C of this regulation (Title V Operating Permits), Part D of this regulation (major New Source Review), Title III (hazardous air pollutants) or Section 111 (New Source Performance Standards) of the Federal Act, is not required to be federally enforceable to participate in the early reductions program, is not required to create a federally enforceable emissions limitation in order to create a synthetic minor source (as defined in Section I.A. of this Part), or is otherwise more stringent than a requirement under the Federal Act.

I.B.43. Stationary Source

Any building, structure, facility, or installation, or any combination thereof belonging to the same industrial grouping that emits or may emit any air pollutant subject to regulation under the Federal Act, that is located on one or more contiguous or adjacent properties and that is owned or operated by the same person or by persons under common control. Those emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road engine as defined in Section I.B.29. of this Part shall not be considered a stationary source. Building, structures, facilities, equipment, and installations shall be considered to belong to the same industrial grouping if they belong to the same major groups (i.e., have the same two-digit codes) as described in the Standard Industrial Classification Manual, 1987, but not later amendments. See National Technical Information Service, Order Number PB 87-100012. The manual is available for examination at the office of the Director of the Air Pollution Control Division, Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

for Affected Source see Section I.A.1. of Part C
for Existing Source, see Section I.B.20. of Part A
for Indirect Source, see Section I.B.24. of Part A
for Major Source, see Section I.B.25. of Part A
for Major Stationary Source, see Section II.A.25. of Part D
for Minor Source, see Section I.B.26. of Part A
for Mobile Source, see Section I.B.27. of Part A
for New Source, see Section I.B.29. of Part A
for Portable Source, see Section I.B.36. of Part A
for Temporary Source, see Section I.B.45. of Part A

I.B.44. Subject to Regulation

For any air pollutant, that the pollutant is subject to either a provision in the Federal Act, or a nationally-applicable regulation codified by the Administrator in Subchapter C of 40 CFR Chapter I of the Federal Act, that requires actual control of the quantity of emissions of the pollutant, and

that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

I.B.44.a. GHG shall not be subject to regulation except as provided in Sections I.B.44.d. through f. of this Part A.

I.B.44.b. For purposes of Section I.B.44.c. through e., the term CO2e of this Part A, shall represent an amount of GHG emitted, and shall be computed as follows:

I.B.44.b.(i) Multiplying the mass amount of emissions (tpy), for each of the six GHGs in the pollutant GHG, by the gas's associated GWP published at Table A-1 to Subpart A of Part 98 of 40 CFR as in effect November 29, 2013, which is hereby incorporated by reference, but not including later amendments. For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

I.B.44.b.(ii) Sum the resultant value from Section I.B.44.b.(i) of this Part A, for each gas to compute a tpy CO2e.

I.B.44.c. The term emissions increase as used in Sections I.B.44.d. through e. of this Part A, shall mean that both a significant emissions increase (as calculated using the procedures in Section II.A.23 of Part D) and a significant net emissions increase (as defined in Sections II.A.26, and II.A.44 of Part D) occur. For the pollutant GHG, an emissions increase shall be based on tpy CO2e, and shall be calculated assuming the pollutant GHG is a regulated NSR pollutant, and significant is defined as 75,000 tpy CO2e instead of applying the value in Section II.A.44.b. of Part D.

I.B.44.d. Beginning January 2, 2011, the pollutant GHG is subject to regulation concerning major stationary source new source review and prevention of significant deterioration if:

I.B.44.d.(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHG, and also will emit or will have the potential to emit 75,000 tpy CO2e or more; or

I.B.44.d.(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHG, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO2e or more.

I.B.44.e. Beginning July 1, 2011, in addition to the provisions in Section I.B.44.d. of Part A, the pollutant GHG shall also be subject to regulation if:

I.B.44.e.(i) Concerning operating permits (Sections I through XIV of Part C), at a new or existing stationary source that will emit or have the potential to emit 100,000 tpy CO2e; or

I.B.44.e.(ii) Concerning major stationary source new source review and prevention of significant deterioration and operating permits:

I.B.44.e.(ii)(A) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO2e; or

I.B.44.e.(ii)(B) At an existing stationary source that will emit or have the potential to emit 100,000 tpy CO2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO2e or more.

I.B.44.f. If there is a change in federal law that supersedes, or the District of Columbia Circuit Court of Appeals or the United States Supreme Court directs or issues an order, which limits or renders ineffective the regulation of GHG emissions at stationary sources under the New Source Review Prevention of Significant Deterioration(PSD) or Title V provisions of the Federal Act the regulation, GHG emissions under the corresponding programs in this Regulation Number 3 shall be limited or rendered ineffective to the same extent.

I.B.45. Temporary Source

A source in operation for not more than two years in duration unless the Division determines that a longer time period is appropriate.

I.B.46. Uncontrolled Actual Emissions

The annual emission rate corresponding to the annual process rate listed on the Air Pollutant Emission Notice form, without consideration of any emission control equipment or procedures.

The Division may allow a source to forego calculating or estimating its uncontrolled actual emissions of hazardous air pollutants upon a showing by the source and a determination by the Division that the creation of such data is unreasonably costly, technically impractical or not reasonably related to information necessary for making regulatory decisions with respect to that source. The Division's final determination may be appealed to the Commission by the source.

I.B.47. Wet Screening Operations

A screening operation at a nonmetallic mineral processing plant that removes unwanted material or that separates marketable fines from the product by a washing process that is designed and operated at all times such that water is an integral part of the process and the product is saturated with water. Screens that use spray bars for the purposes of dust control are not included in this definition.

II. Air Pollutant Emission Notice (APEN) Requirements

II.A. Air Pollutant Emission Notices for New, Modified, and Existing Sources

Except as specifically exempted in Section II.D., no person shall allow emission of air pollutants from, or construction, modification or alteration of, any facility, process, or activity which constitutes a stationary source, except residential structures, from which air pollutants are, or are to be, emitted unless and until an Air Pollutant Emission Notice and the associated Air Pollutant Emission Notice fee has been filed with the Division with respect to such emission. Each such notice shall specify the location at which the proposed emission will occur, the name and address of the persons operating and owning such facility,

the nature of such facility, process or activity, an estimate of the quantity and composition of the expected emission and other information as required in the current Air Pollutant Emission Notice form.

II.B. General

II.B.1. Emission Estimate

The Air Pollutant Emission Notice shall include an estimate of the annual actual emissions, including emission controls. The emissions estimate shall be based upon actual test data or, in the absence of such data, upon estimations acceptable to the Division. The following alternative estimate methods, in order of descending acceptability, are acceptable to the Division:

II.B.1.a. Mass balance calculations or a published, verifiable emission factor, whichever is best applied to the source; or

II.B.1.b. Other engineering calculations.

Stack testing or emission monitoring will not be required solely to meet the Air Pollutant Emission Notice reporting requirements.

An owner or operator shall provide a justification to the Division for not using any methods that are higher on the list than the method the owner or operator proposes to use. If none of the above methods are available or applicable to the source, an appropriate method will be determined on a case-by-case basis by the Division, taking into account the provisions of Section II.C.2. of this Part A.

The Division shall make available to all air pollution control authority offices appropriate forms on which the information required by this section shall be submitted.

II.B.2. Air Pollutant Emission Notice Term

An Air Pollutant Emission Notice is valid for a period of five years. The five-year period recommences when a revised Air Pollutant Emission Notice is received by the Division.

II.B.3. APEN Applicability

For the purposes of Air Pollutant Emission Notice applicability, a source will be considered to be an individual emission point, or group of points pursuant to Section II.B.4. of this Part A.

II.B.3.a. Criteria Pollutants

For criteria pollutants, Air Pollutant Emission Notices are required for: each individual emission point in a nonattainment area with uncontrolled actual emissions of one ton per year or more of any individual criteria pollutant (pollutants are not summed) for which the area is nonattainment; each individual emission point in an attainment or attainment/maintenance area with uncontrolled actual emissions of two tons per year or more of any individual criteria pollutant (pollutants are not summed); each individual emission point with uncontrolled actual emissions of lead greater than one hundred pounds per year, regardless of where the source is located.

II.B.3.b. Non-criteria Reportable Pollutants

For non criteria reportable pollutants, Air Pollutant Emission Notices are required for each individual emission point with uncontrolled actual emissions equal to or greater than 250

pounds per year or more of any individual non-criteria reportable pollutant (pollutants are not summed).

II.B.4. Source Grouping

Grouping of multiple emission points on a single Air Pollutant Emission Notice shall be allowed as often as possible, provided the overall goals of receiving accurate and verifiable emissions information are not compromised. The following guidelines shall be used to delineate occasions when grouping can be allowed. These are intended to be used as guidelines only, and specific questions regarding grouping should be directed to the Division.

Multiple pieces of equipment or processes from a single facility may be grouped or associated together and reported on one single Air Pollutant Emission Notice provided the individual sources of emissions meet the following guidelines:

II.B.4.a. All of the aggregated sources have identical source classification codes and emission factors for criteria pollutants;

II.B.4.b. Each of the aggregated sources share a similar location within the facility;

II.B.4.c. Similar sources regulated under the New Source Performance Standards (Regulation Number 6) and non-New Source Performance Standard sources should not be grouped;

II.B.4.d. None of the individual sources is required to monitor emissions through the use of continuous emission monitors;

II.B.4.e. Each of the individual emission points has fuel usage, production, and a consumption level, which are indistinguishable from the other points, which have been grouped on the Air Pollutant Emission Notice;

II.B.4.f. None of the individual sources grouped on the Air Pollutant Emission Notice has previously been issued its own separate emissions permit.

The Division maintains its authority to require individual separate Air Pollutant Emission Notices for any process or activity.

The Division may allow a source to deviate from this emission point grouping criteria upon a showing that an alternative is reasonable and will not compromise the overall goals of receiving accurate and verifiable emissions information.

II.B.5. Air Pollutant Emission Notices and revised Air Pollutant Emission Notices shall be based on calendar years (January through December).

II.B.6. The emissions noted on the current Air Pollutant Emission Notice on file with the Division shall be used for emission fee calculations as described in Section VI. of this Part A.

II.C. Revised Air Pollutant Emission Notices

II.C.1. A revised Air Pollutant Emission Notice shall be filed:

II.C.1.a. Annually whenever a significant change (as defined in Section II.C.2.) in annual actual emissions occurs; or

II.C.1.b. Whenever there is a change in the owner or operator of any facility, process, or activity; or

II.C.1.c. Whenever new control equipment is installed, or whenever a different type of control equipment replaces an existing type of control equipment (revised Air Pollutant Emission Notices are not required for routine maintenance, repair, or replacement of control equipment; or

II.C.1.d. Whenever a permit limitation must be modified; or

II.C.1.e. Before the Air Pollutant Emission Notice expires.

II.C.1.f. A revised Air Pollutant Emission Notice is not required whenever the location of a portable facility, process, or activity is changed, however, the owner or operator of such source must file a relocation notice. Such notice shall be received by the Division at least ten days prior to the change in location. Alternatively, the owner or operator of a portable source may request written approval from the Division to report multiple relocations. Relocation forms are available at the Division offices.

II.C.1.g. A revised Air Pollutant Emission Notice is not required for emergency or backup generators that are ancillary to the main units at electric utility facilities, and that have a permit under Parts C or D of Title I, or Title V of the Federal Act.

II.C.1.h. A revised Air Pollutant Emission Notice is not required for emergency or backup generators for electric power generating facilities that are not ancillary to a main unit at an electric utility facility, and that have a permit containing limits on the physical or operational capacity of the source to emit a pollutant such that the source is not considered to be a major stationary source as defined in Section II.A.25. of Part D of this Regulation Number 3. If an owner or operator of such a source chooses to file a revised Air Pollutant Emission Notice, the Air Pollutant Emission Notice shall list the average of the annual actual emissions for the preceding three years.

II.C.2. Significant change, for the purposes of this section means:

II.C.2.a. For any non-criteria reportable pollutant if the emissions increase by fifty percent or five tons per year, whichever is less, above the level reported on the last Air Pollutant Emission Notice submitted to the Division.

II.C.2.b. For criteria pollutants:

II.C.2.b.(i) For sources emitting less than one hundred tons per year, a change in annual actual emissions, of the individual criteria pollutant less than one hundred tons per year, of five tons per year or more, above the level reported on the last Air Pollutant Emission Notice submitted to the Division; or

II.C.2.b.(ii) For volatile organic compound and nitrogen oxides sources in ozone nonattainment areas emitting less than one hundred tons of volatile organic compound and nitrogen oxides per year, a change in annual actual volatile organic compound or nitrogen oxide emissions of one ton per year or more or five percent, whichever is greater, above the level reported on the last Air Pollutant Emission Notice submitted to the Division; or

II.C.2.b.(iii) For sources emitting one hundred tons per year or more, a change in annual actual emissions, of the criteria pollutant above one hundred tons per year, of five percent or fifty tons per year or more, whichever is less, above the level reported on the last Air Pollutant Emission Notice submitted to the Division; or

II.C.2.b.(iv) A change in annual actual emissions, above the level reported on the last Air Pollutant Emission Notice submitted to the Division, of fifty pounds of lead.

II.C.3. Timeframe for Revised Air Pollutant Emission Notice submittals

II.C.3.a. Revised Air Pollutant Emission Notices shall be submitted no later than within thirty days before the five-year term expires.

II.C.3.b. Owners or operators of sources that are required to obtain a permit revision must file a revised Air Pollutant Emission Notice along with a request for permit revision. A revised permit must be obtained before the change at the source occurs.

II.C.3.c. Sources submitting revised Air Pollutant Emission Notices to inform the Division of a change in annual actual emission rates must do so by April 30 of the following year (e.g., a change in emissions in calendar year 1993 must be reported by April 30, 1994).

II.C.3.d. Air Pollutant Emission Notices for changes in control equipment must be submitted before the change occurs); except for control equipment at condensate storage tanks located at oil and gas exploration and production facilities subject to the requirements in Regulation Number 7, Section XII. For this control equipment, a revised APEN shall be filed once per year, as specified in Section II.C.3.c. of Part A, if any control equipment is added or if control equipment is relocated or removed.

II.C.4. Emissions reported

II.C.4.a. Sources submitting revised Air Pollutant Emission Notices due to Sections II.C.1.a., II.C.1.b., or II.C.1.e. must report actual annual emissions. Actual annual emissions for sources utilizing emission control equipment or procedures represent controlled actual annual emissions.

II.C.4.b. Sources submitting revised Air Pollutant Emission Notices due to Sections II.C.1.c. or II.C.1.d. must report both uncontrolled actual annual emissions and controlled actual emissions.

II.D. Exemptions from Air Pollutant Emission Notice Requirements

II.D.1.

Stationary sources having emission units that are exempt from the requirement to file an Air Pollutant Emission Notice must nevertheless comply with all requirements that are otherwise applicable specifically to the exempted emission units, including, but not limited to: Title V, Prevention of Significant Deterioration, nonattainment New Source Review, opacity limitations, odor limitations, particulate matter limitations and volatile organic compounds controls.

An applicant may not omit any information regarding APEN exempt emission units in any permit application if such information is needed to determine the applicability of Title V (Part C of this Regulation Number 3), Prevention of Significant Deterioration (Section VI., Part D of this Regulation Number 3), or nonattainment New Source Review (Section V., Part D of this Regulation Number 3).

The following sources are exempt from the requirement to file Air Pollutant Emission Notices because by themselves, or cumulatively as a category, they are deemed to have a negligible impact on air quality.

II.D.1.a. Individual emission points in nonattainment areas having uncontrolled actual emissions of any criteria pollutant of less than one ton per year, and individual emission points in attainment or attainment/maintenance areas having uncontrolled actual emissions of any criteria pollutant of less than two tons per year, and each individual emission point with uncontrolled actual emissions of lead less than one hundred pounds per year, regardless of where the source is located.

II.D.1.b. Individual emission points having uncontrolled actual emissions of any individual non-criteria reportable pollutant less than 250 pounds per year.

II.D.1.c. Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from other processes or equipment.

II.D.1.d. Fireplaces used for recreational purposes, inside or outside.

II.D.1.e. Fires and equipment used for noncommercial cooking of food for human consumption, or cooking of food for human consumption at commercial food service establishments, except for char broilers and wood fired equipment (but not including campfires) in PM10 nonattainment areas. Charbroiler shall mean a cooking device in a commercial food service establishment, either gas fired or using charcoal or other fuel, upon which grease drips down upon an open flame, charcoal or embers.

II.D.1.f. Safety flares used to indicate danger to the public.

II.D.1.g. Agricultural operations such as farming, cultivating, harvesting, seasonal crop drying, grain handling operations that are below New Source Performance Standards de minimis levels (including milling and grain elevator operations), and animal feeding operations that are not housed commercial swine feeding facilities as defined in Regulation Number 2, Part B. This exemption does not apply to an agricultural operation that: (1) is a major source (as defined in Section I.B.25. of this part); (2) meets or exceeds the storage capacity thresholds of a federal New Source Performance Standard (Regulation Number 6, Part A); or (3) participates in the early reduction program of the Federal Act, Section 112. Ancillary operations such as fueling stations located at farms or ranches are not exempt from Air Pollutant Emission Notice and permit requirements unless otherwise below the de minimis emission levels contained in this regulation, and are not exempt from other applicable regulation promulgated by the Commission.

II.D.1.h. Emissions from, or construction, or alteration of residential structures, including all buildings or other structures used primarily as a place of residence, and including home heating devices.

II.D.1.i. Laboratories and research & development facilities:

II.D.1.i.(i) Noncommercial (in house) experimental and analytical laboratory equipment that is bench scale in nature including quality control/quality assurance laboratories, process support laboratories, environmental laboratories supporting a manufacturing or industrial facility, and research and development laboratories.

II.D.1.i.(ii) Research and development activities that are of a small pilot scale and that process less than ten thousand pounds of test material per year;

II.D.1.i.(iii) Small pilot scale research and development projects less than six months in duration with controlled actual emissions less than five hundred pounds of any criteria pollutant or ten pounds of any non criteria reportable pollutant.

II.D.1.j. Disturbance of surface areas for purposes of land development, that do not exceed twenty-five contiguous acres and that do not exceed six months in duration. (This does not include mining operations or disturbance of contaminated soil).

II.D.1.k. Each individual piece of fuel burning equipment, other than smokehouse generators and internal combustion engines, that uses gaseous fuel, and that has a design rate less than or equal to five million British thermal units per hour. (See definition of fuel burning equipment, Common Provisions Regulation).

II.D.1.l. Internal combustion engines powering portable drilling rigs.

II.D.1.m. Exemption Repealed

II.D.1.n. Chemical storage tanks or containers that hold less than five hundred gallons, and that have an annual average daily throughput of less than twenty-five gallons.

II.D.1.o. Unpaved public and private roadways, except for haul roads located within a stationary source site boundary.

II.D.1.p. Sanding of streets and roads to abate traffic hazards caused by ice and snow.

II.D.1.q. Open burning activities, except that all reporting and permitting requirements that apply to such operations must be followed (see Regulation Number 9).

II.D.1.r. Brazing, soldering, or welding operations, except those that use lead based compounds. All welding that occurs strictly for maintenance purposes is exempt.

II.D.1.s. Street and parking lot striping.

II.D.1.t. Battery recharging areas.

II.D.1.u. Aerosol can usage.

II.D.1.v. Sawing operations, that is ancillary to facility operations, and is not part of the production process.

II.D.1.w. The process of demolition and re bricking of furnaces and kilns. This does not include subsequent operation of such furnaces or kilns.

II.D.1.x. Road and lot paving operations at commercial and industrial facilities, except that asphalt and cement batch plants require Air Pollutant Emission Notices and permits, unless exempt under some other section.

II.D.1.y. Adhesive use that is not related to production.

II.D.1.z. Fire training activities.

II.D.1.aa. Caulking operations that are not part of a production process.

II.D.1.bb. Landscaping and site housekeeping devices equal to or less than ten horsepower in size (lawnmowers, trimmers, snow blowers, etc.).

II.D.1.cc. Fugitive emissions from landscaping activities (e.g., weeding, sweeping).

II.D.1.dd. Landscaping use of pesticides, fumigants, and herbicides.

II.D.1.ee. Exemption Repealed

II.D.1.ff. Emergency events such as accidental fires.

II.D.1.gg. Smoking rooms and areas.

II.D.1.hh. Plastic pipe welding.

II.D.1.ii. Vacuum cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes.

II.D.1.jj. Beauty salons.

II.D.1.kk. Operations involving acetylene, butane, propane and other flame cutting torches.

II.D.1.ll. Pharmacies.

II.D.1.mm. Chemical storage areas where chemicals are stored in closed containers, and where total storage capacity does not exceed five thousand gallons. This exemption applies solely to storage of such chemicals. This exemption does not apply to transfer of chemicals from, to, or between such containers.

II.D.1.nn. Architectural painting, roof coating material and associated surface preparation (except for sandblasting and except for volatile organic compound emissions, associated with surface preparation, above Air Pollutant Emission Notice de minimis levels) for maintenance purposes at industrial or commercial facilities.

II.D.1.oo. Emissions that are not criteria (as defined in Section I.B.17. of this part) or non-criteria reportable pollutants (as defined in Section I.B.30. of this part) (These emissions include methane, ethane, and carbon dioxide).

II.D.1.pp. Janitorial activities and products.

II.D.1.qq. Grounds keeping activities and products.

II.D.1.rr. Sources of odorous emissions that do not utilize emission control equipment for control of odorous emissions. This exemption applies to the odor emissions only. All other emissions are subject to other exemptions set forth in this regulation. This exemption does not exempt any source from the requirements of Regulation Number 2.

II.D.1.ss. Truck and car wash units.

II.D.1.tt. Office emissions, including cleaning, copying, and restrooms.

II.D.1.uu. Exemption Repealed

II.D.1.vv. Electrically operated curing ovens, drying ovens and similar activities, articles, equipment, or appurtenances. This exemption applies to the ovens only, and not to the items being dried in the ovens.

II.D.1.ww. Equipment used exclusively for portable steam cleaning.

II.D.1.xx. Blast cleaning equipment using a suspension of abrasive in water and any exhaust system or collector serving them exclusively.

II.D.1.yy. Commercial laundries (except dry cleaners) that do not burn liquid or solid fuel.

II.D.1.zz. Storage of butane, propane, or liquefied petroleum gas in a vessel with a capacity of less than sixty thousand gallons, provided the requirements of Regulation Number 7, Section IV. are met, where applicable.

II.D.1.aaa. Storage tanks of capacity less than forty thousand gallons of lubricating oils or used lubricating oils.

II.D.1.bbb. Venting of compressed natural gas, butane or propane gas cylinders, with a capacity of one gallon or less.

II.D.1.ccc. Fuel storage and dispensing equipment in ozone attainment areas operated solely for company owned vehicles where the daily fuel throughput is no more than four hundred gallons per day that is calculated as an annual average. Sources in an ozone attainment/maintenance area must utilize Stage 1 vapor recovery on all tanks greater than 550 gallons capacity, as required by Regulation Number 7, in order to take this exemption.

II.D.1.ddd. Exemption Repealed

II.D.1.eee. Indirect sources are exempt until a permit regulation specific to indirect sources is promulgated by the Commission.

II.D.1.fff. Storage tanks meeting all of the following criteria:

II.D.1.fff.(i) Annual throughput is less than four hundred thousand gallons; and

II.D.1.fff.(ii) The liquid stored is one of the following:

II.D.1.fff.(ii)(A) Diesel fuels 1 D, 2 D, or 4 6;

II.D.1.fff.(ii)(B) Fuel oils #1 through #6;

II.D.1.fff.(ii)(C) Gas turbine fuels 1 GT through 4 GT;

II.D.1.fff.(ii)(D) oil/water mixtures with a vapor pressure equal to or lower than that of diesel fuel (Reid Vapor Pressure of 0.025 pounds per square inch absolute).

II.D.1.ggg. Each individual piece of fuel burning equipment that uses gaseous fuel, and that has a design rate less than or equal to ten million British thermal units per hour, and that is used solely for heating buildings for personal comfort.

II.D.1.hhh. Natural gas vehicle fleet fueling facilities.

II.D.1.iii. Electric motors driving equipment at non-commercial machining shops.

II.D.1.jjj. Recreational swimming pools.

II.D.1.kkk. Forklifts.

II.D.1.lll. Oil and gas exploration and production operations (well site and associated equipment) shall provide written notice to the Colorado Oil and Gas Conservation Commission of proposed drilling locations prior to commencement of such operations. Air Pollutant Emission Notices are not required until after exploration and/or production drilling, workovers, completions, and testing are finished.

If production will result in reportable emissions, the owner or operator shall file an Air Pollutant Emission Notice with the Division within thirty days after the well completion or recompletion report and log is filed with the appropriate state or federal agency. If production will not occur, or production will not result in reportable emissions, the owner or operator shall submit written notice to the Division indicating that the well was plugged, or that emissions are otherwise not reportable. If production will result in reportable emissions, the owner or operator shall file an Air Pollutant Emission Notice with the Division within thirty days after the report of first production is filed with the appropriate state or federal agency but no later than ninety days following the first day of production.

II.D.1.mmm. Handling equipment and associated activities for glass that is destined for recycling.

II.D.1.nnn. Fugitive emissions of hazardous air pollutants that are natural constituents of native soils and rock (not added or concentrated by chemical or mechanical processes) from underground mines or surface mines unless such source is a major source of hazardous air pollutants under Part C of Regulation Number 3.

II.D.1.ooo. The use of pesticides, fumigants, and herbicides when used in accordance with requirements established under the federal Insecticide, Fungicide and Rodenticide Act as established by the U.S. EPA (United States Code Title 7, Section 136 et seq.).

II.D.1.ppp. Ventilation of emissions from mobile sources operating within a tunnel, garage, or building that are not operating for transportation purposes and are subject to stationary source requirements.

II.D.1.qqq. Non-asbestos demolition.

II.D.1.rrr. Sandblast equipment when the blast media is recycled and the blasted material is collected, including small sandblast glove booths.

II.D.1.sss. Exemption Repealed

II.D.1.ttt. Exemption Repealed

II.D.1.uuu. Surface water storage impoundment of non-potable water and storm water evaporation ponds, with the exceptions of oil and gas production wastewater impoundments (including produced water tanks) containing equal to or more than one percent by volume crude oil on an annual average and commercial facilities that accept oil and gas production wastewater for processing.

II.D.1.vvv. Non-potable water pipeline vents.

II.D.1.www. Steam vents and safety release valves.

II.D.1.xxx. Exemption Repealed

II.D.1.yyy. Seal and lubricating oil systems for steam turbine electric generators.

II.D.1.zzz. Venting of natural gas lines for safety purposes.

II.D.1.aaaa. Chemical Storage Tanks

II.D.1.aaaa.(i) Sulfuric acid storage tanks not to exceed ten thousand five hundred gallons capacity.

II.D.1.aaaa.(ii) Sodium hydroxide storage tanks.

II.D.1.bbbb. Containers, reservoirs, or tanks used exclusively for dipping operations that contain no organic solvents for coating objects with oils, waxes, greases, or natural or synthetic resins.

II.D.1.cccc. Wet screening operations notwithstanding the applicability of the New Source Performance Standards included in the Code of Federal Regulations, Title 40, Part 60, Subpart OOO.

II.D.1.dddd. Non-road engines as defined in Section I.B.31. of this Part A, except certain non-road engines subject to state-only air pollutant emission notice and permitting requirements pursuant to Section I.B.31.c. and I.B.31.d. of this part.

II.D.1.eeee. Exemption Repealed

II.D.1.ffff. Exemption Repealed

II.D.2. An Air Pollutant Emission Notice must be filed for all incinerators.

II.D.3. Air Pollutant Emission Notices are required for emergency and backup generators that are ancillary to the main units at electric utility facilities however, these units may be included on the same Air Pollutant Emission Notice as the main unit.

II.D.4. Any person may request the Division to examine a particular source category or activity for exemption from Air Pollutant Emission Notice or permit requirements.

II.D.4.a. Such requests shall be made separately from the permit application review procedure.

II.D.4.b. Such requests shall include documentation indicating that emissions from the source category or activity have a negligible impact on air quality and public health in Colorado, based on, but not limited to, the following criteria.

II.D.4.b.(i) Emissions from the source or activity are below the Air Pollutant Emission Notice or permit emission de minimis levels set forth in this Regulation Number 3; or

II.D.4.b.(ii) The existing Division emission inventory is sufficient to indicate that the source or activity has a negligible impact; or

II.D.4.b.(iii) For permit exemptions, criteria in Sections II.D.4.b.(i) and/or II.D.4.b.(ii), above, are met, and the source or activity has no applicable requirement that applies to it, and the Division finds that monitoring or record keeping are not necessary.

II.D.4.b.(iv) Exemptions shall not be granted for any source or activity that is subject to any federal applicable requirement. The Division shall determine on a case-by-case basis if sources or activities subject to state only regulations may be granted an exemption.

II.D.4.c. None of the activities submitted as exemption requests to the Division may be taken by a source until the Commission has duly adopted the exemptions as revisions to this Regulation Number 3 and the U.S. EPA has approved the exemption requests.

II.D.5. Commercial (for hire) laboratories whose primary responsibilities are to perform qualitative or quantitative analysis on environmental, clinical, geological, forensic, or process samples may estimate emissions for purposes of Air Pollutant Emission Notice reporting based upon a mass balance calculation utilizing inventory and purchase records of solvents and reagents. Such laboratories may, at their discretion, group emission points if such grouping meets the grouping criteria outlined in this regulation. All inert samples are exempt from Air Pollutant Emission Notice reporting. Emissions from samples subjected to analysis provided to such laboratories for analysis and testing, and by-products that result from sample testing, are exempt from Air Pollutant Emission Notice reporting, provided such samples subjected to analysis are less than five gallons for liquids, or five pounds for solids.

II.D.6. Research and development activities that do not fall within the small scale exemption in Section II.D.1.i. may estimate emissions for purposes of Air Pollutant Emission Notice reporting based upon either a mass balance calculation utilizing inventory and purchase records, or best engineering judgment. Such facilities may file an Air Pollutant Emission Notice or revised Air Pollutant Emission Notice on an annual basis by April 30 of the year following the project's conclusion for each project that is not exempt under Section II.D.1.i., irrespective of Section II.C., herein (revised Air Pollutant Emission Notice requirements), such Air Pollutant Emission Notices shall be filed on a per project basis and shall be based on controlled actual emissions.

III. Administrative Permit Amendment Procedures

III.A. An application for an administrative permit amendment shall be prepared on forms supplied by the Division.

III.B. Within sixty calendar days after receipt of a complete application for an administrative permit amendment the Division shall issue its final determination on such application in accordance with the following:

III.B.1. Deny the application for an administrative permit amendment; or

III.B.2. Grant the application and incorporate any such changes into the permit providing such permit revisions are made pursuant to this Part A, Section III.

III.C. A source may implement the changes addressed in the application for an administrative amendment immediately upon submittal of request, subject to the final determination of the Division.

III.D. As required under the Federal Act, the Division shall transmit to the Administrator a copy of each revised permit made pursuant to an administrative permit amendment under this provision.

III.E. No public notice or review by affected states shall be necessary for permit revisions made pursuant to administrative amendment procedures.

III.F. Administrative permit amendments for purposes of the acid rain portion of a permit shall be governed by regulations promulgated under Title IV of the Federal Act, found at Code of Federal Regulations Title 40, Part 72.

IV. Operational Flexibility

IV.A. Alternative operating scenarios

No permit revision is required for reasonably anticipated operating scenarios identified by the source in its application for a permit and approved by the Division, provided the permit contains terms and conditions that:

IV.A.1. Require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

IV.A.2. Ensure that the terms and conditions of each such alternative scenario meet all applicable requirements of the state and Federal Act.

IV.A.3. Extend the permit shield to all operating permit terms and conditions under each such operating scenario.

IV.B. Trading based on the permit

If allowed by the applicable state implementation plan, no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes in emissions that are provided for in the permit. The permit applicant must request such provisions to be included in its permit, and if approved by the Division, the permit shall contain terms and conditions that:

IV.B.1. For operating permits, include all terms required under Section V.C. of Part C;

IV.B.2. Ensure that changes resulting from such increases and decreases in emissions meet all applicable requirements under the state and Federal Acts;

IV.B.3. Extend the permit shield to all operating permit terms and conditions that allow such increases and decreases in emissions.

IV.C. Emissions trading under permit caps

No permit revision shall be required where an applicant requests, and the Division approves such request, for a permit containing terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility. Procedures for such changes are:

IV.C.1. For operating permits, the permit shall contain terms and conditions required pursuant to Section V.C. of Part C;

IV.C.2. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable;

IV.C.3. Any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades shall not be included in this provision allowing emissions trading without permit revision;

IV.C.4. The source shall comply with all other applicable requirements.

IV.C.5. The source shall provide a minimum of seven days written notification in advance of the proposed changes to the Division and to the Administrator. The notice must be received by the Division no later than seven days in advance of the proposed changes. The source and the Division shall attach each such notice to their copy of the relevant permit. The notice shall contain:

IV.C.5.a. When the change will occur;

IV.C.5.b. A description of the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit;

IV.C.5.c. The permit shield shall extend to all operating permit terms and conditions that allow such increases and decreases in emissions.

IV.C.6. A source shall be allowed to make such change proposed in its notice on the day following the last day of the advance notice described in Section IV.C.5. above, if the Division has not responded nor objected to such changes on or before that day.

V. Certification And Trading Of Emission Reduction Credits Offset And Netting Transactions

V.A. Purpose

This section establishes procedures for the recording of certified emissions reductions and for their use in emission credit transactions. These procedures are intended to:

V.A.1. Promote economic development and lower the cost of meeting pollution control requirements while assuring ambient air quality progress and continued air quality maintenance; and

V.A.2. Encourage development of innovative pollution control methods and technologies.

V.B. Scope

This section applies to any pollutant regulated under the Colorado Air Quality Control Act or the regulations promulgated there under in all attainment, attainment/maintenance, and nonattainment areas of the state. This section does not apply to emissions trading under permit caps in Section IV.C. of Part A.

V.C. Definitions

V.C.1. Alternative compliance methods means the use of emissions reductions credits to meet emissions control requirements in lieu of an applicable control technique guidance method or reasonably available control technology.

V.C.2. Bubble lets existing sources (or groups of sources) increase emissions at one operation in exchange for compensating extra decreases in emissions at another operation. The net result must be equivalent to or better than would have been accomplished using conventional source specific controls.

V.C.3. Certified emissions reduction means a reduction in emissions below the baseline that has been certified by the Division in accordance with the criteria of Section V.E., and that may then be used in an emission credit transaction.

V.C.4. Criteria pollutant means an air pollutant for which a National Ambient Air Quality Standard has been promulgated.

V.C.5. Emission credit transaction means the use of certified emission reduction credits in a bubble, netting or offset transaction or as an alternative compliance method.

V.C.6. Major stationary source means major stationary source as defined in Section II.A.25. of Part D of this regulation.

V.C.7. Net emissions increase means net emissions increase as defined in Section II.A.27. of Part D of this regulation.

V.C.8. Netting is designed to exempt modifications of existing major stationary sources from new source review requirements if the resultant impact does not exceed any of the significant values found in the definition of significant in Section II.A.44. of Part D of this regulation.

V.C.9. Non-inventoried source means any source that has not been recorded on the Division's emission inventory system.

V.C.10. Offset means a transaction in which a certified emissions reduction is used either to avoid causing a violation of an increment in an attainment or attainment/maintenance area, to meet the requirements of Section V.A.3. of Part D of this regulation, regarding the maintenance of reasonable further progress towards attainment of the National Ambient Air Quality Standards in nonattainment areas, or to avoid contributing to visibility or other air quality related values impairment in a Class I area.

V.C.11. Registry means the Division's record of the certification and use of emissions reductions.

V.C.12. Significant means significant as defined in Section II.A.44. of Part D of this regulation.

V.C.13. Surplus means emission reductions not required by current regulations, relied on for state implementation plan planning purposes, and not used to meet any other regulatory requirement.

V.C.14. Open Dust means solid or other air borne particulate matter (excluding particulates produced directly during combustion) resulting from natural forces or from surface use or disturbance, including, but not limited to, all dust from agriculture, construction, forestry, unpaved roads, mining, exploration, or similar activities in which earth is either moved, stored, transported or redistributed.

V.C.15. Baseline emissions are equal to the product of the:

V.C.15.a. Emission Rate (ER), specified in terms of mass emission per unit of production or throughput (e.g., pounds sulfur dioxide per million British thermal units or pounds of volatile organic compounds per weight of solids applied);

V.C.15.b. Average hourly capacity utilization (CU) e.g., millions of British thermal units per hour or weight of solids applied per hour; and

V.C.15.c. Number of hours of operation (H) during the relevant time period i.e., baseline emissions = ER x CU x H. Net baseline emissions for a bubble are the sum of the baseline emissions of all sources involved in the trade.

V.D. Procedure for Certification of Emissions Reductions and Approval of Transactions

V.D.1. The owner or operator of a source may request the Division to certify any emissions reduction anticipated to occur after the effective date of this section, provided the owner or operator files his application prior to the occurrence of the reduction, at a time at which the source is emitting the baseline emissions of the subject pollutant. Sources that shutdown prior to the application to bank or trade have zero emissions, and therefore no credit is available.

V.D.2. Upon receiving an application for certification, the Division may require the applicant to submit all data and calculations necessary to verify the baseline emissions or the reduction of emissions below the base level including, but not limited to, documentation of operating hours and inputs. The Division may also require the applicant to perform source tests to establish the baseline emissions or the reduction of emissions below the baseline emissions. The Division shall not certify reductions anticipated to occur after the effective date of this regulation until the reductions have occurred and been verified.

V.D.3. The Division shall maintain an emissions reduction registry, in which it shall maintain a record of all certified emissions reductions, and of the use of certified emissions reductions in emission credit transactions. The information contained in such registry shall include the name and address of the owner or operator of the source creating the emissions reduction, the location of the source, its stack parameters, the temperature and velocity of its plume, particle size, the existence of any hazardous pollutants, daily and seasonal emission rates, and any other data that might reasonably be necessary to evaluate future use.

V.D.4. If the Division determines that certification should be granted it shall modify the permit of the applicant to provide that the allowable emissions are equal to the level of current emissions utilized in the calculation of the emissions reduction. The owner or operator of a source not required to obtain a permit by provisions of law other than this section shall be required to apply for and accept a permit as a condition of obtaining a certified emissions reduction. Such permits shall contain only those conditions necessary to

ensure the enforcement of the emissions limitations applicable to the source as a result of certification of its emissions reduction.

V.D.5. The amount of the emissions reduction to be certified and entered in the registry shall be calculated as follows:

V.D.5.a. For any emissions reduction that has occurred in an attainment or attainment/maintenance area, the amount of the certified emissions reduction shall be 90 percent of the amount by which emissions have been reduced below the baseline emissions.

V.D.5.b. For any emissions reduction that has occurred in a nonattainment area, the amount of the certified emission reduction shall be 80 percent of the amount by which emissions have been reduced below the baseline emissions.

V.D.5.c. For bubbles in nonattainment areas that need, but lack, approved demonstrations of attainment, i.e., areas with unapproved state implementation plans, a greater discount may be taken. This discount will be based on the area's total baseline emissions, the target emissions for attainment, the emissions for the projected attainment year and the reductions needed to achieve attainment. These values are dynamic and so the discount value may change from year to year but will never be less than 20 percent. These transactions will require a state implementation plan revision.

V.D.6. An application may be filed for approval of the use of a certified emissions reduction in an emissions credit transaction simultaneously with the filing of a certification application, or within seven years after certification has been granted. If the transaction would require the modification of permits held by more than one person, the application shall be jointly submitted by all potentially affected permittees. The Commission shall determine whether to approve all bubble and alternative compliance method transactions, or any offset transactions that, pursuant to Section V.H., require a state implementation plan revision. The Division shall determine whether to approve all netting transactions, or any offset transactions for which no state implementation plan revision is required. The Commission may approve the use of a certified emissions reduction credit as an alternative compliance method in lieu of a specified control technique guidance method or reasonable available control technology.

V.D.7. Applications for certification of emissions reductions and approval of transactions shall be made on forms provided by the Division. Any source applying for approval of an alternative compliance method transaction shall submit to the Division a construction permit application in accordance with Regulation Number 3, Part B, Section III. for the construction or modification, reflecting the source and proposed use of the emissions credit. The application shall contain information sufficient to demonstrate that the criteria set forth in Section V.F. of this Part A are met as well as the criteria for approval of the state implementation plan revision. The Division shall review the application and prepare its preliminary analysis in accordance with Regulation Number 3, Part B, Section III.B. The source requesting approval for the transaction and the state implementation plan revision should be granted, and shall provide with its petition, a copy of the preliminary analysis of the Division. The Division shall not grant initial approval of any such application until the Commission has approved the transaction, the source has met the conditions placed on the transaction by the Commission, and the requirements of all other applicable regulations are met.

V.D.8. Where the owner or operator of a source requests a state implementation plan revision pursuant to this Section V., the Commission shall set a hearing on the proposed revision to be held in accordance with the procedures set forth in Colorado Revised Statutes

Section 25-7-119. With respect to applications for certification of emissions reductions, or for approval of any netting transactions, or offset transactions within the Division's jurisdiction under Section V.H.2., the same time limitations for emission permits as found in Part B Section III.B. of this regulation shall apply.

V.D.9. Applicants for certification of an emissions reduction, or for approval of any emission credit transaction, shall be assessed fees for time spent by Division personnel in evaluating such applications in accord with the criteria for assessment of emissions permit fees set forth in Section VI.C. of this Part A. Where more than one person applies for approval of a transaction, all such persons shall be jointly liable for the fees assessed. Applicants shall be responsible for paying such fees regardless of whether the Division approves or denies an application. The costs of Division review of any emissions modeling or other information necessary for the Division to formulate recommendations to the Commission regarding any proposed emission credit transaction shall be included in the costs attributed to the permit application for the source(s) seeking approval of the transaction and shall be paid by the source regardless of whether the emission credit transaction is approved.

V.D.10. The state shall not utilize a certified emissions reduction in making demonstrations of attainment, or reasonable further progress toward attainment of the National Ambient Air Quality Standards, within seven years after the date of certification, or at any time after an application for use of the certified emissions reduction in a transaction has been approved. Where no application has been filed for the approval of the use of a certified emissions reduction within seven years after certification was granted, the state shall subsequently utilize the reduction in making demonstrations of attainment, or reasonable further progress towards attainment of the National Ambient Air Quality Standards. This seven-year period shall be tolled during any time in that there is a pending application before the Division or the Commission for approval of a bubble, netting, or offset transaction based on the certified emissions reduction.

V.D.11. Applications for approval of transactions involving PM10 (fine particulates for Prevention of Significant Deterioration increment consumption), sulfur dioxide, carbon monoxide, lead, and oxides of nitrogen (where visibility impacts are of concern), shall be subject to the following ambient air quality modeling requirements:

V.D.11.a. De minimis: In general modeling is not required to determine the ambient equivalence of trades in which applicable net baseline emissions do not increase and in that the sum of the emissions increases, looking only at the increasing sources, 15 tons per year for PM10, 40 tons per year for sulfur dioxide, 100 tons per year for carbon monoxide, 40 tons per year for nitrogen oxide (where visibility impacts are of concern), or 0.6 tons per year for lead, after applicable control requirements. For purposes of Prevention of Significant Deterioration any increase in PM10 should be modeled.

V.D.11.b. Level 1: In general, modeling to determine ambient equivalence is not required if:

V.D.11.b.(i) The trade does not result in an increase in applicable net baseline emissions;

V.D.11.b.(ii) The relevant sources are located in the same immediate vicinity (within 250 meters) of each other;

V.D.11.b.(iii) An increase in baseline emissions does not occur at the source with the lower effective plume height, as determined under the U.S. EPA

approved and Division accepted guidelines, as interpreted in the Code of Federal Regulations Title 40, Subpart 52.343.

V.D.11.b.(iv) No complex terrain is within the area of significant impact (see Figure 1) of the trade or 50 kilometers, whichever is less;

V.D.11.b.(v) Stacks with increasing baseline emissions are sufficiently tall to avoid possible downwash situations, as determined by good engineering practice;

V.D.11.b.(vi) The trade does not involve open dust sources.

V.D.11.c. Level II: Bubble trades that are neither De minimis nor Level I may nevertheless be evaluated for approval based on modeling to determine ambient equivalence limited solely to the impacts of the specific emission sources involved in the trade, if:

V.D.11.c.(i) There is no increase in applicable net baseline emissions;

V.D.11.c.(ii) If the potential change in emissions before and after the trade will not cause a significant increase in pollutant concentrations at any receptor for an averaging time specified in an applicable ambient air quality standard; and

V.D.11.c.(iii) Such an analysis does not predict any increase in ambient concentrations in a Class I or Category I area. However, a bubble will not be approved under Level II where evidence clearly indicates the bubble would create a new violation of an ambient standard or Prevention of Significant Deterioration increment or would delay the planned removal of an existing violation. The change in concentration from the before-trade case to the after-trade case must, in general, be modeled using refined models for each appropriate averaging time for the relevant national ambient air quality standards for each receptor, using the most recent full year of meteorological data. Other techniques may be approved where sources show they equally well protect national ambient air quality standards, applicable Prevention of Significant Deterioration increments, and visibility. For example, in limited circumstances conservative screening models may be acceptable in lieu of refined models. In such cases, use of a full year of meteorological data may not be necessary. Such screening models may be acceptable where: (A) the screening model shows that all the emissions from the stack(s) with increasing emissions would not produce exceedances of the Level II significance values; (B) the stack parameters at the stack(s) with increasing emissions do not change; and (C) the screening model shows that the increase in emissions at the increasing stack(s) would not produce exceedances of these significant values.

In determining significant impact for Level II bubble trades, the Division will use the following significance values to identify trades whose potential ambient impact need not be further evaluated before approval:

8-micrograms/cubic meter (µg/m3) for any twenty-four hour period for PM10;

4-micrograms/cubic meter (µg/m3) for any annual arithmetic mean for PM10;

13-micrograms/cubic meter (µg/m3) for any twenty-four hour period for sulfur dioxide;

46-micrograms/cubic meter (µg/m3) for any three-hour period for sulfur dioxide;

3-micrograms/cubic meter (µg/m3) for any annual period for sulfur dioxide;

575-micrograms/cubic meter (µg/m3) for any eight-hour period for carbon monoxide;

2,300-micrograms/cubic meter (µg/m3) for any one-hour period for carbon monoxide;

0.1 micrograms/cubic meter (µg/m3) for any three-month period for lead. Except that:

V.D.11.c.(iii)(A) For offset transactions, significant impact shall be determined by the values found in the table of significant values in Section VI.D.2. of Part D of this regulation.

V.D.11.c.(iii)(B) Only process fugitive emissions vented through stacks may be approved in a Level II analysis.

V.D.11.c.(iii)(C) Trades involving open dust sources may not be approved in a Level II analysis.

V.D.11.c.(iii)(D) Trades involving complex terrain cannot be approved with a Level II analysis.

V.D.11.d. LEVEL III full dispersion modeling considering all sources affecting the trade's area of impact is required to determine ambient equivalence if applicable net baseline emissions will increase as a result of the trade, or if the trade cannot meet criteria for approval under De Minimis, Level I or Level II.

V.D.11.e. Approved Models:

Modeling: Only U.S. EPA-approved models may be used in banking transactions. Use of non-guideline models will be allowed once they have been approved according to the requirements of Section VIII.A.1. of Part A of this regulation.

V.D.12. Following the certification of an emissions reduction, if the Division determines that certification was granted on the basis of fraud or material misstatement or omission, the Division shall revoke certification of the reduction. Certification shall be revoked only after the owners or operators of the affected sources have received notice and, if requested, a hearing has been conducted. In such cases the Division shall also modify the permit of the source that has used the emissions reduction, so that the permit will contain all conditions that would have applied if the emissions reduction had not been certified initially.

V.E. Criteria for Certification of Emissions Reductions

An emissions reduction shall be certified for use in an emission credit transaction, provided it meets the following criteria:

V.E.1. The emissions reduction shall be surplus. Surplus reductions are those below the baseline emissions. The baseline emissions shall be determined as follows:

V.E.1.a. In attainment and attainment/maintenance areas, the baseline emissions shall be a source's actual emissions of the subject pollutant, or allowable emissions whichever is lower, for the three baseline factors. Reasonably Available Control Technology shall be as set forth in the State implementation plan for the source. Where Reasonably Available Control Technology has not been determined in the state implementation plan for the source, it shall be determined by the Division.

V.E.1.b. In nonattainment areas for which there is a demonstration of attainment of the National Ambient Air Quality Standards approved by the U.S. EPA the baseline emissions shall be actual emissions, provided, however, the baseline emissions shall not exceed reasonably available control technology as defined in the state implementation plan or the level of emissions used by the state in making a demonstration of attainment.

V.E.1.c. In nonattainment areas for which there is not a demonstration of attainment of National Ambient Air Quality Standards approved by the U.S. EPA, the baseline emissions shall be the lower of: 1) the actual emissions, 2) allowable emissions under the state implementation plan or 3) allowable emissions if the source is subject to Reasonably Available Control Technology.

V.E.1.d. Emission rate, capacity utilization and hours of operation must be used to compute pre-trade and post-trade emission levels. Baseline must be established on an annual basis and for all other averaging periods consistent with the relevant National Ambient Air Quality Standards and Prevention of Significant Deterioration increments.

V.E.2. No emissions reduction shall be certified if the Division has relied upon the occurrence of the reduction in demonstrating attainment of the National Ambient Air Quality Standards or reasonable further progress towards attainment, or in establishing a baseline concentration.

V.E.3. Each certified reduction of a pollutant's emissions shall be quantified in the same unit of measurement used in the standard or regulation applicable to the pollutant.

V.E.4. In attainment and attainment/maintenance areas, reductions at major stationary sources that commenced construction after January 1, 1975 may be able to qualify for credit whether such reductions occurred before or after the Prevention of Significant Deterioration baseline triggering date. Other emission reductions (e.g., at minor sources) cannot qualify for credit where the Prevention of Significant Deterioration baseline date is or has been triggered and such reductions occurred prior to the trigger date, unless these reductions are not assumed in the Prevention of Significant Deterioration baselines. Since banked emission reduction credits must be considered to be "In the Air" for all planning purposes, if the baseline date is triggered before banked credits are actually used, such banked credits will be considered as part of the baseline and will not consume increment when used in an emissions trade.

In attainment and attainment/maintenance areas where the Prevention of Significant Deterioration baseline has not been triggered as of the date the permitting authority takes relevant final action on the trading transaction, reductions below current state

implementation plan or permit limits generally may be used without special restrictions in bubble or banking transactions, provided they are otherwise creditable and there is assurance that National Ambient Air Quality Standards will not be violated due to any potential increase in actual emissions. However, reductions at sources other than major stationary sources on which construction commenced before January 1, 1975 may not be used to balance increases at such pre 1975 major sources.

V.E.5. Emission reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an U.S. EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns that occurred prior to August 7, 1977. For purposes of this section a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources.

V.E.5.a. Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions of Section A, above, are met.

V.E.6. No emission reduction credits are allowed from mobile sources unless those sources are subject to ambient impact and new source review permitting.

V.E.7. Reductions down to compliance levels may not qualify for emission reduction credit.

V.E.8. If an existing source commits to switch to a cleaner fuel at some future date, emission reduction credit is allowable only if a permit is conditioned to require use of a specified alternative control measure that would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The Division will ensure that adequate long-term supplies of the new fuel are available before granting the reduction credit.

V.E.9. Emission reductions otherwise required by the Federal Act shall not be creditable as emission reductions. Incidental emission reductions that are not otherwise required by the Federal Act are creditable as emission reductions if such emission reductions meet the requirements of Section V. of Part D of this regulation, if applicable and this Section V.

V.E.10. The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Federal Act shall be determined by summing the difference between the allowable emissions (as defined in Section I.B.7. of this part) after the modification and the actual emissions (as defined in Section II.A.1. of Part D) before the modification for each emissions unit.

V.F. Criteria for Approval of all Transactions

The use of an emissions reduction in an emission credit transaction shall be approved only if it meets the following criteria:

V.F.1. The transaction shall involve like pollutants. For toxic or volatile organic compound pollutants, the trade should involve the same degrees of toxicity or photochemical reactivity or else a greater reduction may be required. New or modified major sources of a PM10 precursor can only obtain offsets from emissions reductions in that same PM10 precursor or in PM10. New or modified major sources of PM10 can only obtain offsets from emissions reductions in PM10. The offsets must be greater than one for one and represent a net air quality benefit in the area the source is proposing to locate or modify. (See exception in Section V.H.8.)

V.F.2. No transaction shall be approved if it will result in an increased concentration, at the point of maximum impact, of hazardous air pollutants.

V.F.3. Where a significant fraction of a criteria pollutant stream has been listed as hazardous by the Commission under Regulation Number 8 or the U.S. EPA under United States Code, Title 42, Section 7412 but has not yet been regulated, emissions containing that pollutant from sources within two hundred and fifty meters of each other may only be traded against each other on a greater than one for one basis that assures a net decrease in emissions of the hazardous pollutant.

V.F.4. Hazardous and non-hazardous emissions of the same criteria pollutant may be traded against each other, provided the total emissions containing the hazardous pollutant from the sources involved in the transaction are required to decrease as a result of the transaction.

V.F.5. No transaction may be approved that is inconsistent with any standard established by the Federal Act, the state Act or the regulations promulgated under either, or to circumvent New Source Performance Standards requirements or Best Available Control Technology although the Commission may approve a transaction using a certified emissions reduction credit in lieu of a specified control technique guidance method or reasonably available control technology.

V.F.6. No transaction shall be approved unless either:

V.F.6.a. The source at which the emissions reduction occurred and the source using the emissions reductions are in the same nonattainment area or Prevention of Significant Deterioration baseline area; or

V.F.6.b. The emissions reduction is to be used as an offset to meet the requirements of Section V.A.3. of Part D of this regulation, and the conditions of that section are met for the use of an offset obtained from a source outside the nonattainment area.

V.F.7. Emission reduction credits may not be used to meet applicable technology based requirements for new sources such as New Source Performance Standards, Best Available Control Technology, or Lowest Achievable Emission Rate, although the Commission may approve a transaction using a certified emissions reduction credit in lieu of a specified control technique guidance method or reasonably available control technology.

V.F.8. Trades Involving Open Dust: Sources of particulate emissions may be approved through case by case state implementation plan revisions based on modeled demonstrations of

ambient equivalence. Sources proposing such trades must commit, as part of the trade's approval, to:

V.F.8.a. Undertake a post approval monitoring program to evaluate the impact of their control efforts, and

V.F.8.b. Make further enforceable reductions if post trade monitoring indicates initial open dust controls do not produce the predicted air quality results.

V.F.9. The federal land manager must be notified if an emissions trade will take place within one hundred kilometers of a Prevention of Significant Deterioration Class I area. Notification must occur early enough in the review process to allow at least thirty days for the submittal of comments before the trade will be approved by the reviewing authority.

Where a bubble within fifty kilometers of a Prevention of Significant Deterioration Class I area is submitted as a case-by-case state implementation plan revision, the Division may call for additional technical support, beyond the applicable requirements of the modeling screen if deemed necessary to protect air quality in the Class I area.

V.F.10. Effect on Trades of Subsequently-Discovered Clean Air Act Problems: Revisitation Considerations - If ambient violations are discovered in an area where the Division has approved a trade, or if other violations of the act are discovered in that area, sources in the trade should be aware that they are potentially subject to requirements for additional emission reductions, just as are all other sources in the area.

V.F.11. For volatile organic compound and nitrogen oxide trades, pound for pound trades will be considered equal in ambient effect where all sources involved in the trade are in the same control strategy demonstration area (nonattainment area) or if outside that area are sufficiently close to show an equal effect.

V.F.12. For volatile organic compound trades involving surface coating, the emissions must be calculated on a solids applied basis and should specify the maximum time period over which the emissions may be averaged, not to exceed twenty-four hours.

V.F.13. The following trades require a state implementation plan revision:

V.F.13.a. PM10, sulfur dioxide, carbon monoxide or lead trades requiring full-scale dispersion modeling under Level III;

V.F.13.b. PM10, sulfur dioxide, carbon monoxide or lead trades where complex terrain is within the area of the source's significant impact or fifty kilometers, whichever is less, unless the trade does not result in a modification of effective stack heights and the trade otherwise qualifies as De minimis or Level I. The area of significant impact can be determined from Figure 1;

V.F.13.c. Open Dust Trades;

V.F.13.d. Level II trades involving process fugitive PM10, sulfur dioxide , carbon monoxide or lead emissions not discharged through stacks;

V.F.13.e. Trades involving Emission Reduction Credits from mobile sources (see Section V.E.7.);

V.F.13.f. Trades involving sources that are subject of a notice of violation (NOV), noncompliance penalty action or the filing of a judicial complaint;

V.F.13.g. Interstate trades;

V.F.13.h. Volatile organic compound trades with averaging times longer than twenty-four hours;

V.F.13.i. Trades involving work practice and equipment standards;

V.F.13.j. Trades involving negotiated Reasonably Available Control Technology baselines;

V.F.13.k. Trades affecting areas that need but lack approved demonstrations of attainment.

V.F.13.l. Emission credit transactions used as an alternative compliance method.

V.F.14. No emission credit transaction shall be approved unless the terms of the transaction are incorporated in permits applicable to the originating (as applicable) and receiving emissions sources.

V.F.15. Emission credit transactions that require a state implementation plan revision shall be considered by the Commission on a case-by-case basis. The source requesting approval of the transaction has the burden of demonstrating that all the criteria of this Section V.F., are met and of demonstrating that all applicable requirements for approval of the state implementation plan revision has been met.

V.G. Bubble Transactions

V.G.1. An owner or operator of an existing source may apply to the Commission for approval of a state implementation plan revision establishing a bubble. The bubble shall establish new emissions limitations for two or more facilities or operations within the source.

V.G.2. The Commission shall not approve a bubble unless it meets the criteria for approval of Section V.F., and the Division has first certified an emissions reduction at a facility or operation included in the bubble.

V.G.3. As part of the certification process, the amount of allowable emissions shall be reduced at the facility or operation where the emissions reduction has occurred in accord with Section V.D.5. As part of the bubble approval, the Commission may approve an increase in the total allowable emissions at the other facilities or operations covered by the bubble, by an amount not to exceed the amount of the subject certified emissions reduction.

V.G.4. As part of the bubble approval, the Commission may extend compliance deadlines otherwise required by Commission regulations for volatile organic compounds or carbon monoxide emissions, provided the following criteria are met:

V.G.4.a. The applicant must demonstrate to the satisfaction of the Commission that reasonable further progress toward the attainment of the National Ambient Air Quality Standards under the state implementation plan shall be maintained either by:

V.G.4.a.(i) Achievement of emissions reductions earlier than otherwise required by certain facilities or operations covered by the bubble; or

V.G.4.a.(ii) Temporary use of a certified emissions reduction to assure reasonable further progress toward attainment of the National Ambient Air Quality Standards.

V.G.5. If subsequent to the approval of a bubble, the Commission promulgates new regulations or amends existing regulations applicable to a source for which the bubble has been approved, the source shall be required to meet the new or amended regulations, irrespective of the bubble, by either further reducing emissions or using certified emissions reductions as offsets.

V.G.6. Bubble applications in areas that require but lack approved demonstrations of attainment, i.e., non approved state implementation plans, must be accompanied by assurances of consistency with ambient progress and air quality planning goals specified below:

V.G.6.a. The resulting emission limits comply with the reduction requirements of Section V.D.5.c., and the baseline requirements of Section V.E.;

V.G.6.b. The bubble emission limits will be included in any new state implementation plan and associated control strategy demonstration;

V.G.6.c. The bubble will not constrain the Division's ability to obtain any additional emission reductions needed to expeditiously attain and maintain ambient air quality standards;

V.G.6.d. The Division is making reasonable efforts to develop a complete approvable state implementation plan and intends to adhere to the schedule for such development (including dates for completion of emission inventory and subsequent increments of progress) stated in or with the letter formally submitting the bubble.

V.G.7. Bubbles should not increase applicable net baseline emissions. Ordinarily, bubbles may not result in an increase in applicable net baseline emissions. Such a bubble would require a case-by-case state implementation plan revision, and may only be approved based upon a combined Level III and Level II modeling analysis (i.e., an analysis sufficient to show that all applicable requirements of a full Level III analysis are met, and that the bubble would not result in any exceedance of significance values specified for a Level II analysis at any receptor for any averaging time specified in an applicable ambient air quality standard).

V.G.8. Bubbles should not increase emissions of hazardous or toxic air pollutants.

V.H. Offset Transactions

V.H.1. The owner or operator of a source at which an emissions reduction has occurred, and the owner or operator of another source who wishes to use the emissions reduction as an offset, may apply for approval of an offset transaction. In such transactions certified emissions reductions may be applied to avoid causing a violation of an increment in an attainment or attainment/maintenance area, or to meet the requirements of Section V.A.3. of Part D of this regulation. A certified emissions reduction may not be used as an offset for the purpose of complying with an existing applicable emissions control regulation, except for Reasonably Available Control Technology.

V.H.2. The Division shall determine whether to approve an offset transaction in the following cases:

V.H.2.a. Where the source using the emissions reduction would be allowed to increase emissions by less than one hundred tons per year.

V.H.2.b. Where the transaction involves volatile organic compounds or oxides of nitrogen emissions.

V.H.2.c. Where the transaction involves sulfur dioxide, PM10 or carbon monoxide emissions, and all sources involved in the transaction are within two hundred and fifty meters of one another.

V.H.3. Any proposed offset transaction, other than those referred to in Section V.H.2., shall be treated as a request to the Commission for a state implementation plan revision.

V.H.4. Sources of PM10 precursors, sulfur dioxide, nitrogen oxide and carbon monoxide must seek offsets within reasonably close proximity. Sources of nitrogen oxide and volatile organic compounds may seek offsets over a greater area. However, for widely dispersed and volatile organic compound trades, a higher offset may be required.

V.H.5. If the applicant has used his best efforts in seeking the required emission offsets but was unsuccessful, the source may petition for use of some portion of growth allowance. The petition must state the emission increase will not interfere with Reasonably Further Progress and the petitioner is willing to enter into an enforceable program to provide the required emission offset at some future time.

V.H.6. In the absence of an approved attainment demonstration, banked Emission Reduction Credits from shutdowns or curtailments may be used for offsets only if the criteria stated in Section V.E.5.b. of Part A of this regulation are met.

V.H.7. In nonattainment areas with approved demonstrations, banked Emission Reduction Credits may be used for offsets in any trade provided the criteria stated in Section V.E.5.a. of Part A of this Regulation are met.

V.H.8. Interpollutant offsets (other than those offsets discussed above) may be approved by U.S. EPA on a case-by-case basis provided that the applicant demonstrates, on the basis of U.S. EPA-approved methods where possible, that the emissions increases from the new or modified source will not cause or contribute to a violation of an ambient air quality standard. A source's permit application that includes such an interpollutant offset proposal shall not be approved by the Division until there has been an opportunity for public hearing on the proposed emissions trade and until written approval has been received from the U.S. EPA.

V.I. Netting Transactions

V.I.1. Netting may exempt modifications of existing major sources from certain pre-construction permit requirements under new source review, so long as there is no significant net emission increase, as net emissions increase is defined in Section II.A.27. of Part D of this regulation. By netting out, the modifications is not considered major and therefore not subject to pre-construction permit requirements for major modifications as follows:

V.I.1.a. Section VI. of Part D of this regulation, for prevention of significant deterioration;

V.I.1.b. Visibility analysis; and

V.I.1.c. Section V.A. of Part D of this regulation, for nonattainment new source review.

V.I.2. The Division shall grant such an exemption if the emissions reduction qualifies as an Emission Reduction Credit under Regulation Number 3 meets the criteria in Section V.E., for certification, and the difference between the amount of the certified emissions reduction, and the amount of new pollutants to be emitted from the new or modified facility, does not constitute a significant increase of pollutants.

V.I.3. An increase of pollutants shall be considered significant if it equals or exceeds the amounts specified in the definition of significant in Part D of this regulation.

VI. Fees

VI.A. General

VI.A.1. Every person required to obtain a Construction or Operating Permit or to file an Air Pollution Emission Notice shall pay fees as set forth in the following sections. Such fees shall be charged to recover the direct and indirect costs incurred by the Division in processing permit applications, issuing permits, and in conducting a compliance monitoring and enforcement program. Such fees shall apply without regard to whether a permit is issued, denied, withdrawn, or revoked. Fees shall be charged as indicated in Section VI.D. of this part.

VI.B. Permit Processing Fees

VI.B.1. Applicants for a permit shall be assessed total fees that shall be partially determined at the time that the Division makes its decision whether to issue preliminary approval of the permit and partially at the time the Division makes its decision whether to issue final approval.

VI.B.2. The partial fee collected at the time the Division makes its decision whether to issue preliminary approval of the permit shall include the costs associated with the preliminary engineering evaluation, modeling, and analysis of impact on ambient air quality, notice and publication requirements, and such other costs as are required for the aforementioned activities incurred by the Division up to the time of the decision of whether to issue preliminary approval.

VI.B.3. The final fee collected at the time the Division makes its decision of whether to issue final approval shall include the balance of the total of all costs associated with enforcement of any terms and conditions of the emission permit, the supervision of compliance testing, notice and publication requirements, and such other costs as are required for the processing, issuance, and administration of the permit.

VI.B.4. If the Division requires more than thirty hours to process an application, the Division shall inform the owner or operator of the source and provide an estimate of what the actual charges may be, prior to commencing with processing of the application, unless the owner or operator waives this requirement in writing.

VI.B.5. All permit processing fees assessed must be received within thirty days of the date of receipt of the written request therefore. All fees collected under this regulation shall be made payable to the Colorado Department of Public Health and Environment. Construction permits may be issued prior to the Division's receipt of such fees. Failure to pay the permit processing fees within ninety days of the written request for fees may result in late fees or revocation of the permit. Permits issued in accordance with Part C of this regulation may be issued upon approval by the Division of a fee payment schedule.

VI.C. Annual Emissions Fees

VI.C.1. As used in this Section VI., in accordance with Colorado Revised Statute Section 25-7-114.7, regulated air pollutant means:

VI.C.1.a. A volatile organic compound;

VI.C.1.b. Each hazardous air pollutant;

VI.C.1.c. Each pollutant regulated under Section 111 of the Federal Act (New Source Performance Standards), except GHG;

VI.C.1.d. Each pollutant for which a National Ambient Air Quality Standard has been promulgated, except for carbon monoxide; and

VI.C.1.e. Each pollutant regulated under Section 25-7-109, except GHG of the state Act.

VI.C.1.f. The term regulated air pollutant does not include fugitive dust as defined in Section I.B.21. of this Part A, or any fraction thereof.

VI.C.2. Every owner or operator of an air pollution source required to file an Air Pollutant Emission Notice shall pay a nonrefundable annual emissions fee as set forth in Section VI.D.1. of this Part A.

VI.C.3. All annual emissions fees assessed must be received within sixty days of the date of issuance of the written request therefore. All fees collected under this regulation shall be made payable to the Colorado Department of Public Health and Environment.

VI.C.4. In no event shall an owner or operator of a source pay more than a fee based upon total annual emissions of four thousand tons of each regulated air pollutant per source.

VI.D. Fee Schedule

VI.D.1. Annual emission fees and permit processing fees shall be charged in accordance with and in the amounts and limits specified in the provisions of Colorado Revised Statutes Section 25-7-114.7. Annual emission fees for regulated pollutants shall be $22.90 per ton. Annual emission fees for hazardous air pollutants shall be $152.90 per ton. GHG is exempt from the requirement to pay annual emission fees.

VI.D.2. Air Pollutant Emission Notice filing fees shall be charged in accordance with and in the amounts and limits specified in the provisions of Colorado Revised Statutes Section 25-7-114.1.

VII. Confidential Information or Data Contained in Air Pollutant Emission Notices, Permit Applications, or Reports Submitted Pursuant to Part C, Section V.C.6.

VII.A. Upon written request to the Division, any person filing an Air Pollutant Emission Notice or permit application, or submitting reports pursuant to Regulation Number 3, Part C, Sections V.C.6. or V.C.7., may request that information contained in such an Air Pollutant Emission Notice, permit application, or report relating to secret processes or methods of manufacture or production be kept confidential. The written request must identify the basis for the claim that the information relates to secret processes or methods of manufacture or production. All information claimed as confidential must be segregated from the rest of the Air Pollutant Emission Notice, permit

application, or report when submitted, with each page clearly marked as "Confidential," "Trade Secret," or other similar marking.

VII.B. The Division will evaluate confidentiality claims based on the written request. The burden of establishing that the information relates to secret processes or methods of manufacture or production is on the claimant. Emission data, as defined in Colorado Revised Statutes Section 25-7-103(11.5), shall not be entitled to confidential treatment notwithstanding this Section VII., or any other law to the contrary. In no event shall an Operating Permit or the compliance certifications submitted pursuant to Section III.B.8. of Part C of this Regulation Number 3 be entitled to confidential treatment. If the Division determines that information requested to be kept confidential is not entitled to confidential treatment, it shall provide written notice of this determination at least three working days prior to making such information available to the public.

VII.C. A request for confidential treatment of information or data submitted to the Division shall be deemed a limited waiver by the applicant of the time constraints contained in Section III.B. of Part B, or Section IV. of Part C of this regulation. Therefore, any delay in the processing of a permit application resulting from the Division's being required to give notice under Section VII.B., hereof, shall not be considered in determining whether the time constraints set forth in this regulation have been met.

VIII. Technical Modeling and Monitoring Requirements

VIII.A. Air Quality Models

VIII.A.1. All estimates of ambient concentrations required under this Regulation Number 3 shall be based on the applicable air quality models, databases, and other requirements generally approved by U.S. EPA and specifically approved by the Division.

If a non-U.S. EPA approved model, such as a wind tunnel study, is proposed, the nature and requirements of such a model should be outlined to the Division at a pre-application meeting. The application will be deemed incomplete until there has been an opportunity for a public hearing on the proposed model and written approval of the U.S. EPA has been received.

VIII.B. Monitoring

VIII.B.1. All monitoring must be performed in accordance with U.S. EPA accepted procedures as approved by the Division.

VIII.B.2. An owner or operator may submit a monitoring program for a proposed source or modification to the Division for review. Within sixty days after such submittal, the Division shall:

VIII.B.2.a. Approve the monitoring program; or

VIII.B.2.b. Specify the changes necessary for approval; otherwise, the monitoring program shall be deemed approved.

VIII.C. Stack Heights

This regulation sets limits for the maximum stack height credit to be used in ambient air quality modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. It does not limit the actual physical stack height for any source. The following shall not be considered in determining whether an emission limitation is met:

VIII.C.1. Stack height in excess of good engineering practice; or

VIII.C.2. Any other dispersion technique except that the provisions of this Section VIII.C. shall not apply to stack heights in existence or dispersion techniques implemented before December 31, 1970. Sources that were constructed, reconstructed, or for which major modifications were carried out after December 31, 1970, and that are emitting pollutants from such stacks, or using such dispersion techniques, shall be subject to the provisions of this section.

VIII.D. Definitions as used in Section VIII.C.

VIII.D.1. Stack in existence means that the owner or operator had:

VIII.D.1.a. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or

VIII.D.1.b. Entered into binding agreements or contractual obligations that could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

VIII.D.2. Dispersion Technique means any technique that attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack that exceeds good engineering practice stack height, varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant, or by increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The preceding sentence does not include:

VIII.D.2.a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

VIII.D.2.b. The merging of exhaust gas streams where:

VIII.D.2.b.(i) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

VIII.D.2.b.(ii) After July 8, 1983, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of dispersion techniques shall apply only to the emission limitation for the pollutant affected by such change in operation; or

VIII.D.2.b.(iii) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emissions limitation or, in the event that no emission limitation was in existence prior to the merging, the reviewing agency shall presume that merging was significantly motivated by intent to gain emissions credit for greater dispersion.

Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

VIII.D.2.c. Smoke management in agricultural or silvicultural prescribed burning programs;

VIII.D.2.d. Episodic restrictions on residential wood burning and open burning; or

VIII.D.2.e. Techniques that increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed five thousand tons per year.

VIII.D.3. Good Engineering Practice Stack Height means the greater of:

VIII.D.3.a. 65 meters; or

VIII.D.3.b. For stacks in existence on January 12, 1979 and for which the owner or operator had obtained all applicable pre-construction permits or approvals required, Hg = 2.5H, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation; and

VIII.D.3.c. For all other stacks, Hg = H + 1.5L where:

VIII.D.3.c.(i) Hg = good engineering practice stack height measured from the ground level elevation at the base of the stack;

VIII.D.3.c.(ii) H = height of nearby structure(s) measured from the ground level elevation at the base of the stack;

VIII.D.3.c.(iii) L = lesser dimension (height or projected width) of nearby structure(s) provided that the reviewing agency may require the use of a field study or fluid model to verify Good Engineering Practice stack height for the source; or

VIII.D.3.d. The height demonstrated by a fluid model or a field study approved by the reviewing agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, structures, or terrain obstacles.

VIII.D.4. Nearby as applied to good engineering practice is:

VIII.D.4.a. For purposes of applying the formulae provided in Sections VIII.D.3.b. and VIII.D.3.c. in the definition of good engineering practice stack height means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometers (1/2 mile), and

VIII.D.4.b. For conducting demonstrations in Section VIII.D.3. in the definition of good engineering practice means not greater than 0.8 kilometers (1/2 mile), except that the portion of a terrain feature may be considered to be nearby that falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 kilometers from the stack that is at least forty percent of the good engineering practice stack height determine by the formula or twenty-six meters, whichever is greater.

VIII.D.5. Excessive concentrations for the purpose of determining good engineering practice, stack height in a fluid model or field study, means:

VIII.D.5.a. For sources seeking credit for stack height exceeding that established by the formulae, a maximum ground level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features that individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and that contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program, an excessive concentration alternatively means a maximum ground level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features that individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Division, an alternative emission rate shall be established in consultation with the source owner or operator;

VIII.D.5.b. For sources seeking credit after October 1, 1983 for increases in existing stack heights up to the heights established by the formulae, either:

VIII.D.5.b.(i) A maximum ground level concentration due in whole or part to downwash, wakes or eddy effects as provided in Section VIII.D.5.a. above, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used; or

VIII.D.5.b.(ii) The actual presence of a local nuisance caused by the existing stack, as determined by the Division; and

VIII.D.5.b.(iii) For sources seeking credit after January 12, 1979 for a stack height determined using the formula, where the Division requires the use of a field study or fluid model to verify good engineering practice stack height; for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers; and for sources seeking credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by the formulae: a maximum ground level concentration due in whole or part to downwash, wakes or eddy effects that is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes or eddy effects.

APPENDIX A

De Minimis Level For Non-Criteria Reportable Pollutants

An Air Pollutant Emission Notice must be filed for each emission point (individual or grouped) that has uncontrolled actual emissions equal to or greater than 250 pounds per year of any non-criteria reportable pollutant listed in Appendix B. As provided in Section II.C.4., sources submitting revised Air Pollutant Emission Notices due to Sections II.C.1.a., II.C.1.b., or II.C.1.e. must report actual annual emissions.

Actual annual emissions for sources utilizing emission control equipment or procedures represent controlled actual annual emissions.

If a non-criteria reportable pollutant is not listed in Appendix B, it does not have to be reported unless it is included in a chemical compound group.

Definitions

Point - an individual emission point or a group of individual emission points reported on one Air Pollutant Emission Notice as provided for in Part A, Section II.B.4.

APPENDIX B

Non-criteria Reportable Pollutants (Sorted by CAS Number)

Note: HAP means federal, or federal and state hazardous air pollutant

HAPs means state-only hazardous air pollutant

	CAS		**Toxics**
HAP	-		Lindane (all isomers of hexachlorocyclohexane)
	-		Thallium compounds
HAPs	-		Nitrilotriacetic acid, Ca-, Na-, K salts
	-		Ozone depleting compounds (CFC, etc.)
HAP	0		Antimony compounds
HAP	0		Arsenic compounds
HAP	0		Beryllium compounds
HAP	0		Cadmium compounds
HAP	0		Chromium compounds (incl. 6+ compounds, etc.)
HAP	0		Cobalt compounds (as cobalt metal dust and fumes)
HAP	0		Coke Oven Emissions
HAP	0		Cyanide compounds
HAP	0		Fine mineral fibers
HAP	0		Glycol ethers
HAP	0		Lead compounds (except elemental lead)
HAP	0		Manganese compounds

HAP	0		Mercury compounds
HAP	0		Nickel compounds (incl. nickel subsulfide)
HAP	0		Polycyclic Organic Matter
HAP	0		Radionuclides (including radon)
HAP	0		Selenium compounds
HAP	50000		Formaldehyde
HAP	51285		2,4-Dinitrophenol
HAP	51796		Ethyl carbamate (Urethane)
HAP	53963		2-Acetylaminofluorene
	540885		Tertiary Butyl Acetate
	54115		Nicotine
	54626		Aminopterin
HAPs	55185		N-Nitrosodiethylamine
	55914		Isofluorphate
HAPs	55981		1,4-Butanediol dimethanesulphonate
HAP	56235		Carbon tetrachloride
HAP	56382		Parathion
	56724		Coumaphos
HAP	57147		1,1-Dimethyl hydrazine
	57249		Strychnine
HAP	57578		Propiolactone, beta
HAP	57749		Chlordane
HAP	59892		N-Nitrosomorpholine
HAP	60117		Dimethyl aminoazobenzene
HAP	60344		Methyl hydrazine
HAP	60355		Acetamide

	60413		Strychnine sulfate
	60515		Dimethoate
HAPs	60571		Dieldrin
HAP	62533		Aniline
HAP	62737		Dichlorvos
	62748		Sodium fluoroacetate
HAP	62759		N-Nitrosodimethylamine
HAP	63252		Carbaryl
	64006		Phenol,3-(1-methylethyl)-methylcarbamate
HAP	64675		Diethyl sulfate
	66819		Cyclohexamide
HAP	67561		Methanol (Methyl alcohol)
HAP	67663		Chloroform (Trichloromethane)
HAP	67721		Hexachloroethane
HAP	68122		Dimethylformamide
HAP	71432		Benzene
HAP	71556		1,1,1-Trichloroethane (Methyl chloroform)
	72208		Endrin
HAP	72435		Methoxychlor
HAP	74839		Methyl bromide (Bromomethane)
HAP	74873		Methyl chloride (Chloromethane)
HAP	74884		Methyl iodide (Iodomethane)
	74931		Methyl mercaptan (Methanethiol)
HAP	75003		Ethyl chloride (Chloroethane)
HAP	75014		Vinyl chloride
HAP	75058		Acetonitrile

HAP	75070		Acetaldehyde
HAP	75092		Methylene chloride (Dichloromethane)
HAP	75150		Carbon disulfide
	75183		Dimethyl sulfide (Methyl sulfide)
HAP	75218		Ethylene oxide
HAP	75252		Bromoform
HAP	75343		Ethylidene dichloride (1,1-Dichloroethane)
HAP	75354		1,1-Dichloroethylene (Vinylidene chloride)
HAP	75445		Phosgene
HAP	75558		1,2-Propylenimine (2-Methyl aziridine)
HAP	75569		Propylene oxide
HAP	76448		Heptachlor
HAP	77474		Hexachlorocyclopentadiene
HAP	77781		Dimethyl sulfate
	77816		Tabun
	78342		Dioxathion
	78535		Amiton
HAP	78591		Isophorone
HAP	78875		Propylene dichloride (1,2-Dichloropropane)
	78944		Methyl vinyl ketone (3-butene-2-one)
HAPs	78988		Methylglyoxal
HAP	79005		1,1,2-Trichloroethane
HAP	79016		Trichloroethylene (TCE)
HAP	79061		Acrylamide
HAP	79107		Acrylic acid
HAP	79118		Chloroacetic acid

	79196		Thiosemicarbizide
	79210		Peracetic acid
	79221		Methyl chloroformate
HAP	79345		1,1,2,2-Tetrachloroethane
HAP	79447		Dimethyl carbamoyl chloride
HAP	79469		2-Nitropropane
HAP	80626		Methyl methacrylate
	81812		Warfarin
	82666		Diphacinone
HAP	82688		Pentachloronitrobenzene (Quintobenzene)
HAP	84742		Dibutyl phthalate
HAP	85449		Phthalic anhydride
	86500		Methyl azinphos
	86884		ANTU (alpha-naphthylthiourea)
HAP	87683		Hexachlorobutadiene
HAP	87865		Pentachlorophenol
	88051		Aniline,2,4,6-Trimethyl
HAP	88062		2,4,6-Trichlorophenol
HAP	90040		o-Anisidine
	91087		2,6-Toluene diisocyanate
HAP	91203		Naphthalene
HAP	91225		Quinoline
HAP	91941		3,3-Dichlorobenzidene
HAP	92524		Biphenyl
HAP	92671		4-Aminobiphenyl
HAP	92875		Benzidine (p-Diamino diphenyl)

HAP	92933		4-Nitrobiphenyl
HAP	94757		2,4-D, salts and esters (2,4-Dichlorophenoxyacetic acid)
HAP	95476		o-Xylene
HAP	95487		o-Cresol
HAP	95534		o-Toluidine
HAP	95807		2,4-Toluene diamine
HAP	95954		2,4,5-Trichlorophenol
HAP	96093		Styrene oxide
HAP	96128		1,2-Dibromo-3-chloropropane
HAP	96457		Ethylene thiourea
HAP	98077		Benzotrichloride
HAP	98828		Cumene
HAP	98862		Acetophenone
	98873		Benzal chloride [(Dichloromethyl)benzene; benzylidenechloride]
HAP	98953		Nitrobenzene
	99989		Dimethyl-p-phenylenediamine
HAP	100027		4-Nitrophenol
HAP	100414		Ethyl benzene (Phenylethane)
HAP	100425		Styrene
HAP	100447		Benzyl chloride, (Chloromethyl)benzene
HAP	101144		4,4-Methylene bis (2-chloroaniline)
HAP	101688		Methylene diphenyl diisocyanate (MDI)
HAP	101779		4,4-Methylenedianiline
HAP	106423		p-Xylene
HAP	106445		p-Cresol
HAP	106467		1,4-Dichlorobenzene

HAP	106503		p-Phenylenediamine
HAP	106514		Quinone
HAP	106887		1,2-Epoxybutane
HAP	106898		Epichlorohydrin (1-Chloro-2,3-epoxypropane)
HAP	106934		Ethylene dibromide (1,2-Dibromoethane)
	106967		Propargyl bromide
HAP	106990		1,3-Butadiene
HAP	107028		Acrolein
HAP	107051		Allyl chloride
HAP	107062		Ethylene dichloride (1,2-Dichloroethane)
	107073		Chloroethanol
HAP	107131		Acrylonitrile
	107153		Ethylene diamine
	107186		Allyl alcohol
HAP	107211		Ethylene glycol
HAP	107302		Chloromethyl methyl ether
	107448		Sarin
	107493		TEPP (Tetraethyldithiopyrophosphate)
HAP	108054		Vinyl acetate
HAP	108101		Methyl isobutyl ketone (MIBK) (Hexone)
	108236		Isopropyl chlorformate
HAP	108316		Maleic anhydride
HAP	108383		m-Xylene
HAP	108394		m-Cresol
HAP	108883		Toluene
HAP	108907		Chlorobenzene

	108918		Cyclohexylamine
HAP	108952		Phenol
	108985		Thiophenol (Phenyl mercaptan)
	110009		Furan
HAP	110543		Hexane
	110576		Trans 1,4-dichlorobutene
	110894		Piperidine
HAP	111422		Diethanolamine
HAP	111444		Dichloroethyl ether (Bis(2-chloroethyl)ether)
HAP	114261		Propoxur (Baygon)
	115264		Dimefox
HAPs	115286		Chlorendic acid
	115297		Endosulfan
	115902		Fensulfothion
	116063		Aldicarb (Temik)
HAPs	117102		Chrysazin (Dorbane)
HAP	117817		Bis(2-ethylhexyl) phthalate (DEHP) (Dioctyl phthalate)
HAP	118741		Hexachlorobenzene
	119380		Isopropylmethylpyrazolyl dimethylcarbamate (Isolan)
HAP	119904		3,3-Dimethoxybenzidine
HAP	119937		3,3'-Dimethyl benzidine
HAP	120809		Catechol
HAP	120821		1,2,4-Trichlorobenzene
HAP	121142		2,4-Dinitrotoluene
HAP	121448		Triethylamine
HAP	121697		N,N-Diethyl aniline (N,N-Dimethylaniline)

	122145		Fenitrothion
HAPs	122601		Phenyl glyceryl ether (3 phenoxy 1,2 propanediol)
HAP	122667		1,2-Diphenylhydrazine
HAP	123319		Hydroquinone
HAP	123386		Propionaldehyde
	123739		Crotonaldehyde (E)
HAP	123911		1,4-Dioxane (1,4-Diethyleneoxide)
	126987		Methacrylonitrile
HAP	126998		Chloroprene (2-Chloro-1,3-butadiene)
HAP	127184		Perchloroethylene (Tetrachloroethylene)
	129066		Warfarin sodium
HAP	131113		Dimethyl phthalate
	131522		Sodium pentachlorophenate
HAPs	132274		2-Biphenylol sodium salt
HAP	132649		Dibenzofurans
HAP	133062		Captan
HAP	133904		Chloramben (3-amino-2,5-dichloro benzoic acid)
	140761		Pyridine, 2-methyl-5-vinyl
HAP	140885		Ethyl acrylate
	141662		Dicrotophos
	144490		Fluoracetic acid
	149746		Dichloromethylphenylsilane
HAP	151564		Ethylene imine (Aziridine)
	152169		Diphosphoramide, octamethyl
HAP	156627		Calcium cyanamide
	297789		Isobenzan

	297972		Thionazin (O,O-Diethyl-O-(2-pyrazinyl)phosphorothioate)
	298000		Parathion-methyl
	298022		Phorate
	298044		Disulfoton
HAP	302012		Hydrazine
HAPs	309002		Aldrin
	315184		Mexacarbate
HAP	334883		Diazomethane
	359068		Fluoroacetyl chloride
	371620		Ethylene fluorohydrin
HAP	463581		Carbonyl sulfide
	465736		Isodrin
	470906		Chlorfenvinfos
	505602		Mustard gas (Dichlorodiethyl sulfide)
	509148		Tetranitromethane
HAP	510156		Chlorobenzilate (ethyl-4,4'-dichlorobenzilate)
HAP	532274		2-Chloroacetophenone
	534076		Bis(chloromethyl)ketone
HAP	534521		4,6-Dinitro o-cresol, and salts
	535897		Crimidine
	538078		Ethyl bis (2-chloroethyl)amine
HAP	540841		2,2,4-Trimethylpentane
	541537		Dithiobiuret
HAP	542756		1,3-Dichloropropene
HAP	542881		Bischloromethyl ether
	542905		Ethylthiocyanate

	555771		Tris(2-chloroethyl)amine
	556616		Methyl isothiocyanate
	563122		Ethion
HAP	584849		2,4-Toluene diisocyanate
HAP	593602		Vinyl bromide
HAPs	615532		N-nitroso-N-methylurethane
HAP	624839		Methyl isocyanate
	624920		Methyl disulfide
	625558		Isopropyl formate
	640197		Fluoroacetamide
	644644		Dimetilan
	675149		Cyanuric fluoride
HAP	680319		Hexamethylphosphoramide
HAP	684935		N-nitroso-N-methylurea
	732116		Phosmet
	786196		Carbophenothion
	814686		Acrylyl chloride
HAP	822060		Hexamethylene-1,6-diisocyanate
	919868		Demeton-s-methyl
HAPs	924163		N-Nitroso-di-n-butylamine
	944229		Fonofos
	947024		Phosfolan
	950107		Mephosfolan
	950378		Methidathion
	991424		Norbormide
HAP	1120714		1,3-Propane sultone

	1122607		Nitrocyclohexane
	1314847		Zinc phosphide
HAP	1319773		Cresylic acid/Cresols
HAP	1330207		Xylene (and mixed isomers)
HAP	1332214		Asbestos
HAP	1336363		Polychlorinated biphenyls (PCBs) (Aroclors)
	1397940		Antimycin A
HAPs	1402682		Aflatoxins
	1420071		Dinoterb
	1464535		Diepoxybutane
	1563662		Carbofuran
HAP	1582098		Trifluralin
HAP	1634044		MTBE (Methyl tertiary butyl ether)
	1642542		Diethylchlorophosphate
HAP	1746016		2,3,7,8-TCDD (Dioxin)
	1910425		Paraquat
	1982474		Chloroxuron
	2001958		Valinomycin
	2032657		Methiocarb
	2074502		Paraquat methosulfate
HAPs	2475458		Disperse Blue 1
	2497076		Oxydisulfoton
	2524030		Dimethylphosphorochloridothioate
	2540821		Formothion
	2631370		Promecarb
	2642719		Ethyl azinphos

HAPs	2646175		CI Solvent Orange 2
	2778043		Endothion
HAP	3547044		DDE (Dichlorodiphenyldichloroethylene)
	3689245		Sulfotep
	3691358		Chlorophacinone
	3734972		Amiton oxalate
	3735237		Methyl phenkapton
	3878191		Fuberidazole
	4098719		Isophorone diisocyanate
	4170303		Crotonaldehyde
	4301502		Fluenetil
	4835114		Hexamethylenediamine, N,N-dibutyl
	5836293		Coumatetralyl
	7446119		Sulfur trioxide
HAP	7550450		Titanium tetrachloride
HAPs	7644410		1,4-Dichloro-2-butene
HAP	7647010		Hydrochloric acid (Hydrogen chloride)
HAP	7664393		Hydrogen fluoride (Hydrofluoric acid)
	7664417		Ammonia
	7664939		Sulfuric acid
	7697372		Nitric acid
HAP	7723140		Phosphorous
	7726956		Bromine
	7782414		Fluorine
HAP	7782505		Chlorine
	7783064		Hydrogen sulfide

	7786347		Mevinphos
HAP	7803512		Phosphine
HAP	8001352		Toxaphene (Camphechlor)
	8065483		Demeton
	10265926		Methamidophos
	10294345		Boron trichloride
	10311849		Dialifor
	13071799		Terbufos
	13171216		Phosphamidon
	13194484		Ethoprophos (Ethoprop)
	13494809		Tellurium
	16752775		Methomyl
	17702577		Formparanate
	19287457		Diborane
	20859738		Aluminum phosphide
	21548323		Fosthietan
	21609905		Leptophos
	21923239		Chlorthiophos
	22224926		Fenaminophos (Fenamiphos)
	23135220		Oxamyl
	23422539		Formotanate hydrochloride
	23505411		Pirimifos-ethyl
	24934916		Chlormephos
	28347139		Xylylene dichloride
	28772567		Bromodiolone
	53558251		Pyriminil

HAPs	60153493		3-(N-Nitrosomethylamine) (Propionitrile)
HAPs	64091914		Ketone, 3-pyridyl-3-(N-methyl-N-nitrosoamino) propyl
HAPs	108171262		Chlorinated paraffins (C12, 60% chlorine)

PART B CONCERNING CONSTRUCTION PERMITS

I. Applicability

I.A. The provisions of this Part B shall apply statewide. All sources that did not commence construction or operation prior to February 1, 1972, are required to have a construction permit except as specified in Section II.

II. General Requirements For Construction Permits

II.A. General Considerations

II.A.1. Except where specifically authorized by the terms of this Regulation Number 3, no person shall commence construction of any stationary source or modification of a stationary source without first obtaining or having a valid construction permit from the Division.

II.A.2. Any permit that has been issued pursuant to a prior regulation of the Commission, with respect to a project or the operation thereof, shall continue in full force and effect for the purpose for that it was originally issued, unless this current regulation no longer requires such permit, in that case the permit can be rescinded upon request of the owner or operator of the permitted source.

II.A.3. Any orders or decisions of the Division shall be final upon issuance, according to Section III.F.3. of this Part B.

II.A.4. Construction permits for criteria pollutants, GHG and hazardous air pollutants shall be issued based on the production/process rate requested in the Air Pollutant Emission Notice submitted with the permit application or as requested in the application. The emission rate associated with the requested production/process rate shall be a permit condition. For permits to limit the potential to emit criteria, pollutants, GHG or hazardous air pollutants the Division may modify the production/process rate, hours of operation or other requested permit conditions in order to create state-only or federally and practically enforceable permit conditions; provided, however, that the applicant may decline to accept such modifications and elect instead to forego limits on its potential to emit or pursues any right of appeal or other available alternative. For details regarding permits to limit the potential to emit hazardous air pollutants see Regulation Number 8, Part E, Section IV.

II.A.5. Construction permits are required for hazardous air pollutants if:

II.A.5.a. The source is subject to Colorado Maximum Achievable Control Technology or Generally Available Control Technology.

II.A.6. Owners or operators of sources that have valid operating permits in accordance with Part C of this regulation may construct or modify such source without obtaining a construction permit prior to construction or modification, provided the construction or modification

qualifies for a minor permit modification or for operational flexibility, and the applicable provisions as set forth in Sections X., XI., or XII. of Part C are met. In addition, all applicable requirements that are related to construction permit approval and that are set forth in Sections III.D.1.a. through III.D.1.g. of this Part B remain in effect.

II.A.7. A source that is voluntarily applying for a permit to create state-only or federally enforceable permit conditions, as appropriate, to limit the potential to emit criteria, pollutants, GHG or hazardous air pollutants may request to obtain such limits in a construction permit.

II.B. Transfer or Assignment of Ownership

If transfer or assignment of ownership or operation of an air pollution emission source permitted pursuant to this Part B is anticipated, the prospective owner or operator shall apply to the Division on Division supplied administrative permit amendment forms for reissuance of the existing permit. Section III. of Part A of this regulation governs the administrative permit amendment procedures required for transfer or assignment of ownership.

In accordance with the provisions of this section, the permit shall be reissued upon completion of the transfer or assignment if the applicant certifies that no change is contemplated that might constitute a new or modified air pollution source. In no event shall the new owner or operator of a source that was subject to the requirements of these regulations prior to the transfer or assignment be relieved of the obligation to comply with such requirements by reason of a transfer. Such transfers are subject to all applicable permit processing and inspection fees.

If a company is changing its name only, the owner or operator shall apply to the Division, on Division supplied administrative permit amendment forms, for reissuance of the existing permit. Section III. of Part A, governs the administrative permit amendment procedures required for identifying a change in name. If all other procedures and information as stated in the last submitted Air Pollutant Emission Notice(s) remains unchanged, only one Air Pollutant Emission Notice need be submitted for each stationary source, indicating the name change.

No administrative permit amendment for transfer or assignment of ownership of a source shall be complete until a written agreement containing a specific date for transfer of permit, responsibility, coverage and liability between the current and new permittee is received by the Division.

II.C. Portable Sources

A permitted portable source (e.g., asphalt plants, crushers, etc.) shall have its permit number permanently and prominently displayed on each major component of equipment that is a part of that portable source.

II.D. Exemption from Construction Permit Requirements

Permit exemptions taken under this section do not affect the applicability of any State or Federal regulations that are otherwise applicable to the source.

An applicant may not omit any information regarding APEN or permit exempt emission units in any application if such information is needed to determine the applicability of Title V (Part C of this Regulation Number 3), Prevention of Significant Deterioration (Section VI. of Part D of this Regulation Number 3), or Nonattainment New Source Review (Section V. of Part D of this Regulation Number 3).

II.D.1. The following sources are exempt because by themselves, or cumulatively as a category, they are deemed to have a negligible impact on air quality:

II.D.1.a. Those sources exempted from the filing of Air Pollutant Emission Notices in Section II.D. of Part A, of this regulation.

II.D.1.b. Containers, reservoirs, or tanks used exclusively for dipping operations for coating objects with oils, waxes, greases, or natural or synthetic resins containing no organic solvents.

II.D.1.c. Stationary Internal Combustion Engines that:

II.D.1.c.(i) Are power portable drilling rigs; or

II.D.1.c.(ii) Are emergency power generators that operate no more than two hundred and fifty hours per year; or

II.D.1.c.(iii) Have uncontrolled actual emissions less than five tons per year or manufacturer's site-rated horsepower of less than fifty.

II.D.1.d. The collection, transmission, liquid treatment, and solids treatment processes at domestic wastewater treatment works, or treatment facilities that treat only domestic type wastewater, except for combustion processes.

II.D.1.e. Each individual piece of fuel burning equipment, other than smokehouse generators, that uses gaseous fuel, and that has a design rate less than or equal to ten million British thermal units per hour.

II.D.1.f. Gasoline stations located in ozone attainment areas, except for stations located in the Denver 1-hour ozone attainment/maintenance area.

II.D.1.g. Surface mining activities that mine seventy thousand tons or fewer of product material per year. A fugitive dust control plan is required for such sources. Crushers, screens and other processing equipment activities are not included in this exemption.

II.D.1.h. Composting piles, however, all odor requirements of Regulation Number 2 must be met.

II.D.1.i. Commercial and product quality control laboratory equipment.

II.D.1.j. Fires and equipment used for noncommercial cooking of food for human consumption and for cooking of food for human consumption at commercial food service establishments.

II.D.1.k. Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in trace (less than five hundred parts per million weight) amounts, approved by the Colorado Oil and Gas Conservation commission and having uncontrolled emissions of any pollutant of less than five tons per year.

II.D.1.l. Crude oil truck loading equipment at exploration and production sites where the loading rate does not exceed 10,000 gallons of crude oil per day averaged on an annual basis. Condensate truck loading equipment at exploration and production sites that splash fill less than 6750 barrels of condensate per year or that submerge fill less than 16308 barrels of condensate per year.

II.D.1.m. Oil and gas production wastewater impoundments (including produced water tanks) containing less than one percent by volume crude oil on an annual average, with the exception of commercial facilities that accept oil and gas production wastewater for processing.

II.D.1.n. Exemption Repealed.

II.D.2. Facilities located in a nonattainment area for any criteria pollutant for which the area is nonattainment; with total facility uncontrolled actual emissions (potential emissions at actual operating hours) that are less than the following amounts:

II.D.2.a. Two tons per year volatile organic compounds.

II.D.2.b. One ton per year PM10.

II.D.2.c. One ton per year PM2.5.

II.D.2.d. Five tons per year total suspended particulate.

II.D.2.e. Five tons per year carbon monoxide.

II.D.2.f. Five tons per year sulfur dioxide.

II.D.2.g. Five tons per year nitrogen oxides.

II.D.2.h. Two hundred pounds per year lead.

For purposes of calculating total facility uncontrolled actual emissions, only those individual (or grouped) emission points requiring Air Pollutant Emission Notices are to be considered.

II.D.3. Facilities located in attainment or attainment/maintenance areas for all criteria pollutants with total facility uncontrolled actual emissions less (potential emissions at actual operating hours) than the following amounts:

II.D.3.a. Five tons per year volatile organic compounds.

II.D.3.b. Five tons per year PM10.

II.D.3.c. Five tons per year PM2.5.

II.D.3.d. Ten tons per year total suspended particulate.

II.D.3.e. Ten tons per year carbon monoxide.

II.D.3.f. Ten tons per year sulfur dioxide.

II.D.3.g. Ten tons per year nitrogen oxides.

II.D.3.h. Two hundred pounds per year lead.

For purposes of calculating total facility uncontrolled actual emissions, only those individual (or grouped) emission points requiring Air Pollutant Emission Notices are to be considered.

II.D.4. Facilities that emit any other criteria pollutant that is not listed in Sections II.D.2. and II.D.3., above (fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, reduced

sulfur compounds, and municipal waste combustor emissions), with total facility uncontrolled actual emissions of such pollutants that are less than two tons per year.

II.D.5. When a facility that was previously exempt from permit requirements exceeds one of the permit de minimis levels stated in Sections II.D.2. through II.D.4., above, due to the addition of new emission points, the Division will issue either a facility-wide permit for all non-grandfathered emission units above Air Pollutant Emission Notice de minimis levels, or individual emission permits for those emission units.

II.D.6. All incinerators require a permit as stated in Regulation Number1, Section III.B.1.

II.D.7. Oil and gas exploration and production operations that are addressed under Section II.D.1.lll. of this Regulation Number 3, Part A, and that are required to obtain a construction permit, are not required to file an application for a construction permit until they are required to file an Air Pollutant Emission Notice, as set forth in Section II.D.1.lll. The application shall include a list of all applicable requirements, and how the requirements will be met until a construction permit is issued.

II.D.8. Any person may request the Division to add source categories to the permit exemption list, in accordance with the procedures set forth in Section II.D.4. of Part A of this regulation.

II.D.9. Sources with a valid operating permit are not required to obtain a construction permit prior to commencing construction or modification, as set forth in Section II.A.6. of this Part B.

III. Construction Permit Review Procedures

III.A. Option for Pre Application Meeting

Prior to submitting an application for a permit, an applicant may request and, if so requested, the Division shall grant, a pre-application meeting with the applicant. At such meeting, the Division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications and the data required to be furnished with the permit application.

III.B. Application for a Construction Permit

III.B.1. An application for a Construction Permit shall be prepared on forms currently supplied by the Division.

III.B.2. Applications for Construction Permits, and modifications to Construction Permits, must include an Air Pollutant Emission Notice.

III.B.3. Applications shall be signed by a person legally authorized to act on behalf of the applicant. The applicant shall furnish all information and data required by the Division to evaluate the permit application and to make its preliminary analysis in accordance with Section III.B.5. of this part.

III.B.4. An application for a Construction Permit will not be deemed to be complete until all information and data required to evaluate the application have been submitted to the Division. Within sixty calendar days after the receipt of an application or any supplemental information timely requested by the Division, the Division will give notice to the applicant if and in what respect the application is incomplete. If the Division fails to notify an applicant that the application is incomplete within sixty calendar days of receipt of the original application or receipt of the requested supplemental information, the

application shall be deemed to have been complete as of the day of receipt by the Division of the application or the last submitted supplemental information, whichever is later.

III.B.5. Except for applications for sources subject to the requirements of Section VI. of Part D of this regulation (Prevention of Significant Deterioration), the Division shall prepare its preliminary analysis within sixty calendar days after receipt of a complete permit application. The preliminary analysis allows the Division to determine whether the new source will, at date of commencement of operation, comply with:

III.B.5.a. All applicable emission control regulations,

III.B.5.b. Applicable regulations for the control of hazardous pollutants,

III.B.5.c. Requirements of the nonattainment and attainment programs (Sections V. and VI. of Part D), and

III.B.5.d. Any applicable ambient air quality standards and all applicable regulations.

The preliminary analysis shall indicate what impact, if any, the new source will have (as of the projected date of commencement of operation) on all areas (attainment, attainment/maintenance, nonattainment, unclassifiable), within the probable area of influence of the proposed source. If so requested on the permit application form, a copy of this preliminary analysis shall be forwarded to the applicant postmarked no later than fifteen calendar days after the completion of the preliminary analysis.

When the preliminary analysis includes modeling, the model used shall be an appropriate one given the topography, meteorology and other characteristics of the region that the source will impact. Use of any non-guideline model requires U.S. EPA approval under Section VIII.A. of Part A of this regulation.

III.C. Public Comment and Hearing Requirements

III.C.1. The following sources, unless exempted in Section III.C.2., below, are subject to public comment:

III.C.1.a. Sources with projected controlled annual emissions of any pollutant for which an ambient air quality standard has been designated, where such emissions will be greater than twenty five tons per year if the source is located in a nonattainment area, fifty tons per year if the source is located in an attainment or attainment/maintenance area, or two hundred pounds per year of lead (for any area of the state).

III.C.1.b. Sources for which preliminary analysis indicates a possible violation of Commission Regulation Number 2 (odor emissions).

III.C.1.c. For hazardous air pollutants if:

III.C.1.c.(i) The source is subject to Federal National Emission Standards for Hazardous Air Pollutants,

III.C.1.c.(ii) The source is subject to Federal or Colorado Maximum Achievable Control Technology or Generally Available Control Technology standards, or

III.C.1.c.(iii) The source is voluntarily applying for permit conditions to limit the source's potential to emit hazardous air pollutants.

III.C.1.d. Sources subject to Sections V. or VI. of Part D of this regulation that are attempting to obtain a federally enforceable limit on the potential to emit of the source in order to avoid other requirements.

III.C.1.e. Sources submitting an application for a BART determination or BART alternative pursuant to Regulation Number 3, Part F.

III.C.2. The following sources are generally not required to be subject to public comment, unless the Division determines that public comment is warranted pursuant to Section III.C.3. below:

III.C.2.a. Sources of six months duration or less, except that public comment shall be required for all major sources of hazardous pollutants without regard to the duration of the operation of such source unless specifically exempted below.

III.C.2.b. Demolition projects, even if asbestos materials are present, provided that all the requirements of Regulation Number 8 are followed for any and all materials suspected of containing asbestos.

III.C.2.c. Construction or modification of sources in accordance with the minor modification and operational flexibility provisions of Sections X., XI., and XII. of Part C of this regulation are subject to the public participation requirements of Part C.

III.C.3. Sources for which a permit is required, but for which public comment is not required by Sections III.C.1., III.C.2.a., or III.C.2.b., above, are exempt from public comment requirements unless the Division determines that public comment is warranted. In making such determinations, the Division shall take into consideration the duration of the operation, its location, the nature and projected amount of emissions, anticipated public concern, and other relevant factors.

III.C.4. When public comment is required by Section III.C.1., or when the Division determines, pursuant to Section III.C.3., that an application warrants public comment, the Division shall, within fifteen calendar days after the preparation of the preliminary analysis, cause public notice of the application to be published in a newspaper of general distribution in the area in which the proposed project or activity is or will be located, or by such other means necessary to assure notice to the affected public, that may include posting of such notice on the publicly accessible portion of the Division's web site. The Division shall cause a copy of the application, the preliminary analysis, and the draft permit to be filed with the county clerk for each county in which the source is, or will be located. The Division shall send written or electronic notice to persons requesting notice of permit applications that are subject to public notice requirements. For sources applying for a permit to limit the potential to emit criteria pollutants or federal hazardous air pollutants, the Division shall send a copy of the public notice and the draft permit to the U.S. EPA Administrator for comment. The Division shall also send a copy of the final permit approval to the U.S. EPA Administrator for comment. The newspaper notice or other such means of notice shall contain all of the following information in Sections III.C.4.a. through III.C.4.e., below:

III.C.4.a. The location and nature of the proposed project or activity for which a construction permit application has been filed.

III.C.4.b. The locations where the application and preliminary analysis are available for public inspection.

III.C.4.c. That comments concerning the ability of the proposed project or activity to comply with the applicable standards and regulations of the Commission are solicited from any interested person.

III.C.4.d. That the Division will receive and consider public comments for thirty calendar days after such publication.

III.C.4.e. The Division's preliminary determination of approval, conditional approval, or disapproval of the application.

III.D. Construction Permit Review Requirements

III.D.1. Requirements applicable to all construction permit applications (except that processing timeframes of combined construction/operating applications shall be as set forth in Part C, Section IV., of this Regulation Number 3). Within thirty calendar days following the completion of the Division's preliminary analysis for applications not subject to the public comment, within thirty calendar days following the period for public comment for applications subject to public comment, or if a public comment hearing is held, within thirty calendar days following such hearing, the Division shall grant the permit if it finds that:

III.D.1.a. The proposed source or activity will meet all applicable emission control regulations and regulations for the control of hazardous air pollutants;

III.D.1.b. As applicable, the proposed source or activity will meet the requirements of the attainment program as outlined in Section V. of Part D of this regulation, if any;

III.D.1.c. The proposed source or activity will not cause an exceedance of any National Ambient Air Quality Standards;

III.D.1.d. The source or activity will meet any applicable ambient air quality standards and all applicable regulations;

III.D.1.e. As applicable, the proposed source or modification will meet the requirements of the prevention of significant deterioration program of Section VI. of Part D of this regulation.

[Provided however, that the Division shall not deny a permit for failure of the proposed source to meet any applicable requirement of the state implementation plan where (1) there is pending an application for a revision to the state implementation plan pursuant to Colorado Revised Statute, Section 25-7-305 (Alternative Emission Reduction) that, if adopted, would require the Division to grant the permit and (2) the applicant waives the time constraints on the Division to act on its application until the Commission has issued its final decision on the request for a state implementation plan revision and the U.S. EPA has acted on the proposed revision to the state implementation plan. In such circumstances, the Division shall delay its decision on the permit application until after final action on the request for revision of the state implementation plan (including action by the U.S. EPA)];

III.D.1.f. The fees required in Section VI. of Part A of this regulation have been paid;

III.D.1.g. Permit approval shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state, or federal law.

III.D.2. RACT Requirements for new or modified Minor Sources (including new or modified minor emissions units at major stationary sources) of volatile organic compounds, carbon monoxide, nitrogen oxides, sulfur dioxide, and PM10 in nonattainment and attainment/maintenance areas:

III.D.2.a. Minor sources in designated nonattainment or attainment/maintenance areas that are otherwise not exempt pursuant to Section II.D. of this Part, shall apply Reasonably Available Control Technology for the pollutants for which the area is nonattainment or attainment/maintenance.

III.D.2.b. In the Denver Metropolitan PM10 attainment/maintenance area, for any new minor source with a potential to emit forty tons per year or more of nitrogen oxides or sulfur dioxide, or a modification of an existing minor source with a net emissions increase of forty tons per year or more of nitrogen oxides or sulfur dioxide, the source will install Reasonably Available Control Technology.

III.E. Permit Terms and Conditions

The Division shall include such terms and conditions in any permit as it deems necessary for the proposed project or activity to qualify for the permit.

III.F. Denial or Revocation of the Construction Permit

III.F.1. If the Division determines that a source cannot comply with the provisions of Part B, Section III.D., of this regulation, the Division shall issue its written denial of the permit application stating the reasons for such denial. Any Division denial of a permit shall become final upon mailing of the denial notice to the applicant by certified mail. The applicant may appeal the Division's final denial of a permit as provided in Section III.F.3., below.

III.F.2. Any applicant for a construction permit shall advise the Division in writing of any refusal to accept any permit condition imposed by the Division within twenty calendar days after receipt of the permit. Such refusal shall be deemed a denial of the permit application.

III.F.3. If the Division denies a permit, imposes conditions upon a permit that are contested by the applicant, revokes a permit, or requires a permit from a source that may qualify for an exemption, the applicant or owner or operator of a source may request a hearing before the Commission for review of the Division's action. The request for a hearing must be filed with the Commission within thirty days after the issuance of the permit, denial or revocation. The hearing shall be heard in accordance with the provisions of Section VI. of the Commission's Procedural Rules, Colorado Revised Statute Sections 25-7-114.5(8), and 25-7-119, (Colorado Air Pollution Prevention and Control Act) and Section 24-4-105, (State Administrative Procedure Act).

III.F.4. Initial Approval Expiration

III.F.4.a. An initially approved permit shall expire if the owner or operator of the source for which the permit was issued: (i) does not commence construction or operation of the source within eighteen months after either the date of issuance of the permit or the date on which such construction or activity was scheduled to

commence as set forth in the permit, whichever is later; (ii) discontinues construction for a period of eighteen months or more; or (iii) does not complete construction within a reasonable time of the estimated completion date.

III.F.4.b. Upon a showing of good cause by the permittee, the Division may grant extensions of the permit not to exceed eighteen months per extension. Construction or operation shall commence or be resumed within a reasonable period of time from the granting of the extension. In determining what constitutes good cause or a reasonable period of time, the Division shall consider the degree of construction already completed, the amount invested or legally committed to the project, whether an extension would prevent (e.g., through reservation of a Prevention Significant Deterioration increment) economic development in the affected area, general economic conditions, the health of the community as it affects the ability of the permittee to proceed, and other relevant factors. The Division shall notify the Commission of any requested extensions and the reason given for each request.

III.G. Final Permit Approval

III.G.1. Unless prior and mutually acceptable arrangements have been made, the applicant shall give notice to the Division within fifteen calendar days after the date on which commencement of operation takes place.

III.G.2. Within 180 calendar days after commencement of operation, the source shall demonstrate to the Division compliance with the terms and conditions of the initial approval construction permit. The Division may inspect the source to determine whether or not the operating terms and conditions of the initial approval construction permit have been satisfied. At the end of 180 days, the Division must revoke the construction permit; or, continue the construction permit if applicable; or, notify the owner or operator that the source has demonstrated compliance with the construction permit.

III.G.3. Before final approval of the permit is granted, the Division may require the applicant to conduct and pay for performance tests in accordance with methods approved by the Division. A test protocol shall be submitted to the Division for review and approval at least thirty days prior to testing. The Division may monitor such tests and may, at its expense, conduct its own performance tests.

III.G.4. For sources that submit an application for an operating permit pursuant to Part C of this Regulation Number 3, including any application for a permit modification or permit renewal, prior to issuance of a final approval construction permit, upon demonstration by the source of compliance with all terms and conditions of the construction permit or a satisfactory final approval inspection, as required pursuant to this Section III.G., the Division may elect to either issue a final approval construction permit or allow the initial approval construction permit to continue in full force and effect. The Division shall provide written notice to the permittee of its election.

III.G.5. If the Division determines that the terms and conditions of the permit have been satisfied, the Division shall issue in writing its final permit approval to the applicant, or shall incorporate the terms and conditions into an operating permit issued in accordance with Part C of this regulation. Otherwise, the Division shall revoke the permit.

III.G.6. Final approval may be issued at the same time as initial approval for temporary sources of duration of one month or less.

III.G.7. Prior to issuance of final approval, the applicant shall furnish:

III.G.7.a. An operating and maintenance plan for all control equipment and control practices; and

III.G.7.b. A proposed record keeping format for demonstrating compliance on an ongoing basis.

III.H. Permit Cancellation

Whenever an owner or operator wishes to cancel a permit, the owner or operator shall notify the Division, using forms provided by the Division.

III.I. General Construction Permits

III.I.1. The Division may issue a general construction permit covering numerous similar sources to a source that would otherwise be required to obtain a construction permit pursuant to this Part B. Any general construction permit shall comply with all applicable requirements, including notice and opportunity for public participation where warranted for such sources. The Division may issue a general construction permit in accordance with one or more of the following considerations:

III.I.1.a. The control equipment utilized by the sources;

III.I.1.b. The design characteristics of the sources;

III.I.1.c. The operational variability of the sources;

III.I.1.d. The location of the sources.

III.I.2. A source shall not perform any of the following without first obtaining a valid general construction permit from the Division pursuant to this provision, or a valid construction permit as otherwise required pursuant to Section III. of this Part B:

III.I.2.a. Commence construction or modify any building, facility, structure, or installation;

III.I.2.b. Install any machine, equipment, or other device;

III.I.2.c. Commence the conduct of any such activity;

III.I.2.d. Commence performance of any combinations thereof; or

III.I.2.e. Commence operations of any of the same that will or do constitute a new stationary source.

III.I.3. Administration

III.I.3.a. General construction permits may be issued, modified, revoked and reissued, or terminated in accordance with the provisions of this regulation.

III.I.3.b. Sources shall submit applications to be covered under the general construction permit on forms provided by the Division.

III.I.3.c. Individual Permit Requirements

III.I.3.c.(i) The Division may require any source authorized by a general construction permit to apply for and obtain an individual permit. Cases

where an individual permit may be required include, but are not limited to, the following:

III.I.3.c.(i)(A) A change has occurred in the availability of control technology or practices for the control or abatement of air pollutants applicable to the source; or

III.I.3.c.(i)(B) Circumstances have changed since the time of the request to be covered so that the source is no longer appropriately controlled under the general construction permit.

III.I.3.c.(ii) Any source authorized by a general construction permit may request to be excluded from the coverage of the general construction permit by applying for an individual permit, as provided for under this regulation, Parts A and B.

III.I.3.c.(iii) When the Division issues an individual permit to a source otherwise subject to a general construction permit, the applicability of the general construction permit to the individual permittee is automatically terminated on the effective date of the individual permit.

III.I.3.c.(iv) A source excluded from a general construction permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general construction permit. Upon revocation of the individual permit, the general construction permit shall apply to the source.

III.I.3.c.(v) In determining whether an individual permit is required, the Division may consider the compliance history and current compliance status of the source.

III.I.4. The Division shall review the application and certify or deny the request based on criteria specified in the general construction permit established by the Division for that type of source.

III.I.5. General construction permits shall include conditions necessary to ensure the sources will meet all applicable requirements.

III.I.6. General construction permits issued by the Division may include the following requirements, as appropriate and as specified in each permit:

III.I.6.a. An operating and maintenance plan for all control equipment and control practices;

III.I.6.b. A record keeping format for demonstrating compliance;

III.I.6.c. Monitoring methods to assure compliance; and

III.I.6.d. Alternative operating scenarios that include specific monitoring, record keeping, and reporting methods that will assure compliance with the permit conditions.

III.I.7. All general construction permits shall undergo statewide public notice. If a source wants to be covered under a general construction permit, the source must apply within the time period specified in the public notice.

PART C CONCERNING OPERATING PERMITS

I. Applicability

The provisions of this Regulation Number 3, Part C shall apply statewide to all sources of air pollutants that are required to obtain an operating permit as specified in Section II. The provisions of this Part C shall also apply, except as otherwise provided herein, to those minor sources of air pollutants that voluntarily choose to obtain an operating permit.

I.A. DEFINITIONS

I.A.1. Affected Source

(acid deposition program) A source of air pollutants that includes one or more fossil fuel fired combustion devices subject to emission reduction requirements or limitations under Title IV of the Federal Act, Code of Federal Regulations Title 40, Part 72, or under the state Act.

I.A.2. Minor Permit Modification

Any revisions to an operating permit issued by the Division that meets the criteria of Sections X. or XI. of this Part C.

I.A.3. Permit Modification

Any revision to an operating permit issued by the Division that cannot be accomplished under the administrative permit amendment procedures set forth in Section III. of Part A of this regulation, or the minor permit modification procedures set forth in Sections X. or XI. of this Part C. A permit modification for purposes of the acid rain portion of a permit shall be governed by regulations promulgated under Title IV of the Federal Act, found at Code of Federal Regulations, Title 40, Part 72.

I.A.4. Permit Shield

Where a source operates in compliance with all operating permit terms and conditions, the source shall be deemed in compliance with the state and Federal Acts where the permit includes all applicable requirements of such acts, specifically states that other identified provisions are not applicable, and states that the permit shield applies. The permit shield does not apply to terms and conditions that become applicable to the source subsequent to permit issuance. The permit shield shall not alter or affect the provisions of Colorado Revised Statutes Sections 25-7-112 or 25-7-113, Section 303 of the Federal Act, the applicable requirements of the acid rain program, consistent with Section 408(a) of the Federal Act, or the ability of the Administrator to obtain information from a source pursuant to Section 114 of the Federal Act; nor shall the permit shield affect the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.

I.A.5. Renewal of an Operating Permit

The process by which a permit is reissued at the end of its term.

I.A.6. Section 502(b)(10) Changes

Changes that contravene an express permit term. Such changes do not violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

I.A.7. Significant Permit Modification

All operating permit modifications that do not qualify as minor permit modifications or as administrative permit amendments. At a minimum, a significant permit modification shall include:

I.A.7.a. Any change that causes a significant increase in the rate of emissions as described by any permit term or condition;

I.A.7.b. Any change that is considered a modification under Title I of the Federal Act;

I.A.7.c. Any change that requires or changes a case-by-case determination of an emission limitation or other standard;

I.A.7.d. Any change that requires or changes a source specific determination for temporary sources of ambient impacts;

I.A.7.e. Any change that requires or changes a visibility or increment analysis;

I.A.7.f. Every significant change in existing monitoring permit terms or conditions; and

I.A.7.g. Every relaxation of reporting or record keeping permit terms or conditions.

I.A.7.h. Every change that seeks to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

I.A.7.h.(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Federal Act; and

I.A.7.h.(ii) An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Federal Act

I.A.7.i. The establishment of a Plant-wide Applicability Limitation (PAL) in accordance with Section XVII. of Part D of this regulation.

I.A.7.j. All significant permit modifications shall be processed using the procedures set forth in Part C of Regulation Number 3 for combined Construction/Operating Permit issuance. Such source may choose to obtain a construction permit pursuant to Part B and shall subsequently meet the operating permit requirements of Part C.

II. General Requirements for Operating Permits

II.A. General Considerations

II.A.1. Except where specifically authorized by the terms of this Regulation Number 3, Part C, no person shall operate any of the following sources without first obtaining an operating permit in accordance with the provisions of this regulation.

II.A.1.a. Any affected source;

II.A.1.b. Any major source; with the exception of those sources that would be major based only on total suspended particulates emissions

II.A.1.c. Any source required to have a permit pursuant to the prevention of significant deterioration program of Part C, Title I, of the Federal Act;

II.A.1.d. Any source required to have a permit pursuant to the program for the attainment and maintenance of national ambient air quality standards or Part D of Title I of the Federal Act; and

II.A.1.e. Any solid waste incineration unit that is a distinct operating unit of any facility that combusts any solid waste material from commercial or industrial establishments or the general public (including single residences, hotels, and motels). Such term does not include: (1) incinerators or other units required to have a permit under United States Code Title, 42, Section 6925 of the Solid Waste Disposal Act; (2) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals; (3) qualifying small power production facilities, as defined in United States Code Title 16, Section 769(17)(C), or qualifying cogeneration facilities, as defined in United States Code Title 16, Section 796(18)(B), of the Federal Power Act, that burn homogenous waste for the production of electric energy or in the case of qualifying cogeneration facilities that burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes; or (4) air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with any applicable opacity limitations. Operating permits for solid waste incineration units shall be obtained within thirty-six months of promulgation of a new source performance standard applicable to such units, or by November 15, 1994, whichever is later.

II.A.1.f. Any source designated by the Administrator and the Commission as requiring an operating permit.

II.A.1.g. A source is not required to obtain an operating permit solely because it is subject to regulation or requirements pursuant to Section 112(r) of the Federal Act.

II.A.2. Any construction permit that has been issued pursuant to Regulation Number 3, Part B, with respect to a source that is subject to the operating permit requirements of this Part C, shall continue in full force and effect until such time as the operating permit is issued for such source, if the source has filed a timely and complete operating permit application. If a complete operating permit application has been timely filed with the Division by the source in accordance with the provisions of Section III., below, the source will not be subject to an enforcement action for operating the source without an operating permit. No source subject to an operating permit may operate after the time it is required to file a timely and complete application except in compliance with a previously issued operating permit and as set forth in Section II.B., below. A previously issued construction permit shall not constitute a defense for operating a source in violation of the requirement to have an operating permit.

II.A.3. Any orders or decisions of the Division shall be final upon issuance.

II.B. Application Shield

A timely and complete application for an operating permit under the provisions of this Part C shall operate as a defense to an enforcement action for the source's failure to have an operating permit until the Division or the Commission makes a final determination on the permit application. This defense to an enforcement action shall not apply if, subsequent to the completeness determination required by Section IV.B.1. of this Part C, the applicant fails to submit by the deadline specified in writing by the Division any

additional information identified as necessary to process the application, or to otherwise supplement its application in accordance with the provisions of Sections IV.B.3. and IV.B.4. of this Part C. This defense to an enforcement action shall not be available to an applicant that files a fraudulent application. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted to the Division.

II.C. Transfer or assignment of ownership

If transfer or assignment of ownership or operation of an air pollution emission source permitted pursuant to the operating permit requirements of this Part C of Regulation Number 3 is anticipated, the prospective owner or operator shall apply to the Division, on Division supplied administrative permit amendment forms, for reissuance of the existing permit. Part A, Section III. governs the administrative permit amendment procedures required for transfer or assignment of ownership of a source subject to the operating permit requirements. No administrative permit amendment shall be complete until a written agreement containing a specific date for transfer of permit, responsibility, coverage, and liability between the current and new permittee has been submitted to the Division.

II.D. Portable Sources

A portable source that conducts the same or similar type activity at multiple temporary locations throughout the state may be issued a single operating permit under this Part C, provided that the operation involves at least one change in location of the source during the five year permit term. Portable sources must notify the Division at least ten days in advance of each change in location. The owner or operator of a portable source must demonstrate that all applicable requirements will be met at all locations at which the source will operate before an operating permit authorizing operations at the multiple locations will be issued. Sources subject to the acid rain provisions of Title IV of the Federal Act shall not constitute portable sources.

II.E. Insignificant Activities and Exemptions from Operating Permit Requirements

Sources that are otherwise required to obtain an operating permit are not required to include insignificant activities from the following list in their operating permit applications, except as otherwise provided below.

None of the exemptions listed below, including emission de minimis levels, shall apply if by taking such exemption a source would avoid any specific federal or state applicable requirement, including, but not limited to, New Source Performance Standards, Regulation Number 7, Prevention of Significant Deterioration (Section VI., Part D of this Regulation Number 3), nonattainment New Source Review requirements (Section V. Part D of this Regulation Number 3), Title III, National Emission Standards for Hazardous Air Pollutants, Title V, and Colorado Maximum Achievable Control Technology or Generally Available Control Technology . (If the potential to emit, taking into account full design rate and continuous operation, triggers Prevention of Significant Deterioration or New Source Review requirements, the source must submit an Air Pollutant Emission Notice and apply for the appropriate permit, or must apply for a permit to limit the physical or operational capacity of the source such that the source is not considered to be a major source as defined in Section I.B.25. of Part A of this regulation.).

Sources otherwise required to obtain an operating permit are required to include a list of insignificant activities in their permit applications if the insignificant activities are listed in Sections II.E.1. and II.E.2., or marked with an asterisk in Section II.E.3. The asterisk denotes an insignificant activity source category based on the size of the activity, emissions levels from the activity or the production rate of the activity. The owner or operator of individual emission points marked with an asterisk in Section II.E.3., below, must maintain sufficient record keeping verifying that the exemption applies. Such records shall be made available for Division review upon request.

The following sources are exempt from the requirement to obtain an operating permit pursuant to this Part C:

II.E.1. Sources subject to regulation or requirements pertaining to standards of performance for new residential wood heaters pursuant to Regulation Number 6; or

II.E.2. Sources subject to regulation or requirements pertaining to national emissions standards for hazardous air pollutants for asbestos in the course of demolition and renovation pursuant to Regulation Number 8.

II.E.3. Certain categories of sources and activities which are considered to be insignificant contributors to air pollution as listed below. A source solely comprised of one or more of these activities are not required to obtain an operating permit pursuant to this regulation, unless the source's emissions trigger the major source threshold as defined in Section I.B.25. of Part A of this Regulation Number 3 (definition of major source):

II.E.3.a. *Individual emission points in nonattainment areas having uncontrolled actual emissions of any criteria pollutant (as defined in Section I.B.17. of Part A of this Regulation Number 3) of less than one ton per year, and individual emission points in attainment or attainment/maintenance areas having uncontrolled actual emissions of any criteria pollutant of less than two tons per year, and each individual emission point with uncontrolled actual emissions of lead less than one hundred pounds per year, regardless of where the source is located.

II.E.3.b. Individual emission points of non criteria reportable pollutants having uncontrolled actual emissions less than the de minimis levels as determined following the procedures set forth in Appendix A.

II.E.3.c. Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from other processes or equipment.

II.E.3.d. Fireplaces used for recreational purposes, inside or outside.

II.E.3.e. Fires and equipment used for noncommercial cooking of food for human consumption, or cooking of food for human consumption at commercial food service establishments, except for char broilers and wood fired equipment (but not including campfires) in PM10 nonattainment areas. Charbroiler shall mean a cooking device in a commercial food service establishment, either gas fired or using charcoal or other fuel, upon which grease drips down upon an open flame, charcoal or embers.

II.E.3.f. Flares used to indicate danger to the public.

II.E.3.g. Agriculture operations such as farming, cultivating and harvesting, seasonal crop drying, grain handling operations that are below New Source Performance Standards de minimis levels (including milling and grain elevator operations), and animal feeding operations that are not housed commercial swine feeding facilities as defined in Regulation Number 2, Part B. This exemption does not apply to an agricultural operation that: (1) is a major source (Regulation Number 3, Part A, Section I.B.25.); (2) meets or exceeds the storage capacity thresholds of a federal New Source Performance Standards (Regulation Number 6, Part A); or (3) participates in the early reduction program of the Federal Act, Section 112. Ancillary operations such as fueling stations located at farms or ranches are not exempt from Air Pollutant Emission Notice and permit requirements unless otherwise below the de minimis emission levels contained in this regulation, and are not exempt from other applicable regulations promulgated by the Commission.

II.E.3.h. Emissions from, or construction, or alteration of residential structures, including all buildings or other structures used primarily as a place of residence, and including home heating devices.

II.E.3.i. Research laboratories

II.E.3.i.(i) Noncommercial (in house) experimental and analytical laboratory equipment that is bench scale in nature including quality control/quality assurance laboratories, process support laboratories, environmental laboratories supporting a manufacturing or industrial facility, and research and development laboratories.

II.E.3.i.(ii) *Research and development activities that are of a small pilot scale and that process less than ten thousand pounds of test material per year;

II.E.3.i.(iii) *Small pilot scale research and development projects less than six months in duration with controlled actual emissions less than five hundred pounds of any criteria pollutant or ten pounds of any non criteria reportable pollutant.

II.E.3.j. *Disturbance of surface areas for purposes of land development, that do not exceed twenty-five contiguous acres and that do not exceed six months in duration. (This does not include mining operations or disturbance of contaminated soil).

II.E.3.k. *Each individual piece of fuel burning equipment, other than smokehouse generators and internal combustion engines, that uses gaseous fuel, and that has a design rate less than or equal to five million British thermal units per hour. (See definition of fuel burning equipment in the Common Provisions Regulation).

II.E.3.l. Internal combustion engines powering portable drilling rigs.

II.E.3.m. *Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in trace amounts (less than five hundred parts per million weight), approved by the Colorado Oil and Gas Conservation Commission and having uncontrolled emissions of any pollutant of less than five tons per year.

II.E.3.n. *Chemical storage tanks or containers that hold less than five hundred gallons, that have an annual average throughput less than twenty-five gallons per day, and are not associated with either oil and gas production wastewater or commercial facilities that accept oil production wastewater for processing.

II.E.3.o. Unpaved public and private roadways, except for haul roads located within a stationary source site boundary.

II.E.3.p. Sanding of streets and roads to abate traffic hazards caused by ice and snow.

II.E.3.q. Open burning activities, except that all reporting and permitting requirements that apply to such operations must be followed (see Regulation Number 9).

II.E.3.r. Brazing, soldering, or welding operations that use lead based compounds. All welding that occurs strictly for maintenance purposes is exempt.

II.E.3.s. Street and parking lot striping.

II.E.3.t. Battery recharging areas.

II.E.3.u. Aerosol can usage.

II.E.3.v. Sawing operations that are ancillary to facility operations and are not part of the production process.

II.E.3.w. The process of demolition and re-bricking of furnaces and kilns. This does not include subsequent operation of such furnaces or kilns.

II.E.3.x. Road and lot paving operations at commercial and industrial facilities, except that asphalt and cement batch plants require Air Pollutant Emission Notices and permits, unless exempt under some other section.

II.E.3.y. Adhesive use that is not related to production.

II.E.3.z. Fire training activities.

II.E.3.aa. Caulking operations that are not part of a production process.

II.E.3.bb. *Landscaping and site housekeeping devices equal to or less than ten horsepower in size (lawnmowers, trimmers, snow blowers, etc.).

II.E.3.cc. Fugitive emissions from landscaping activities (e.g., weeding, sweeping).

II.E.3.dd. Landscaping use of pesticides, fumigants, and herbicides.

II.E.3.ee. *Crude oil loading truck equipment at exploration and production sites where the loading rate does not exceed 10,000 gallons of crude oil per day averaged on an annual basis. Condensate truck loading equipment at exploration and production sites that splash fill less than 6750 barrels of condensate per year or that submerge fill less than 16308 barrels of condensate per year.

II.E.3.ff. Emergency events such as accidental fires.

II.E.3.gg. Smoking rooms and areas.

II.E.3.hh. Plastic pipe welding.

II.E.3.ii. Vacuum cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes.

II.E.3.jj. Beauty salons.

II.E.3.kk. Operations involving acetylene, butane, propane and other flame cutting torches.

II.E.3.ll. Pharmacies.

II.E.3.mm. *Chemical storage areas where chemicals are stored in closed containers, and where total storage capacity does not exceed five thousand gallons. This exemption applies solely to storage of such chemicals. This exemption does not apply to transfer of chemicals from, to, or between such containers.

II.E.3.nn. Architectural painting, roof coating material and associated surface preparation (except for sandblasting and except for volatile organic compound emissions, associated with surface preparation, above Air Pollutant Emission Notice de minimis levels) for maintenance purposes at industrial or commercial facilities.

II.E.3.oo. Emissions of air pollutants that are not criteria or non-criteria reportable pollutants (see Sections I.B.17. and I.B.30. of Part A of this regulation). These emissions include methane, ethane and carbon dioxide.

II.E.3.pp. Janitorial activities and products.

II.E.3.qq. Grounds keeping activities and products.

II.E.3.rr. Sources of odorous emissions that do not utilize emission control equipment for control of odorous emissions. This exemption applies to the odor emissions only. All other emissions are subject to other exemptions set forth in this regulation. This exemption does not exempt any source from the requirements of Regulation Number 2.

II.E.3.ss. Truck and car wash units.

II.E.3.tt. Office emissions, including cleaning, copying, and restrooms.

II.E.3.uu. *Oil production wastewater (produced water tanks), containing less than one percent by volume annual average crude oil, except for commercial facilities that accept oil production wastewater for processing.

II.E.3.vv. Electrically operated curing ovens, drying ovens and similar activities, articles, equipment, or appurtenances. This exemption applies to the ovens only, and not to the items being dried in the ovens.

II.E.3.ww. Equipment used exclusively for portable steam cleaning.

II.E.3.xx. Blast-cleaning equipment using a suspension of abrasive in water and any exhaust system or collector serving them exclusively.

II.E.3.yy. Commercial laundries (except dry cleaners) that do not burn liquid or solid fuel.

II.E.3.zz. Storage of butane, propane, or liquefied petroleum gas in a vessel with a capacity of less than sixty thousand gallons, provided the requirements of Regulation Number 7, Section IV. are met, where applicable.

II.E.3.aaa. Storage tanks of capacity less than forty thousand gallons of lubricating oils or waste lubricating oils.

II.E.3.bbb. *Venting of compressed natural gas, butane or propane gas cylinders, with a capacity of one gallon or less.

II.E.3.ccc. *Fuel storage and dispensing equipment in ozone attainment areas operated solely for company-owned vehicles where the daily fuel throughput is no more than four hundred gallons per day, averaged annually. Sources in an ozone attainment/maintenance area must utilize Stage 1 vapor recovery on all tanks greater than five hundred and fifty gallons capacity, as required by Regulation Number 7, in order to take this exemption.

II.E.3.ddd.Exemption Repealed.

II.E.3.eee. Indirect sources are exempt until a (permit) regulation specific to indirect sources is promulgated by the Commission.

II.E.3.fff. *Storage tanks meeting all of the following criteria:

II.E.3.fff.(i) Annual throughput is less than four hundred thousand gallons; and

II.E.3.fff.(ii) The liquid stored is one of the following:

II.E.3.fff.(ii)(A) Diesel fuels 1-D, 2-D, or 4-6;

II.E.3.fff.(ii)(B) Fuel oils #1 - #6;

II.E.3.fff.(ii)(C) As turbine fuels 1 - GT through 4 - GT;

II.E.3.fff.(ii)(D) An oil/water mixture with a vapor pressure less than or equal to that of diesel fuel (Reid vapor pressure of .025 psia).

II.E.3.ggg. Each individual piece of fuel burning equipment that uses gaseous fuel, and that has a design rate less than or equal to ten million British thermal units per hour, and that is used solely for heating buildings for personal comfort.

II.E.3.hhh. Natural gas vehicle fleet fueling facilities.

II.E.3.iii. Electric motors driving equipment at non-commercial machining shops.

II.E.3.jjj. Recreational swimming pools.

II.E.3.kkk. Forklifts.

II.E.3.lll. Handling equipment and associated activities for glass that is destined for recycling.

II.E.3.mmm. Containers, reservoirs, or tanks used exclusively for dipping operations, that contain no organic solvents, for coating objects with oils, waxes, greases, or natural or synthetic resins.

II.E.3.nnn. Stationary Internal Combustion Engines that:

II. E.3.nnn.(i) Are power portable drilling rigs; or

II. E.3.nnn.(ii) Are emergency power generators that operate no more than two hundred fifty hours per year; or

II. E.3.nnn.(iii) Have uncontrolled actual emissions less than five tons per year or manufacturer’s site-rated horsepower of less than fifty

II.E.3.ooo. The collection, transmission, liquid treatment, and solids treatment processes at domestic wastewater treatment works, or treatment facilities that treat only domestic type wastewater, except for combustion processes.

II.E.3.ppp. Gasoline stations located in ozone attainment areas.

II.E.3.qqq. *Surface mining activities that mine seventy thousand tons or fewer of product material per year. A fugitive dust control plan is required for such sources. Crushers, screens and other processing equipment activities are not included in this exemption.

II.E.3.rrr. Composting piles, however, all odor requirements of Regulation Number 2 must be met.

II.E.3.sss. Fugitive emissions of hazardous air pollutants that are natural constituents of native soils and rock (not added or concentrated by chemical or mechanical processes) from underground mines or surface mines unless such source is a major source of hazardous air pollutants under Part C of this Regulation Number 3.

II.E.3.ttt. The use of pesticides, fumigants, and herbicides when used in accordance with requirements established under the federal Insecticide, Fungicide and Rodenticide Act as established by the U.S. EPA (United States Code Title 7, Section 136 et seq.).

II.E.3.uuu. Ventilation of emissions from mobile sources operating within a tunnel, garage, or building that are not operating for transportation purposes and are subject to stationary source requirements,.

II.E.3.vvv. Non-asbestos demolition.

II.E.3.www. Sandblast equipment when the blast media is recycled and the blasted material are collected.

II.E.3.xxx. Stationary internal combustion engines:

II.E.3.xxx.(i) *Less than or equal to 175 horsepower which operate less than 1,450 hours per year.

II.E.3.xxx.(ii) *Greater than 175 horsepower and less than or equal to 300 horsepower which operate less than 850 hours per year.

II.E.3.xxx.(iii) *Greater than 300 horsepower and less than or equal to 750 horsepower which operate less than 340 hours per year.

II.E.3.yyy. Surface water storage impoundment of non-potable water and storm water evaporation ponds, with the exceptions of impoundment of oil and gas production wastewater (including produced water tanks) containing equal to or more than one percent by volume crude oil on an annual average and commercial facilities that accept oil and gas production wastewater for processing.

II.E.3.zzz. Non-potable water pipeline vents.

II.E.3.aaaa. Steam vents and safety release valves.

II.E.3.bbbb. Exemption Repealed.

II.E.3.cccc. Seal and lubricating oil systems for steam turbine electric generators.

II.E.3.dddd. Venting of natural gas lines for safety purposes.

II.E.3.eeee. Chemical storage tanks

II.E.3.eeee.(i) *Sulfuric acid storage tanks not to exceed ten thousand five hundred gallons capacity.

II.E.3.eeee.(ii) *Sodium hydroxide storage tanks.

II.E.3.ffff. Wet screening operations notwithstanding the applicability of the New Source Performance Standards included in the Code of Federal Regulations, Title 40, Part 60, Subpart OOO.

II.E.3.gggg. *Any condensate storage tank with a production rate of 730 barrels per year or less or condensate storage tanks that are manifold together with a production rate of 730 barrels per year or less that are owned and operated by the same person, and are located at exploration and production sites.

II.F. Sources that are not required by this Part C to obtain an operating permit may elect to apply for, and may be issued, an operating permit. Any such permit issued must contain terms and conditions sufficient to satisfy the requirements of this regulation.

II.G. All federally enforceable terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator, as well as citizens pursuant to United States Code Title 42, Section 7604.

III. Operating Permit Application Requirements

III.A. Option for pre application meeting

Prior to submitting an application for a permit an applicant may request and, if so requested, the Division shall grant, a pre application meeting with the applicant. At such meeting, the Division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications and the data required to be furnished with the permit application, based on the best information available from the applicant at the time. Failure of the Division to identify all requirements and information does not exempt the source from compliance with applicable requirements or these regulations.

III.B. Application for operating permit and combined construction/operating permit applications

III.B.1. An application for an operating permit shall be prepared on forms supplied by the Division that meet all the requirements of the Federal Act. Applicants shall submit sufficient copies of their applications for provision of copies to the Administrator, affected states and county clerks as required by Sections V.B.5., VI., and IX. of this Part C.

III.B.2. Each source required to obtain an operating permit pursuant to Section III. of this Part C, for the first time, shall submit an application for such a permit no later than twelve months after the source becomes subject to the operating permit requirement. A source that becomes subject to the operating permit program by operation of law, such as the adoption of new legal requirements, shall submit an application for an operating permit within twelve months of the effective date of such new legal requirements unless otherwise specified by the requirements. A new source or an existing source that modifies in a way that renders it newly subject to the operating permit requirements, shall submit a complete application for an operating permit within twelve months of commencing operation, except as otherwise provided herein. Modifications made to a source with an operating permit, through a permit issued under Part B of this regulation shall apply for a modification to their operating permit within twelve months of startup. A

new source (including any significant modification), shall meet the applicable requirements of Part B.

III.B.3. Reserved.

III.B.4. Reserved.

III.B.5. All other major sources existing on January 1, 1995 shall submit their operating permit applications unless otherwise notified by the Division.

III.B.6. Each source subject to an operating permit shall submit an application for renewal of the operating permit at least twelve months, but not more than eighteen months, prior to the expiration of the operating permit. All of the provisions governing the application for and issuance of operating permits are applicable to applications for renewal of operating permits, except that an application for permit renewal may address only those portions of the permit that require revision, supplementing, or deletion, incorporating the remaining permit terms by reference from the previous permit. A copy of any materials incorporated by reference must be included with the application. The Division may choose to issue a draft renewal or proposed renewal permit specifying only those portions that will be revised, supplemented, or deleted, incorporating the remaining permit terms by reference. All requirements for compliance plans, compliance schedules and compliance certifications found in Sections III.B.7., III.B.8., and III.C.8. through III.C.13. of this Part C, are applicable to the entire operating permit upon renewal.

III.B.7. A source required to obtain a construction permit pursuant to Part B of this Regulation Number 3 may submit an application for a combined construction permit and operating permit on a standard application form supplied by the Division prior to commencing construction, modification, installation or commencement of any activities or operations for which a construction permit is required pursuant to Part B. In accordance with the provisions of Part B, a source applying for a combined construction/operating permit cannot construct before issuance of a permit.

III.B.8. Applications shall be signed by a responsible official who shall also sign the compliance certification on the application. The compliance certification shall include: (a) a certification of compliance with all applicable requirements; (b) a statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods; (c) a schedule for submission of compliance certifications during the permit term not less than annually, or more frequently as specified by the terms and conditions of the permit; (d) a statement indicating the source's compliance status with any applicable compliance assurance monitoring and compliance certification requirements; (e) if applicable to a source, a statement indicating the source has properly registered its risk management plan required pursuant to Section 112(r) of the Federal Act. Compliance certifications for state only conditions shall be separate from compliance certifications required under the Federal Act, and shall only be required for sources of such state only conditions seeking the operational flexibility provisions of Sections X., XI., and XII. of this Part C. Sources seeking protection under the terms of the permit shield for such state only conditions, or sources of state only conditions are otherwise required to obtain an operating permit pursuant to the state Act.

III.B.9. Each application form, report and compliance certification submitted pursuant to this regulation 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.

III.C. Complete applications

The applicant shall furnish all information and data required by the Division to evaluate the permit application and to make its preliminary analysis in accordance with Section IV. of this Part C including, but not limited to:

III.C.1. Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and name of plant site manager/contact;

III.C.2. A description of the source's processes and products (by standard industrial classification code) including any associated with alternate scenarios identified by the source;

III.C.3. The following emission-related information:

III.C.3.a. All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under Section II.E. of this Part C, and all additional information related to the emissions of pollutants sufficient to verify which requirements are applicable to the source and other information necessary to collect any permit fees owed pursuant to Section VI. of Part A of this regulation;

III.C.3.b. Identification and description of all points of emissions described in Section III.C.3.a., above, in sufficient detail to establish the basis for fees and applicability of requirements of the Federal Act;

III.C.3.c. Emissions rate in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

III.C.3.d. The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules;

III.C.3.e. Identification and description of air pollution control equipment and compliance monitoring devices or activities;

III.C.3.f. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source;

III.C.3.g. Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to United States Code Title 42, Section 7423 (Part A, Section VIII. of this Regulation Number 3); and

III.C.3.h. Calculations on which the information required in Sections III.C.3.a. through III.C.3.g. are based.

III.C.4. The following air pollution control requirements:

III.C.4.a. Citation and description of all applicable requirements, and

III.C.4.b. Description of, or reference to, any applicable test method for determining compliance with each applicable requirement.

III.C.5. Other specific information that may be necessary to implement and enforce other applicable requirements of the Federal Act or of this Section III., or to determine the applicability of such requirements.

III.C.6. An explanation of any proposed exemptions from otherwise applicable requirements.

III.C.7. Additional information as determined to be necessary by the Division to define alternative operating scenarios identified by the source pursuant to Section IV.A. of Part A of this regulation, or to define permit terms and conditions implementing Section XII. of this Part C.

III.C.8. A compliance plan which contains: (a) a description of the compliance status of the source with respect to all applicable requirements; (b) for applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements; (c) for applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis; and (d) for requirements for which the source is not anticipated to be in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

III.C.9. A compliance schedule which contains: (a) for applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements; or (b) for applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy the provision, unless a more detailed schedule is expressly required by the applicable requirement; and (c) a schedule of compliance for sources that are not anticipated to be in compliance at the time of permit issuance. This schedule shall include a schedule of enforceable remedial milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

III.C.10. A schedule for submission of progress reports no less frequently than every six months for sources required having a schedule of compliance to remedy a violation.

III.C.11. The compliance plan content requirements specified in this section shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Federal Act, Code of Federal Regulations Title 40, Part 72, with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

III.C.12. Data necessary to allow the Division to determine whether the source complies with:

III.C.12.a. All applicable emission control regulations;

III.C.12.b. Applicable regulations for the control of hazardous air pollutants;

III.C.12.c. Requirements of the nonattainment and attainment programs, Sections V. and VI. of Part D of this regulation; and

III.C.12.d. Any applicable ambient air quality standards (for temporary sources and new or modified sources applying for a combined construction/operating permit only). When the data includes modeling, the model used shall be an appropriate one given the topography, meteorology, and other characteristics of the region that the source will impact; and

III.C.12.e. All applicable regulations.

III.C.13. Copies of Air Pollutant Emission Notices on file with the Division indicating production/process rates for which the operating permit is to be evaluated, or, if Air Pollutant Emission Notice(s) have not been previously filed, a new Air Pollutant Emission Notice(s) shall be submitted in accordance with Part A, Section II. The Air Pollutant Emission Notice fee will not be charged for submission of copies of current Air Pollutant Emission Notice(s) previously filed with the Division.

III.D. Operating Permit Renewal

In submitting an application for renewal of an operating permit issued under these regulations, a source may identify terms and conditions in its previous permit that remain unchanged and incorporate by reference those portions of its existing permit and the permit application and any permit amendments or modification applications that describe products, processes, operations, and emissions to which those terms and conditions apply. The source must identify specifically and list which portions of its previous permit and/or applications that are incorporated by reference. In addition, a renewal application must contain:

III.D.1. Information for those products, processes, operations, and emissions, in accordance with the provisions of this Part C, that:

III.D.1.a. Are not addressed in the existing permit;

III.D.1.b. Are subject to applicable requirements that are not addressed in the existing permit; or

III.D.1.c. Are permit terms and conditions that differ from those in the existing permit.

III.D.2. A compliance plan, schedule, and certification requirements for the entire permit in accordance with this Part C.

III.E. A major source may comply with this section through any one of the following methods:

III.E.1. The source may obtain a single permit for all relevant emission points located within a contiguous or adjacent area under common control (whether or not falling under the same two digit standard industrialized code);

III.E.2. The source may obtain separate permits for separate emission points or groups of emission points, or

III.E.3. The Division may issue a permit covering one or more emission points eligible for coverage under a general permit and the source may obtain a separate permit or permits for emission points not eligible for such coverage.

III.F. The acid rain portions of permit applications shall be made on nationally standardized forms pursuant to regulation promulgated by the Administrator at Code of Federal Regulations Title 40, Part 72.

IV. Processing Of Applications

IV.A. Standards for application determinations

The Division shall evaluate operating permit applications and combined construction/operating permit applications. The evaluation of permit applications shall consider, for the construction permit portion, whether operation of the proposed new source at the date of start-up, and for operating permits whether the permitted emissions, will comply with all applicable emissions control regulations, regulations for the control of hazardous air pollutants, applicable ambient air quality standards and regulations, requirements for the prevention of significant deterioration of air quality that is better than the National Ambient Air Quality Standards, and nonattainment and attainment/maintenance area requirements. The submittal of a complete application shall not affect the requirement that any source have a construction permit pursuant to Part B of this Regulation Number 3, except as otherwise required herein.

IV.B. Completeness determinations

IV.B.1. An application for an operating permit or a combined construction permit/operating permit, will not be deemed to be complete until all information and data required to evaluate the application have been submitted to the Division. Within sixty calendar days after the receipt of an application or any supplemental information requested by the Division, the Division will give notice to the applicant if and in what respect the application is incomplete. If the Division fails to notify an applicant that the application is incomplete within sixty calendar days of receipt of the original application or receipt of the requested supplemental information, the application shall be deemed to have been complete as of the day of receipt by the Division of the application or the last submitted supplemental information, whichever is later, for the purposes specified in Section II.B. of this Part C (concerning the application shield). Nothing herein precludes the Division from requesting further information about the source in order to process the permit application. If the Division concludes that the application is not complete, it shall inform the applicant of the additional information that must be submitted prior to consideration of the application. No completeness determination shall be required for applications for administrative or minor permit modification procedures under Section III. of Part A of this regulation, or Sections X. and XI. of this Part C.

IV.B.2. The Division shall review each application submitted to determine whether it is complete. An application shall be deemed to be complete when it contains the information required by Sections III.B., III.C., and III.D. of this Part C in sufficient detail for the Division to evaluate the subject source and the permit application, to determine all applicable requirements and to calculate all applicable fees.

IV.B.3. A source shall supplement its permit application to correct or update information provided in its initial submission as soon as it becomes aware of any omissions or incorrect information submitted or to address changes made to the source after submission of the application, but prior to public notice as provided in Section VI. of this Part C.

IV.B.4. A source shall supplement its permit application to address any requirements that become applicable to the source after the date the source submitted its application, but prior to issuance of a draft permit.

IV.C. Permit application processing timeframes

For operating permit applications, or for combined construction and operating permit applications, the Division shall approve or disapprove the permit application within eighteen months of receipt of a complete application. Permit processing timeframes for operating permit applications for affected sources under the acid rain provisions shall be governed by Code of Federal Regulations Title 40, Part 72. If a

timely and complete application is filed, but the Division fails to issue or deny a renewal operating permit prior to expiration of the operating permit for which a source is seeking renewal, the previously issued operating permit, and all of its terms and conditions, shall not expire until the renewal operating permit is issued and any previously extended permit shield continues in full force and operation.

To the extent feasible, applications shall be acted upon in the order received except that priority shall be given to taking final action on applications for construction or modification under Title I, Parts C and Part D, of the Federal Act. Final action on such applications shall be taken within twelve months following receipt of a complete application.

IV.D. Requests for additional information

If, after an application is deemed complete, the Division determines that additional information is necessary to evaluate or take final action on an application, the Division shall request necessary information in writing and set a reasonable deadline for response. Additional information submitted within the deadline will be evaluated by the Division. If the applicant fails to provide the requested information or does not meet the deadline, the source's ability to operate without a permit shall terminate on the date of the deadline as provided in Section II.B. of this Part C.

V. Operating Permit Issuance, Renewals And Modifications

V.A. Except as provided below, the Division shall not issue, reissue or renew an operating permit until the source has obtained a final approval construction permit for all emission units pursuant to Regulation Number 3, Part B, Section III.G. However, nothing in this section shall preclude the Division from issuing, reissuing, or renewing an operating permit if the holder of an initial approval construction permit has not commenced operation of the new construction or modification authorized by that construction permit.

When the source has not demonstrated compliance with the terms of an initial approval construction permit as required pursuant to Regulation Number 3, Part B, Section III.G., or has not obtained a final approval construction permit as required above, the Division may issue, reissue or renew an operating permit under the following circumstances:

V.A.1. If the source has not demonstrated compliance under the provisions of Regulation Number 3, Part B, Section III.G., and the source is not anticipated to be in compliance at the time of the operating permit issuance with any of the terms or conditions of the initial approval construction permit, the operating permit must contain a compliance plan and compliance schedule that meets the requirements of this Part C, Sections III.C.8., III.C.9., and III.C.10., with respect to those permit term(s). In that instance, the deviation reporting required under this Part C, Section V.C.7.b. may, at the Division's discretion, serve as the demonstration required pursuant to Regulation Number 3, Part B, Section III.G. and no final approval construction permit will be issued; or

V.A.2. If the source has not demonstrated compliance under the provisions of Regulation Number 3, Part B, Section III.G., and the source anticipates being in compliance at the time of the operating permit issuance with all of the terms or conditions of the initial approval construction permit, the Division can elect to allow the initial approval construction permit to continue in full force and effect pursuant Regulation Number 3, Part B, Section III.G.4. In that instance, the first deviation report after permit issuance as required under this Part C, Section V.C.7.b. may, at the Division's discretion, serve as the demonstration required pursuant to Regulation Number 3, Part B, Section III.G., and no final approval construction permit will be issued; or

V.A.3. If the source has demonstrated compliance under the provisions of Regulation Number 3, Part B, Section III.G. but not yet received a final approval construction permit, the

Division may, at its discretion, elect to either issue a final approval construction permit or allow the initial approval construction permit to continue in full force and effect. The Division shall provide written notice to the permittee of its election.

V.B. An operating permit, permit modification or permit renewal shall be issued only upon a determination by the Division that the following criteria have been met:

V.B.1. The Division has received a complete application for a permit, permit modification, or permit renewal;

V.B.2. Public comment and hearing requirements, except for modifications qualifying for minor permit modification procedures or administrative permit revisions;

V.B.3. Requirements for notifying and responding to affected states pursuant to Section IX. of this Part C. This section is not applicable to minor sources that voluntarily apply for an operating permit for purposes of Sections X., XI., and XII., unless the source is required to have federally enforceable emissions limitations to be considered a minor source, nor to major sources of Colorado-only Hazardous Air Pollutants subject to the operating permit requirements solely due to state-only conditions under the state Act;

V.B.4. Permit conditions provide for compliance with all applicable requirements and the requirements of this Regulation Number 3; and

V.B.5. The Administrator has received a copy of the proposed permit and has not objected to its issuance within forty-five days of receipt of the proposed permit and all necessary supporting information. This section is not applicable to minor sources that voluntarily apply for an operating permit for purposes of Sections X., XI., and XII., unless the source is required to have federally enforceable emissions limitations to be considered a minor source, nor to major sources of Colorado-only Hazardous Air Pollutants subject to the operating permit requirements solely due to state only conditions under the state Act.

V.B.6. The Administrator's objection to permit issuance shall be based on a determination that the proposed permit will not be in compliance with applicable requirements or requirements of Code of Federal Regulations Title 40, Part 70. Any such objection shall include a statement of the Administrator's reasons for objecting and a description of the terms and conditions that the permit must include to respond to the objection. Failure of the Division to do any of the following shall also constitute grounds for an objection by the Administrator:

V.B.6.a. Failure to comply with the provisions of Section V.F. of this Part C for submission of copies of permit applications, proposed permits, and final permits to the Administrator;

V.B.6.b. Failure to comply with the provisions of Section IX. of this Part C for review by affected states;

V.B.6.c. Failure to submit any information to the Administrator necessary to review adequately the proposed permit; or

V.B.6.d. Failure to comply with the provisions of Section VI. of this Part C for public participation.

V.B.7. If the Division fails, within ninety days after an objection by the Administrator, to revise and submit a proposed permit in response to the objection, the Administrator will issue or

deny the permit in accordance with the requirements of the federal program promulgated under Title V of the Federal Act.

V.B.8. The permit applicant has paid all applicable hourly fees as set forth in Part A, Section VI. of this Regulation Number 3.

V.C. An operating permit shall contain, at a minimum, the following:

V.C.1. Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance, including:

V.C.1.a. The permit shall specify and reference the origin of and authority for each term and condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based; and

V.C.1.b. The permit shall state that, where an applicable requirement of the Federal Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Federal Act, Code of Federal Regulations Title 40, Part 72, both provisions shall be incorporated into the permit and shall be federally enforceable; and

V.C.1.c. If allowed by the state implementation plan, an alternative emissions limitation that is at least as stringent as an applicable requirement may be substituted for an applicable requirement as a permit term or condition, so long as the permit containing such equivalency determination contains provisions to ensure that any resulting emissions limitation is quantifiable, accountable, enforceable and based on replicable procedures.

V.C.2. The permit term shall be five years.

V.C.3. The effective date and termination date of the permit shall be specifically identified in the permit.

V.C.4. A statement of all monitoring and related record keeping and reporting requirements shall be specifically identified in the permit.

V.C.5. Each permit shall contain the following requirements with respect to monitoring:

V.C.5.a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any required procedures and methods for compliance assurance monitoring and compliance certification requirements;

V.C.5.b. Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, periodic monitoring, or record keeping, sufficient to yield reliable data for the relevant time period that are representative of the source's compliance with the permit as required to be reported pursuant to Section V.C.16.e. of this Part C. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirements.

V.C.5.c. As necessary, requirements concerning the use, maintenance and, where appropriate, installation of monitoring equipment or methods.

V.C.6. Each permit shall incorporate all applicable record keeping requirements and require, where applicable, the following:

V.C.6.a. Records of required monitoring information, which includes the following:

V.C.6.a.(i) Date, place, as defined in the permit, and time of sampling or measurements;

V.C.6.a.(ii) Date(s) on which analyses were performed;

V.C.6.a.(iii) The company or entity that performed the analysis;

V.C.6.a.(iv) The analytical techniques or methods used;

V.C.6.a.(v) The results of such analysis; and

V.C.6.a.(vi) The operating conditions as existing at the time of sampling or measurement.

V.C.6.b. The retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report or application. Support information, for this purpose, includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. The applicant may, with the Division's approval, maintain any of the above records in a computerized form. Sources must retain records of all required monitoring data and support information for the most recent twelve month period, as well as compliance certifications for the past five years on site at all times. A source shall make available for Division review all other records of required monitoring data and support information required to be retained by a source upon forty-eight hours advance notice by the Division.

V.C.6.c. A permittee may request confidential treatment for information in any report submitted under this section pursuant to the limitations and procedures set forth in Section VII. of Part A of this Regulation Number 3.

V.C.7. Each permit shall incorporate all applicable reporting requirements, and shall require the following:

V.C.7.a. Submittal of all reports of any required monitoring at least every six months except as otherwise required on a more frequent basis pursuant to compliance assurance monitoring rules or other applicable requirements. The Division may approve alternative reporting formats and schedules proposed by an applicant consistent with the requirements of this section, allowing for coordination with other reporting requirements for that source. All instances of deviations from any permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with Section III.B.8. of this Part C;

V.C.7.b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Each permit shall contain a definition of prompt reporting in relation to the degree and type of deviation likely to occur and the applicable requirements. Generally "prompt" reporting shall entail reporting as required in Section V.C.7.a., above,

requiring submission of reports of deviations from permit requirements at least every six months, except as otherwise specified by the Division in the permit. Prompt reporting, for this purpose, does not constitute an exception to the requirements of Section VII. relating to reporting of emergency events for the purpose of avoiding enforcement actions.

V.C.8. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Federal Act or the regulations promulgated there under at Code of Federal Regulations Title 40, Part 72.

V.C.9. State only permit terms and conditions shall be listed separately on the operating permit. All procedural requirements of this Part C may apply to such state only conditions, except as otherwise required by the state Act, in order for sources to obtain the permit shield and all operational flexibility provisions. The permit shall also contain a specific designation as not being federally enforceable any state only terms and conditions included in the permit that are not required under the Federal Act or under any of its applicable requirements. A source may choose to obtain a separate construction permit pursuant to Part B for such state only requirements, except as otherwise required under the state Act;

V.C.10. A severability clause that demands the continued validity of the various permit requirements in the event of a challenge to any portion of the permit;

V.C.11. Provisions stating the following permit terms and conditions:

V.C.11.a. The permittee must comply with all conditions of the permit issued under this Part C. Any permit noncompliance relating to federally enforceable terms or conditions constitutes a violation of the Federal Act, as well as the state Act and this regulation. Any permit noncompliance relating to state only terms or conditions constitutes a violation of the state Act and this regulation, shall be enforceable pursuant to state law, and shall not be enforceable by citizens under Section 304 of the Federal Act. Any such violation of the Federal Act, the state Act or regulations implementing either statute is grounds for enforcement action, for permit termination, revocation and reissuance or modification or for denial of a permit renewal application.

V.C.11.b. It shall not be a defense for a permittee in an enforcement action or a consideration in favor of a permittee in a permit termination, revocation or modification action or action denying a permit renewal application that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

V.C.11.c. The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of any request by the permittee for a permit modification, revocation and reissuance, or termination, or any notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided in Sections X. and XI. of this Part C;

V.C.11.d. The permit does not convey any property rights of any sort, or any exclusive privilege;

V.C.11.e. The permittee shall furnish to the Division, within a reasonable time specified by the Division, any information that the Division may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Division copies of records required to be

kept by the permittee, including information claimed to be confidential. Any information subject to a claim of confidentiality shall be specifically identified and submitted separately from information not subject to the claim;

V.C.12. A requirement that the permittee shall pay to the Division all applicable fees required by the state Act and regulations.

V.C.13. A provision that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are specifically provided for in the permit;

V.C.14. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application for a permit and approved by the Division, in accordance with Section IV.A. of Part A of this regulation.

V.C.15. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, in accordance with Section IV.B. of Part A.

V.C.16. The following elements with respect to compliance:

V.C.16.a. Consistent with Sections III.B.7., III.B.8., III.C.8. through III.C.13., and V.C.4. through V.C.7. of this Part C, compliance, certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by an operating permit shall contain a certification by a responsible official that meets the requirements of Section III.B.8. of this Part C;

V.C.16.b. Inspection and entry requirements that require, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Division or any authorized representative to perform the following:

V.C.16.b.(i) Enter upon the permittees premises where an operating permit source is located, or emissions-related activity is conducted, or where records must be kept under the terms of the permit;

V.C.16.b.(ii) Have access to, and copy, at reasonable times, any records that must be kept under the conditions of the permit;

V.C.16.b.(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit. The permittee shall provide, as part of its permit application, a list of any specialized safety equipment which may be necessary for use by an inspector; and

V.C.16.b.(iv) Any sampling or monitoring of substances or parameters at reasonable times for the purpose of assuring compliance with the permit or applicable requirements;

V.C.16.c. A schedule of compliance consistent with Section III.C. of this Part C;

V.C.16.d. Progress reports consistent with an applicable schedule of compliance and Section III.C. of this Part C, to be submitted at least semiannually or at a more frequent period if so specified in the applicable requirement or by the Division. Such progress reports shall contain the following:

V.C.16.d.(i) Dates for achieving the activities, milestones, or compliance required in the schedule for compliance, and dates when such activities, milestones, or compliance were achieved; and

V.C.16.d.(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

V.C.16.e. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

V.C.16.e.(i) The frequency (which shall not be less than annually or such more frequent periods as specified in the applicable requirement or by the Division) of submission of compliance certifications;

V.C.16.e.(ii) In accordance with Sections V.C.4. through V.C.7. of this Part C, a means of monitoring the compliance of the source with its emissions limitations, standards and work practices;

V.C.16.e.(iii) A requirement that the compliance certification include the following:

V.C.16.e.(iii)(A) The identification of each permit term and condition that is the basis of the certification;

V.C.16.e.(iii)(B) The compliance status;

V.C.16.e.(iii)(C) Whether compliance was continuous or intermittent;

V.C.16.e.(iii)(D) The method(s) used for determining the compliance status of the source, currently and over the reporting period, consistent with Sections V.C.4. through V.C.7. of this Part C; and whether the data collection using the methods referenced for compliance certification provide continuous or intermittent data; and

V.C.16.e.(iii)(E) Such other facts as the Division may require to determine the compliance status of the source.

V.C.16.e.(iv) A requirement that all compliance certifications shall be submitted to the Administrator as well as to the Division. This requirement shall not apply to sources subject to the operating permit requirements solely due to state only conditions pursuant to the state Act;

V.C.16.e.(v) Any additional requirements for compliance assurance monitoring and compliance certification;

V.C.16.e.(vi) Such other provisions as the Division may require.

V.C.17. If a source is required to develop and register a risk management plan pursuant to Section 112(r) of the Federal Act, the permit shall only refer to such plan and state the source's compliance with such registration requirement. The content of the risk management plan will not be incorporated as a permit term.

V.D. The permit shield shall extend to applicable requirements that are included and specifically identified in the permit. Upon request, the Division shall include in the permit a determination identifying specific requirements that do not apply to the source. The source shall specify in its permit application for such a determination the requirements as to which the determination is requested. The permit shall state that the permit shield applies to any requirements so identified. A request for a determination to extend the shield to requirements deemed applicable to the source may be made either in the original permit application or in a subsequent application for a permit modification.

V.E. If the Division denies a permit, imposes conditions on a permit that are contested by the applicant, revokes a permit, or requires a permit from a source that may qualify for an exemption, the applicant or owner or operator of the source may request a hearing before the Commission in accordance with the Commission's Procedures for Adjudications. The request for a hearing must be filed with the Commission within thirty days after the issuance of the permit, denial or revocation. The hearing shall be held in accordance with Colorado Revised Statute Sections 25-7-119 and 24-4-105 and the Commission's Procedures for Adjudications.

V.F. The Division shall submit to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final operating permit.

VI. Public Participation Requirements

VI.A. Except for modifications qualifying for administrative permit amendments, minor permit modification procedures and operational flexibility provisions, as described in Sections X., XI., and XII. of this Part C, Sections III. and IV. of Part A, and except for applications for coverage under general operating permits as described in Section VIII. of this Part C, all permit proceedings, including initial permit issuance, significant modifications, re-openings and renewals, and are subject to public notice, comment and opportunity for public hearing requirements. A minor source voluntarily applying for an operating permit is not subject to the public participation requirements of this Part C unless the source is required to have a federally enforceable emission limitation to be considered a (synthetic) minor source. Minor sources that are not synthetic minors and major sources of Colorado-only Hazardous Air Pollutants subject to the operating permit requirements solely due to state-only conditions shall be subject to the public participation requirements where warranted in accordance with the provisions of Part B of this Regulation Number 3.

VI.B. The Division shall, within fifteen calendar days after the preparation of the preliminary analysis, cause public notice of the application to be published in a newspaper of general distribution in the area in which the proposed project or activity is or will be located or in a State publication designed to give general public notice, and by such other means if necessary to assure notice to the affected public, which may include posting of such notice on the publicly accessible portion of the Division's web site. The Division shall cause a copy of the preliminary analysis and application to be filed with the county clerk for each county in which the source is or will be located. The Division shall send written or electronic notice to the applicant, to persons requesting notice of permit applications that are subject to public notice requirements, and to affected states. The newspaper notice or other State publication shall contain the information listed below in VI.B.1. through VI.B.9. The Division's web site notice shall contain all the following information in Sections VI.B.1. through VI.B.15.:

VI.B.1. The name and address of the permittee;

VI.B.2. The name and address of the affected facility;

VI.B.3. The Division's name and address;

VI.B.4. The activity or activities proposed in the permit application;

VI.B.5. The emissions change involved in any permit modification;

VI.B.6. The name, address, and telephone number of a Division staff contact from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, the compliance plan, the monitoring and compliance certification report, and all other materials available to the Division that are relevant to its permit decision;

VI.B.7. Information regarding scheduling of any public comment hearing if one is requested;

VI.B.8. That the Division will receive and consider public comments for thirty calendar days after such publication;

VI.B.9. The Division's preliminary determination of approval, conditional approval, or disapproval of the application;

VI.B.10. That any interested person may submit a written request for a public comment hearing to be held by the Commission to receive comments regarding the concerns listed in Sections VI.B.11. through VI.B.15., below, the sufficiency of the preliminary analysis, and whether the Division should approve or deny the permit application. Any written request for a public comment hearing must be submitted to the Division within thirty days of publication;

VI.B.10.a. Written requests for a public comment hearing shall be directed to the Air Pollution Control Division's office at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530;

VI.B.10.b. Requests shall: (i) identify the individual or group applying; (ii) state his or her address and phone number; (iii) state the reasons for the request; (iv) state the manner in which the person is affected by the proceedings; and (v) provide an explanation of why the person's interests are not already adequately represented.

VI.B.11. That comments concerning the ability of the proposed activity to comply with applicable requirements are solicited from any interested person;

VI.B.12. That comments are solicited on the air quality impacts of the source or modification;

VI.B.13. That comments are solicited on alternatives to the source or modification;

VI.B.14. That comments are solicited on the control technology required;

VI.B.15. That comments are being solicited on any other appropriate air quality considerations.

VI.C. Within fifteen calendar days after the preparation of the preliminary analysis for those applications subject to the requirements of this Part C, the Division shall forward to the applicant written notice of the applicant's right to a public comment hearing with respect to the application pursuant to Section VII. of the Commission’s Procedural Rules.

VI.D. A public comment hearing request pursuant to Section VI.B. of this Part C must be transmitted by the Division to the Commission, along with the complete permit application, the preliminary analysis, the draft permit, and any written comments received by the Division within five days after the end of the thirty-day comment period. At least thirty days prior to the date set for the

public comment hearing, the notice of public comment hearing, the preliminary analysis and the draft permit shall be posted on the Division's web site. No substantive revisions shall be made to the draft permit during the thirty days prior to the public comment hearing. The applicant may submit, within ten days following the close of the public comment period, a response to any comments made. Nothing herein shall impede the Division's ability to meet required processing timeframes or other required time periods contained in this regulation.

VI.E. The Commission shall hold a public comment hearing within sixty days of its receipt of the request for a hearing pursuant to Section VI.B. or VI.C. of this Part C, unless such greater time is agreed to by the applicant and the Division. The Division shall appear at the public comment hearing in order to present the permit application. At least thirty days prior to such hearing, notice thereof shall be mailed by the Commission to the applicant, and to any interested person who submitted a request for a public hearing, printed in a newspaper of general distribution in the area of the proposed source or modification, and submitted for public review with the county clerk for each county in which the source or modification is or will be located.

VI.F. The Division shall maintain a record of the commenter and of the issues raised during the public comment and public hearing process for a period of five years.

VI.G. The Division shall notify the Administrator and any affected state, in writing, of any refusal to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period, as well as reasons for such refusal.

VI.H. If the Administrator does not object in writing to the issuance of any proposed permit within forty-five days of receipt of the proposed permit, any person may petition the Administrator within sixty days of expiration of the Administrator's forty-five day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period as provided for in Section VI.B. of this Part C, unless the petitioner demonstrates that it was impracticable to raise such objections within that period, or unless the grounds for such objection arose after such period

VI.H.1. A petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five day review period and prior to an U.S. EPA objection.

VI.H.2. If, pursuant to a petition filed under this Section VI.H., the U.S. EPA objects to the issuance of a permit prior to its issuance, the Division shall not issue the permit until the U.S. EPA's objection has been resolved.

VI.H.3. If, pursuant to a petition filed under this Section VI.H., the U.S. EPA objects to the issuance of a permit after it has been issued by the Division, the Administrator may modify, terminate, or revoke such permit and the Division may thereafter issue only a revised permit that satisfies the U.S. EPA's objection.

VI.H.4. In no event will any proceeding under this Section VI.H. cause a source to be in violation of the requirement to have submitted a timely and complete application.

VII. Emergency Provisions

VII.A. An emergency means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of god, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent

caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

VII.B. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of Section VII.C. are met. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

VII.C. The affirmative defense for an emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

VII.C.1. An emergency occurred and that the permittee can identify the cause(s) of the emergency;

VII.C.2. The permitted facility was at the time being properly operated;

VII.C.3. During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

VII.C.4. The permittee submitted oral notice of the emergency to the Division no later than noon of the next working day following the emergency, and followed by written notice within one month of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of Section V.C.7.b. of this Part C. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

VII.C.5. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

VIII. General Operating Permits

VIII.A. The Division may, after notice and opportunity for public participation provided under Section VI. of this Part C, issue a general permit covering numerous similar sources that would otherwise be required to obtain an operating permit pursuant to this Part C. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. For sources that qualify, the Division shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, a source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits are not authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the Federal Act. A general permit may be issued for the following purposes:

VIII.A.1. To establish terms and conditions to implement applicable requirements for a source category;

VIII.A.2. To establish terms and conditions to implement applicable requirements in lieu of reopening the permit to incorporate additional applicable requirements pursuant to Section XIII of this Part C;

VIII.A.3. To establish terms and conditions for new requirements that apply to sources with existing permits, so long as no terms or conditions of the existing permit are being violated;

VIII.A.4. To establish federally enforceable caps on emissions from sources in a specified category.

VIII.A.5. The Division may issue a general permit if it finds that:

VIII.A.5.a. There are several permittees, permit applicants, or potential permit applicants who have the same or substantially similar operations, emissions, activities, or facilities;

VIII.A.5.b. The permittees, permit applicants, or potential permit applicants emit the same type of regulated air pollutants;

VIII.A.5.c. The operations, emissions, activities, or facilities are subject to the same or similar standards, limitations, and operating requirements; and

VIII.A.5.d. The operations, emissions, activities, or facilities are subject to the same or similar monitoring, record keeping, and reporting requirements.

VIII.B. A general permit developed under this section shall identify criteria by which sources may qualify for the general permit. After a general permit has been developed, any eligible source may submit an application to be covered under the permit.

VIII.C. An application for coverage under a general permit shall identify the source and provide information sufficient to demonstrate that it falls within the source category covered by the general permit, together with all information necessary to determine qualification for, and to assure compliance with, the general permit including a compliance plan in accordance with Section III.C.8. of this Part C.

VIII.D. A final action approving a request for coverage under a general permit shall not be subject to judicial review. A source may seek judicial review of a final action denying coverage under a general permit.

VIII.E. If some, but not all, of a source's operations, activities, and emissions are eligible for coverage under one or more general permits, the source may apply for and receive coverage under the general permits for the operations, activities, and emissions that are so eligible. If the source is required under Section II. of this Part C to obtain an operating permit addressing the remainder of its operations, activities, and emissions, it may apply for, and receive, an operating permit that addresses specifically those items not covered by general permits. In such a case, the source's operating permit shall identify all operations, activities, and emissions that are subject to general permits and incorporate those general permits by reference.

VIII.F. Sources that would qualify for a general permit must apply to the Division for coverage under the terms of the general permit or must apply for an operating permit under Section III. of this Part C. without repeating the public participation procedures required under Section VI. of this Part C, the Division may grant a source's request for authorization to operate under a general permit. Such a grant shall not be a final permit action for purposes of judicial review.

VIII.G. Upon granting of the general permit by the Division, the source must keep a copy of the permit on-site at all times.

VIII.H. A general operating permit shall not be issued to a major source where issuance of a general permit would cause a violation of any applicable requirement in any other operating permit held by the source, or where issuance of a general operating permit operates to allow the source to avoid a modification under Title I of the Federal Act.

VIII.I. A source may commence operations under the general operating permit sixty days after submitting its application for a general operating permit unless notified by the Division within that time period that additional information is required to determine whether the source qualifies for a general operating permit. Nothing herein precludes the Division from requesting additional information after sixty days have elapsed since the source's submission of a general operating permit application.

VIII.J. The application shield shall become effective upon the source's submission of a complete application, in accordance with Section II.B. of this Part C.

VIII.K. The permit shield shall become effective upon issuance of the general operating permit by the Division.

VIII.L. The general operating permits, as developed by the Division, shall be required to undergo review by the Administrator, affected states and the public, as set forth in Sections V.B., VI., and IX. of this Part C every five years.

IX. Review By Affected States

IX.A. The Division shall give notice of each draft-operating permit to any affected state on or before the time that the Division provides public notice under Section VI. of this Part C, except where the requirements for timing of notices are different pursuant to Sections X., X.I., and XII. of this Part C.

IX.B. The Division shall notify the U.S. EPA and any affected state in writing of any refusal by the Division to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. Said notice will include the Division's reasons for not accepting any such recommendation. The Division is not required to accept recommendations that are not based on applicable requirements.

X. Minor Permit Modification Procedures

X.A. Minor permit modification procedures may be used only for those permit modifications that:

X.A.1. Do not violate any applicable requirement;

X.A.2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in a permit;

X.A.3. Do not require or change a case-by-case determination of an emission limitation or other standard or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

X.A.4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

X.A.4.a. A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Federal Act, including but not limited to modifications under Part 2 of the state Act (prevention of significant deterioration), Part 3 of the state Act (attainment), or New Source Performance Standards (Regulation Number 6);

X.A.4.b. An alternative emissions limit approved pursuant to regulations promulgated under Colorado Revised Statute Section 25-7-109.3 or Section 112(i)(5) of the federal Act (Regulation Number 8);

X.A.5. Are excepted from the definition of permit modification in Section I.A.3. of Part C.

X.A.6. Are not otherwise required by the Division to be processed as a significant modification.

X.B. Notwithstanding Sections X.A.5.and XI. (group processing criteria), minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other approved approaches, to the extent that such minor permit modification procedures are otherwise provided for in the state implementation plan promulgated pursuant to the state Act.

X.C. An application for a minor permit modification shall be prepared on forms supplied by the Division.

X.D. Applications shall meet the requirements of an application for an operating permit as set forth in Commission Regulation Number 3, Part C, Section III., and be signed by a responsible official. The applicant shall furnish all information and data required by the Division to evaluate the minor permit modification application, and shall include the following:

X.D.1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

X.D.2. The sources suggested draft permit;

X.D.3. Certification by a responsible official that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

X.D.4. Completed forms supplied by the Division for the Division to use to notify the Administrator and affected states.

X.D.5. Data necessary to allow the Division to determine whether the source complies with:

X.D.5.a. All applicable emission control regulations;

X.D.5.b. Applicable regulations for the control of hazardous air pollutants;

X.D.5.c. Requirements of the nonattainment and attainment programs (Sections V. and VI. of Part D of this regulation); and

X.D.5.d. Any applicable ambient air quality standards and all applicable regulations. When the data includes modeling, the model used shall be an appropriate one given the topography, meteorology, and other characteristics of the region, which the source will impact;

X.D.6. Copies of Air Pollutant Emission Notice(s) on file with the Division indicating production/process rates for which the operating permit is to be evaluated, or, if Air Pollutant Emission Notice(s) have not been previously filed, a new Air Pollutant Emission Notice(s) shall be submitted in accordance with Part A, Section II. The Air Pollutant Emission Notice fee will not be charged for submission of copies of current Air Pollutant Emission Notice(s) previously filed with the Division.

X.E. An application for a minor permit modification will not be deemed to be complete until all information and data (including any required ambient air impact analysis in accordance with Section VIII. of Part A) required to evaluate the application have been submitted to the Division.

X.F. Within five working days of receipt of a complete minor permit modification application, the Division shall send a copy of the notice completed pursuant to Section X.D.4., above, to the Administrator.

X.G. Within five working days of receipt of a complete minor permit modification application, the Division shall send a copy of the notice completed pursuant to Section X.D.4., above, to affected states. Notice to affected states shall not be required for minor sources that voluntarily apply for an operating permit to obtain the operational flexibility set forth in this Part C. The Division shall notify the Administrator and any affected state of any refusal by the Division to accept all recommendations for the proposed revised permit under the minor permit modification procedures that the affected state submitted during its review period. The Division shall include in such notice its reasons for not accepting any such recommendation. The Division is not required to accept recommendations that are not based on applicable requirements under the state or Federal Act. Notice to affected states and to the Administrator is not required for minor modifications involving state only conditions.

X.H. Within ninety calendar days of receipt of a complete application for minor permit modification, or fifteen calendar days after the end of the Administrator's forty five day review period, whichever is later, the Division shall:

X.H.1. Issue the minor permit modification as proposed;

X.H.2. Deny the minor permit modification application;

X.H.3. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

X.H.4. Revise the draft minor permit modification and transmit to the Administrator the new proposed minor permit modification as required in this Regulation Number 3, Part C, Section V.B.5.

X.I. A source shall be allowed to make the changes proposed in its application for minor permit modification immediately after it files such application. If the source elects to make such changes, and until the Division issues its final determination in accordance with Sections X.H.1. through X.H.4., above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time, the source does not need to comply with existing permit terms and conditions it seeks to modify, but if the source fails to comply with its proposed permit terms and conditions during this period, the existing permit terms and conditions it seeks to modify shall be fully enforceable by the Division.

X.J. The permit shield shall not extend to minor permit modifications.

X.K. A permit modification for purposes of the acid rain portion of a permit shall be governed by regulations promulgated under Title IV of the Federal Act, found at Code of Federal Regulations Title 40, Part 72.

XI. Procedures For Group Processing Of Minor Permit Modification Applications

XI.A. Group processing of applications for modifications eligible for minor permit modification processing may be used only for those permit modifications that:

XI.A.1. Meet the requirements of Part C, Sections X.A.1. through X.A.6., above, for minor permit modification procedures; and

XI.A.2. That collectively is below the lowest threshold level as set forth below:

XI.A.2.a. Ten percent of the emissions allowed by the permit for the emissions unit for which the change is requested; or

XI.A.2.b. Twenty percent of the applicable definition of major source; or

XI.A.2.c. Five tons per year, whichever is less.

XI.B. An application shall be filed with the Division for each change the source proposes to make, describing the change and the new emissions resulting from the change and notifying the Division that the source intends to request group processing of such minor modification applications in accordance with Section XI.C.4., below. An application for group processing of minor permit modifications shall be prepared on forms supplied by the Division.

XI.C. Applications shall meet the requirements of an application for an operating permit as set forth in Commission Regulation Number 3, Part C, Section III., and be signed by a responsible official. The applicant shall furnish all information and data (including any required ambient air impact analysis in accordance with Section VIII. of Part A of this regulation) required by the Division to evaluate the minor permit modification application and shall include the following:

XI.C.1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

XI.C.2. The sources suggested draft permit;

XI.C.3. Certification by a responsible official that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used;

XI.C.4. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under Sections XI.A.2.a. through XI.A.2.c. of this Part C;

XI.C.5. Certification by a responsible official that the source has notified the U.S. EPA of the proposed modification. Such notification need only contain a brief description of the requested modification;

XI.C.6. Copies of Air Pollutant Emission Notice(s) on file with the Division indicating production/process rates for which the operating permit is to be evaluated, or, if Air Pollutant Emission Notice(s) have not been previously filed, a new Air Pollutant Emission Notice(s) shall be submitted in accordance with Part A, Section II. The Air Pollutant Emission Notice fee will not be charged for submission of copies of current Air Pollutant Emission Notice(s) previously filed with the Division.

XI.C.7. Completed forms for the permitting authority to use to notify the Administrator and affected states. Notice to affected states is not required for minor sources voluntarily applying for an operating permit to obtain the operational flexibility set forth in this Part C. Notice to affected states and the Administrator is not required for group processing of minor modifications involving state only conditions.

XI.C.8. As provided for in the state implementation plan, minor permit modifications made pursuant to this Section XI. will not trigger the procedural requirements otherwise applicable for modifications pursuant to Part B of this regulation.

XI.D. On a quarterly basis, or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the thresholds set forth in Section XI.A.2., whichever is earlier, the Division shall promptly notify the Administrator and affected states. A source shall only be allowed to aggregate its increased emissions caused by changes made in accordance with this Section XI. during each five-year permit term, except that any aggregation of emissions that equals or exceeds the thresholds set forth in Section A.2. shall trigger the procedural requirements set forth in this Section XI. All aggregation of emissions not addressed through the procedures set forth in this Section XI. shall be incorporated into the operating permit upon renewal.

The Division shall promptly notify the Administrator and any affected state of any refusal by the Division to accept all recommendations for the proposed revised permit under the group processing of minor permit modifications that the affected state submitted during its review period. The Division shall include in such notice the reasons for not accepting any such recommendation. The Division is not required to accept recommendations that are not based on applicable requirements under the state or Federal Acts.

XI.E. Within one hundred and eighty calendar days of receipt of a complete application for group processing of minor permit modifications under this Section XI., or fifteen calendar days after the end of the Administrator's forty-five days review period, whichever is later, the Division shall:

XI.E.1. Issue the minor permit modification as proposed;

XI.E.2. Deny the minor permit modification application;

XI.E.3. Determine that the requested modifications do not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

XI.E.4. Revise the draft minor permit modification and transmit to the Administrator the new proposed minor permit modification.

XI.F. A source shall be allowed to make the changes proposed in its application for group processing of minor permit modifications immediately after it files such application. If the source elects to make such changes, and until the Division issues its final determination in accordance with Sections XI.E.1. through XI.E.4. above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time, the source does not need to comply with existing permit terms and conditions it seeks to modify, but if the source fails to comply with its proposed permit terms and conditions during this period, the existing permit terms and conditions it seeks to modify shall be fully enforceable by the Division.

XI.G. The permit shield shall not extend to minor permit modifications made pursuant to the group processing procedures in this Section XI.

XII. Operational Flexibility

XII.A. Section 502(b)(10) changes

XII.A.1. No permit revision is necessary for changes within a permitted facility, if the changes are excepted from the definition of modification in Part A, Section I.B.28. of this Regulation Number 3, and the changes do not exceed the emissions allowable under the permit,

whether expressed therein as a rate of emissions or in the terms of total emissions, and provided that notice is provided to the Division as set forth below:

XII.A.1.a. For each such change, the facility shall provide the Administrator and the Division with a minimum of seven days' written notification in advance of the proposed changes. The notice must be received by the Division no later than seven days in advance of the proposed changes. The source, the Division, and the Administrator shall attach each such notice to their copy of the relevant permit;

XII.A.1.b. For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable because of the change;

XII.A.1.c. A source shall be allowed to make such change proposed in its notice on the day following the last day of the advance notice described in this section if the Division has not responded nor objected to the proposed change on or before that day; and

XII.A.1.d. The permit shield shall not apply to any changes made pursuant to this section. If subsequent changes cause the facility's operations and emissions to revert to those anticipated in the operating permit, the permittee resumes compliance with the terms and conditions of the permit, and has provided the Division and Administrator with a minimum of seven days' advance notice of such changes in accordance with the provisions of Section XII.A.1.a., above, the permit shield may be reinstated in accordance with the terms and conditions stated in the operating permit.

XII.A.2. Changes made pursuant to this Section XII.A. shall be incorporated into the operating permit at the time of renewal, at which time the permit shield shall apply.

XII.B. Off Permit Changes

No permit revision shall be necessary for changes within a permitted facility, not otherwise addressed or prohibited in the permit or in the provisions of this Section XII.B., governing off permit changes. This provision shall apply to changes, which are excepted from the definition of permit modification in Section I.A.3. of this Part C, or if such changes are subject to requirements of Title IV of the Federal Act (acid rain program). As provided for in the state implementation plan, changes made pursuant to this Section XII.B. shall not trigger the procedural requirements contained in Part B of this regulation for obtaining a construction permit.

XII.B.1. Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

XII.B.2. The source must provide contemporaneous written notice to the permitting authority and the Administrator of each such change, except for changes that have been determined to be insignificant by the Commission pursuant to regulation. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change. A revised Air Pollutant Emission Notice shall be submitted in accordance with the provisions of Part A, Section II., along with the written notice required in this Section XII.B.2.

XII.B.3. The permit shield shall not apply to any such change made pursuant to this Section XII.B.

XII.B.4. The source shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes, including any other data necessary to show compliance with applicable ambient air quality standards.

XII.B.5. Changes made pursuant to this Section XII.B. shall be incorporated into the operating permit at the time of renewal.

XIII. Reopening For Cause Of Permits Issued Pursuant To Part C

XIII.A. A permit issued pursuant to Part C of this Commission Regulation Number 3, shall be reopened and revised under any of the following circumstances:

XIII.A.1. Additional applicable requirements become applicable to a major source with a remaining permit term of three or more years. Such reopening shall be completed no later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended, or if a general permit is obtained to address the new requirement pursuant to Section VIII.A.2. of this Part C;

XIII.A.2. Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

XIII.A.3. The Division or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit;

XIII.A.4. The Division or the Administrator determines that the permit must be revised or revoked to assure compliance with the applicable requirements;

XIII.A.5. Permit reopening and reissuance shall be processed using the procedures set forth in Sections III., IV., and V. of this Part C for permit issuance and permit renewal;

XIII.A.6. Proceedings to reopen and reissue permits affect only those parts of the permit for which cause to reopen exists; and

XIII.A.7. Reopening under this section of Part C shall not be initiated before notice of such intent is provided to the source by the Division at least thirty days in advance of the date that the permit is to be reopened. The Division may provide a shorter time period within which to give notice in the case of an emergency.

XIII.B. The Division shall extend the permit shield to those parts of the permit that have been changed pursuant to the reopening and reissuance proceedings of this section of Part C.

XIII.C. A source may choose to have its operating permit renewed during any proceeding for reopening the permit under this section, provided a complete application is submitted pursuant to Part C.

XIV. Compliance Assurance Monitoring

The regulations promulgated by the U.S. EPA listed in Section XIV.A.1., below, are hereby incorporated by reference by the Commission and made a part of the Colorado Commission regulations. Materials incorporated by reference are those in existence as of the date indicated and do not include later

amendments. The material incorporated by reference is available for public inspection during regular business hours at the Office of the Commission, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys. Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the office of the Commission.

XIV.A.1. Air Pollution Control, Monitoring, Operating Permits, Reporting and Record Keeping Requirements: Compliance Assurance Monitoring, Code of Federal Regulations Title 40, Parts 64 and 70.6, October 22, 1997 (62 FR 54900).

Air Pollution Control, Monitoring, Operating Permits, Reporting and Record keeping Requirements: Compliance Assurance Monitoring, Code of Federal Regulations Title 40, Parts 64, 70.6 and 71.6, October 22, 1997 (62 FR 54900).

PART D CONCERNING MAJOR STATIONARY SOURCE NEW SOURCE REVIEW AND PREVENTION OF SIGNIFICANT DETERIORATION

I. Applicability

I.A. General Applicability

I.A.1. This Part D shall apply to any new or existing major stationary source.

Any new major stationary source or major modification, to which the requirements of this Part D apply, shall not begin actual construction in a nonattainment, attainment, or unclassifiable area unless a permit has been issued containing all applicable state and federal requirements.

I.A.2. Except as otherwise provided in Section XV. of this Part D, and consistent with the definition of major modification (Section II.A.23. of this part), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in Section II.A.45. of this part), and a significant net emissions increase (as defined in Sections II.A.27. and II.A.44. of this part). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

I.A.3. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being constructed or modified, according to Sections I.B.1. through I.B.3. of this part. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of Net Emissions Increase (Section II.A.27. of this part). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

I.B. Applicability Tests

I.B.1. Actual-to-projected-actual applicability test for projects that only involve existing emissions units.

A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in Section II.A.38. of this part) and the baseline actual emissions (as defined in Sections II.A.4.a. and II.A.4.b. of this part, as

applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Section II.A.44. of this part).

I.B.2. Actual-to-potential test for projects that only involve construction of a new emissions unit(s).

A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in Section I.B.37. of Part A of this regulation) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Section II.A.4. of this part) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Section II.A.44. of this part).

I.B.3. Hybrid test for projects that involve multiple types of emissions units.

A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the methods specified in Sections I.B.1. through I.B.3. of this part as applicable with respect to each type of emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Section II.A.44. of this part).

I.B.4. An owner or operator of a major stationary source who conducts the actual-to-projected-actual test for a project that requires a minor permit modification in accordance with Section X. of Part C, requires a significant permit modification in accordance with Section I.A.3. of Part C, a modification as defined in Section I.B.28. of Part A or that requires a minor source permit under Part B shall submit a permit application including:

I.B.4.a. All calculations and supporting documentation used to determine baseline actual emissions of each emissions unit affected by the project;

I.B.4.b. All calculations and supporting documentation used to determine projected actual emissions of each existing emissions unit affected by the project;

I.B.4.c. A determination of that portion of each existing unit's emissions following the project that the unit could have accommodated during the consecutive twenty-four month period used to establish the baseline actual emissions and that are unrelated to the project, including any increased utilization due to product demand growth; and,

I.B.4.d. Any other information requested by the Division that may be needed to determine if a major modification will occur at each emissions unit affected by the project.

The information submitted in accordance with Section I.B.4.a. through I.B.4.d., above, shall be incorporated into an appendix to the major stationary source's Title V Operating permit or as a permit note in the construction permit.

The requirement that the owner or operator of a major stationary source who conducts the actual-to-projected-actual test for a project that requires a minor permit modification submit information in accordance with Sections I.B.4.a. through I.B.4.d., as set out in this Subsection I.B.4., shall not be federally enforceable and shall not be incorporated into the state implementation plan.

I.C. For any major stationary source requesting, or operating under, a Plant-wide Applicability Limitation (as defined in Section II.A.35.) for a regulated NSR pollutant, the major stationary source shall comply with the requirements of Section XV. of this part.

II. Definitions

II.A. The following definitions apply specifically to the provisions contained in this Part D.

II.A.1. Actual Emissions

The actual rate of emission of a regulated NSR pollutant from an emissions unit, determined as follows:

II.A.1.a. Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four month period that precedes the particular date and is representative of normal unit operation. A different period may be used if it is more representative of normal unit operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted or actual emission data during the selected time period;

II.A.1.b. The Division may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit only if actual emissions cannot be determined pursuant to Section II.A.1.a., above;

II.A.1.c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

II.A.1.d. This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Section XV. of Part D of this regulation. Instead, Sections II.A.38. and II.A.4. of this part shall apply for these purposes.

II.A.2. Actuals PAL

For a major stationary source, means a PAL based on the baseline actual emissions (as defined in Sections II.A.4.a. through II.A.4.d. of this part) of all emissions units (as defined in the Common Provisions regulation) at the source that emit or have the potential to emit the PAL pollutant. For a GHG-only source, actuals PAL means a PAL based on the baseline actual emissions (as defined in Sections II.A.4.e. and II.A.4.f.) of all emissions units (as defined in Section II.A.13.b.) at the source that emit or have the potential to emit GHGs.

II.A.3. Air Quality Related Value

Any value of an area that may be affected by a change in air quality. Examples include flora, fauna, soil, water, visibility, cultural, and odor.

II.A.4. Baseline Actual Emissions

The rate of emissions, in tons per year, of a regulated NSR pollutant.

II.A.4.a. For any existing electric utility steam generating unit (as defined in Section II.A.14. of this part), baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four month period selected by the owner or operator within the five year period immediately preceding when the owner or operator begins actual construction of the project. The Division shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

II.A.4.a.(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

II.A.4.a.(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four month period.

II.A.4.a.(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four month period may be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four month period can be used for each regulated NSR pollutant.

II.A.4.a.(iv) The average rate shall not be based on any consecutive twenty-four month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Section II.A.4.a.(ii).

II.A.4.b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four month period selected by the owner or operator within the ten year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Division for a permit required under this Part D, except that the ten year period shall not include any period earlier than November 15, 1990.

II.A.4.b.(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

II.A.4.b.(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four month period.

II.A.4.b.(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had the major stationary source been required to comply with such limitations during the consecutive twenty-four month period. However, if an emission limitation is part of a maximum achievable control technology standard contained in Part E of Regulation Number 8, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan.

II.A.4.b.(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four month period can be used for each regulated NSR pollutant.

II.A.4.b.(v) The average rate shall not be based on any consecutive twenty-four month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required under Sections II.A.4.b.(ii) and II.A.4.b.(iii) of this part.

II.A.4.c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit (as defined in Section I.B.37. of Part A of this regulation).

II.A.4.d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Section II.A.4.a., for other existing emissions units in accordance with the procedures contained in Section II.A.4.b., and for a new emissions unit in accordance with the procedures contained in Section II.A.4.c.

II.A.4.e. For a GHG PAL means the average rate, in tons per year CO2e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins construction of the project, or the date a complete permit application is received by the Division for a permit required under this Part D or by the Division for a permit required by a plan, whichever is earlier.

II.A.4.f. For any existing electric utility steam generating unit (as defined in Section II.A.14. of this part), baseline actual emissions for a GHG PAL means the average rate, in tons per year CO2e or tons per year GHG, at which the unit actually emitted the pollutant during any consecutive twenty-four month period selected by the owner or operator within the five year period immediately preceding when the owner or operator begins actual construction of the project. The Division shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

II.A.4.f.(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

II.A.4.f.(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four month period.

II.A.4.f.(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

II.A.4.f.(iv) The average rate shall not be based on any consecutive twenty-four month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by Sections II.A.4.a.(ii) and II.A.4.a.(iii).

II.A.5. Baseline Area

II.A.5.a. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Sections 107(d)(1)(A)(ii) or (iii) of the Federal Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than one microgram/cubic meter (1 µg/m3) (annual average) for SO2, NO2, or PM10; or equal to or greater than 0.3 µg/m3) (annual average) for PM2.5.

II.A.5.b. Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the Federal Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

II.A.5.b.(i) Establishes a minor source baseline date, or

II.A.5.b.(ii) Is subject to this Part D, and would be constructed in the same state as the state proposing the redesignation.

II.A.5.c. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that such baseline area shall not remain in effect if the permit authority rescinds the corresponding minor source baseline date in accordance with Section II.A.26.c.

II.A.6. Baseline Concentration

The ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

II.A.6.a. The actual emissions representative of sources in existence on the applicable minor source baseline date, except as otherwise provided in this definition; and

II.A.6.b. The allowable emissions from major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

II.A.6.c. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

II.A.6.c.(i) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

II.A.6.c.(ii) Actual emission increases and decreases at any stationary source occurring after the minor source baseline date.

II.A.7. Begin Actual Construction

Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipe work, and construction of permanent storage structures. With respect to a change in the method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

II.A.8. Best Available Control Technology (BACT)

An emission limitation (including a visible emissions standard) based on the maximum degree of reduction of each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the Division or Commission, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of the best available control technology result in emissions of any pollutant that would exceed emissions allowed by the applicable standards in the Code of Federal Regulations, Title 40, Parts 60 and 61 (Regulation Number 6, Part A, and Regulation Number 8, Part A) as in effect on the effective date of this clause, but not including later amendments, unless such amendments are specifically incorporated by reference in accordance with the provisions of Colorado Revised Statutes Section 24-4-103 (12.5). Information as to the availability of such standards may be obtained from the Director, Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

If the Division or Commission determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, it may instead prescribe designs, equipment, work practices, operational standards or combination thereof, to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means that achieve equivalent results.

II.A.9. Clean Coal Technology

Any technology, including technologies applied at the pre-combustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

II.A.10. Clean Coal Technology Demonstration Project

A project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

II.A.11. Complete

In reference to an application for a major NSR permit, an application that contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Division from requesting or accepting any additional information.

II.A.11.a. At a minimum, a complete application for a permit to construct a major source or major modification subject to the requirements of this Part D shall include:

II.A.11.a.(i) All monitoring data required pursuant to this regulation and an analysis of ambient air quality in accordance with Section VI.A.3. of this part;

II.A.11.a.(ii) The impact analysis required by Section VI.A.2. of this part, a written summary of the data inputs to the model, and a topographic presentation of the

resultant concentrations of each pollutant modeled for each applicable ambient standard or Prevention of Significant Deterioration increment within the impact area of the source;

II.A.11.a.(iii) A report of the regulatory status of the model pursuant to Section VIII.A.1. of Part A;

II.A.11.a.(iv) A demonstration that the proposed technological system of continuous emission reduction that is to be used will enable such source to comply continuously with the standards of performance that are to apply to such source and that the emission inputs to the model for the impact analysis are equivalent to the emissions allowed by such standards of performance;

II.A.11.a.(v) A description of the devices or systems that will be installed to monitor the emissions of each pollutant that will be emitted in significant amounts, maintaining such devices or systems, and the schedule and format for reporting the results of such emission monitoring to the Division;

II.A.11.a.(vi) The additional impact analysis required by Section VI.A.6. of this part, any demonstration of facts needed to establish a claim by the applicant to qualify for any exemption or exclusion under Section VI.B. of this part;

II.A.11.a.(vii) A schedule of construction in accordance with Section III.G.2. of Part B;

II.A.11.a.(viii) An additional copy of the application for the federal land manager of each affected Class 1 area, for the U.S. EPA, for the county Commissioner, and for public notice (county clerk). Two additional copies shall be submitted for interested public groups.

II.A.12. Construction

Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions

II.A.13. Emissions Unit

II.A.13.a. Any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam-generating unit as defined in Section II.A.14. of this part. For purposes of this Part D, there are two types of emissions units described in Section II.A.13.a.(i) and II.A.13.a.(ii), below.

II.A.13.a.(i) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

II.A.13.a.(ii) An existing emissions unit is any emissions unit that does not meet the requirements in Section II.A.13.a.(i), above. A replacement unit (as defined in Section II.A.41. of this part) is an existing emissions unit.

II.A.13.b. With respect to GHGs means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of Section XV., there are two types of emissions units:

II.A.13.b.(i) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

II.A.13.b.(ii) An existing emissions unit is any emissions unit that does not meet the requirements in Section II.A.13.b.(i).

II.A.14. Electric Utility Steam Generating Unit

Any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electrical output capacity and more than twenty-five megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

II.A.15. Federal Land Manager (FLM)

With respect to any lands of the United States, the secretary of the department with authority over such lands.

II.A.16. GHG-only source

Any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Part D, Section II.A.25. and the amount of GHGs on a CO2e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Part A, Section I.B.44. at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under Part D, Section XV.

II.A.17. High Terrain

Any area having an elevation nine hundred feet or more above the base of the stack of a source.

II.A.18. Hydrocarbon Combustion Flare

Either a flare used to comply with an applicable new source performance standard or maximum achievable control technology standard (including uses of flares during startup, shutdown, or malfunction permitted under such standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.

II.A.19. Innovative Control Technology

Any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

II.A.20. Low Terrain

Any area other than high terrain.

II.A.21. Lowest Achievable Emissions Rate (LAER)

For any source, the more stringent rate of emissions based on the following:

II.A.21.a. The most stringent emission limit contained in any state implementation plan for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limits are not achievable; or

II.A.21.b. The most stringent emission limitation that is achieved in practice by such class or category of source. In no event shall application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard (Regulation Number 6).

II.A.22. Major Emissions Unit

II.A.22.a. Any emissions unit that emits or has the potential to emit one hundred tons per year or more of the PAL pollutant in an attainment area; or

II.A.22.b. Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major stationary source threshold (as defined in Section II.A.25. of this part) for the PAL pollutant for nonattainment areas. For example, in accordance with the definition of a major stationary source (as defined in Section II.A.25.of this part), an emissions unit would be a major emissions unit for volatile organic compounds if the emissions unit is located in an ozone nonattainment area and emits or has the potential to emit one hundred or more tons of voc per year.

II.A.22.c. For a GHG PAL issued on a CO2e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO2e basis that would be sufficient for a new source to trigger permitting requirements under paragraph Part A, Section I.B.44. at the time the PAL permit is being issued.

II.A.23. Major Modification

Any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

II.A.23.a. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NOx shall be considered significant for ozone.

II.A.23.b. In the Denver Metropolitan PM10 nonattainment area, any net emission increase that is significant for sulfur dioxide or nitrogen oxides shall be considered significant for PM10.

II.A.23.c. A physical change or change in the method of operation shall not include routine maintenance, repair, and replacement.

II.A.23.d. A physical change or change in the method of operation, unless previously limited by any enforceable or federally enforceable permit condition that was established after January 6, 1975 for sources in attainment or unclassifiable

areas and after December 21, 1976 for sources in nonattainment areas, shall not include:

II.A.23.d.(i) Use of an alternative fuel or raw material by reason of an order in effect under Sections 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), a prohibition under the Power Plant and Industrial Fuel Use Act of 1978 (or any superseding legislation) or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

II.A.23.d.(ii) Use of an alternative fuel because of an order or rule under Section 125 of the Federal Act;

II.A.23.d.(iii) Use of an alternative fuel at a steam-generating unit to the extent that the fuel is generated from municipal solid waste;

II.A.23.d.(iv) Use of an alternative fuel or raw material that:

II.A.23.d.(iv)(A) the stationary source in a nonattainment area was capable of accommodating prior to December 21, 1976, unless such change would be prohibited under a federally enforceable permit condition, or

II.A.23.d.(iv)(B) the stationary source in an attainment or unclassifiable area was capable of accommodating prior to January 6, 1975 unless such change would be prohibited under a federally enforceable permit condition, or

II.A.23.d.(iv)(C) the source is approved to use under any permit issued under this Regulation Number 3.

II.A.23.d.(v) An increase in the production rate, unless such change would be prohibited under a federally enforceable permit condition;

II.A.23.d.(vi) An increase in the hours of operation, unless such increase would be prohibited under a federally enforceable permit condition; or

II.A.23.d.(vii) Any change in ownership of a stationary source.

II.A.23.d.(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with:

II.A.23.d.(viii)(A) The Colorado State Implementation Plan, and

II.A.23.d.(viii)(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

II.A.23.d.(ix) For major stationary sources in attainment areas:

II.A.23.d.(ix)(A) The installation or operation of a permanent clean coal technology demonstration project that constitutes re-powering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. The exemption shall apply on a pollutant-by-pollutant basis.

II.A.23.d.(ix)(B) The reactivation of a very clean coal fired electric utility steam generating unit.

II.A.23.d.(x) The reactivation of a very clean coal fired electric utility steam generating unit.

II.A.23.e. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under Section XV. of this Part D for a PAL for that pollutant. Instead, the definition in Section II.A.31. of this part shall apply.

II.A.23.f. Emissions caused by indirect sources of pollution, emissions from internal combustion engines on any vehicle, and emissions resulting from temporary construction or exploration activities shall be excluded in determining whether a major modification will occur.

Emissions from on-going construction are not considered to be temporary emissions, and are included in determining whether a major modification will occur.

Fugitive emissions from the listed sources in Section II.A.25.a. and any other stationary source category that, as of August 7, 1980 was regulated under Sections 111 or 112 of the Federal Act (as adopted in Regulations Nos. 6, Part A, and 8, Parts A and E) shall, to the extent quantifiable, be considered in calculating the potential to emit of the modification.

II.A.24. Major Source Baseline Date

II.A.24.a. In the case of PM10 and sulfur dioxide, January 6, 1975;

II.A.24.b. In the case of nitrogen dioxide, February 8, 1988; and

II.A.24.c. In the case of PM2.5, October 20, 2010.

II.A.25. Major Stationary Source

II.A.25.a. For the purpose of determining whether a source in an attainment or unclassifiable area is subject to the requirements of this Part D, major stationary source means:

II.A.25.a.(i) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant:

II.A.25.a.(i)(A) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input

II.A.25.a.(i)(B) Coal cleaning plants (with thermal dryers)

II.A.25.a.(i)(C) Kraft pulp mills

II.A.25.a.(i)(D) Portland cement plants

II.A.25.a.(i)(E) Primary zinc smelters

II.A.25.a.(i)(F) Iron and steel mill plants

II.A.25.a.(i)(G) Primary aluminum ore reduction plants

II.A.25.a.(i)(H) Primary copper smelters

II.A.25.a.(i)(I) Municipal incinerators capable of charging more than 250 tons of refuse per day

II.A.25.a.(i)(J) Hydrofluoric, sulfuric, and nitric acid plants

II.A.25.a.(i)(K) Petroleum refineries

II.A.25.a.(i)(L) Lime plants

II.A.25.a.(i)(M) Phosphate rock processing plants

II.A.25.a.(i)(N) Coke oven batteries

II.A.25.a.(i)(O) Sulfur recovery plants

II.A.25.a.(i)(P) Carbon black plants (furnace process)

II.A.25.a.(i)(Q) Primary lead smelters

II.A.25.a.(i)(R) Fuel conversion plants

II.A.25.a.(i)(S) Sintering plants

II.A.25.a.(i)(T) Secondary metal production plants

II.A.25.a.(i)(U) Chemical process plants

II.A.25.a.(i)(V) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input

II.A.25.a.(i)(W) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels

II.A.25.a.(i)(X) Taconite ore processing plants

II.A.25.a.(i)(Y) Glass fiber processing plants

II.A.25.a.(i)(Z) Charcoal production plants

II.A.25.a.(ii) Notwithstanding the stationary source size specified in Section II.A.25.a.(i), any stationary source that emits, or has the potential to emit, two hundred and fifty tons per year or more of any regulated NSR pollutant.

II.A.25.b.For the purpose of determining whether a source in a nonattainment area is subject to the requirements of Section V. of this part, and whether a source in an attainment area affecting a nonattainment area is subject to the requirements of Section VI.D. of this part, major stationary source means any stationary source of air pollutants that emits, or has the potential to emit 100 tons per year or more of

any regulated NSR pollutant for which the area is nonattainment. Additionally, a source causing or contributing to a violation of a national ambient air quality standard for any pollutant regulated under Section 110 of the Federal Act shall be considered a major stationary source when it has the potential to emit one hundred tons per year or more of that pollutant. The source will be considered to cause or contribute to a violation where the source exceeds the significance levels in the table under Section VI.D.2. of this Part D. Such source is subject to the requirements of Section VI. of this Part D.

II.A.25.c. Major stationary source includes any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source under Sections II.A.25.a and II.A.25.b. of this part, if the change would constitute a major stationary source by itself.

II.A.25.d. A major stationary source that is major for volatile organic compounds or NOx shall be considered major for ozone, except that emissions of negligibly reactive volatile organic compounds, as defined in the Common Provisions, shall not be included in the determination of major stationary source status for ozone.

II.A.25.e. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in Section II.A.25.a.(i) or any other stationary source category which, as of August 7, 1980, is regulated under Section 111 or 112 of the Federal Act.

II.A.25.f. Emissions caused by indirect air pollution sources (as defined in Section I.B.24. of Part A of this regulation), emissions from internal combustion engines on any vehicle, and emissions resulting from temporary activities, such as construction or exploration, shall be excluded in determining whether a source is a major stationary source. Emissions from ongoing construction are not considered to be temporary emissions and are included in determining whether a major modification will occur.

II.A.25.g. A major stationary source in the Denver Metro PM10 attainment/maintenance area that is major for sulfur dioxide or nitrogen oxides shall be considered major for PM10.

II.A.26. Minor Source Baseline Date

II.A.26.a. The earliest date after the trigger date that a major stationary source or a major modification subject to the requirements of Section VI. of this Part D submits a complete application under the relevant regulations. The trigger date is:

II.A.26.a.(i) In the case of PM10 and sulfur dioxide, August 7, 1977;

II.A.26.a.(ii) In the case of nitrogen dioxide, February 8, 1988; and

II.A.26.a.(iii) In the case of PM2.5, October 20, 2011.

II.A.26.b. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

II.A.26.b.(i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Sections

107(d)(1)(A)(ii) or (iii) of the Federal Act for the pollutant on the date of its complete application under Section VI. of this part; and

II.A.26.b.(ii) In the case of a major stationary source the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

II.A.26.c. Any minor source baseline date established originally for the Total Suspended Particulates increments shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the Division may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Division, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM10 emissions.

II.A.27. Net Emissions Increase

II.A.27.a. With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

II.A.27.a.(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source calculated pursuant to Sections I.A.2. through I.A.3., and I.B. of this Part D; and

II.A.27.a.(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as provided in the definition of baseline actual emissions, except that paragraphs II.A.4.a.(iii) and II.A.4.b.(iv) of this Part D shall not apply.

II.A.27.b. Contemporaneous - an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within five years prior to the date that the increase from the particular change occurs.

II.A.27.c. An increase or decrease in actual emissions is creditable only if:

II.A.27.c.(i) It occurs within five years before the date that the increase or decrease occurs; and

II.A.27.c.(ii) The Division has not relied on it in issuing a permit for the source under Regulation Number 3, Part D, or the U.S. EPA has not relied on it in issuing a permit under Title I, Part C of the Federal Act, which permit is in effect when the increase in actual emissions from the particular change occurs; and

II.A.27.c.(iii) In order to establish a baseline emissions rate, the owner or operator must submit an Air Pollutant Emission Notice to the Division prior to the increase or decrease indicating actual emissions (as defined in Section II.A.1. of this of part) and the owner or operator must submit a revised Air Pollutant Emission Notice to the Division within one year after the increase or decrease occurs, or

II.A.27.c.(iv) The owner or operator provides credible, demonstrable evidence to the Division of what actual emissions were before making the increase or decrease and what they were after making the increase or decrease.

II.A.27.d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions can be used to evaluate the net emissions increase for PM10 and only PM2.5 emissions can be used to evaluate the net emissions increase for PM2.5.

II.A.27.e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

II.A.27.f. A decrease in actual emissions is creditable only to the extent that:

II.A.27.f.(i) The Division has not relied on it in issuing any permit under this Part D, or has not relied on it in demonstrating attainment or reasonable further progress:

II.A.27.f.(ii) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

II.A.27.f.(iii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

II.A.27.f.(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

II.A.27.g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred and eighty days.

II.A.27.h. Section II.A.1.a. of this part shall not apply for determining creditable increases and decreases after a change.

II.A.27.i. The organic compounds referenced in the common provisions definition of negligibly reactive volatile organic compounds are neither counted as reactive volatile organic compounds in determining significant ozone increases nor creditable against an increase in emissions of any volatile organic compound.

II.A.27.j. Creditable Decreases for Fuel Switching.

Generally, for credit to be given for the emissions reduction in potential to emit or actual emissions resulting from a physical change or change in method of operation of a major stationary source occurring on or after the effective date of this rule, an Air Pollutant Emission Notice reporting such reduction must be filed within one year after the reduction occurs unless an extension is requested by the source and approved by the Division due to uncertainty as to the permanence of such reduction. At the time credit for any reduction is requested,

such reduction must be enforceable. Such reductions must be enforceable through permit conditions or source specific state implementation plan revisions.

II.A.28. Nonattainment Major New Source Review (NSR) Program

A major stationary source preconstruction permit program that has been approved by the Administrator and incorporated into this Regulation Number 3, Part D. Any permit issued under the program is a major NSR permit.

II.A.29. PAL Effective Date

Generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

II.A.30. PAL Effective Period

The period beginning with the PAL effective date and ending ten years later.

II.A.31. PAL Major Modification

Notwithstanding Part A, Section I.B.44. and Part D Sections II.A.22 and II.A.26. (the definitions for subject to regulation, major modification, and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

II.A.32. PAL Minor Source

Any stationary source that does not meet the definition of major stationary source in Part D, Section II.A.25. at the time the PAL is issued.

II.A.33. PAL Permit

The Operating Permit issued in accordance with this Part D that establishes a PAL for a major stationary source or a GHG-only source.

II.A.34. PAL Pollutant

The pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

II.A.35. Plant-wide Applicability Limitation (PAL)

An emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO2e for a CO2e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source that is enforceable as a practical matter and established source-wide in accordance with Section XV. of this Part D.

II.A.36. Prevention of Significant Deterioration (PSD) Permit

Any permit that is issued in accordance with Section VI. of this Part D.

II.A.37. Project

A physical change in, or change in the method of operation of, an existing major stationary source.

II.A.38. Projected Actual Emissions

II.A.38.a. The maximum annual rate, in tons per year, at which an existing emissions unit at a major stationary source is projected to emit a regulated NSR pollutant in any one of the five years (twelve-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

II.A.38.b. In determining the projected actual emissions under Section II.A.38.a., above, before beginning actual construction, the owner or operator of the major stationary source:

II.A.38.b.(i) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans; and

II.A.38.b.(ii) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

II.A.38.b.(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four month period used to establish the baseline actual emissions under Section II.A.4. of this part D and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

II.A.38.b.(iv) In lieu of using the method set out in Sections II.A.38.b.(i) through II.A.38.b.(iii), may elect to use the emissions unit's potential to emit, in tons per year, as defined in Section I.B.37. of Part A of this regulation.

II.A.39. Reactivation of Very Clean Coal-fired Electric Utility Steam Generating Unit

Any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

II.A.39.a. Has not been in operation for the two year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of the enactment;

II.A.39.b. Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eighty-five percent and a removal efficiency for particulates of no less than ninety-eight percent;

II.A.39.c. Is equipped with low-nitrogen oxide burners prior to the time of commencement of operations following reactivation; and

II.A.39.d. Is otherwise in compliance with the requirements of the Federal Act.

II.A.40. Regulated NSR Pollutant

II.A.40.a. Nitrogen oxides or any volatile organic compound;

II.A.40.b. Any pollutant for which a national ambient air quality standard has been promulgated;

II.A.40.c. Any pollutant that is a constituent or precursor of a general pollutant listed under Sections II.A.40.a. or II.A.40.b., above,(e.g. volatile organic compounds and oxides of nitrogen are precursors for ozone) provided that such a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors for the purposes of New Source Review are the following:

II.A.40.c.(i) Nitrogen oxides or any volatile organic compound are precursors to ozone;

II.A.40.c.(ii) Sulfur dioxide is a precursor to PM2.5;

II.A.40.c.(iii) Nitrogen oxides are precursors to PM2.5.

II.A.40.d. Any pollutant, except for GHG, that is subject to any standard promulgated under Section 111 of the Federal Act, (see II.A.40.e. for GHG);

II.A.40.e. Any pollutant that otherwise is subject to regulation under the Federal Act as defined in Section I.B.44. or Part A;

II.A.40.f. Notwithstanding Sections II.A.40.a. through II.A.40.e. of this Part D, the term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in Section 112 of the Federal Act (that have not been delisted pursuant to Section 112(b)(3) of the Federal Act) or Appendix B of this regulation, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Federal Act.

II.A.40.g. PM2.5 emissions and PM10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM2.5 and PM10 in PSD permits. Compliance with emission limitations for PM2.5 and PM10 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section.

II.A.41. Replacement Unit

An emissions unit for which all the criteria listed in Sections II.A.41.a. through II.A.41.d. are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

II.A.41.a. The emissions unit is a reconstructed unit within the meaning of Code of Federal Regulations Title 40, Section 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

II.A.41.b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

II.A.41.c. The replacement does not alter the basic design parameters of the process unit.

II.A.41.d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

II.A.42. Repowering

II.A.42.a. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

II.A.42.b. Repowering shall also include any oil and/or gas-fired unit that have been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

II.A.43. Secondary Emissions

Emissions that occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this Part D, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

II.A.44. Significant

II.A.44.a. Unless the context otherwise requires, , a significant rate of emissions in tons per year is defined as a value that would equal or exceed any of the following:

Carbon monoxide: 100 tons per year

Nitrogen Oxides: 40 (nitric oxide + nitrogen dioxide) tons per year

Sulfur dioxide: 40 tons per year

Particulate matter: 25 tons per year particulate matter emissions or, 15 tons per year of PM10 emissions

PM10 - Precursors in the Denver Metropolitan PM10 attainment/maintenance area: 40 tons per year for each individual precursor (nitrogen oxides or sulfur oxides)

PM2.5: 10 tons per year of direct PM2.5 emissions; 40 tons per year of sulfur dioxide emissions; or 40 tons per year of nitrogen dioxide emissions

Ozone: 40 tons per year of volatile organic compounds or nitrogen oxides

Lead: 0.6 tons per year

Fluorides: 3 tons per year

Sulfuric acid mist: 7 tons per year

Hydrogen sulfide: 10 tons per year

Total reduced sulfur (including hydrogen sulfide): 10 tons per year

Reduced sulfur compounds (including hydrogen sulfide): 10 tons per year

Municipal Waste Combustor Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2 x 10-6 megagrams per year (3.5 x 10-6 tons per year)

Municipal Waste Combustor Metals (measured as particulate matter): 14 megagrams per year (15 tons per year)

Municipal Waste Combustor Acid Gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)

Municipal Solid Waste Landfill Gases (measured as non-methane organic compounds): 45 megagrams per year (50 tons per year)

II.A.44.b. Significant means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that this definition does not list, any emissions rate, except that this definition shall not apply to hazardous air pollutants listed in or pursuant to Section 112 of the Federal Act.

II.A.44.c. Notwithstanding the significant emission rates above, significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification, that would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than one microgram/cubic meter ((g/m3) (twenty-four hour average).

II.A.45. Significant Emissions Increase

For a regulated NSR pollutant, an increase in emissions that is significant (as defined in Section II.A.44. of this Part D) for that pollutant.

II.A.46. Significant Emissions Unit

II.A.46.a. An emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Section II.A.44. of this Part D or in the Federal Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit (as defined in Section II.A.22. of this part).

II.A.46.b. For a GHG PAL issued on a CO2e basis, significant emissions unit means any emissions unit that emits or has the potential to emit GHGs on a CO2e basis in amounts equal to or greater than the amount that would qualify the unit as small emissions unit as defined in Section II.A.47, but less than the amount that would qualify the unit as a major emissions unit as defined in Section II.A.22.

II.A.47. Small Emissions Unit

II.A.47.a. An emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant (as defined in Section II.A.34. of this Part D or in the Federal Act, whichever is lower).

II.A.47.b. For a GHG PAL issued on a CO2e basis, small emissions unit means an emissions unit less than the amount of GHGs on a CO2e basis defined as significant for the purposes of Part A, Section I.B.46.c. at the time the PAL permit is being issued.

II.A.48. Temporary Clean Coal Technology Demonstration Project

A clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the state implementation plan and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

III. Permit Review Procedures

III.A. Major stationary sources subject to the requirements of this Part D must apply for and obtain a Construction Permit in accordance with the procedures and requirements in Part B or an Operating permit in accordance with the procedures and requirements in Part C.

III.B. The Division shall complete the processing of applications (including any requested public hearing) for sources subject Sections VI. and VII. of this Part D within twelve months of receipt of a complete application.

IV. Public Comment Requirements

IV.A. When public comment is required, or when the Division determines that an application warrants public comment in accordance with Section III.C.3. of Part B of this regulation, the Division shall, within fifteen calendar days after the preparation of the preliminary analysis, cause public notice of the application to be published in a newspaper of general distribution in the area in which the proposed project or activity is or will be located, and by such other means as necessary to assure notice to the affected public, which may include posting of such notice on the publicly accessible portion of the Division's web site, and cause a copy of the application, the preliminary analysis and the draft permit to be filed with the county clerk for each county in which the source is, or will be, located. The Division shall send written or electronic notice to persons requesting a notice of permit applications for the type of source or geographic area.

IV.A.1. For sources subject to the provisions of Sections V. and VI. of this part, a copy of all the materials the applicant submitted, and a copy or summary of other materials, if any,

considered in making the preliminary analysis shall be filed with the county clerk for each county in which the source is or will be located. In addition, for sources subject to the provisions of Sections V. and VI., a copy of the written or electronic notice of public comment shall be sent to the applicant, the U.S. EPA Administrator, and to officials and agencies having cognizance over the location where the proposed construction would occur, including any other state or local air pollution control agencies and any state, Indian governing body or Federal Land Manager whose lands may be affected by emissions from the source or modification.

IV.A.2. Additionally, for permit applications subject to the requirements of this Part D, the notice shall contain the following information:

IV.A.2.a. That comments are solicited on an innovative technological system for pollution control if proposed by the applicant and that a hearing by the Commission will be held on such system if requested by any interested person;

IV.A.2.b. That comments are solicited on the air quality impacts of the source or modification;

IV.A.2.c. That comments are solicited on alternatives to the source or modification;

IV.A.2.d. That any interested person may submit a written request for a public comment hearing to be held pursuant to Section VII. of the Commission's Procedural rRules to receive comments regarding the foregoing concerns, the sufficiency of the preliminary analysis, and whether the Division should approve or deny the permit application; and

IV.A.2.e. The degree of increment consumption that is expected from the source or modification.

IV.A.3. Within fifteen calendar days after the preparation of the preliminary analysis for those applications subject to the requirements of this Part D, the Division shall forward to the applicant written notice of the applicant's right to a public comment hearing with respect to the application pursuant to Section VII. of the Commission's Procedural Rules.

IV.A.4. A hearing request pursuant to Section IV.A.2.a. of this Part D, regarding innovative control, must be transmitted by the Division to the Commission within twenty days after its receipt.

IV.A.5. A hearing request pursuant to Section IV.A.2.d. of this Part D must be transmitted by the Division to the Commission, along with the complete permit application, the preliminary analysis, the draft permit, and any written comments received by the Division within five days after the end of the thirty-day comment period. At least thirty days prior to the date set for the public comment hearing, the notice of public comment hearing, the preliminary analysis and the draft permit shall be posted on the Division's web site. No substantive revisions shall be made to the draft permit during the thirty days prior to the public comment hearing.

IV.A.6. The Commission shall hold a public comment hearing within sixty days of its receipt of the request for such hearing pursuant to Section IV.A.2. of this Part D (unless such greater time is agreed to by the applicant and the Division), but at least sixty days after receipt by any Federal Land Manager of notice and the permit application required pursuant to Section XIII.A. of this Part D. The Division shall appear at the public comment hearing in order to present the permit application. At least thirty days prior to such hearing, notice thereof shall be mailed by the Commission to the applicant, to any

interested person who submitted a request for a public hearing and to any Federal Land Manager given notice pursuant to Section XIII.A., printed in a newspaper of general distribution in the area of the proposed source or modification, and submitted for public review with the county clerk for each county in which the source or modification is or will be located. Except as provided herein and in the notice, such hearings will be conducted pursuant to the Act, the Procedural Rules of the Air Quality Control Commission and the State Administrative Procedure Act, Colorado Revised Statutes, Section 24-4-101 et seq.

IV.A.7. Within fifteen days after the Division makes a final decision on an application subject to the requirements of this Part D, the Division shall make available for public inspection the decision and all public comments with the county clerk for each county where the pre-construction information was made available.

V. Requirements Applicable to Nonattainment Areas

V.A. Major Stationary Sources.

For any new major stationary source or major modification, the Division shall grant a permit if it determines that the following conditions in Sections V.A.1. through V.A.6., as well as those in Section III.D.1. of Part B of this regulation, will be met:

V.A.1. The proposed source will achieve the lowest achievable emission rate for the specific source category.

V.A.2. The applicant has certified that all other existing major stationary sources owned, operated, or controlled by the applicant (or any entity controlling, controlled by, or under the common control with the applicant) in Colorado are in compliance with the requirements of the State implementation plan and the federally approved state implementation plan, or are subject to and in compliance with an enforceable compliance schedule, or a federally enforceable compliance schedule.

V.A.3. Prior to the date of commencement of operations, the ratio of total actual emission reductions compared to the emissions increase (offsets) shall be at least one for one (1:1), unless an alternative ratio is provided for the applicable nonattainment area as identified in Section V.A.3.a., below.

V.A.3.a. Offset Ratios

V.A.3.a(i) For ozone nonattainment areas that are subject to subpart 2, part D, title I of the Federal Act, the offset ratio of total actual emission reductions of VOC to the emissions increase of VOC shall be as follows:

V.A.3.a(i)(a) In any marginal nonattainment area for ozone – at least 1.1:1;

V.A.3.a(i)(b) In any moderate nonattainment area for ozone – at least 1.15:1;

V.A.3.a(i)(c) In any serious nonattainment area for ozone – at least 1.2:1;

V.A.3.a(i)(d) In any severe nonattainment area for ozone – at least 1.3:1; or

V.A.3.a(i)(e) In any extreme nonattainment area for ozone – at least 1.5:1.

V.A.3.a.(ii) For all areas within an ozone transport region that is subject to subpart 2, part D, title 1 of the Federal Act, and that are not designated

as serious, severe or extreme and are subject to subpart 1, part D, title 1 of the Federal Act – at least 1.15:1.

V.A.3.a.(iii) For ozone nonattainment areas that are subject to subpart 1, part D, title I of the Federal Act, including 8-hour ozone nonattainment areas subject to 40 CFR, Part 51, Section 51.902(b), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

V.A.3.b. Offsets must be obtained from existing sources (whether or not under the same ownership) within the nonattainment area for each pollutant, or its precursors, for which the area is nonattainment. Offsets must represent reasonable further progress towards attainment of the National Ambient Air Quality Standards when considered in connection with other new and existing sources of emissions. In addition, offsets for PM10, PM2.5, sulfur oxides, and carbon monoxide must show, through atmospheric modeling, a positive net air quality benefit in the area affected by the emissions. Provided, however, that offsets meeting the requirements of this Section V.A.3. may also be obtained from existing sources outside the nonattainment area if the applicant demonstrates:

V.A.3.b.(i) A greater air quality benefit may thus be achieved, or sufficient offsets are not available from sources within the nonattainment area; and

V.A.3.b.(ii) The other area has an equal or higher nonattainment classification than the area in which the source is located; and

V.A.3.b.(iii) Emissions from such other area contribute to a violation of the National Ambient Air Quality Standard in the nonattainment area in which the source is located.

V.A.3.b.(iv) With respect to offsets obtained from outside the nonattainment area, the Division may increase the ratio of the required offsets to new emissions the greater the distance such offsets are from the new or modified source.

V.A.3.c. Offsets must be for the same regulated NSR pollutant, except that offset requirements for direct PM2.5 emissions or PM2.5 precursors may be satisfied by offsetting reductions in direct PM2.5 emissions or emissions of any PM2.5 precursor identified under Section II.A.40. of Part D.

V.A.4. The permit application shall include an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source that demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

V.A.5. Offsets for which emission reduction credit is taken must be enforceable through permit conditions or source specific state implementation plan revisions.

V.A.6. The applicant will demonstrate that emissions from the proposed source will not adversely impact visibility in a Class I area. This demonstration shall be reviewed by the Federal Land Manager and any determination made by the Federal Land Manager shall be considered in the Division's decision to grant the permit. If an adverse impact, as described in Section XIV.E., is predicted by the Division, the permit application will be denied. Federal Land Manager involvement shall follow the same procedures as stated in Section XIII.A. of this Part D. The demonstration will be performed using either

techniques described in the latest version of the U.S. EPA document entitled "Workbook for Estimating Visibility Impairment" or other techniques approved by the Division.

V.A.7. Applicability of Certain Nonattainment Area Requirements

V.A.7.a. Any major stationary source in a nonattainment area is subject to the requirements of Section V.A. of this Part D.

V.A.7.b. The requirements of Section V.A. shall apply at such time that any stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980 on the capacity of the source or modification to otherwise emit a pollutant, such as a restriction on hours of operation.

V.A.7.c. The following provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a project that is not a part of a major modification and the owner or operator elects to use the method specified in Sections II.A.38.b.(i) through II.A.38.b.(iii) of this Part D for calculating projected actual emissions.

V.A.7.c.(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

V.A.7.c.(i)(A) A description of the project;

V.A.7.c.(i)(B) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

V.A.7.c.(i)(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Section II.A.38.b.(iii) of this part and an explanation for why such amount was excluded, and any netting calculations, if applicable.

V.A.7.c.(ii) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Section V.A.7.c.(i) to the Division. Nothing in this Section V.A.7.c.(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the Division before beginning actual construction.

V.A.7.c.(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Section V.A.7.c.(i)(B); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

V.A.7.c.(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Division within sixty days

after the end of each year during which records must be generated under Section V.A.7.c.(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

V.A.7.c.(v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Division if the annual emissions, in tons per year, from the project identified in Section V.A.7.c.(i), exceed the baseline actual emissions (as documented and maintained pursuant to Section V.A.7.c.(i)(C)) by a significant amount (as defined in Section II.A.44. of this part) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Section V.A.7.c.(i)(C). Such report shall be submitted to the Division within sixty days after the end of such year. The report shall contain the following:

V.A.7.c.(v)(A) The name, address and telephone number of owner or operator of the major stationary source;

V.A.7.c.(v)(B) The annual emissions as calculated pursuant to Section V.A.7.c.(iii); and

V.A.7.c.(v)(C) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

V.A.7.d. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Section V.A.7.c. available for review upon request for inspection by the Division or the general public.

V.A.8. Exemptions from certain nonattainment area requirements:

V.A.8.a. The following are exempt from the major stationary source criteria of Section V.A.3. of this part.

V.A.8.a.(i)(A) Portable sources that will relocate outside a nonattainment area in less than one year.

V.A.8.a.(i)(B) Each pilot plant that operates an aggregate of less than six months.

V.A.8.a.(i)(C) Construction phases of a new or modified building, facility, structure, or installation. These may, at the discretion of the Division, exceed a period of one year.

V.A.8.a.(i)(D) Other temporary processes or activities of less than one year in duration.

V.A.8.a.(i)(E) Sources undergoing fuel switches as required by federal order if the Division determines that:

V.A.8.a.i(E)(1) The applicant has used best efforts in seeking the required emission offsets but was unsuccessful;

V.A.8.a.i(E)(2) All available emission offsets were obtained; and,

V.A.8.a.i(E)(3) The applicant will continue to seek emission offsets as they become available.

VI. Requirements applicable to attainment and unclassifiable areas and pollutants implemented under Section 110 of the Federal Act (Prevention of Significant Deterioration Program).

VI.A. Major Stationary Sources and Major Modifications.

The requirements of this Section VI. shall apply to any major stationary source and any major modification with respect to each pollutant regulated under the Act and the Federal Act that it would emit, except as this Regulation Number 3 would otherwise allow.

For any new major stationary source or major modification proposing to construct in any area in Colorado designated under Section 107 (d) of the Federal Act as attainment or unclassifiable for any criteria pollutant as of the date of submittal of a complete application under this Regulation Number 3, or for pollutants implemented under Section 110 of the Federal Act, the Division shall grant a permit if it determines that the following requirements, in addition to those in Section III.D.1. of Part B of this regulation, have been or will be met:

VI.A.1. Control Technology Review.

VI.A.1.a. A new major stationary source shall apply Best Available Control Technology for each pollutant regulated under the Act or Federal Act that it would have the potential to emit in significant amounts.

VI.A.1.b. A major modification shall apply best available control technology for each pollutant regulated under the Act or Federal Act for which there would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation of the unit.

VI.A.1.c. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen months prior to commencement of construction of each independent phase of the project. The review will be conducted in a timely manner that will allow the owner or operator to proceed with scheduled construction of the source. During the review, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

VI.A.2. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate to the Division that allowable emission increases from the proposed source or modification in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to concentrations of air pollutants in the ambient air in violation of either Section VI.A.2.a. or b.

VI.A.2.a. Any state or national ambient air quality standard in any baseline area or air quality control region; or

VI.A.2.b. Any applicable maximum allowable increase over the baseline concentration in any area.

VI.A.2.c. Reserved

VI.A.3. Pre-construction Monitoring and Analysis

VI.A.3.a. An analysis of ambient air quality in any area that would be affected by the proposed major stationary source or major modification shall be performed for each pollutant regulated under the Act or Federal Act that the source or modification would emit or have the potential to emit in a significant amount, or for which there would be a significant net emissions increase.

VI.A.3.b. With respect to any such regulated pollutant for which no national ambient air quality standard exists and for which there is an acceptable method for the monitoring of that pollutant, the analysis shall contain such air quality monitoring data as the Division determines are necessary to assess ambient air quality for that pollutant in any area that emissions of that pollutant would affect.

VI.A.3.c. With respect to any such pollutant for which a national ambient air quality standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the applicable standard or any maximum allowable increase.

VI.A.3.d. In general, the continuous air quality monitoring data that are required under Section VI.A.3.c., or the pre-application monitoring of air quality related values required by Section XIII.B. of this part, shall have been gathered over a period of one year and shall represent the year preceding receipt of the application, except that, if the Division determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that are required shall have been gathered over at least that shorter period.

VI.A.3.e. The owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of the Code of Federal Regulations Title 40, Part 51, Appendix S, Section IV. (but not including conditions resulting from amendments after July 1, 1991 and not including Section IV. B. of Appendix S) may provide post-approval monitoring data for ozone in lieu of providing pre-construction data as required under Section VI.A.3.a. (Information on obtaining the Code of Federal Regulations Title 40, Part 51, Appendix S, Section IV. is available from the Director, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado, 80246-1530.)

VI.A.4. Post-Construction Monitoring. At its discretion, the Division may require that the owner or operator of a major stationary source or major modification conduct post-construction ambient monitoring for a period up to one year. The Division may also require additional monitoring beyond the one year period if such monitoring is necessary to determine the effect emissions from the stationary source or modification have, or may have, on air quality in any area. The monitoring of air quality related values or sensitive receptors required by Section XIII.B. of this part, shall be for such time as is necessary to determine the effect emissions from the source or modification will have on the air quality related values or sensitive receptors.

Post-construction monitoring requirements will be permit conditions.

VI.A.5. Operation of Monitoring Stations. The owner or operator of a major stationary source or major modification shall use the U.S. EPA accepted procedures for ambient monitoring as approved by the Division during the operation of monitoring stations for purposes of satisfying the requirements of Sections VI.A.3. and VI.A.4., above.

VI.A.6. Additional Impact Analysis. For each pollutant that is regulated under the Act or the Federal Act, and for which the source or modification would emit in significant amounts (as defined in Section II.A.44. of this part) or for which there would be a significant net emissions increase, the owner or operator shall provide an analysis of the impairment to visibility, water, soils, and vegetation that would occur as a result of the emissions of such pollutant from the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The analysis of impairment to water will not be used in the determination of best available control technology. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value. The additional impact analysis will include the effects on air quality related values as stated in Section XIII.B. of this part, if applicable.

The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

VI.B. Applicability of Certain PSD Requirements.

VI.B.1. The requirements of Section VI.A. do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant:

VI.B.1.a. The source or modification is subject to Part 3 of the Act and Section V. of this part, and the source or modification would not impact any area designated as attainment or unclassifiable for that pollutant; or

VI.B.1.b. The emissions from the source or modification would not be significant; or

VI.B.1.c. The source or modification is a portable stationary source that has previously received a permit under requirements equivalent to those contained in Section VI.A. of this part if:

VI.B.1.c.(i) The source proposes to relocate and emissions of the source at the new location would be temporary;

VI.B.1.c.(ii) The emissions from the source would not exceed its allowable emissions;

VI.B.1.c.(iii) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

VI.B.1.c.(iv) Reasonable notice identifying the proposed new location and the probable duration of operation at the new location and a revised Air Pollutant Emission Notice is given to the Division prior to the relocation. Such notice and revised Air Pollutant Emission Notice shall be given to the Division not less than ten days in advance of the proposed relocation unless a different time duration is previously approved by the Division.

VI.B.2. The requirements contained in Sections VI.A.2. through VI.A.4. of this part do not apply:

VI.B.2.a. To a proposed major stationary source or major modification with respect to a particular pollutant, if the emissions would be from a temporary source, modification or activity, such as construction or exploration, and would not have an impact on air quality in any Class I area or an area where an applicable increment is known to be violated; or

VI.B.2.b. As they relate to any maximum allowable increase for a Class II area, to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation, excluding GHG, under the Act from the modification after the application of best available control technology would be less than fifty tons per year.

VI.B.3. The Division may exempt a proposed major stationary source or major modification from the requirements of Sections VI.A.3. through VI.A.5. of this part, with respect to monitoring for a particular pollutant if:

VI.B.3.a. The emissions of the pollutant from the new stationary source or the net emissions increase of the pollutant from the modification would cause air quality impacts, in any area, less than the following:

VI.B.3.a.(i) Carbon monoxide - 575 $\mu g/m^3$, 8-hour average;

VI.B.3.a.(ii) Nitrogen dioxide - 14 $\mu g/m^3$, annual average;

VI.B.3.a.(iii) Particulate Matter - PM10 -- 10 $\mu g/m^3$, 24-hour average; PM2.5 – 0 $\mu g/m^3$, 24-hour average;

VI.B.3.a.(iv) Sulfur dioxide - 13 $\mu g/m^3$, 24-hour average;

VI.B.3.a.(v) Lead - 0.1 $\mu g/m^3$, 3-month average;

VI.B.3.a.(vi) Fluorides - 0.25 $\mu g/m^3$, 24-hour average;

VI.B.3.a.(vii) Total reduced sulfur - 10 $\mu g/m^3$, 1-hour average;

VI.B.3.a.(viii) Hydrogen sulfide - 0.2 $\mu g/m^3$, 1-hour average;

VI.B.3.a.(ix) Reduced sulfur compounds - 10 $\mu g/m^3$, 1-hour average; or

VI.B.3.b. The existing concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in this section; or

VI.B.3.c. For ozone, the emissions increase or net emissions increase of volatile organic compounds or nitrogen oxides from the source or modification would be less than 100 tons per year; or

VI.B.3.d. The pollutant is not referred to in this Section VI.B.3.a.; or

VI.B.3.e. The source or modification was subject to Section VI., with respect to PM2.5, as in effect before July 15, 2008, and the owner or operator submitted an application for a permit under this Section VI.A. of Part D before that date consistent with EPA recommendations to use PM10 as a surrogate for PM2.5, and the Division subsequently determines that the application as submitted was complete with respect to the PM2.5 requirements then in effect, as interpreted by EPA in the memorandum entitled “Interim Implementation of New Source Review

Requirements for PM2.5" (October 23, 1997). Instead, the requirements of Section VI.A. of this Part D, as interpreted in the aforementioned memorandum, that was in effect before July 15, 2008 shall apply to such source or modification.

VI.B.4. The requirements of this Part D shall apply at such time that any stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification to otherwise emit a pollutant such as a restriction on hours of operation.

VI.B.5. The following provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a project that is not a part of a major modification and the owner or operator elects to use the method specified in Sections II.A.38.b.(i) through II.A.38.b.(iii) of this Part D for calculating projected actual emissions.

VI.B.5.a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

VI.B.5.a.(i) A description of the project;

VI.B.5.a.(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

VI.B.5.a.(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Section II.A.38.b.(iii) of this part, and an explanation for why such amount was excluded, and any netting calculations, if applicable.

VI.B.5.b. If the emissions unit is an existing electric utility steam-generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Section VI.B.5.a. to the Division. Nothing in this Section VI.B.5.b. shall be construed to require the owner or operator of such a unit to obtain any determination from the Division before beginning actual construction.

VI.B.5.c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Section VI.B.5.a.(ii); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

VI.B.5.d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Division within sixty days after the end of each year during which records must be generated under Section VI.B.5.c. setting out the unit's annual emissions during the calendar year that preceded submission of the report.

VI.B.5.e. If the unit is an existing unit other than an electric utility steam-generating unit, the owner or operator shall submit a report to the Division if the annual emissions, in tons per year, from the project identified in Section VI.B.5.a. exceed

the baseline actual emissions (as documented and maintained pursuant to Section VI.B.5.a.(iii)) by a significant amount (as defined in Section II.A.44. of this part) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Section VI.B.5.a.(iii). Such report shall be submitted to the Division within sixty days after the end of such year. The report shall contain the following:

VI.B.5.e.(i) The name, address and telephone number of the major stationary source;

VI.B.5.e.(ii) The annual emissions as calculated pursuant to Section VI.B.5.c.; and

VI.B.5.e.(iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

VI.B.6. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Section VI.B.5. available for review upon request for inspection by the Division or the general public.

VI.B.7. A stationary source or modification may apply the applicable maximum allowable increases for total suspended particulate matter as in effect on the date of the permit application, in meeting the requirements of Section VI.A.2. of this part, if the following requirements are met:

VI.B.7.a. The owner or operator of the source or modification submitted an application for a permit under Regulation Number 3 before the provisions for maximum allowable increases for PM10 took effect; and

VI.B.7.b. The Division determines that the application as submitted, before the date that the maximum allowable increases for PM10 took effect, was complete.

VI.C. Notice to the U.S. EPA.

The Division shall transmit to the Administrator of the U. S. EPA a copy of each permit application relating to a major stationary source or major modification subject to this regulation, and provide notice of every action related to the consideration of such permit.

VI.D. Major Stationary Sources in attainment areas affecting nonattainment areas.

VI.D.1. For any new major stationary source or major modification that is proposed to be constructed in an area designated under Section 107(d) of the Federal Act as attainment or unclassifiable for a particular pollutant and the emissions of such pollutant from which would significantly affect ambient air quality in an area designated as nonattainment for such pollutant, the Division shall grant a permit if it determines that one or both of the following conditions, as well as those in Section III.D.1. of Part B and Section VI.A. of this Part D will be met:

VI.D.1.a. The proposed source or modification will meet the requirements of Sections V.A.1. and V.A.2. of this part, and obtain sufficient emission reductions of such pollutant in the nonattainment area to offset that portion of its emissions of such pollutant that affect the nonattainment area. Offsets may be obtained from outside the nonattainment area as provided in Section V.A.3. of this part; or

VI.D.1.b. The proposed source or modification will achieve an emissions rate that will ensure that the emissions of such pollutant from the source or modification will not significantly affect ambient air quality in the nonattainment area.

VI.D.2. Ambient air quality will be deemed to be significantly affected if, but for any offsets, the applicable significance level set forth in the following table would be exceeded in the nonattainment area.

TABLE OF SIGNIFICANCE LEVELS

Pollutant	**Averaging Time**				
	Annual	**24-Hour**	**8-Hour**	**3-Hour**	**1-Hour**
SO_2	1.0 µg/m^3	5 µg/m^3		25 µg/m^3	
PM10	1.0 µg/m^3	5 µg/m^3			
PM2.5	0.3 µg/m^3	1.2 µg/m^3			
NO_2	1.0 µg/m^3				
CO			500 µg/m^3		2000 µg/m^3

VI.D.3. Any new major stationary source or major modification subject to this section that will emit or cause a net emissions increase in volatile organic compounds or oxides of nitrogen shall demonstrate to the satisfaction of the Division that its emissions will not affect any ozone nonattainment area or shall obtain offsets as required in Section VI.D.1., above.

VI.D.4. Emission offsets for PM10, sulfur dioxide, and carbon monoxide, must show, through air quality modeling, a positive net air quality benefit in the portion of the nonattainment area affected by emissions from the proposed source or modification.

VII. Negligibly Reactive Volatile Organic Compounds (NRVOCs)

VII.A. The negligibly reactive volatile organic compounds referenced in the Common Provisions definition of negligibly reactive volatile organic compounds are considered to be of negligible photochemical reactivity and are neither counted as reactive volatile organic compounds in determining volatile organic compound emission contributions to an increase in ozone nor used as volatile organic compound emission offsets or other volatile organic compound emission trading credits against volatile organic compounds not listed in the common provisions negligibly reactive volatile organic compound definition.

VII.B. Negligibly reactive volatile organic compounds may be substituted for volatile organic compounds and the resulting decrease in volatile organic compound emissions, if otherwise creditable, may be used for offset, banking or other emission trading credit.

VIII. Area Classifications

VIII.A. The following areas in Colorado shall be Class I areas and may not be redesignated:

VIII.A.1. National Parks

VIII.A.1.a. Rocky Mountain

VIII.A.1.b. Mesa Verde

VIII.A.2. National Wilderness Areas

VIII.A.2.a. Black Canyon of the Gunnison

VIII.A.2.b. Eagle's Nest

VIII.A.2.c. Flattops

VIII.A.2.d. Great Sand Dunes

VIII.A.2.e. La Garita

VIII.A.2.f. Maroon Bells - Snowmass

VIII.A.2.g. Mount Zirkel

VIII.A.2.h. Rawah

VIII.A.2.i. Weminuche

VIII.A.2.j. West Elk

VIII.B. All other areas of Colorado, unless otherwise specified by Act of Congress or the Colorado legislature, or the Commission pursuant to Section IX. are designated Class II; provided, however that in the following areas as they existed on August 7, 1977 (maps available from the Division), the increase allowed in sulfur dioxide concentrations over the baseline concentration shall be the same as the increase established by Section 163(b) of the Federal Act for Class I areas, except that such allowable increases may not be allowed if a Federal Land Manager should make an adverse impact determination under Section XIII.C. with which the Division concurs and except that such allowable increases, may be exceeded by compliance with the provisions of Sections XIII.D., XIII.E., or XIII.F.:

VIII.B.1. National Monuments

VIII.B.1.a. Florissant Fossil Beds

VIII.B.1.b. Colorado

VIII.B.1.c. Dinosaur

VIII.B.1.d. Great Sand Dunes (those portions not included as National Wilderness Areas in Section VIII.A.2.)

VIII.B.2. Forest Service Primitive Areas

VIII.B.2.a. Uncompahgre Mountain

VIII.B.2.b. Wilson Mountain

VIII.B.3. Lands administered by the Federal Bureau of Land Management in the Gunnison Gorge Recreation Area as of October 27, 1977. All areas designated Class II under this section may be redesignated as provided in Section IX. of this part.

VIII.B.4. National Parks

Black Canyon of the Gunnison (those portions not included as National Wilderness Areas in Section VIII.A.2.)

VIII.C. The following areas may be redesignated only as Class I or II.

VIII.C.1. An area that exceeds ten thousand acres in size and is a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore; and

VIII.C.2. A national park or national wilderness area established after August 7, 1977, that exceeds ten thousand acres in size.

VIII.D. The Commission recognizes out of state Class I areas that have been listed in the Federal Register (44 Fed. Reg. 69124). Emissions from sources in Colorado shall not violate any standard in these areas.

IX. Redesignation

IX.A. Except as otherwise provided in this section or Section VIII. of this part, the Commission may redesignate any area in Colorado as Class I, Class II or Class III as herein provided. The Commission will provide notice to the General Purpose Unit of local government in an area where the maximum allowable increase is being approached.

IX.B. The Commission shall review and consider a request for redesignation by any person.

IX.C. The Commission shall not set a hearing date on a proposed redesignation until the following have been completed:

IX.C.1. A complete description of the area proposed for redesignation;

IX.C.2. A detailed statement of the circumstances that support the proposed redesignation;

IX.C.3. A prediction of the costs and benefits for the affected population from the proposed redesignation;

IX.C.4. A technical analysis of expected impacts on ambient air quality in adjacent or nearby areas;

IX.C.5. Comments, or evidence of an opportunity for submission of comments, by all appropriate regional planning agencies and councils of government organizations, affected municipalities and other affected political subdivisions; and

IX.C.6. An analysis of the relationship of the proposed redesignation with applicable county or regional development plans, including but not limited to, comprehensive area wide plans and 208 water quality plans.

IX.D. The Commission shall provide sixty day notice prior to a public hearing, including notice to other states, Indian governing bodies and Federal Land Managers whose lands may be affected by a proposed redesignation, of any proposed redesignation, and conduct public hearings on such proposed redesignation in or near areas within Colorado that may be affected by such proposed redesignation, including at least one public hearing within or as near as is practicable to the area to be redesignated. At least thirty days prior to any such public hearings, the Commission shall make available for public inspection a discussion of the reasons for the proposed redesignation,

including a satisfactory description and analysis of the health, environmental, economic, and societal and energy effects of the proposed redesignation. The notice announcing any public hearings shall contain appropriate notification of the availability of such discussion.

IX.E. Prior to the issuance of notice respecting the proposed redesignation of an area that includes any federal lands, the Commission shall provide written notice to the appropriate Federal Land Manager and afford adequate opportunity (not in excess of sixty days) to confer with the Commission respecting the notice of proposed redesignation and to submit written comments and recommendations with respect to such notice of proposed redesignation. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the Commission shall publish a list of any inconsistency between such redesignation and such comments and recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager).

IX.F. All redesignations, except any established by an Indian governing body, shall be specifically approved; (1) by the governor, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session, and (2) by resolutions or ordinances enacted by the general purpose units of local government representing a majority of the residents of the area to be redesignated.

IX.G. No area may be redesignated if such redesignation would cause or contribute to concentrations of any air pollutant in any other area that exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of such area.

IX.H. Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body.

IX.I. Any redesignation shall constitute a revision to the Colorado State Implementation Plan and shall be submitted for approval to the Administrator of the U.S. EPA.

IX.J. Any redesignation or denial of a proper request for redesignation made pursuant to this Section IX. shall be subject to judicial review in accord with Colorado Revised Statute Section 25-7-120.

IX.K. Any area other than an area to which Sections VIII.A. or VIII.C. refer to may be redesignated as Class III if any major stationary source or major modification could receive a permit only if the area in question were redesignated as Class III, and any material submitted as part of that application were available, insofar as was practicable, for public inspection prior to any public hearing on redesignation of any area as Class III.

X. Air Quality Limitations

X.A. Ambient Air Increments

X.A.1. The maximum allowable increases over the baseline concentration for sulfur dioxide, PM10, PM2.5 or nitrogen dioxide except as provided in Section VIII.B. of this part, are:

X.A.1.a. For any Class I area:

PM2.5 ($\mu g/m^3$)	
Annual arithmetic mean	1

Twenty-four hour maximum	2
PM10 (µg/m³)	
Annual arithmetic mean	4
Twenty-four hour maximum	8
Sulfur dioxide (µg/m³)	
Annual arithmetic mean	2
Twenty-four hour maximum	5
Three hour maximum	25
Nitrogen dioxide (µg/m³)	
Annual arithmetic mean	2.5

X.A.1.b. For any Class II area:

PM2.5 (µg/m³)	
Annual arithmetic mean	4
Twenty-four hour maximum	9
PM10 (µg/m³)	
Annual arithmetic mean	17
Twenty-four hour maximum	30
Sulfur dioxide (µg/m³)	
Annual arithmetic mean	20
Twenty-four hour maximum	91
Three hour maximum	512
Nitrogen dioxide (µg/m³)	
Annual arithmetic mean	25

X.A.1.c. For any Class III area:

PM2.5 (µg/m³)

Annual arithmetic mean	8
Twenty-four hour maximum	18
PM10 (µg/m^3)	
Annual arithmetic mean	34
Twenty-four hour maximum	60
Sulfur dioxide (µg/m^3)	
Annual arithmetic mean	40
Twenty-four hour maximum	182
Three hour maximum	700
Nitrogen dioxide (µg/m^3)	
Annual arithmetic mean	50

X.A.2. The maximum allowable increases over the baseline concentration for any other air pollutant shall be the same as those increases established pursuant to Section 165(a) of the Federal Act.

X.A.3. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

X.A.4. Periodic Review

X.A.4.a. The Division shall, on a periodic basis, review the adequacy of this Regulation Number 3 for preventing significant deterioration of air quality. Within thirty days after any information becomes available and there is cause to believe that an applicable increment is being violated, the Division shall present the cause for such belief to the Commission.

X.A.4.b. If the Commission concurs that there is cause to believe that an increment is being violated, it shall hold a hearing to determine whether an increment violation exists. The hearing shall be held pursuant to the procedures of Colorado Revised Statute Section 25-7-119. Notice should be given by first class mail to permitted sources that can be reasonably identified as emitting the pollutant in violation and affecting the area of violation.

X.A.4.c. Should the Commission determine that an increment violation exists, the Division shall review all sources affecting the area of increment violation and ensure that all such sources comply with all applicable permit conditions, and state and local regulations. Within thirty days after completing such a review, the Division shall recommend revisions, if necessary, to the Commission to correct the violation. Upon receipt of recommended revisions from the Division, the Commission shall as soon as practicable act to revise this regulation as it deems necessary.

X.A.5. Increment Consumption Restriction

X.A.5.a. No new major stationary source or major modification shall individually consume more than seventy-five percent of an applicable increment.

X.A.5.a.(i) Applicants may request a hearing before the Commission to request a waiver of this restriction. The hearing shall be heard in accordance with the provisions of Colorado Revised Statute Sections 25-7-114 (4)(h), 25-7-119 (Colorado Air Pollution Prevention and Control Act), and Colorado Revised Statute 24-4-105 (State Administrative Procedure Act).

X.A.5.a.(i)(A) The Commission shall not set a hearing date for a waiver request until submittal of comments, or evidence of an opportunity for submittal of comments by all appropriate regional planning agencies and councils of government organizations, affected municipalities and other affected political subdivisions has occurred.

X.A.5.a.(i)(B) Ambient Air Limits. No concentrations of a pollutant shall exceed a national ambient air quality standard or a state ambient air standard where no national ambient air quality standard has been established.

XI. Exclusions From Increment Consumption

XI.A. The following concentrations are excluded in determining compliance with a maximum allowable increase:

XI.A.1. Concentrations attributable to the increase in emissions from stationary sources that have converted from the use of petroleum products, natural gas, or both by an order in effect under Sections 2(a) and (b) of the federal "Energy Supply and Environmental Coordination Act of 1974" (or any superseding legislation) over the emissions from such sources before the effective date of such an order, but not more than five years after the effective date of such an order.

XI.A.2. Concentrations attributable to the increase in emissions from sources that have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal "Power Act" over the emissions from such sources before the effective date of such plan, but not more than five years after the effective date of the plan.

XI.A.3. Concentrations of particulate matter attributable to an increase in emissions from construction or other temporary emission-related activities of new or modified sources.

XI.A.4. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, or particulate matter, or nitrogen oxides from stationary sources that are affected by revisions of the Colorado State Implementation Plan that are approved by the Administrator of the U.S. EPA and that provide:

XI.A.4.a. The time period of such temporary increase in emissions is not renewable and may not exceed two years in duration, unless a longer time is approved by the Division and the U.S. EPA;

XI.A.4.b. Such temporary increase in emissions shall not impact a Class I area or an area where an applicable increment is known to be violated or cause or contribute to the violation of a national ambient air quality standard; and

XI.A.4.c. Emission limitations shall be in effect at the end of the time period specified in the plan revision that will ensure that the emissions levels from stationary sources affected by the plan revision will not exceed those levels occurring from such sources before the plan revision was approved by the U.S. EPA.

XII. Innovative Control Technology

XII.A. An owner or operator of a proposed major stationary source or major modification otherwise subject to the requirements of Section VI. of this Part D may request the Division to grant a waiver from the Best Available Control Technology requirements and to approve a system of innovative control technology, in order to encourage the use of such technology.

XII.B. The Division or the Commission may, with the consent of the governor(s) of other affected states, grant a waiver from the Best Available Control Technology requirements of Section VI.A.1. of this part necessary for the employment of innovative control technology and determine that the source or modification may employ such system if:

XII.B.1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

XII.B.2. The owner or operator agrees to achieve a level of continuous emissions reduction greater than or equivalent to that, which would have been required under Section VI.A.1. by a date specified by the Division. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

XII.B.3. The source or modification would meet the requirements of Sections VI.A.1. and VI.A.2. based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Division;

XII.B.4. The source or modification would not, before the date specified by the Division under Section XII.B.2., above;

XII.B.4.a. Cause or contribute to any violation of an applicable national ambient air quality standard; or

XII.B.4.a.(i) Impact any area where an applicable increment is known to be violated; or

XII.B.5. All other applicable requirements including those for public participation have been met.

XII.B.6. The provisions of Section VIII. of this part (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

XII.C. The Division shall withdraw any approval to employ a system of innovative control technology made under this section, if:

XII.C.1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

XII.C.2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

XII.C.3. The Division decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

XII.D. If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with Section XII.C., above, the Division may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

XIII. Federal Class I Areas

XIII.A. Within twenty days of receipt of a permit application for a new major stationary source or major modification that may affect visibility or air quality related values in any Federal Class I area, the Division shall transmit a copy of the application to all affected Federal Land Managers and consult with them as to its completeness in its analysis and monitoring (if required) of air quality related values. If the Division receives advance notification of a permit application of a source that may affect visibility or air quality related values, it will notify all affected Federal Land Managers within thirty days of such notification. The Division will consider any analysis performed by a Federal Land Manager that indicates there will be an adverse impact on visibility or air quality related values if such analysis is received within thirty days after the Federal Land Manager receives a copy of the complete application. If the Division disagrees with the Federal Land Manager, any notices for public comment or of a public hearing on the application will explain the disagreement or state where the explanation can be obtained.

XIII.B. In addition to the general impact analysis required by Section VI.A.6. of this part, any source that will have or is likely to have an impact on any designated Class I area may be required to conduct monitoring to establish the condition of and the impact on air quality related values in such Class I area(s) both prior to completing an application for a permit to construct and during the construction and operation of such source.

XIII.B.1. If monitoring is required, the source shall conduct a private monitoring program. However, if monitoring is being conducted by any other existing source or government agency, the new source may enter into a joint monitoring program with that source or agency. All monitoring programs must be approved in advance by the Division.

XIII.B.2. Pre-application monitoring may include the monitoring of not more than three air quality related values or sensitive receptors of air quality related values specified by the Division after consultation with the Federal Land Manager. The air quality related values or sensitive receptor(s) selected must be important to the affected Class I area, and there must be cause to believe that monitoring of the air quality related values or sensitive receptors will provide a basis for evaluating effects to the relevant air quality related values.

XIII.B.3. Monitoring during construction and operation may only be required for the sensitive receptors specified for pre-application monitoring, unless new information becomes available that demonstrates a significant economic or technological advantage of monitoring a different sensitive receptor, and it is acceptable to the source owner or operator.

XIII.B.4. Monitoring of air quality related values or sensitive receptors of air quality related values may only be required if:

XIII.B.4.a. Monitoring methods are reasonably available and research and development of monitoring methods are unnecessary;

XIII.B.4.b. The major effect on the air quality related values or sensitive receptor would reasonably be predicted to be a result of the applicant's individual emissions or of

the applicant's emissions in combination with any person's emissions with whom the applicant may be required to conduct joint monitoring; and

XIII.B.4.c. It is economically reasonable for the source to conduct such monitoring.

XIII.C. Sources Impacting Federal Class I Area - Additional Requirements. Federal Land Managers may present to the Division, after its preliminary analysis required under Section III.B. of Part B of this regulation, a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality related values (including visibility) of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area. If the Division concurs with such demonstration, or in the event the Federal Land Manager fails to perform an adverse impact analysis and the Division determines that there is an adverse impact on visibility, or the Division determines that a demonstration of no adverse impact is in error, the Division shall not issue the permit.

XIII.D. Class I Variances. The owner or operator of a proposed major stationary source or major modification may demonstrate to the satisfaction of the Federal Land Manager that the emissions from such source or modification would not have an adverse impact on the air quality related values (including visibility) of Class I lands under the Federal Land Manager's jurisdiction, notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and so certifies to the Division, the Division or the Commission may, provided that applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, and PM10, PM2.5 and nitrogen oxides would not exceed the following maximum allowable increases over the minor source baseline concentration for such pollutants.

Maximum allowable increase	
Particulate matter	
PM2.5, Annual arithmetic mean	4 $\mu g/m^3$
PM2.5, Twenty-four hour maximum	9 $\mu g/m^3$
PM10, Annual arithmetic mean	17 $\mu g/m^3$
PM10, Twenty-four hour maximum	30 $\mu g/m^3$
Sulfur dioxide	
Annual arithmetic mean	20 $\mu g/m^3$
Twenty-four hour maximum	91 $\mu g/m^3$
Three hour maximum	325 $\mu g/m^3$
Nitrogen dioxide	
Annual arithmetic mean	25 $\mu g/m^3$

XIII.E. Sulfur Dioxide Variance by Governor

XIII.E.1. The owner or operator of a proposed major stationary source or major modification that cannot be approved under Section XIII.D., above, may demonstrate to the governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less, applicable to any Class I area and, in the case of the federal mandatory Class I areas, that a variance under this section would not have an adverse affect on the air quality related values of the area (including visibility).

XIII.E.2. The governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may grant, after notice and an opportunity for a public hearing, a variance from such maximum allowable increase.

XIII.E.3. If such variance is granted, the Division may issue a permit to such source or modification in accordance with Section XIII.G., below, if the applicable requirements of Regulation Number 3 are otherwise met.

XIII.F. Variance by the Governor with the President's Concurrence

XIII.F.1. The recommendations of the governor and the Federal Land Manager shall be transferred to the president in any case where the governor recommends a variance with which the Federal Land Manager does not concur.

XIII.F.2. If the president approves the variance, the Division may issue a permit in accordance with Section XIII.G., below, if the applicable requirements of Regulation Number 3 are otherwise met.

XIII.G. Emission Limitations for Presidential and Gubernatorial Variance. In the case of a permit to be issued under Sections XIII.E. and XIII.F., the source or modification shall comply with emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on that the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration assure that such emissions would not cause or contribute to concentrations that exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four hours or less for more than eighteen days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase ($\mu g/m^3$)

Period of Exposure	**Terrain Areas**	
	Low	**High**
24-hour maximum	36	62
3-hour maximum	130	221

XIV. Visibility

XIV.A. Purpose

This section assures reasonable progress towards the national goal of preventing future, and remedying existing, visibility impairment in Class I areas, where such impairment results from man-made air pollution.

XIV.B. Applicability

This section applies to all Class I areas and to sources in Colorado the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area (even if the area is in another state).

XIV.C. Definitions

For purposes of this Section XIV.

XIV.C.1. Adverse impact on visibility means for the purpose of Section XIV.E. visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Class I area. Any determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

XIV.C.2. Best Available Retrofit Technology means an emission limitation achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation shall be established on a case-by-case basis taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility that may reasonably be anticipated to result from the use of such technology.

XIV.C.3. Existing stationary facility means any of the stationary sources of air pollutants defined in Sections I.B.19., I.B.24. through I.B.27., I.B.36., and I.B.43. of Part A, Section I.A.1.(c) of Part C, and Section II.A.24. of Part D of this regulation, including any reconstructed source that was not in operation prior to August 7, 1962, and had commenced construction on or before August 7, 1977, and has the potential to emit two hundred and fifty tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable shall be counted.

XIV.C.4. Long-term strategy means a ten to fifteen year plan for making reasonable progress toward the national goal specified in Section XIV.A. of this part.

XIV.C.5. Natural conditions include naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

XIV.C.6. Reasonably attributable means attributable by visual observation or any other technique the state deems appropriate.

XIV.C.7. Significant impairment means, for purposes of Section XIV.D.2.c., visibility impairment, that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area.

XIV.C.8. Visibility impairment means any humanly perceptible change in visibility (visual range, contrast, coloration) that would have existed under natural conditions.

XIV.C.9. Class I area means an area listed in Section VIII.A. of this part and any area that may be redesignated to Class I in the future.

XIV.D. Existing Impairment

XIV.D.1. The Federal Land Manager or the Division may, at any time, certify to the Division director that visibility impairment exists in any Class I area. The Division may also certify that visibility impairment exists in any Class I area without the concurrence of the Federal Land Manager.

XIV.D.2. Each existing stationary facility located in Colorado to which the cause of or contribution to visibility impairment in any Class I area is reasonably attributable, shall apply for and obtain from the Division a permit that requires the installation and operation of Best Available Retrofit Technology. The facility shall install and operate Best Available Retrofit Technology as expeditiously as practicable but in no case later than five years after permit issuance.

XIV.D.2.a. For fossil-fuel fired generating plants having a total generating capacity in excess of 750 megawatts, Best Available Retrofit Technology shall be determined pursuant to "Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities" (U.S. EPA Publication Number 450/3-80-009b, 1980), and state of the art information available at the time of Best Available Retrofit Technology analysis. Pursuant to Colorado Revised Statute Section 24-4-103 (12.5), the document referenced in this section is available for public inspection during normal working hours, or copies are available for cost, from the technical secretary of the Commission, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. This Regulation Number 3 does not include later amendments to or editions of the referenced documents.

XIV.D.2.b. Should technological or economic limitations make the application of Best Available Retrofit Technology as previously defined infeasible; the state may instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof, as representing Best Available Retrofit Technology. Where a facility is subject to Section XIV.D.2.a., due to technological limitations, the facility shall install and operate Best Available Retrofit Technology as previously defined when new technology for control of the pollutant becomes reasonably available provided: 1) the pollutant is emitted by the existing facility; 2) controls representing Best Available Retrofit Technology for the pollutant have not previously been required under this section; and 3) the impairment of visibility in any Class I area is reasonably attributable to the emissions of that pollutant.

XIV.D.2.c. Any existing stationary facility required to install and operate Best Available Retrofit Technology under this section may apply to the Division and the U.S. EPA Administrator for an exemption.

XIV.D.2.c.(i) An application under this section must include all available documentation relevant to the impact of the source's emissions on visibility in any Class I area and a demonstration by the existing stationary facility that it does not or will not by itself or in combination with other sources, emit any air pollutant that may be reasonably anticipated to cause or contribute to a significant impairment of visibility in any Class I area.

XIV.D.2.c.(ii) Any fossil fuel fired power plant with a total generating capacity of 750 megawatts or more may receive an exemption from Best Available Retrofit Technology only if the owner or operator of such power plant demonstrates to the satisfaction of the Division that such power plant is located at such a distance from all Class I areas that such power plant does not or will not by itself or in combination with other sources emit any

air pollutant that may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such Class I area.

XIV.D.2.c.(iii) The existing stationary facility must give prior written notice to all affected Federal Land Managers of any application for exemption.

XIV.D.2.c.(iv) The Federal Land Manager may provide an initial recommendation or comment on the disposition of such application. Such recommendation, where provided, must be part of the exemption application. This recommendation is not to be construed as the concurrence required under Section XIV.D.2.c.(iv).

XIV.D.2.c.(v) After notice and opportunity for public hearing, before the Commission, the Division may grant or deny the exemption.

XIV.D.2.c.(vi) An exemption granted by the Division under this section will be effective only upon concurrence by all affected Federal Land Managers.

XIV.D.2.c.(vii) Any determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of the visibility impairment, and how these factors correlate with time of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

XIV.D.2.d. The Division shall process any application for a permit required by Section XIV.D.2., above, or any application for exemption under Section XIV.D.2.b., according to the time constraints stated in Part B, Section III.B. of this regulation. All applications for permits or exemptions will be subject to public notice and public hearing requirements applicable to sources subject to the provisions of Section VI. of this part. Processing fees will be charged to the applicant to recover actual costs incurred by the Division as stated in Section VI. of Part A of this Regulation Number 3.

XIV.E. New Source Review

Applicants for new major stationary sources and major modifications shall demonstrate that the proposed source will not have an adverse impact on visibility in a Class I area as required by Sections V.A.6., VI.A.6., and XIII. of this part.

XIV.F. Long-term Strategy

XIV.F.1. The Commission shall review and revise, if appropriate, the long-term strategy every five years.

XIV.F.1.a. During the long-term strategy development and review process, the Commission shall consult with the Federal Land Managers.

XIV.F.1.b. A public hearing shall be held upon request of any interested person. The state shall provide written notification to each affected Federal Land Manager and other affected states at least sixty days prior to holding any public hearing.

XIV.F.1.c. The Division shall prepare a report for the Commission on any progress made toward the national visibility goal since the last long-term strategy revisions. The report will be made available on September 1, at least every fifth year following

the submittal of the previous report and consistent with the federal five-year Regional Haze reporting schedule. The report shall include an assessment of:

XIV.F.1.c.(i) The progress achieved in remedying existing impairment of visibility in any Class I area;

XIV.F.1.c.(ii) The ability of the long-term strategy to prevent future impairment of visibility in any Class I area;

XIV.F.1.c.(iii) Any change in visibility since the last such report, or in the case of the first report, since plan approval, including an assessment of existing conditions;

XIV.F.1.c.(iv) Additional measures, including the need for state implementation plan revisions, that may be necessary to assure reasonable progress toward the national visibility goal;

XIV.F.1.c.(v) The progress achieved in implementing Best Available Retrofit Technology and meeting other schedules set forth in the long-term strategy;

XIV.F.1.c.(vi) The impact of any exemption granted under Section XIV.D.2.c.; and,

XIV.F.1.c.(vii) The need for Best Available Retrofit Technology to remedy existing impairment in an integral vista declared since plan approval.

XIV.G. Public Land Emission Inventories

XIV.G.1. Federal Public Lands

XIV.G.1.a. For the purposes of this Section XIV.G., federal land management agency means a federal agency that owns and manages at least 50,000 acres of federal land in Colorado.

XIV.G.1.b. Federal land management agencies shall submit to the Commission emission inventories by December 31, 2001 and no less frequently than every five years thereafter.

XIV.G.1.c. The inventory shall include the sources listed in Section XIV.G.3.b. of this regulation and emissions of criteria pollutants, including surrogates or precursors for such pollutants, from activities in Colorado or other states that may affect any mandatory class I federal area in Colorado by reducing visibility in such area.

XIV.G.2. Colorado State Public lands

XIV.G.2.a. The Division shall submit to the Commission emission inventories for all state land management agencies including the State Land Board, the Department of Agriculture, and the Department of Natural Resources by July 1, 2002 and no less frequently than every five years thereafter.

XIV.G.2.b. The inventory shall include the sources listed in Section XIV.G.3.b. of this regulation and emissions of criteria pollutants, including surrogates or precursors for such pollutants, from activities in Colorado that may affect any mandatory Class I federal area in Colorado by reducing visibility in such area.

XIV.G.3. Public Land Emission Inventory Requirements

XIV.G.3.a. The inventory shall include both current emissions and projected future emissions, over at least a five-year period.

XIV.G.3.b. The following sources on public lands shall be included in the inventory:

XIV.G.3.b.(i) Stationary source emissions, based on existing air pollution emission notices filed with the Division;

XIV.G.3.b.(ii) Mobile sources utilizing state lands, excluding state and federal highways;

XIV.G.3.b.(iii) Paved and unpaved roads;

XIV.G.3.b.(iv) Fires on public lands from all sources; and

XIV.G.3.b.(v) Biogenic sources, including emissions from flora and fauna.

XIV.G.4. Public Hearings

Not later than December 31, 2002, and no less frequently than every five years thereafter, a public hearing before the Commission shall be conducted to approve the public land emission inventories.

XV. Actuals PALs

XV.A. Applicability.

XV.A.1. At the request of an owner or operator, the Division may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO2e basis, in a Title V permit for any existing major stationary source or any existing GHG-only source that has operated for at least two years if the PAL meets the requirements in Sections XV.A. through XV.L. The term "PAL" shall mean "actuals PAL" throughout Section XV. of this part.

XV.A.2. Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets the requirements in Sections XV.A. through XV.L., and complies with the PAL permit:

XV.A.2.a. Is not a major modification for the PAL pollutant;

XV.A.2.b. Is not subject to the major NSR review procedures in Sections I.B., V., and VI. of this part;

XV.A.2.c. Is not subject to the provisions in Section V.A.5.b. of this part (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program); and

XV.A.2.d. Does not make GHGs subject to regulation as defined in Part A, Section I.B.44.

XV.A.3. Except as provided under Section XV.A.2.c. above, a major stationary source or a GHG-only source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

XV.B. Permit application requirements.

As part of a permit application requesting a PAL, the owner or operator of a major stationary or a GHG-only source source shall submit the following information to the Division for approval (in addition to the information required by Part C of this Regulation):

XV.B.1. A list of all emissions units at the source designated as small (as defined in Section II.A.47. of this part), significant (as defined in Section II.A.46. of this part), and major (as defined in Section II.A.22. of this part) based on their potential to emit, and identifying each as such. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations or work practices apply to each unit.

XV.B.2. Calculations of the baseline actual emissions for each emissions unit listed in Section XV.B.1. above (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

XV.B.3. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring data to monthly emissions and annual emissions based on a twelve-month rolling total for each month as required by Section XV.M.1.

XV.B.4. As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing major source as defined in Sections II.A.24.a. and II.A.24.b. or a GHG-only source as defined in Section XV.P.1.

XV.C. General requirements for establishing PALs.

XV.C.1. A PAL may be established at a major stationary source or a GHG-only source, provided that, at a minimum, the requirements in Sections XV.C.1.a. through XV.C.1.g. below are met.

XV.C.1.a. The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO2e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first twelve months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the monthly emissions of the PAL pollutant from each emissions unit under the PAL for the previous twelve consecutive months is less than the PAL (a rolling twelve-month total). For each month during the first eleven months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the preceding monthly emissions of the PAL pollutant for each emissions unit under the PAL is less than the PAL.

XV.C.1.b. The PAL shall be established in a PAL permit section of an operating permit issued pursuant to Part C of this regulation that meets the public participation requirements in Section XV.D.

XV.C.1.c. The PAL permit shall contain all the requirements of Section XV.F.

XV.C.1.d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

XV.C.1.e. Each PAL shall regulate emissions of only one pollutant.

XV.C.1.f. Each PAL shall have a PAL effective period of ten years.

XV.C.1.g. The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Sections XV.K. through XV.N. for each emissions unit under the PAL throughout the PAL effective period.

XV.C.2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under Section V. unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

XV.D. Public participation requirement for PALs.

PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased in accordance with the significant modification provisions set forth in Section I.A.7.of Part C of this regulation. The Division shall provide the public with notice of the proposed approval of a PAL permit and a thirty-day period for submittal of public comment.

XV.E. Setting the ten-year actuals PAL level.

XV.E.1. Except as provided in Sections XV.E.4. and XV.E.6., the actuals PAL level for a major stationary source or GHG-only source shall be established as the sum of the baseline actual emissions (as defined in Section II.A.4. of this Part D or, for GHGs in Section XV.P.2.) of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level for the PAL pollutant under Section II.A.44. of this part, or under the Federal Act, whichever is lower.

XV.E.2. When establishing the actuals PAL level for a PAL pollutant, only one consecutive twenty-four month period may be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive twenty-four month period may be used for each different PAL pollutant.

XV.E.3. Emissions associated with units that were permanently shut down after this twenty-four month period must be subtracted from the PAL level.

XV.E.4. For newly constructed units (which do not include modifications to existing units) on which actual construction began after the twenty-four month period, in lieu of adding the baseline actual emissions as specified in Section XV.E.1., above, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

XV.E.5. The Division shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Division is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOx to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

XV.E.6. For CO2e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions (as defined in Section XV.P.2.) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as “significant”

on a CO2e basis for the purposes of Part A, Section I.B.44.c. at the time the PAL permit is being issued.

XV.E.6.a. When establishing the actuals PAL level for a CO2e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions units.

XV.E.6.b. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level.

XV.E.6.c. The Division shall specify a reduced PAL level in tons per year CO2e in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or state regulatory requirement(s) that the Division is aware of prior to issuance of the PAL permit.

XV.F. Contents of the PAL permit.

The PAL permit shall contain, at a minimum, the information in Sections XV.F.1. through XV.F.11.

XV.F.1. The PAL pollutant and the applicable source-wide emission limitation in tons per year CO2e.

XV.F.2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

XV.F.3. Specification in the PAL permit that if a major stationary source or a GHG-only source owner or operator applies to renew a PAL in accordance with Section XV.I. before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Division.

XV.F.4. A requirement that emission calculations for compliance determination purposes include emissions from startups, shutdowns and malfunctions.

XV.F.5. A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of Section XV.H.

XV.F.6. The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring data to monthly emissions and annual emissions based on a twelve-month rolling total for each month as required by Section XV.M.1.

XV.F.7. A requirement that the major stationary source or GHG-only source owner or operator monitors all emissions units in accordance with the provisions under Section XV.K.

XV.F.8. A requirement to retain the records required under Section XV.M. on site. Such records may be retained in an electronic format.

XV.F.9. A requirement to submit the reports required under Section XV.N. by the required deadlines.

XV.F.10. Any other requirements that the Division deems necessary to implement and enforce the PAL.

XV.F.11. A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under Part A, Section I.B.44. as long as the source complies with the PAL.

XV.G. Reopening of the PAL permit.

XV.G.1. During the PAL effective period, the Division shall reopen the PAL permit to:

XV.G.1.a. Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

XV.G.1.b. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under Section V.A.3. of this Part D.

XV.G.1.c. Revise the PAL to reflect an increase in the PAL as provided under Section XV.J.

XV.G.2. The Division has discretion to reopen the PAL permit to:

XV.G.2.a. Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date.

XV.G.2.b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the Division may impose on the major stationary source or GHG-only source.

XV.G.2.c. Reduce the PAL if the Division determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

XV.G.3. Except for the permit reopening in Section XV.G.1.a. for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Section XV.D.

XV.H. Expiration of a PAL.

Any PAL that is not renewed in accordance with the procedures in Section XV.I. shall expire at the end of the PAL effective period, and the requirements in Sections XV.H.1. through XV.H.5. shall apply.

XV.H.1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in Sections XV.H.1. through XV.H.5. of this part.

XV.H.1.a. Within the time frame specified for PAL renewals in Section XV.I.2., the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as determined by the Division) by distributing the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became

effective during the PAL effective period, as required under Section XV.I.5., such distribution shall be made as if the PAL had been adjusted.

XV.H.1.b. The Division shall determine whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Division determines is appropriate.

XV.H.2. Each emissions unit(s) shall comply with the allowable emission limitation on a twelve-month rolling total basis. The Division may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

XV.H.3. Until the Division issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Section XV.H.1.a., the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

XV.H.4. Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to the major NSR requirements if such change meets the definition of major modification in Section II.A.23. of this Part D.

XV.H.5. The major stationary source or GHG-only source owner or operator shall continue to comply with any State or Federal applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Sections V.A.7.b. and VI.B.4. of this part, but were eliminated by the PAL in accordance with the provisions in Section XV.A.2.c.

XV.I. Renewal of a PAL.

XV.I.1. The Division shall follow the procedures specified in Section XV.D. in approving any request to renew a PAL for a major stationary source or GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Division.

XV.I.2. Application deadline.

A major stationary source or GHG-only source owner or operator shall submit a timely application to the Division to request renewal of a PAL. A timely application is one that is submitted at least twelve months prior to, but not earlier than eighteen months from, the date of PAL permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application , including any additional information requested by the Division, to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

XV.I.3. Application requirements.

The application to renew a PAL permit shall contain the information required in Sections XV.I.3.a. through XV.I.3.d., below.

XV.I.3.a. The information required in Sections XV.B.1. through XV.B.3. of this part.

XV.I.3.b. A proposed PAL level.

XV.I.3.c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

XV.I.3.d. Any other information the owner or operator wishes the Division to consider in determining the appropriate level for renewing the PAL.

XV.I.4. PAL adjustment.

In determining whether and how to adjust the PAL, the Division shall consider the options outlined in Sections XV.I.4.a. and XV.I.4.b. However, in no case may any such adjustment fail to comply with Section XV.I.4.c.

XV.I.4.a. If the emissions level calculated in accordance with Section XV.E. is equal to or greater than eighty percent of the PAL level, the Division may renew the PAL at the same level without considering the factors set forth in Section XV.I.4.b.; or

XV.I.4.b. The Division may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Division in its preliminary analysis or technical review document.

XV.I.4.c. Notwithstanding Sections XV.I.4.a. and XV.I.4.b. above,

XV.I.4.c.(i) If the potential to emit of the major stationary source or GHG-only source is less than the PAL, the Division shall adjust the PAL to a level no greater than the potential to emit of the source; and

XV.I.4.c.(ii) The Division shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of Section XV.J. (increasing a PAL).

XV.I.5. If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Division has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

XV.J. Increasing a PAL during the PAL effective period.

XV.J.1. The Division may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the provisions in Sections XV.J.1.a. through XV.J.1.d. below.

XV.J.1.a. The owner or operator of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.

XV.J.1.b. As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual

emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

XV.J.1.c. The owner or operator obtains a major NSR permit for all emissions unit(s) identified in Section XV.J.1.a., regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT or LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

XV.J.1.d. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

XV.J.2. The Division shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Section XV.J.1.b.), plus the sum of the baseline actual emissions of the small emissions units.

XV.J.3. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Section XV.D. of this part.

XV.K. Monitoring requirements for PALs.

XV.K.1. General Requirements.

XV.K.1.a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plant-wide emissions of the PAL pollutant in terms of mass per unit of time or CO2e per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

XV.K.1.b. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Sections XV.K.2.a. through XV.K.2.d. and must be approved by the Division.

XV.K.1.c. Notwithstanding Section XV.K.1.b., you may also employ an alternative monitoring approach that meets the requirements of Section XV.K.1.a. if approved by the Division.

XV.K.1.d. Failure to use a monitoring system that meets the requirements of this Section renders the PAL invalid.

XV.K.2. Minimum Performance Requirements for Approved Monitoring Approaches.

The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Sections XV.K.3. through XV.K.9:

XV.K.2.a. Mass balance calculations for activities using coatings or solvents;

XV.K.2.b. CEMS (as defined in Section I.B.14. of Part A);

XV.K.2.c. CPMS or PEMS (as defined in Sections I.B.16. and I.B.38., respectively, of Part A); and

XV.K.2.d. Published, verifiable emission factors

XV.K.3. Mass Balance Calculations.

An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

XV.K.3.a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

XV.K.3.b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

XV.K.3.c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Division determines there is site-specific data or a site-specific monitoring program to support another content within the range.

XV.K.4. CEMS.

An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

XV.K.4.a. CEMS must comply with applicable Performance Specifications found in the Code of Federal Regulations Title 40, Part 60, Appendix B, and Part 75; and

XV.K.4.b. CEMS must sample, analyze and record data at least every fifteen minutes while the emissions unit is operating.

XV.K.5. CPMS or PEMS.

An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

XV.K.5.a. The CPMS or the PEMS must be based on current site specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

XV.K.5.b. Each CPMS or PEMS must sample, analyze, and record data at least every fifteen minutes, or at another less frequent interval approved by the Division, while the emissions unit is operating.

XV.K.6. Emission factors.

An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

XV.K.6.a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

XV.K.6.b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

XV.K.6.c. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the Division determines that testing is not required.

XV.K.7. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

XV.K.8. Notwithstanding the requirements in Sections XV.K.3. through XV.K.7., where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Division shall, at the time of permit issuance:

XV.K.8.a. Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

XV.K.8.b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

XV.L. Re-validation.

All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Division. Such testing must occur at least once every five years after issuance of the PAL.

XV.M. Recordkeeping requirements.

XV.M.1. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of Section XV. of this part and of the PAL, including a determination of each emissions unit's twelve-month rolling total emissions, for five years from the date of such record.

XV.M.2. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

XV.M.2.a. A copy of the PAL permit application and any applications for revisions to the PAL; and

XV.M.2.b. Each annual certification of compliance pursuant to Part C of this regulation, and the data relied on in certifying the compliance.

XV.N. Reporting and notification requirements.

The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Division in accordance with the requirements of the applicable Title V permit and Section V.C.7. of Part C of this regulation. The reports shall meet the requirements in Sections XV.K.11.a. through XV.K.11.c. below.

XV.N.1. Semi-Annual Report.

The semi-annual report shall be submitted to the Division within thirty days of the end of each reporting period. This report shall contain the information required by the Title V permit, Section V.C.7.a. of Part C of this regulation, and Sections XV.N.1.a. through XV.N.1.g., below.

XV.N.1.a. The identification of owner and operator and the permit number.

XV.N.1.b. Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO2e) based on a twelve-month rolling total for each month in the reporting period recorded pursuant to Section XV.K.10.a.

XV.N.1.c. All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions shall be made available upon request by the Division.

XV.N.1.d. A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding six-month period.

XV.N.1.e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

XV.N.1.f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, whether the emissions unit(s) monitored by the monitoring system continued to operate, and calculations of emissions from those units as provided by Section XV.K.7. of this part.

XV.N.1.g. A signed statement by the responsible official (as defined in Section I.B.40. of Part A of this regulation) certifying the truth, accuracy, and completeness of the information provided in the report.

XV.N.2. Deviation report.

The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to Section V.C.7.b. of Part C of this regulation shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by Section V.C.7.b. of Part C. The reports shall contain the following information:

XV.N.2.a. The identification of owner and operator and the permit number;

XV.N.2.b. The PAL requirement that experienced the deviation or that was exceeded;

XV.N.2.c. Emissions resulting from the deviation or the exceedance; and

XV.N.2.d. A signed statement by the responsible official (as defined in Section I.B.40. of Part A of this regulation) certifying the truth, accuracy, and completeness of the information provided in the report.

XV.N.3. Re-validation results

The owner or operator shall submit to the Division the results of any revalidation test or method within three months after completion of such test or method.

XV.O. If any provision of this Section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

PART E RESERVED FOR ENVIRONMENTAL MANAGEMENT SYSTEMS

Reserved for Environmental Management Systems

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

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

The provisions of Part 51, Appendix Y, Title 40, of the Code of Federal Regulations (CFR), promulgated by the U.S. Environmental Protection Agency listed in this Section are hereby incorporated by reference by the Air Quality Control Commission and made a part of the Colorado Air Quality Control Commission Regulations as modified by the following Regulation Number 3, Part F. Materials incorporated by reference are those in existence as July 6, 2005 and do not include later amendments. The material incorporated by reference is available for public inspection during regular business hours at the Office of the Commission, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys. Parties wishing to inspect these materials should contact the Technical Secretary of the Commission, located at the Office of the Commission.

I. Applicability

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

II. Definitions

II.A. Adverse impact on visibility

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

II.B. Available Technology

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

II.C. Applicable Technology

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

II.D. Average Cost Effectiveness

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

II.E. BART Alternative

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

II.F. BART-eligible source

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

II.G. Best Available Retrofit Technology (BART)

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

II.H. Deciview

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

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

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

II.I. Existing stationary facility

Means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any visibility impairing air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

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

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

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

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

II.I.3. Kraft pulp mills

II.I.4. Portland cement plants

II.I.5. Primary zinc smelters

II.I.6. Iron and steel mill plants

II.I.7. Primary aluminum ore reduction plants

II.I.8. Primary copper smelters

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

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

II.I.11. Petroleum refineries

II.I.12. Lime plants

II.I.13. Phosphate rock processing plants

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

II.I.14. Coke oven batteries

II.I.15. Sulfur recovery plants

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

II.I.17. Primary lead smelters

II.I.18. Fuel conversion plants

II.I.19. Sintering plants

II.I.20. Secondary metal production facilities

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

II.I.21. Chemical process plants

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

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

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

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

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

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

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

II.I.24. Taconite ore processing facilities

II.I.25. Glass fiber processing plants

II.I.26. Charcoal production facilities

Includes charcoal briquette manufacturing and activated carbon production

II.J. Incremental Cost Effectiveness

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

Incremental Cost Effectiveness (dollars per incremental ton removed) = [(Total annualized costs of control option) - (Total annualized costs of next control option)] ÷ [(Next Control option annual emissions) - (control option annual emissions)]

II.K. In existence

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

II.L. In operation

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

II.M. Integral vista

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

II.N. Natural conditions

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

II.O Plant

Means all emissions units at a stationary source.

II.P. Visibility-Impairing Air Pollutant

Includes the following:

II.P.1. Sulfur dioxide (SO2),

II.P.2. Nitrogen oxides (NOx) and

II.P.3. Particulate matter. (PM10 will be used as the indicator for particulate matter. Emissions of PM10 include the components of PM2.5 as a subset.).

III. Sources required to Perform a BART Analysis

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

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

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

III.B. Identification of sources subject to BART

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

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

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

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

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

IV. BART Analysis

IV.A. Presumptive BART for Coal Fired Power Plants

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

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

IV.A.2. Other Coal Fired Power Plants

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

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

IV.A.3.a. Sulfur Dioxide

Coal-Fired Electric Generating Units: 95 percent reduction or 0.15 lb SO2/mmBTU.

IV.A.3.b. Nitrogen Oxides

Unit Type	Coal Type	NO_X limit (lb/mm BTU)
Dry bottom Wall fired	Bituminous	0.39
	Sub-bituminous	0.23
	Lignite	0.29
Tangential Fired	Bituminous	0.28
	Sub-bituminous	0.15
	Lignite	0.17
Cell Burners	Bituminous	0.40
	Sub-bituminous	0.45

Dry-turbo-fired	Bituminous Sub-bituminous	0.32 0.23
Wet-bottom tangential-fired	Bituminous	0.62

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

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

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

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

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

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

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

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

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

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

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

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

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

IV.B.1.f. Coal-fired power plants may, in their discretion, include in the BART analysis an evaluation of representative characteristics (including nitrogen content) of coal from sources they reasonably expect to use, to the extent such characteristics tend to result in higher NOx emissions than coals of the same classification from alternative sources. The analysis also may consider whether a particular BART limit might lead the power plant not to use coal from a particular mine due to such coal characteristics, and the extent to which such a decision might result in economic disruption or unemployment at the mine or in nearby communities.

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

IV.B.2. Sources with a potential to emit of less than 40 tons per year of SO2 and NOx and less than 15 tpy of PM10 may exclude those pollutants from the BART determination.

IV.B.3. Selecting a best alternative

The source shall submit a proposal for BART at the source or unit(s), including a justification for selecting the technology proposed. The justification shall be based on the following factors: (1) the technology available; (2) the costs of compliance; (3) the energy and non-air environmental impacts of compliance; (4) any pollution control equipment in

use at the source or unit(s); (5) the remaining useful life of the source or unit(s) and; (6) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

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

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

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

IV.C. BART Alternative

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

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

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

IV.D. Emission limits

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

Compliance with the emission limitation is determined on a 30-day rolling average basis for SO2 and NOx, or may be determined by the Division based on the BART analysis submitted by the source. The emission limit shall be included in the facility's permit.

IV.D.2. Other Sources Subject to BART

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

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

IV.F. Division Review and Approval

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

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

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

V. Challenge of Division BART Determinations and Enforceable Agreements.

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

VI. Regional Haze Determinations

VI.A. BART Determinations

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

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

BART Determinations for Colorado Sources

Unit	NOx Emission Limit	SO2 Emission Limit	Particulate Emission Limit
CENC Unit 4	0.37 lb/MMBtu (30-day rolling average) or 0.26 lb/MMBtu Combined Average for Units 4 and 5 (30-day rolling average)	1.0 lb/MMBtu (30-day rolling average)	0.07 lb/MMBtu
CENC Unit 5	0.19 lb/MMBtu (30-day rolling average) or 0.26 lb/MMBtu Combined Average for Units 4 and 5 (30-day rolling average)	1.0lb/MMBtu (30-day rolling average)	0.07 lb/MMBtu
Craig Unit 1	0.07 lb/MMBtu (30-day rolling average) by 8/31/2021	0.11 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu

Craig Unit 2	0.08 lb/MMBtu (30-day rolling average)	0.11 lb/MMBtu (30-day rolling average)	0.03 lb/MMBtu

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

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

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

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

VI.B. Reasonable Progress Determinations

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

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

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

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

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

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

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

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

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

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

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

Cherokee Unit 2 Shutdown 12/31/2011	0 Shutdown 12/31/2011	0 Shutdown 12/31/2011	0 Shutdown 12/31/2011
Cherokee Unit 3 Shutdown No later than 12/31/2016	0 Shutdown No later than 12/31/2016	0 Shutdown No later than 12/31/2016	0 Shutdown No later than 12/31/2016
Cherokee Unit 4	0.12 lb/MMBTU (30-day rolling average) by 12/31/2017 Natural Gas Operation 12/31/2017	7.81 tpy (rolling 12 month average) Natural Gas Operation 12/31/2017	0.03 lbs/MMBtu Natural Gas Operation 12/31/2017
Valmont Unit 5 Shutdown 12/31/2017	0 Shutdown 12/31/2017	0 Shutdown 12/31/2017	0 Shutdown 12/31/2017
Pawnee	0.07 lb/MMBTU (30-day rolling average) by 12/31/2014	0.12 lbs/MMBtu (30-day rolling average) by 12/31/2014	0.03 lbs/MMBtu
Arapahoe** Unit 3 Shutdown 12/31/2013	0 Shutdown 12/31/2013	0 Shutdown 12/31/2013	0 Shutdown 12/31/2013
Arapahoe Unit 4	600 tpy on (rolling 12 month average) Natural Gas operation12/31/2014	1.28 tpy (rolling 12 month average) Natural Gas operation 12/31/2014	0.03 lbs/MMBtu Natural Gas operation 12/31/2014

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

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

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

VI.C.4. In addition to the above listed emission limits and compliance dates, between 1/1/2013 and 12/31/2015, Cherokee Units 3 and 4 and Valmont, considered as a whole, shall not emit in excess of 4,200 tons of SO2 per year as determined on a calendar year annual basis. Between 1/1/2016 and 12/31/2017 Cherokee Unit 4 and Valmont considered as a whole, shall not emit in excess of 3,450 tons of SO2 per year as determined on a calendar year annual basis.

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

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

Federal Regulations Adopted by Reference

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

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

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

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

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

VII.A. Definitions

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

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

VII.A.3. "Continuous emission monitoring system" or "CEMS" means the equipment required by Regulation Number 3, Part F, Section VII, to sample, analyze, measure, and provide (using an automated data acquisition and handling system (DAHS)), a permanent record of SO2 or NOx emissions, other pollutant emissions, diluents, or stack gas volumetric flow rate.

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

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

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

VII.B. Monitoring/Compliance Determination: SO2 and NOx Regional Haze Limits

VII.B.1. BART, RP, and BART alternative program units with SO2 and NOx CEMS.

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

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

At all times after the compliance deadline specified in Regulation Number 3, Part F, Section VI.A.3., VI.B.3. or VI.C.3., the owner/operator of each BART, RP, or BART alternative program unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR Part 75 not excluded above, to accurately measure from such unit SO2, NOx, diluents, and stack gas volumetric flow rate as such parameters are relevant to the applicable emission limit. The CEMS shall be used to determine compliance with the SO2 and NOx Regional Haze emission limits for each such unit. Such limits are expressed in units of pounds per million Btu. The owner/operator shall calculate emissions in the applicable units.

In determining compliance with the SO2 and NOx Regional Haze limits, all periods of emissions shall be included, including startups, shutdowns, emergencies, and malfunctions.

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

For any hour in which fuel is combusted in the BART, RP, or BART alternative program unit, owner/operator shall calculate hourly average SO2 and NOx concentrations in pounds per million Btu at the CEMS in accordance with the requirements of 40 CFR Part 75 except for Part 75 requirements excluded by Section VII. B.1.a. These hourly averages shall then be used to determine compliance in accordance with the particular limit’s averaging period, as follows:

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

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

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

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

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

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

Combined emission rate (lb/MMBtu) = [(ER1)(HI1) + (ER2)(HI2)]/(HI1 + HI2)

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

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

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

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

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

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

For any hour in which fuel is combusted in the BART or RP unit, the owner/operator shall calculate hourly NOx and SO2 emissions in the appropriate units (lbs/hr) or (lbs/MMbtu) in accordance with the provisions in 40 CFR Part 60. These hourly values shall be used to determine compliance in accordance with the particular limits averaging time, as follows:

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

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

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

VII.B.1.b.(ii). 30-Day Rolling Average Pounds per Ton Clinker Regional Haze Limits . Hourly clinker production shall be determined in accordance with the requirements in 40 CFR Part 60 Subpart F Section 60.63(b). An operating day includes all valid data obtained in any daily 24-hour period during which the kiln operates and excludes any measurements made during the daily 24-hour period when the kiln was not operating. The 30-operating day rolling emission rate of NOx and SOx shall be calculated and recorded as the total of all hourly emissions data for a cement kiln in the preceding 30 operating days, divided by the total tons of clinker produced in that kiln during the same 30-day operating period in accordance with the equation in 40 CFR Part 60 Subpart F Section 60.64(c).

VII.B.1.b.(iii). CENC Units 4 and 5 NOX Regional Haze limits:

For any hour in which fuel is combusted in CENC Unit 4 or Unit 5, the owner/operator shall calculate hourly NOX emissions in the appropriate units (lbs/MMbtu) in accordance with the provisions in 40 CFR Part 60. These hourly values shall be used to determine compliance with the Regional Haze limits, as follows:

VII.B.1.b.(iii).(1). Individual unit pound per Million Btu on a 30-day rolling average Regional Haze Limit: Before the end of each operating day, the owner/operator shall calculate and record the 30-day rolling average emission rate in lb/MMBtu from all valid hourly emission values from the CEMS for the previous 30 operating days, OR

VII.B.1.b.(iii).(2). Combined units 4 and 5 lbs/MMbtu 30-day rolling average Regional Haze Limit: Before the end of each operating day, the owner/operator shall calculate and record a 30-day

rolling average using data from the previous 30 operating days in accordance with the following equation:

Average ER = [(ER4)(HI4)+(ER5)(HI5)] / [(HI4)+(HI5)]

Where:

ER4 = average NOX emission rate, in pounds per MMbtu over the 30 day period. This is an average of all valid hours within the 30 operating day period for Unit 4.

ER5 = average NOX emission rate, in pounds per MMbtu over the 30 day period. This is an average of all valid hours within the 30 operating day period for Unit 5.

HI4 = Total heat input over the 30 operating day period for Unit 4.

HI5 = Total heat input over the 30 operating day period for Unit 5.

VII.B.1.b.(iii).(3). The owner or operator shall indicate in the excess emission reports required by Section VII.E of this Part F, which compliance demonstration method has been followed for the reporting period.

VII.B.2. BART and RP Units without NOX and SO2 CEMS.

VII.B.2.a. CENC Unit 3. Compliance with the SO2 limitations shall be determined by sampling and analyzing each shipment of coal for the sulfur and heat content using the appropriate ASTM Methods. In lieu of sampling, vendor receipts may be used provided the sampling and analysis was conducted in accordance with the appropriate ASTM Method. Each sample or vendor receipt must indicate compliance with the SO2 limitation. Compliance with the annual NOx limits shall be monitored by recording fuel consumption and calculating emissions monthly using the appropriate AP-42 emission factor. Monthly emissions shall be calculated by the end of the subsequent month and shall be used in a rolling twelve month total to monitor compliance with the annual limitations. Each month a new twelve month total shall be calculated using the previous 12 months data. [*Note: CENC Unit 3 is not subject to annual SO2 limits.]

VII.B.2.b. CEMEX Dryer. Unless performance tests were completed within the previous 6 months, within 60 days of the compliance deadline specified in Regulation Number3, Part F Section VI.A.3, the owner/operator shall conduct a stack test to measure NOX and SO2 emissions in accordance with the appropriate EPA test methods. Frequency of testing thereafter shall be every five years. Each test shall consist of three test runs, with each run at least 60 minutes in duration.

In addition to the stack tests described above, compliance with the annual NOx and SO2 limits shall be monitored by calculating emissions monthly using the emission factors (in lb/hr) determined from the most recent Division-approved stack test and hours of operation for the month. Monthly emissions shall be calculated by the end of the subsequent month and used in a twelve month rolling total to monitor compliance with the annual limitations. Each month a new twelve month total shall be calculated using the previous 12 months' data.

VII.C. Monitoring/Compliance Determination: Particulate Regional Haze Limits

VII.C.1. Particulate Regional Haze Limits for all boilers except CENC and Clark boilers

Unless particulate compliance testing was completed within the previous 6 months, within 60 days of the compliance deadline specified in Regulation Number 3, Part F, Section VI.A.3., VI.B.3., or VI.C.3., the owner/operator shall conduct a stack test to measure particulate emissions in accordance with the requirements and procedures set forth in EPA Test Method 5 as set forth in 40 CFR Part 60, Appendix A. Stack testing for particulate matter shall be performed annually, except that: (1) if any test results indicate emissions are less than or equal to 50% of the emission limit, another test is required within five years; (2) if any test results indicate emissions are more than 50%, but less than or equal to 75% of the emission limit, another test is required within three years; and (3) if any test results indicate emissions are greater than 75% of the emission limit, an annual test is required until the provisions of (1) or (2) are met. A test run shall consist of three test runs, with each run at least 120 minutes in duration. Test results shall be converted to the applicable units and compliance will the based on the average of the three test runs.

In addition, to the stack tests described above, the owner/operator shall monitor compliance with the particulate matter limits in accordance with the applicable compliance assurance monitoring plan developed and approved in accordance with 40 CFR Part 64.

VII.C.2. Portland Cement Plant Particulate Regional Haze Limits.

VII.C.2.a. Kilns. Compliance with the particulate matter limitations shall be monitored using a PM CEMS that meets the requirements in 40 CFR Part 63 Subpart LLL. The owner or operator shall calculate emissions in the applicable units. If a PM CEMS is used to monitor compliance with the PM limits, the opacity limits specified in this Part F do not apply.

In the event that the provisions in 40 CFR Part 63 Subpart LLL are revised, stayed or vacated, such that a PM CEMS is not required, compliance with the PM limitations shall be monitored by conducting stack tests in accordance with the requirements of Section VII.C.3. except that the results of the test shall be converted to the appropriate units (lb/ton clinker or lb/ton dry feed) and compliance will be based on the average of three test runs.

In addition, if no PM CEMS is required, as discussed in the above paragraph, the opacity limits specified in this Part F do apply. In order to monitor compliance with the opacity limit, the owner or operator shall install, calibrate, maintain, and continuously operate a COM located at the outlet of the PM control device to continuously monitor opacity. The COM shall be installed, maintained, calibrated, and operated as required by 40 CFR Part 63, Subpart A, and according to PS-1 of 40 CFR Part 60, Appendix B

VII.C.2.b. Dryers. Performance tests shall be conducted in accordance with the requirements in Section VII.C.3. Opacity monitoring shall be conducted in accordance with the requirements in 40 CFR Part 63 Subpart LLL.

VII.C.3. Particulate Regional Haze Limits for the CENC and Clark boilers and the CEMEX dryer. Within 60 days of the compliance deadline specified in Regulation Number 3, Part F, Section VI.A.3. or VI.B.3., the owner/operator shall conduct a stack test to measure particulate emissions in accordance with the requirements and procedures set forth in EPA Test Method 5, 5B, 5D or 17, as appropriate, as set forth in 40 CFR Part 60, Appendix A. Stack testing for particulate matter shall be performed annually, except that: (1) if any test results indicate emissions are less than or equal to 50% of the emission limit, another test is required within five years; (2) if any test results indicate emissions

are more than 50%, but less than or equal to 75% of the emission limit, another test is required within three years; and (3) if any test results indicate emissions are greater than 75% of the emission limit, an annual test is required until the provisions of (1) or (2) are met. Each test shall consist of three test runs, with each run at least 60 minutes in duration.

In addition, to the stack tests described above, compliance with the annual limitations (ton/yr limits) applicable to the Clark boilers and CEMEX dryer shall be monitored by calculating emissions monthly using the emission factors (in lb/hr) determined from the most recent Division-approved stack test and hours of operation for the month. Monthly emissions shall be calculated by the end of the subsequent month and used in a twelve month rolling total to monitor compliance with the annual limitations. Each month a new twelve month total shall be calculated using the previous 12 months' data.

In addition to the stack tests described above, the owner/operator shall monitor compliance with the particulate matter limits in accordance with the applicable compliance assurance monitoring plan developed and approved in accordance with 40 CFR Part 64.

VII.D. Recordkeeping

Owner/operator shall maintain the following records for at least five years:

VII.D.1. All CEMS data as required in the applicable regulation, stack test data, and data collected pursuant to the CAM plan, including the date, place, and time of sampling, measurement, or testing; parameters sampled, measured, or tested and results; the company, entity, or person that performed the testing, if applicable; and any field data sheets from testing.

VII.D.2. Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR Part 60, 63, or 75.

VII.D.3. Any other records required by 40 CFR parts 60, Subpart F, Section 60.65, 63, Subpart LLL, 64 or 75.

VII.E. Reporting requirements

The owner/operator of a BART, RP or BART alternative program unit shall submit semi-annual excess emissions reports no later than the 30th day following the end of each semi-annual period unless more frequent reporting is required. Excess emissions means emissions that exceed the Regional Haze emissions limits. Excess emission reports shall include the information specified in 40 CFR Part 60, Section 60.7(c).

The owner/operator of a BART, RP or BART alternative program unit shall submit reports of any required performance stack tests for particulate matter, to the Division within 60 calendar days after completion of the test.

The owner/operator shall also submit semi-annual reports of any excursions under the approved compliance assurance monitoring plan in accordance with the schedule specified in the source's Title V permit.

PART G STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

I.A. Adopted June 5, 1980

Rational and Justification for the Repeal and Repromulgation of Regulation Number 3 and Common Provisions Regulation as Related to Regulation Number 3

On December 14, 1978, the Air Quality Control Commission revised Regulation Number 3 (concerning requirements for filing air pollution emission notices, obtaining emission permits, and payment of fees with respect to both) for the primary purpose of bringing Colorado's air pollutant emission permit program into conformity with the requirements of the Federal Clean Air Act Amendments of 1977 to the extent authorized by the then effective State statutory authority: "The Air Pollution Control Act of 1970, "C.R.S. 1973, 25-7-101 et seq. The regulation as revised in 1978 and which became effective January 30, 1972, was submitted to the U.S. Environmental Protection Agency as a revision to the state Implementation Plan ("SIP") pursuant to Subsection 129(c) of the Federal Clean Air Act Amendments of 1977.

Since that submittal, the Colorado General Assembly has repealed and reenacted the State's basic air pollution control statute: Article 7 of Title 25, Colorado Revised Statutes, 1973. The new article, known as the "Colorado Air Quality Control Act" (designated House Bill 1109 in the 1979 legislative session), became effective June 20, 1979, and largely brought the State statute into conformity with the Federal legislation, mandating the Commission to develop a comprehensive air pollution control program meeting the requirements of the Federal Clean Air Act.

Revisions also respond to the requirements set forth in the October 5, 1979 Federal Register notice which conditionally approved portions of the Colorado SIP and set forth certain requirements for securing their unconditional approval. E.G., see Section IV.D.2.a.(iv) of revised Regulation Number 3, which incorporates the requirements of Section l72(b)(II)(A) of the Clean Air Act. 44 Fed. Reg. 57401, 57408 (1979).

The Commission has made an effort to formulate a permit program meeting the requirement of and paralleling of the provisions EPA policies and rules to the extent authorized by House Bill 1109 and to the extent deemed appropriate by the Commission for Colorado's particular circumstances. This has been done in order to meet certain specific requirements expressly set forth in the Federal Clean Air Act, to meet certain specific requirements EPA has determined are required for compliance with the Federal Act, and to avoid subjecting sources of air pollution in Colorado to differing State and Federal requirements. The Commission considered the assurance of reasonable further progress toward attainment of National Ambient Air Quality Standards as the primary underlying criterion in developing permit requirements for sources located in or near nonattainment areas.

Consideration has also been given to the opinion of the United States Court of appeals for the District of Columbia in the case of Alabama Power Company v. Costle F.2d (D.C. Cir., 1979).

APENs

In order to reduce the administrative burden on both the Air Pollution Control Division ("the Division") and owners and operators of air pollution sources, the filing of revised air pollution emission notices for the purpose of reporting significant changes in emissions will be required only on an annual basis, rather than whenever a significant change in emissions occurs. In making this revision, the Commission relied on the representations of the Division that annual reporting would be sufficient for purposes of keeping the emissions inventory current.

Street Sanding

With the exception of street sanding (and indirect sources), the exemptions provided in the revised regulation from the APEN-filing and emission permit requirements are for minor or insignificant sources of emissions.

Although not finding that particulate emissions resulting from the application and re-entrainment of "sand" applied to snow or ice covered roadways as a traffic safety measure are insignificant, the Commission has exempted sanding from the APEN-filing and permit requirements out of administrative necessity.

Little benefit can be obtained from the filing of APENs in light of the fact that the amount of emissions cannot be predicted with any reasonable accuracy due to varying factors such as weather. APENs would therefore serve little purpose as notices of expected emissions.

It is the judgment of the Commission that protection of persons and property by sanding snow and ice covered roadways is an overriding consideration and that the costs of not taking such safety measures would far outweigh any air quality benefits resulting from requiring permits for sanding. Sanding should not therefore be prohibited -- even without a permit. The only reason for imposing a permit requirement would be to facilitate enforcement of control measures to limit emissions, which the Commission believes may be accomplished without a permit requirement through emission control regulations and provisions in local elements of the State Implementation Plan.

Major Source, Major Modifications, and the "bubble" Concept

The Commission has retained requirements that new "major sources" locating in nonattainment areas and "major modifications" to existing sources in nonattainment areas meet special requirements (Offsets, LAER, etc.) designed to allow for continued development in such areas without interfering with reasonable further progress toward attainment of National Ambient Air Quality Standards. The criteria for determining when a new source or modification to an existing source is "major" however, have been extensively revised.

Prior to the U.S. Court of Appeals Decision in Alabama Power Company v. Costle, EPA had defined "potential to emit" -- a key phrase in the definition of "major emitting facility" -- in terms of uncontrolled emissions. The court however, interpreted the phrase "potential to emit" as used in the definition of "major emitting facility" in Section 169(1) of the Clean Air Act as taking "into account the anticipated functioning of the air pollution control equipment designed into the facility," thereby drastically reducing the number of sources qualifying as major. In response to this decision, on September 5, 1979, EPA proposed amendments to its regulations concerning requirements for SIPs including those pertaining to prevention of significant deterioration of air quality ("PSL)") and new source review in nonattainment areas, as well as EPA's Emission Offset Interpretative Ruling. 44 Fed. Reg. 51924 (1979). The Commission in reviewing Regulation Number 3 and the Common Provisions Regulation has incorporated many of the amendments adopted by EPA in its regulations including classifications of sources as major or minor based on controlled emissions.

The court in Alabama Power Company struck down the ~PA regulation definition of "major modification" which definition required the imposition of the special nonattainment area requirements (Offsets, LAER, etc.) on sources when modifications resulted in an increase in emissions of a criteria pollutants of 100 tons per year or more (for certain~ listed categories of sources; 250 tons or more for sources not listed). The court held that the special nonattainment requirements applied to all modifications of major emitting facilities except those resulting in only "de minimus" increases in emissions. The court stated, however, that it would be permissible to look at the net increase in potential emissions from a major source in determining whether Offsets, LAER, etc., will be required.

In its proposed rules, EPA has adopted the "net increase" or "bubble" approach which generally allows a major source undergoing modification to avoid permit review as a major modification by allowing emission reductions elsewhere at the source to offset any increases resulting from the proposed modification. The Commission has adopted the "bubble" concept and many of EPA's specific regulatory provisions with respect to the concept as applied to modifications.

The court in Alabama Power Company also held that fugitive emissions could be included in determining whether a source is "major" only to the extent, such emissions were expressly determined to be included by rule of the EPA administrator. In response, EPA has proposed a regulatory definition of "Potential to

emit" by which fugitive emissions from twenty-seven (27) listed sources would be included in determinations of which new sources and modifications are major. 44 Fed. Reg. 51956, 51958 (1979). In recognition of the fact that such emissions would be included in determinations of whether a source or modification was major if they were emitted through a stack (as opposed to being "fugitive"), recognizing that generally emissions from the twenty-seven (27) listed source categories contribute to hazards to public health and welfare, and to be consistent with the federal scheme, the Commission has also decided to consider fugitive emissions from the twenty-seven source categories in major source/major modification determinations to the extent they are quantifiable. An owner or operator may avoid the inclusion of fugitive emissions of particulate matter by demonstrating that such emissions are of a size and substance, which do not adversely affect public health or welfare.

Banking

C.R.S. 1973, *25-7-304* requires the attainment program to provide that emission reduction offsets exceeding those required for the granting of a permit "may be preserved for sale or use in the future." Section V of Regulation Number 3 establishes an administrative framework and the basic requirements of such a procedure consistent with the "banking" provisions established by EPA in its Emission Offset interpretative Ruling, 44 Fed. Keg. 3274, 3280, 3285 (January 16, 1979) (to be codified as Appendix S to 40 C.R.S. Part 51).

Extended "Debugging" Period.

Pursuant to C.R.S. 1973, 25-7-1 14(4)(j), the Division may grant the owner or operator of a new source up to six months after commencement of operation in which to demonstrate compliance with all terms and conditions of its emission permit. The Commission determined, however, that under certain circumstances it would be appropriate to allow a source employing innovative control technology additional time in which to bring the operation of the source into full compliance. Therefore, pursuant to its authority under C.R.S. 1973, 25-7-109(5), the Commission has provided in paragraph IV. H.6. of Regulation Number 3 for such temporary relief from controls under specified limited circumstances. The provision is intended for very limited application.

PSD

Regulation Number 3 does not address the subject of special permits for major sources locating in attainment areas to insure prevention of significant deterioration of air quality. The Commission decided to wait until EPA's PSD regulations to establish a fully State-operated program. State emission permits are nonetheless still required for sources locating in attainment areas.

Common Provisions Regulation

In connection with the revision of Regulation Number 3, the Commission concurrently made limited, related revisions in its Common Provisions Regulation. Sections I.B. and I.C. of that regulation have been changed to reflect the renumbering of the Sections in the State statute authorizing the Commission to promulgate regulations and to reflect the amended language in the declaration of legislative intent.

Section I.F. of the regulation was amended to add new abbreviations used in revised Regulation Number 3 and Section I.G. (definitions) was amended to delete, revise, and add terms and their definitions to reflect changes in the terminology used in Regulation Number 3.

I.B. Adopted May 13, 1982

Concerning May 13, 1982 Amendment to Section IV.C. (Public Comment) for Small Sources Locating in Nonattainment Areas

The rationale for this proposed revision is based on the underlying purpose of public comment: to obtain public input on proposed sources that the Air Pollution Control Division (APCD) can use in considering whether a permit should be granted.

Under the previous regulation all sources locating in nonattainment areas were subject to the public comment requirement unless the APCD exercised its discretion under Section IV.C.3. (sources of less than 6 month's duration) to exempt them. APCD experience has shown that there are four categories of small sources that frequently locate in nonattainment areas, but which did not stimulate comment from the public. These categories are: (I) service stations; (2) restaurants; (3) land development (houses and commercial); and (4) other small sources (such as concrete batch plants). Basically, all the effort put into preparation of public comment packages for these sources can now be used more efficiently and the associated expense to industry saved.

The limit of 5 Tons Per Year (tpy) of controlled annual emissions is based on calculations that show most of the sources in these four categories emit less than 5 tpy of any one pollutant. Service stations, for example, generally emit I to 2 tpy. In many cases less than I tpy is emitted.

Under the revised regulation, sources less than 5 tpy can still be subject to public comment if the Division determines it appropriate based on criteria set forth in the regulation. The difference is that the APCD would have discretion to decide instead of being required to provide public notice. Controversial sources such as gravel pits, odor sources and landfill operations are subjected to public comment by the APCD regardless of the level of emissions. This practice will continue in effect.

I.C. Adopted March 10, 1983

Prevention of Significant Deterioration Program Regulations in Regulation Number 3

This Statement of oasis and Purpose for the Prevention of Significant Deterioration (PSD) Program Regulations complies with the State Administrative Procedure Act, CR5 1973, 24-4-103(4). The statutory authority for the PSD regulations are in the Air Quality Control Act at CR5 973, 25-7-102, 25-7-105, 25-7-106, 25-7-108, 25-7-109, 25-7-114, 25-7-116, 25-7-201 et seq. The general purpose of these regulations is to prevent the significant deterioration of air quality in those Sections of the state, which has attained the national ambient air quality standards. The parties to this rulemaking include:

> Colorado Association of Commerce and Industry; Rocky Mountain Oil & Gas Association, Inc.; Chevron Shale Oil Company; Union Oil Company of California; Colorado Ute Electric Association, Inc.; The Colorado Mountain Club; COAL; Public Service Company of Colorado; City of Colorado Springs; CF&I Steel; Environmental Defense Fund, Inc.; United States Department of the Interior; and United States Department of Agriculture.

The Air Pollution Control Division acted as staff for and advised the Commission during the proceeding. See CRS 1973, 25-7-lll(2)(g).

The PSD regulations adopted by the Commission are in many respects identical to the U.S. Environmental Protection Agency (EPA) PSD regulations. See 40 CFR 51.24 et seq.; 40 CFR 52.21 et seq. The primary reason for this is that the State Act requires that the S~PSD program be in accordance with the federal Clean Air Act PSD provisions. See CRS 1973, 25-7-203. Thus, federal PSD requirements are generally a minimum for the State PSD Program. For these reasons, to the extent that the federal PSD rules are identical or substantially identical to the state regulations, the Commission incorporates herein the EPA statements of basis and purpose for the federal PSD rules at 43 Fed. Reg. 26380 et seq. (June 19, 1978) and 45 Fed. Reg. 52676 et seq. (August 7, 1980).

The Commission has additional authorities to prevent significant deterioration of air quality. In several important areas the Commission has tailored these regulations to meet the concerns of Colorado citizens. These areas include the requirement for an impact analysis on water to determine acid deposition effects,

the authority to make independent determinations on adverse impact to visibility in Class I areas if the federal land manager fails to fulfill his responsibility to do so, the requirement to establish baselines for, and to monitor air quality related values in, Class I areas to determine the effects of emissions on such values, and the application of Class I sulfur dioxide increments to several Class II primitive areas and national monuments.

The proposed PSD regulations included several provisions reflecting the terms of a settlement agreement in the matter of Chemical Manufacturer's Association, et al. V. EPA in which EPA has agreed to propose amendments to its P50 rules. The Commission has rejected the adoption of such provisions for several reasons. They are arguably less stringent than current EPA rules in that they would appear to permit more air pollution. Because they may be less stringent, their adoption appeared likely on the basis of EPA testimony to impede the approval of the state PSD program by EPA at this time. Finally, EPA's schedule for consideration of such provisions is unknown. Subsequent to EPA action on the provisions of the settlement agreement, the Commission will reconsider those provisions.

The PSD regulations will generally not become applicable to major sources or major modifications in Colorado •until EPA has approved them. See CRS 1973, 25-7-210. However, the regulations pertaining to attainment area designations and the enforcement of Class I sulfur dioxide increments in those areas-listed in CRS 1973, 25-7-209 will be applicable upon the effective date of these regulations. These regulations will be effective twenty (20) days from publication in the Colorado Register.

DEFINITION OF "ACTUAL EMISSIONS"

The definition adopted is essentially identical to the EPA definition.

One party proposed that reference should be made to consideration of control efficiency. The Commission did not adopt this proposal because the definition inferentially considers control equipment efficiency and the reference requested would create confusion, when actual test data were available, as to whether a separate "efficiency" factor was to be applied.

Another party, in commenting on the definition of "baseline concentration," expressed concern that the determination of "actual emissions" could take place, for example, during a low-demand period for a power plant. Such determination would result in an emission rate considerably less than the full-capacity allowable emission rate, resulting in a low baseline concentration. The power plant, operating the next year at full capacity, could consume all or most of the available increment, prohibiting growth in the area. The Commission recognizes that, for certain sources such as power plants (i.e., fossil fuel-fired steam generators), the source must respond to constantly changing demands with significant changes in emissions from year to year. Therefore, for fossil fuel-fired steam generators, "allowable emissions" should generally be considered "representative of normal unit operation" rather than actual emissions in determinations of "actual emissions" for determining baseline concentration and increment consumption, unless it is clearly demonstrated that a lower level of emissions will never be exceeded.

DEFINITION OF "BASELINE AREA" AND "BASELINE DATE"

"Baseline area" is not specifically defined in the State Act but is simply referred to as "an area subject to this article~~ in the definition of baseline concentration. CRS 1973, 25-7-202. The Federal Clean Air Act definition of "baseline concentration," Section 169(4), is identical to the state's, and EPA has interpreted" an area subject to this article" to mean the attainment and unclassifiable areas designated pursuant to Section 107(d)(l)(D) or (E) of the Federal Clean Air Act. Such an interpretation is also reasonable under the Colorado Air Quality Control Act which states that the Commission shall adopt measures "to prevent significant deterioration of ambient air quality in each region, or portion thereof, of the state identified pursuant to Section 107(d)(1)(D) or (E) of the Federal Act." The result of EPA's definition is that the entire state is the baseline area for 502, and air quality control regions for particulate matter.

Several parties proposed alternative approaches to the definition of baseline area. These approaches ranged from a modeled 1-μg/m^3 impact area (based on 7.5 minute quadrangles, the county-township-range-Section system, or a metric grid) to the entire state.

The Commission adopted the EPA definition for the following reasons:

(1) The EPA approach has been in effect for several years and has proven workable. EPA has wel1-developed procedures for performing source impact analyses in large baseline areas, which the state can use. Changing the definition of baseline area would result in use of an approach that has not been proven and that would cause a discontinuity for the regulated industries when the PSD program is delegated to the state.

(2) The use of areas larger than the source impact area means that baseline concentrations will be determined at an earlier date, and increments will be consumed from an earlier date, thus minimizing air quality deterioration. This fulfills the primary purpose of the State Act. See CRS 1973, 25-7-102.

Certain parties were concerned that baseline areas larger than the impact area might unnecessarily inhibit economic growth in the unaffected portion of the baseline area, but should that occur, and there are no specific examples in the record of where that would occur, the Commission could consider subdividing baseline areas to allow for a new baseline date and concentration.

Testimony from Pitkin County and members of the general public indicated concern that with small baseline areas, minor source emission increases would continue to raise the background ambient air concentrations, especially for particulate matter, before a major source would locate in an area to begin the counting of increment consumption. The baseline areas selected by the Commission for particulate matter represent a balance between a recognition that particulate matter emissions are often a more localized problem than are gaseous emissions (hence the use of AQCRs for particulate matter instead of the entire state, as is the approach for S02) and the need to begin counting increment consumption expeditiously (hence, the use of AQCRs for particulate matter rather than the smaller impact area). Only two AQCRs in Colorado have been triggered during the six years PSD has been in effect. Since triggered baseline areas can in the future be subdivided into triggered and untriggered areas, the Commission considers the use of baseline areas the size of AQCRs sufficiently flexible for purposes of reasonable application, economic growth, and prevention of air quality deterioration.

(3) Use of a baseline area equivalent to the 1 ug/m^3 impact area could result in a situation where impacts on a Class I area individually were each less than 1 ug/m^3, with the result that the Class I area would not be a part of a baseline area. Yet the cumulative impact of these sources could be greater than the 1 ug/m^3 increment for particulate matter 'for Class I areas, so that deterioration of air quality greater than that allowed by the regulation could legally occur.

(4) The use of the entire state as an SO_2 baseline area provides maximum protection for all Class I areas in the state. This is of particular concern to the Commission, since the general flow of air from west to east and the long-range transport of gaseous pollutants can result in effects on nearly all of Colorado's Class I areas by SO_2 sources on the West Slope. The effects and extent of acid deposition, to which SO_2 is a major contributor, was a topic of extensive testimony at the hearings; the definition of the entire state as a baseline area for affords maximum protection of the environment while the problem of acid deposition receives additional study.

DEFINITION OF "BASELINE CONCENTRATION"

Two parties proposed changes to this definition, both suggesting the substitution of "allowable" for "actual" emissions in portions of the definition. The concern regarding power plant actual versus allowable emissions is discussed under "Actual Emissions," above.

The other concern arises from the possibility of a large difference between actual and allowable emissions in the calculation of increment consumption or in establishing baseline concentrations. This is discussed extensively in the EPA preamble to the August 7, 1980 PSD regulations (Division Exhibit B, pp. 74-76) concerning increment consumption. EPA's rationale is that actual emissions more reasonably represent actual air quality than allowable emissions and that because actual emissions are based on at least two years of operation, future emissions could be reasonably expected to remain at the same level. EPA therefore uses actual emissions to avoid "paper consumption" of increment (or modeled baseline concentrations which would exceed monitored levels) The Commission concurs with the EPA rationale and has adopted the EPA approach of using actual emissions to track increment consumption and determine baseline concentrations.

DEFINITION OF "COMPLETE"

The Environmental Defense Fund (EDF) proposed a list of specific elements of a PSD permit application, for aid in determining whether an application is "complete," which was generally incorporated in the final rule. The proposed list of items would add some certainty and clarification for the applicant and the Division of the specific items required demonstrating completeness of an application. Regarding items (i) and (iii)-(iv)., opposition to the list by several parties was primarily that it was redundant with other requirements of the rules. York, Nov. 10 Tr. at 18 et seq. and 60 et seq. .Item (ii) was retained because, for many or most applications, such information would be necessary to verify the applicant's modeling.

DEFINITION OF "NET EMISSIONS INCREASE"

Several parties proposed crediting increases or decreases in emissions, which occur up to five years after a modification, becomes operational. The Commission did not adopt this recommendation because EPA specifically prohibits states from crediting decreases, which would occur after the change occurs. 40 CFR 5l.24(b)(3). In addition, it would prove difficult to exact an enforceable agreement for a source to close down or otherwise decrease emissions at some future date.

Several parties proposed in paragraph f(ii) to shift "enforceable" from time of construction to time of operation. This change would not be consistent with the state statutory requirements, which prohibit construction or operation of a non-permitted new source or modification. The suggested change would also needlessly complicate the correlation of permits to enforceable decreases in emissions.

In response to a party comment that 90 days to report a reduction in emissions is too short, the Commission agreed and has allowed such reports to be made within a year of the decrease unless •an extension is granted. A longer time would make the reduction difficult to verify.

DEFINITION OF "SECONDARY EMISSIONS"

The final definition incorporates a recent amendment by EPA, 47 Fed. Reg. 27554 (June 25, 1982) and is consistent with CRS 1973, 25-7-202(6.5).

DEFINITION OF "ALLOWABLE EMISSIONS"

In several Sections of EPA's PSD rules, including its definition of "allowable emissions," EPA grants credit for permit conditions only if they are "federally enforceable. In each of such Sections, the Commission has deleted the qualification of "federally" and has in the Common Provisions Regulation defined "enforceable" so that it is consistent with 'S definition of 'federally enforceable."

DEFINITION OF "SIGNIFICANT"

Several parties commented that the proposed definition, which defined both "significant" and "significantly" and included a listing of "significant concentrations," was confusing and unnecessary. The proposed definition also gave the Division the discretion to (1) determine that certain sources were not significant even if the source met the definition, and (2) to determine significance levels for non-listed pollutants. In addition, it limited the definition for sources affecting Class I areas to those sources producing a "significant" impact. There were several Sections in the proposed regulations that used the "significant" definition of ambient concentrations to allow impacts to Class I areas not allowed under EPA rules. EPA and the National Park Service commented that these changes resulted in a less stringent definition. The Commission agreed with these comments. The final definition is essentially identical to EPA's and uses only emission rates to define "significant," and the use of "significant" to qualify impacts to Class I areas in other Sections of the rules has been deleted.

DEFINITION OF "MODIFICATION"

One party proposed that an existing exception for increases in ~ emissions caused by adding new emission control equipment (e.g., replacing scrubbers with fabric filters) be retained. The Commission acknowledges that this exemption was intended to avoid penalizing a source willing to improve particulate matter collection by converting from scrubbers to baghouses or electrostatic precipitators. Since scrubbers collect gaseous pollutants, but baghouses and precipitators do not, the amount of SO_2 emitted would increase, hence the exemption. Since there are a number of nonattainment areas for particulate matter, but none for SO_2, the Commission will continue to encourage additional control of particulate matter by including this exemption in the definition of "modification."

It should, however, be noted that this exemption is not included in the definition of "major modification," so a significant increase in SO_2 emissions from a major source will result in P50 applicability. The effect of this is to provide the exemption only for minor sources and minor modifications.

DEFINITION OF "STATIONARY SOURCE"

The proposed definition was revised to include language essentially identical to that of EPA at 40 CFR 51.24(b)(5) and (b)(6). The final rule allows more discretion to define stationary source on a case-by-case basis. The definition clarifies that a source in a nonattainment area may also be "an identifiable piece of process equipment" which makes it consistent with a recent federal case. See Natural Resources Defense Council et al. V. Gorsuch, et al., 685 F.2d 718 (D.C. Cir. 1982).

DEFINITION OF "FUGITIVE DUST"

The State Act exempts "fugitive dust" from regulation under the PSD program, including exemption from determinations of whether a source or modification is major and of increment consumption. C.R.S. 1973, 25-7-202(4), -202(5),-204(l)(b), and -204(2)(c). "Fugitive Dust" is defined as:

> Soil or other airborne particulate matter (excluding particulates produced directly during combustion) resulting from natural forces or from surface use or disturbance, including, but not limited to, all dust from wind erosion of exposed surfaces or storage piles and from agriculture, construction, forestry, unpaved roads, mining, exploration, or similar activities in which earth is either moved, stored, transported, or redistributed; except that fugitive dust shall not include any fraction of such soil or other airborne particulate matter which is of a size or substance to adversely affect public health or welfare.

C.R.S. 1973, 25-7-202(3). Under such definition, fugitive particulates are regulated in the PSD program if they are "of a size or substance to adversely affect public health or welfare."

The exemption of "fugitive dust" is an issue because EPA counts total suspended particulates ("TSP") in determining increment consumption, maintenance of primary and secondary NMQS, and source applicability. Therefore, to the extent that the state excludes some sizes of particulate matter in these

determinations, its regulations are arguably less stringent than EPA's, although as explained below, because of depositional effects, there is generally an insignificant difference between the counting of TSP and the counting of smaller particulates.

The basis for setting the primary NAAQS is health effects; the basis for setting the secondary NAAQS is welfare effects. These are. also the bases under the State Act for counting fugitive particulates in the PSD program. Because the bases for the State's inclusion of fugitive particulates and for EPA'S promulgation of particulate matter NAAQS are essentially identical, it is appropriate to consider whether the NAAQS should be the standard for determining which particulates are "of a size or substance to adversely affect public health or welfare." However, EPA's current primary and secondary NAAQS for particulates are based on the "Air Quality Criteria for Particulate Matter" (1969), Div. Ex. R., which has generally been superseded by more recent research and analysis. For that reason, EPA in the CMA v. EPA Settlement Agreement has agreed in the near future to promulgate new primary, and perhaps secondary, NAAQS for particulates which would exclude particulates above a size posing no health or welfare risks.

EPA's staff review, in anticipation of revisions to the particulate matter definition and NAAQS, of the effects of particulate matter on health concludes that the size counted should be less than 10 urn, which includes those particles capable of penetrating the thoracic regions. "Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information," EPA 450/5-82-001 (January 1982).

EPA staff review of welfare impacts indicates that visibility impacts are generally caused by fine particulates of less than 2.5 um. Id. at 122. However, such review recognizes that "the full size range of particles including dustfall can contribute to soiling, become a nuisance and result in increased cost and decreased enjoyment of the environment." Id. At 140. Further, the EPA "staff recommends consideration of the economic and other effects associated with soiling and nuisance when determining whether a secondary standard for TP or for TSP or other large particle indicator is desirable," id. at 141, and that "the basis for selecting a particular level for a secondary TP or TSP standard is a matter of judgment." (emphasis added) Id. at 147. The EPA staff review indicates that EPA will probably propose fine particulate secondary standard but is undecided as to whether to establish a TSP or large particulate secondary standard, and that there is a basis for concluding that welfare impacts are being caused by all sizes of particulates. Additionally, there was public and party testimony on welfare effects from fugitive particulates, some of which can be assumed to be large particles. See Markey, November 10 Tr. at 2 et seq.

One of the apparent concerns of parties and persons opposing the use by the Commission of TSP as a welfare standard is that the increment would be consumed and that no further development could occur. Division Exhibit W, which compares the modeled ambient impacts of TSP using a deposition model with particulates of 10 urn or less using the same model, shows that the larger particles deposit quickly and that the ambient impact is relatively the same at a distance of 1000 meters or greater. The implication of this is that for many sources the modeling of increment consumption would have the same general results whether TSP is counted or whether only particles 10 urn or less are counted (assuming the boundary of the source is 1000 meters or farther from the emissions point). Another implication is that welfare impacts from large particulates can only result within relatively short distances of a source.

Another concern was that the legislative intent was not to count TSP, although there was not clear evidence of legislative intent presented to the Commission. In any event, statutory language leaves the determination to the Commission to decide what particulates are of a size or substance to adversely affect health or welfare.

Given the foregoing considerations and the Commission's general interest in interpreting health and welfare effects of particulates consistent with EPA, but also given the uncertainty surrounding the revision of the particulate NAAQS by EPA, the Commission determines that in applying the definition of "fugitive dust", the adverse effects on health or welfare of fugitive particulate emissions should be determined individually for each source. Adverse welfare effects of nuisance and soiling will be presumed to occur if the source would have offsite, ambient, particulate impacts unless the permit applicant rebuts such

presumption with clear and convincing evidence. The result of this presumption will be that in most cases, large particulates will be counted and there will be no difference between EPA s treatment of particulates and the states. Other health and welfare effects shall generally be evaluated based on EPA's most recent research and analysis, but the permit applicant shall have the burden of proof of demonstrating with clear and convincing evidence, which, if any, sizes or substances of fugitive particulates do not adversely affect, health or welfare. This presumption of health and. welfare effects has been incorporated in the definitions of "major stationary source" and "major modification," Section XI.A.4 on Exclusions from Increment Consumption, and Section V.D.3.c.(i)(B).

Upon EPA's adoption of revised NAAQS for particulates, the Commission may consider whether to revise this Statement of Basis and Purpose or the definition of "fugitive dust1' to reflect such revisions., Should EPA decide not to have a secondary NAAQS incorporating nuisance and soiling (welfare) impacts of large particulates, the Commission will consider whether the welfare effects of large particulates are significant enough to be included, or whether they are relatively insignificant and, thus, should not be counted in the state PSD Program.

DEFINITION OF "MAJOR SOURCE" AND "MAJOR MODIFICATION"

The State Act permits the counting of fugitive emissions in determining whether a source or modification is major "only if the Commission adopts regulations to include fugitive emissions for that source category." CR5 1973, 25-7-202(4) and (5). The Federal Clean Air Act has a similar requirement at Sec. 302(j). EPA has interpreted the rulemaking requirement to mean simply a consideration in rulemaking of whether fugitive emissions should be counted and a requirement that affected industries be allowed to present policy or factual reasons why fugitive emissions should not be counted. 45 Fed. Reg. 52676 (August 7, 1980). Based on this rationale, EPA's rules currently list 26 categories of sources for which fugitive emissions are counted. A similar interpretation of the State Act is reasonable and has been adopted by the Commission.

One party recommended the addition of uranium mills and coal mines to the list of sources for which fugitive emissions would be counted. However, those sources could not be considered in this proceeding due to inadequate public notice. The Commission intends to consider those sources for listing as soon as practicable.

In the CMA v. EPA Settlement Agreement, the EPA has agreed to remove these 26 listed sources on the basis of industry's argument that the rulemaking requirement means that EPA must identify reasonable methods for measuring and modeling fugitive emissions from a category of sources. Although not agreeing that this is legally required under state or Federal law, the Commission has determined that Division Exhibit F, primarily, makes that demonstration for the ten categories located or expected to locate in Colorado.

It should be noted that measurement methods are not only available, but have been in use for a number of years and have provided test results that are the basis for the fugitive emission factors used by EPA and other control agencies, including the Colorado Air Pollution Control Division.

The following important parallels between stack emission 'factors and fugitive emission factors support the conclusion that fugitive emission factors are relatively as reliable and as reasonably available as stack emission factors:

- Both are based on numerous test data at different locations on different equipment or operations.

- Both are influenced by many variables (e.g., for a stack, flow rate, temperature, process variations; for a fugitive plume, wind speed, moisture content of the material, size distribution of the material).

- Neither is intended to represent actual emissions from a specific source. Actual acceptable test data for a specific or similar source would always be used in lieu of an emission factor.

- Both are intended as air management tools to allow pre-construction assessment of a source impact or as a representative value to average total emissions from a number of similar sources (e.g., all waste incinerators, commercial boilers, or coal storage piles) for such air quality management purposes as determining "reasonable further progress" in nonattainment areas.

Stack and fugitive emission factors are both estimates; such factors are nevertheless widely used by control agencies and applicants alike. However, control agencies generally have no objection to, and would prefer, actual test data in lieu of factors whenever such information is submitted. (See Testimony of McCutchen, October 28, 1982; Egley, November 18, 1982, pp. 72-75 and p. 99; Bertolin, October 29, (am), p.39.)

One party's concern involved whether the emission factors for a facility can be extrapolated to a larger facility, specifically, from a 7000 ton per day oil shale processing facility to a 50,000 ton per day facility. Scale-up is a widely used and accepted approach throughout industry for estimating the feasibility of larger-scale facilities from results at smaller-scale facilities. There are a number of well-known precautions that should always be considered when extrapolating, and a control agency should be at least as cautious in extrapolating emission levels as the applicant is in extrapolating process data. Of course, if different equipment, such as a retort, is to be used at a proposed facility, an emission estimate would be based on mining and handling practices and on different processing equipment emission factors (e.g., refinery emission factors) which are similar to oil shale processing activities where such would be more accurate than extrapolation. Therefore, either through extrapolation or through the application of other more applicable and available emissions factors, relatively accurate emissions levels from all types of oil shale facilities can be calculated.

The same modeling techniques used to model stack emissions can be and are used to model fugitive emissions (Division Appendix F). One modeling parameter, deposition, is more critical in modeling fugitive particulate emissions and should be carefully evaluated. Fugitive particulate emissions usually contain more large particles than do controlled stack emissions. These large particles generally settle out rapidly, so that the impact at a plant boundary is usually much less than would be anticipated by the quantity of emissions at the source. See "Fugitive Dust." However, acceptable models exist which incorporate deposition and thereby provide a reasonably accurate assessment of fugitive particulate emission impact. Models without deposition can be used for gaseous and fine particulate fugitive emissions. Models have recognized limitations, but they are as accurate for fugitive emissions as for stack emissions.

The following information, which is primarily from Division Exhibit F, concerns the major policy and factual reasons for counting fugitive emissions from each of ten source categories:

Coal Cleaning. A typical plant would process 10,000 tons per year (tpy) of coal and emit approximately 280 tpy of particulate matter, 96% of which would be fugitive emissions. Over 100 tpy of the fugitive emissions are less than 15 microns in diameter and are considered inhalable particulate (IP).

Portland Cement. The typical plant produces 500,000 tpy of cement and emits approximately 370 tpy of particulate matter, 60% of which would be fugitive emissions.

Iron & Steel Mills (Including Coke Ovens). A typical plant would produce several million tons of steel per year and emit approximately 3,600 tpy of particulate matter, 64% of which would be fugitive emissions. The coke plant would produce over half a million tons of coke per year and emit approximately 700 tpy of particulate matter, 10% of which would be fugitive emissions, and 1,500 tpy of uncontrolled fugitive hydrocarbon emissions.

Petroleum Refineries. A typical plant would process 25,000 barrels of oil per day and emit approximately 1,100 tpy of hydrocarbons, 57% of which would be fugitive emissions.

Lime Plants. A typical plant would produce 300,000 tpy of lime and emit approximately 1,800 tpy of particulate matter, 33% of which would be fugitive emissions.

Fuel Conversion. A typical shale oil plant would produce 50,000 barrels per day of oil and emit 4,800 tpy of particulate matter, 12% (500 tpy) of which would be fugitive emissions, and 8,611 tpy of hydrocarbons, 12% (1,080 tpy) of which would be fugitive emissions.

Sintering Plants. A typical plant would emit approximately 400 tpy of particulate matter, 20% (80 tpy) of which would be fugitive emissions.

Power Plants and Boilers. A typical, but well-controlled, new 500 MW power plant burns 2.1 million tpy of coal and emits approximately 620 tpy of particulate matter, 18% (110 tpy) of which would be fugitive emissions. These fugitive emissions are from coal handling and storage, among the most visible and complaint-related of all fugitive emission sources.

Petroleum Transfer and Storage. A typical plant has a capacity of 476,000 barrels and an annual throughput of 7,123,000 barrels per year and emits 267 tpy of hydrocarbons, 72% of which are fugitive emissions.

In conclusion, the Commission has determined that fugitive emissions from the above sources should be included in determining whether the source or modification is major for the following general reasons:

(a) Fugitive emissions consist of the same pollutants that are emitted through stacks and regulated as stack emissions;

(b) The quantity of fugitive emissions, both in absolute and in relative terms, is significant; and

(c) Although this finding is not legally required, there are methods reasonably available for measuring and modeling fugitive emissions.

PUBLIC COMMENT AND HEARING REQUIREMENTS

The Commission has adopted a regulation designed to offer maximum opportunity for any interested person to learn about, and become involved in, the PSD permit review process. Adopted in the final rule are proposals by one party that (a) the public notice be printed not only in a newspaper of local distribution, but also in one of state-wide distribution to increase the number of potential interested persons reached by the notice, (b) that the public hearing be held at least 60 days after the Federal Land Manager (FLM) has received the notice and permit application, to allow the FLM adequate response time, and (c) that any interested person receive notice of public hearing. In addition, the Commission agrees with the Division proposal to implement and maintain an "interested party" mailing list as described in Division Exhibit M.

The proposed rule contained a requirement that the Division notify the county Commissioners in affected counties when a proposed source would consume 50 percent or more of the remaining PSD increment. Two parties proposed that this requirement be deleted as allowing local land use decision-makers to unduly influence air permit decisions. The intent of this requirement, which has been modified to notify county Commissioners of any PSO permit applications, is not to provide opportunity for counties to comment to the Division on land use; rather, it is to provide information to the counties on proposed sources so that the counties can more adequately assess their priorities and needs. PSD permit approval or denial is to be based solely on the criteria specified in this regulation; land use decisions are, and will remain, the responsibility of local governments.

Regarding the issue of land use decisions, one party commented that Section IV.C.4.e.(iii) of this final rule, which solicits comments from interested parties on alternatives to a proposed PSD source or modification, constitutes the inclusion of land use factors in permit approval determinations. The Commission did not remove this Section because it is required by the State Act, CRS 1973, 25-7-l14(4)(f)(l)(B). Furthermore, the intent of soliciting such alternatives is for the assessment of alternatives with respect to control technology and source impact, not land use.

CONTROL TECHNOLOGY REVIEW

One party proposed that the last sentence in Section IV.D.3.a.(i)(C), which requires the owner or operator of a phased project to demonstrate the adequacy of a previous best available control technology (BACT) determination, be deleted. The Commission did not delete this sentence because (1) an EPA regulation requires such a condition and deletion of this requirement could be considered less stringent, and (2) the requirement is intended to provide for the possibility of a different BACT determination if new technology has developed between the time of permit review and the next phase of a project for which construction has not yet commenced, a time period which can easily exceed five years on large projects.

POST-CONSTRUCTION MONITORING

Five parties proposed that post-construction monitoring requirements be limited to a maximum of one year. The Commission recognizes the concern of lessening the burdens on owners or operators, particularly if the information being gathered is unnecessary. But in many cases, there can be a very real need for monitoring for periods of time greater than a year to obtain reliable data. Accordingly, the final rule requires post-construction ambient monitoring for a period up to one year; additional ambient monitoring can be required only if it is necessary to determine the effect of emissions from the source on air quality. This necessitates an evaluation by the Division regarding the adequacy of the data, and a showing by the Division that additional monitoring is needed, before more than a year of monitoring could be required.

OPERATION OF MONITORING STATIONS

Three parties proposed that the rule be written to allow the latest changes in EPA-approved methods to be used without first having to amend the rule. The Commission agrees with the need to use the most up-to-date approved methods. Accordingly, the final rule specifies that "EPA accepted procedures...as approved by the Division" can be used.

ADDITIONAL IMPACT ANALYSIS

Section IV.D.3.a.(vi) of the final rule requires an owner or operator of a proposed PSD source to provide an analysis of the impairment to water that would occur as a result of emissions associated with the source.

This analysis is not required by the EPA rules. The Inclusion of water in the additional impact analysis reflects a strong concern by the Commission based in the record regarding acid deposition. At this time there is neither the information nor the evidence of damage to justify regulating acid deposition in Colorado. However, the vulnerability of high altitude lakes to acid deposition and the potential increases in acid-forming pollutants such as SO2 and NOx on the Western Slope from sources subject to the PSD program, particularly oil shale processing and large power plants, clearly demonstrate a need for a program to gather data, track and analyze this potential environmental problem. The inclusion of water in the additional impact analysis is intended to gather information on the problem; this analysis is not intended to affect permit approval or denial or control technology review decisions except for determinations of adverse impact to AQRVs in Class I areas. The issues, which have been raised concerning water impact analysis, are discussed in detail below.

a. Legal Authority to Require an Impact Analysis of Acid Deposition

The State Air Quality Control Act requires a PSD permit hearing to consider "air quality impacts of the source... and other appropriate considerations." C.R.S. 1973, 25-7-114(4)(f). Acid deposition can be construed as an indirect but potentially significant air quality impact which should be analyzed, especially in light of one of the stated purposes of the PSD Program "to protect public health and welfare from any actual or potential adverse effect which....may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air (emphasis added). Section 160(1) of the Clean Air Act. Acid deposition in water is those pollutants in other media originating as emissions to the ambient air.

The Federal Land Manager (FLM) of a Class 1 area is responsible for determining whether a source has an adverse impact on air quality related values which is generally defined as follows:

Any value of an area, which may be affected by a change in air quality. Examples include flora, fauna, soil, water, visibility, culture, and odors. Forest Service Comments, October 7, 1982, p.1.

Acid deposition may adversely affect such values, and thus an analysis of its effects should be required for review by the federal land managers of affected Class I areas.

b. Major Issues

The major issues discussed during the hearings are summarized below:

1. Are Colorado's watersheds sensitive to acid deposition?

John Turk of the USGS is involved in acid deposition research in Colorado and stated that 370 lakes in the Flattops Wilderness area comprising 157 hectares would be sensitive to potentially harmful degrees of acidification if precipitation attains an average pH of 4.0. (Exhibit 3, Nov. 10 Tr. at 153)

Ben Parkhurst maintains that there is talk of Colorado's lakes being sensitive (Oct. 29 Tr. at 146), but states that sensitivity must be considered together with acid inputs. Thus, if acid input to the water system is not sufficiently large the sensitivity question is not important.

Dr. William Lewis stated that Colorado's lakes are sensitive to acid deposition as demonstrated by the measured loss in buffering capacity he found in his studies. (Nov. 18 Tr. at 136-138)

In conclusion it can be inferred that some Colorado lakes are poorly buffered and if sufficient levels of acidity are introduced into the lakes, these poorly buffered "sensitive" lakes could develop acidification problems.

2. Has acidification occurred in any Colorado lakes?

John Turk of the USGS states that there has not been any large degree of acidification taking place in the lakes or streams he has studied in the Flattops. (Nov. 10 Tr. at 172)

Ben Parkhurst also states that there is no evidence to show that any acidification has taken place in Colorado Lakes. (Oct. 29 Tr. at 144 and 150-152)

Dr. William Lewis states that he has noted pH changes in lakes he has studied (Nov. 18 Tr. at 140), but he does not consider that to be the major point in regard to the acidification question. Lewis considers the loss of buffering capacity to be the best indicator of acidification effects on lakes and he has found statistically valid evidence to show that this has occurred. (Nov. 18 Tr. At 13 6-138)

In summary, there is some evidence that pH has dropped slightly in some of the lakes Lewis has studied, however, it does not appear that acidification (drop in pH) has occurred to any large degree in Colorado, however, in the prediction of future impacts, buffering capacity should be examined and this has dropped in the lakes examined by Lewis.

3. Is there a potential for acidification in the future?

Paul Ferraro has done some research on estimating potential acid deposition impacts on Colorado and has determined that under different energy development scenarios, there is a potential for acidification in sensitive lakes. (Nov. 10 Tr. at 158-159)

Parkhurst states that he would not expect acidification to be a problem in the future, unless the acid deposition reaches levels similar to those found in the Northeast. (Oct. 29 Tr. at 154-156) Parkhurst states that Ferraro's study is conservative and a pH drop to 5.8 would not affect fish.

Oppenheimer (EDF Exhibit 32 p. 6) states that if a 1-$\mu g/m^3$ increase in SO_2 (annual average) occurs, acid deposition levels could result which would be damaging to sensitive lakes.

In summary, it can be inferred that there is a potential for energy development activities to cause increased levels of acids to be deposited in the watershed, and effects on pH may occur depending on the buffering capacity of the water. The degree of the effect will depend on the amount of acid, thus the amount of emissions.

4. Are there adequate methods of modeling for acid deposition effects on watersheds?

Paul Ferraro has utilized what he refers to as a ''first cut'' approach in estimating impacts due to acid deposition. The approach utilizes methods employed by John Turk for determining sensitivity of waters and methods for estimating deposition rates developed by Systems Applications, Inc. (Nov. 10 Tr. at 154-176)

Oppenheimer (EDF Exhibit 32 p. 12-13) states that acid deposition modeling could be conducted using presently available plume models (approved by EPA), which incorporate a plume depletion function to account for deposition. Results from this model could then be compared to deposition standards.

In summary, there appear to be only screening techniques available at this time for estimating the impacts of acid deposition.

5. What level of acidification is dangerous to aquatic ecosystems?

Parkhurst stated that fish could survive in pH's as low as 4.1. (Oct. 29 Tr. 143)

Lewis states that he feels that trout would be adversely impacted if pH dropped significantly below six as an average. He would not expect trout populations to be able to reproduce and grow at a pH below six. (Nov. 18 Tr. at 152,153)

Parkhurst also states that a permanent pH decrease from 6.0 to 5.0 is not a natural variation and that many species would probably be eliminated and species numbers and diversities reduced. (Nov. 10 Tr. at 110)

Parkhurst also testified that there is not any evidence to show that trout are capable of both reproducing and maturing in an environment, which is consistently of a pH of 4.5 or less. (Nov. 10 Tr. at 114)

In conclusion, the record does not clearly identify the point at which damage to fish will occur. However, testimony indicates that below a pH of 4.5, and maybe below 6, fish populations would not be able to reproduce and mature.

Summary

Few definitive conclusions could be drawn from the evidence and testimony. The main point of agreement was that at the present time there has not been any adverse acidification identified in any of Colorado's watersheds. The buffering capacity of lakes appears to be the important factor to consider in determining sensitivity of lakes. Testimony was given that buffering capacity has diminished in certain mountain lakes; however, the cause of this loss has not been identified. No agreement was reached on what level of pH could be tolerated by aquatic ecosystems without causing adverse impact. It could be agreed by all parties that more research must be conducted on acid deposition so that its effects may be better understood and predicted by appropriate models.

Although more information is needed, studies in the Northeastern United States, Canada, and Europe show that acid deposition can be a serious problem (Oct. 29 Tr. at 144-145 and EDF Exhibit 32 p.3). Colorado contains many lakes, which are sensitive, exhibiting low buffering capacities. If energy development occurs on the Western Slope emissions of acid precursors will grow substantially, which will result in increased acid deposition levels. The nature of energy industry in Colorado may result in rapid growth in a short period of time, which will occur before all information on acid deposition is understood. If a large industry develops and new information shows that ambient air standards and increments do not protect the state from acidification problems, a valuable resource may be damaged. For these reasons, the Commission intends to remain vigilant in monitoring this problem, and as analytical capabilities are developed or a problem develops, to re-address this issue for possible regulatory and/or legislative solutions. A subcommittee should be formed, if resources permit, to develop specific guidelines for acid deposition analyses based on recent modeling innovations. In the interim, proposed PSD sources emitting acid or acid precursors will be required to analyze the impact of these emissions on water, utilizing the most up-to-date techniques available.

AREA CLASSIFICATIONS

Several parties objected to the application of Class I sulfur dioxide increments to those areas of Colorado listed in Section VIII.B. which are otherwise Class II areas. The sulfur dioxide Class I increments are required to be enforced in these areas by CRS 1973, 25-7-209. However, pursuant to CRS 1973, Section 25-7-105(8) (Supp. 1982), this Section VIII.S. may not be made a part of the State Implementation Plan (SIP) until these areas are redesignated as Class I under the procedures of Section IX. Until they are redesignated, they may only be enforced under state law and regulations. However, unlike Class I areas, the increment in these areas may be protected now. See CR5 1973, 25-7-210.

The Commission has also determined that the variances from increment consumption allowed by Sections XIV.C., XIV.D., XIV.E., and XIV.F. for Class I areas should also apply to the areas listed in Section VIII.B. It is a reasonable interpretation of CRS 1973, 25-7-209 that if the Class I (sulfur dioxide) increments are to apply to such areas, the variances from the increments should also apply. There is nothing in the State Act to indicate that the areas listed in CRS 1973, 25-7-209, are to be given better air quality protection than Class I areas, which would be the result if the variances did not apply.

REDESIGNATIQN

Several parties objected to what were considered burdensome requirements for redesignating areas to Class I. The adopted rule incorporates only the minimal requirements for redesignation from state and federal law. See CR5 1973, 25-7-208; Sec. 164 of the Federal Clean Air Act; 40 CFR 5l7~(g). However, the Commission did lessen the burden imposed by the proposed rule on those persons requesting a redesignation by allowing such requests to be made without providing all of the information necessary for a redesignation. Who would provide such information is not specified so that it could be any combination of federal, state and private entities.

TECHNICAL MODELING & MONITORING REQUIREMENTS

Several parties proposed the inclusion of future EPA amendments or guidelines in this Section of the regulation, which specifies the air quality model, monitoring and stack height requirements to be used. In response, the Commission adopted the use of "EPA approved" terminology instead of references to specific documents.

Two parties proposed language making EPA or the state responsible for any needed meteorological data. The Commission did not adopt this proposal because it is the applicant's responsibility to demonstrate that it will not cause exceedance of an NAAQS or increment, and meteorological data are nearly always needed to make such determinations. If the Division has such data, it has an obligation to make that data available to the applicant.

INNOVATIVE CONTROL TECHNOLOGY

Several parties proposed that the phrase "greater than or" be deleted from Section XIII.B.2. which specifies that the innovative system achieve emission reductions "greater than or equivalent to" BACT. The EPA regulation uses the phrase "equivalent to" and the parties considered the proposed state rule more stringent. The Commission does not consider the phrase "greater than or equivalent to" (emphasis added) to be more stringent, but instead to be a clarification that an acceptable innovation can result in either equivalent or lesser emissions from the source, but not a higher level of emissions. The preamble to the EPA RSD regulation (Div. Exhibit B, p. 84) clearly specifies that the "...final emission limitation must at least represent the BACT level that would have been initially defined."

FEDERAL CLASS I AREAS

1. (Section XIV.A.) The State's Independent Determination of Adverse Impact to Visibility

Section XIV.A. allows the Division or the Board (if applicable) to determine independently if there are an adverse impact to visibility in Class I areas if the federal land manager (FLM) fails to make such determination or such determination is in error. This authority is intended to allow the state to fulfill the FLM's responsibility for protection of visibility if for whatever reason, including political, the FLt4 fails to do so. The Commission recognizes that scenic vistas are an important resource of the State of Colorado. (Colorado Mountain Club Exhibit #1) A subcommittee may be formed to further develop visibility protection for the State of Colorado.

Several parties suggested problems with the state's independent authority' to make such visibility determinations. These consisted of (1) measuring or predicting visibility impairment, (2) quantifying man-induced , as opposed to naturally-occurring, visibility impairment, (3) the subjectiveness of visibility impairment, (4) the lack of correlation of current particulate standards to visibility impairment, and (5) the lack of guidance in the regulation regarding determinations of significant and adverse visibility impacts.

The Commission's response to these concerns is as follows:

(1) Although it is true that there are not federal reference methods for measuring visibility at this time, there are reliable means to accurately measure and predict visibility impairment. Scientific instruments such as the telephotometer, nephelometer, and the fine particulate monitor are recognized as being capable of obtaining objective information on visibility-related parameters. Photographs are also useful in visibility assessment.

Visibility theory involving scattering and absorption of light is well documented and has been incorporated into the models described in the Workbook for Estimating Visibility Impairment (EPA-450/4-8-031). The preface to the Workbook for Estimating Visibility Impairment states: "EPA believes these techniques are at a point where the results should now be employed to

assist decision-makers in their assessments." "These techniques" include the Plu-Vu Model. Div. Ex. J at iii. Thus, these models are appropriate for use at this time.

(2) It is possible to determine if a source of visibility impairment is natural or anthropogenic through various chemical/physical analysis techniques. Improvements in air sampling and analytical techniques have made available, for the first time, detailed information on the chemical and physical nature of the ambient aerosol and of source •emissions. Using these chemical "fingerprints," particle morphology and the natural variability of airshed sources, recent developments in receptor models have provided new techniques of assigning source contributions.

(3) Perception of visibility impairment is subjective and involves individual variability; however, norms do exist around which an assessment can be made. As noted above, EPA supports the use of its Workbook for Estimating Visibility Impairment as a guide to decision-makers.

(4) Particulate standards do not address visibility-related effects. It is also true that the major anthropogenic visibility impairing pollutant is fine particulate matter. Since the Class I increment for particulate is in terms of total mass concentration, rather than fine particulates, visibility impairment could occur without the increment being violated. Furthermore, the particulate increment is a maximum allowable ground level concentration; consequently it will not protect visibility impaired by plumes at elevations above ground level. These facts form the basis for the Clean Air Act requirement that visibility should be assessed and regulated in a separate analysis. Div. Ex. S.

(5) The primary guidance for determinations of adverse impact to visibility would be the Workbook for Estimating Visibility Impairment, which has very specific guidelines.

2. (Section XIV.B.) Pre-Application and Operational Monitoring of Air Quality Related Values (AQRVs)

Section XIV.B. of the regulation allows the Division to require a source, which will have or is likely to have an impact on any Class 1 area to conduct monitoring to establish the baseline status of and impacts on AQRVs in such Class 1 areas. EPA has not imposed this requirement on applicants, although under EPA rules and the Commission rule, Section IV.D.3.(a)(vi), an Additional Impact Analysis is required which would include an analysis of impacts on AQRVs based on available data, for example, through literature searches. The data gathered from such monitoring are important and necessary in aiding the federal land manager of a Class 1 area in determining whether or not a source will cause an adverse impact on AQRVs and the state in deciding on concurrence with such determination. The data also aid the public information function of the Additional Impacts Analysis. The authority to require submission of such Information includes, but is not limited to, CRS 1973, 25-7-206(2), 25-7-106(5) and (6), and 25-7-114(4).

A. National Park Service and Forest Service Testimony and Positions

The National Park Service ("NPS") and the Forest Service ("FS") supported the rule as a supplement to their current monitoring activities on the basis that the data is necessary to determining adverse impacts on AQRV5, including visibility. See Mitchell, Nov. 18 Tr. at 122 et seq., 161 et seq.; Haddow, 0ct. 28 (p.m.) Tr. At 22 et seq., Nov. 10 Tr. at 68 et. Seq.; Region 2-USDA Forest Service Comments on Proposed PSD Rule; Comments on the May 19, 1982 Proposed Colorado PSD Regulation by National Park Service Air Quality Division.

The NPS stated its willingness to provide a list of sensitive receptors of AQRVs to applicants for monitoring Mitchell, Nov. 18 Tr. at 162.

The Forest Service recognized severe technical difficulties and high costs of monitoring some pollutants and visibility in wilderness areas. Haddow, Oct. 28 (p.m.) Tr. at 22 ~. However, lichen monitoring could be done without great difficulty and special use permits are available for some complex monitoring. Haddow, Nov. 10 (p.m.) Tr. at 112., The FS intends to identify sensitive indicators of AQRVs for each Class 1 area, e.g. 2 or 3 species of lichen and 2 or 3 scenic views, and proposes that the state require the monitoring of such indicators Id. at 82-83.

B. Environmental Defense Fund's (EDF) and Friends of the Earth's (FOE Position

EDF's and FOE's general contentions in support of the proposed monitoring requirements were:

1. the technology for monitoring of AQRV's exist;

2. the Forest Service has identified AQRV's for wilderness areas;

3. although some monitoring is being done, most areas are not being monitored and will not be without the participation of industry;

4. decisions on adverse impacts to AQRV5 cannot be made rationally without reliable scientific evidence; and

5. the state is required to have a visibility monitoring program by EPA rules, 40 CFR 51.305.

"EDF and FOE Final Recommendations; Summaries of the Record and Legal and Policy Analyses," Section IV.

C. Trade Association Parties' Position

The Trade Association Parties' general contentions in opposition to the monitoring requirements were:

1. The Clean Air Act places the responsibility on the federal land manager to determine adverse impacts on AQRVs and, thus, the responsibility to obtain the data necessary to make such determination;

2. There is insufficient information available at this time to develop an AQRV monitoring program in that sensitive receptors for each Class 1 area have not been identified, there is no monitoring reference method available and no validated models to project impacts of particular emissions levels;

3. In some Class 1 areas monitoring is either physically impossible or inordinately expensive; and

4. The Division's discretion in specifying sensitive receptors is too vague and broad.

Trade Association Parties' Closing Argument at 31-34.

D. Commission Analysis and Decision

The above-cited testimony and evidence and other portions of the record support the conclusion that monitoring of AQRVs or sensitive receptors of AQRV5 would be helpful, and in many cases necessary, to determine whether adverse impacts on AQRVs would occur. It is also evident that baseline data are not available and may never be developed by federal land managers for some AQRVs and sensitive receptors and for some Class 1 areas. Thus, the primary issue is where to place the responsibility for obtaining background data on AQRVs - the federal land manager, the state and/or the applicant.

As the Forest Service suggested, it is traditional permitting practice to require a permit applicant to obtain the data upon which the agency decides. Haddow, Nov. 10.(p.m.) Tr. at 89. This practice is consistent with the economic philosophy that companies should internalize their environmental costs. Furthermore, the Clean Air Act does not change such practice; it places the "affirmative responsibility" on federal land managers to protect AQRVs and to consider whether there will be an adverse impact on AQRVs but does not expressly state whose responsibility it is to provide necessary data upon which to exercise their responsibility.

The Commission has determined that there is available research and test methods, for obtaining background data and impact data on many AQRVs that will be critical in making adverse impact determinations, even though there are not generally adopted reference methods or modeling techniques. For example, to perform a reasonably accurate visibility impairment analysis, background data is needed. Div. Ex. J. Although there are no generally accepted reference methods for estimating visibility impacts, methods for estimating visibility Impairment have been developed and are relatively sophisticated. See Div. Ex. J.; Geier, Oct. 28 (a.m.) Tr. at 62-71. The rule recognizes this potential limitation on monitoring AQRVs by only allowing monitoring if "monitoring methods are reasonably available and research and development of monitoring methods are unnecessary."

In response to the objection that the Division's discretion in selecting AQRVs for monitoring is too vague and broad, the rule provides:

1. A definition of AQRVs (in the Common Provisions Regulation);

2. That the Division will consult with the federal land manager in the selection of AQRVs; and

3. That the AQRVs selected must be important to the affected Class I area and there must be cause to believe that monitoring of the AQRVs will provide a basis for evaluating effects to the AQRVs.

In response to the objection that the monitoring of AQRVs may not be economically reasonable, the rule provides that:

1. no duplication of monitoring may be required;

2. not more than three AQRVs may be required to be monitored;

3. monitoring methods must be reasonably available;

4. monitoring may only be required if the source is a major contributor to the expected effects on the AQRV; and

5. it is economically reasonable as compared to other monitoring and analysis expenses required of a PSD permit applicant.

SULFUR DIOXIDE AMBIENT AIR STANDARDS FOR THE STATE OF COLORADO

The proposed rule would have revised the Colorado ambient air quality standard for sulfur dioxide to be consistent with the federal standard. Because the Colorado standard is not enforceable in the permitting process, see CRS 1973, 25-7-114(4)(g), the Commission ordered on November 10, 1982 That revisions of the state ambient air quality standard for SO2 be removed as a subject of this rulemaking.

The Commission agreed to reconsider the state standard if and when it becomes enforceable.

PUBLIC ACCESS TO CONFIDENTIAL INFORMATION

One party raised the issue of whether Section VII of Regulation NO. 3 improperly restricts access to confidential information, which would be available under the Federal Clean Air Act. Section VII may not be considered for amendment in this rulemaking due to lack of public notice.

I.D. Adopted March 10, 1983

Revisions to Regulation Number 3 (Excluding PSD Program Revisions)

This Rationale complies with the requirement of the Administrative Procedures Act, C.R.S. 1973, 24-4-103(4), to prepare a Statement of Basis and Purpose for adopted regulations. The statutory authority for these amendments are at C.R.S. 1973, 25-7-102, 25-7-105, 25-7-106, 25-7-109, and 25-7-114. These revisions to Regulation Number 3, adopted February 10, 1982, are intended to clarify and further define certain portions of the regulation adopted June 5, 1980. The 1980 revisions were extensive changes designed to reflect the new provisions of the 1979 Colorado Air Quality Control act (HB 1109); these changes reflect policy changes and clarifications to the existing rule. The basis and purpose of each revision is discussed below.

I. MINOR SIGNIFICANCE DETERMINATIONS FOR PERMIT AND APEN EXEMPTIONS

Section II.C.1.j. of Regulation Number 3 allows the Division to exempt sources from Air Pollutant Emission Notice (APEN) filing and permit requirements if the criteria in this Section are met. Since mid-1980, the Division has granted approximately 25 exemptions under Section II.C.1.j.. Of the approximately 700 permits issued by the Division annually, 55 percent are to sources with uncontrolled emissions of less than 5 tons per year (tpy); 35 percent of the total permits are to sources with uncontrolled emissions below 1 tpy. Thus, except for the specific source categories exempted by the Commission under Section II.C.1. of Regulation Number 3, nearly every air pollution source, no matter how minimal its emissions, has had to file an APEN and obtain a permit. The record supports a finding that most sources of less than one ton per year emissions and some of less than five tons per year emissions will have a negligible impact on air quality and should be exempted from the APEN and/or permit requirement.

On that basis and for the following more specific reasons and purposes the adopted revisions to Section II regarding APEN filing exemptions and to Section III regarding permit exemptions are intended to:

(a) require APEN filing and permits for any source of hazardous, toxic or odorous air pollutants, however small the source. The Commission considers the gathering of information on, and the regulation of, such pollutants to be of high priority.

(b) exempt sources of all other pollutants from both APEN filing and permit requirements when uncontrolled emissions from the source would be less than one tpy. Such sources, according to a Division study, account for less than 1 percent of total uncontrolled emissions and would be anticipated to have 24-hour impacts, at a maximum, of less than 2 micrograms per cubic meter ($uglm^3$) assuming 24 hours per day operation, a negligible impact given the localized area of the Impact.

(c) require sources of other than hazardous, toxic or odorous pollutants whose uncontrolled emissions are less than five tpy but greater than or equal to one tpy to file an APEN. These sources would be exempt train permit requirements (with one exception) unless the Division demonstrated using specific guidelines that the source was significant. The Division would have to notify the source that a permit was required; otherwise, the source would be exempt from permit requirements. The APEN should provide all needed information to preclude unnecessary delay in making such determinations.

Emissions from these 1 to 5 tpy sources, according to a Division study, account for no more than two percent of total emissions, yet comprise 20 percent of the total sources obtaining permits. Such sources could, however, produce 24-hour ambient air impacts as high as 10 ug/m^3, which

could be significant in certain cases, especially if such source would cause a violation of a NAAQS or increment or by itself or in combination with similar sources cause a health or welfare problem or interfere with reasonable further progress towards attainment.

Volatile Organic Compound (VOC) sources are treated differently. The record demonstrates that 45 percent of the total of all uncontrolled stationary source VOC emissions are emitted by sources ranging from 1 to 5 tpy in size. Most of these sources locate in urban areas such as Denver, which is nonattainment for ozone. Since VOC emissions are an ozone precursor, such sources should be subject to permitting requirements to ensure compliance with applicable VOC emission limitations.

Therefore, VOC sources equal to or exceeding 1 tpy (uncontrolled) locating in nonattainment areas must both file an APEN and obtain a permit. VOC sources ranging from 1 tpy to 5 tpy locating in attainment areas where there is less concern for ozone will be treated like other sources and will be at least required to file an APEN.

(d) require sources of other pollutants whose uncontrolled emissions equal or exceed five tpy to file APENs and obtain permits unless specifically exempted from such requirements. These sources constitute approximately 98 percent of total uncontrolled emissions, and the Commission feels that such sources should be required to submit APENs and obtain permits unless specifically exempted as a class or as an individual source.

II. "SIGNIFICANT CHANGE" IN EMISSIONS REQUIRING THE FILING OF A REVISED APEN

The purpose of this revision to Sections II.B. and II.C. is to clarify and revise the requirements for reporting changes in emissions (either increases or decreases) to the Division.

The record shows that an acceptable emissions inventory, usually referred to as the EIS (for Emissions Inventory Subsystem), is essential for effective air quality management and that the revised APENs provide an effective system for obtaining EIS data. Revised APENs reporting significant changes in emissions are required by statute, C.R.S. 1973, 25-7-114(1), and the $40 fee for a revised APEN defrays the cost of processing the information (see "Fiscal Impact"). The levels set for reporting emissions changes are significant and will allow the effective tracking of air quality changes and use for air quality management.

It is obvious, however, that there has been confusion concerning these requirements in the past. The following statements should clarify the confusion:

A. Revised APENs reporting significant changes in emissions are to reflect actual emissions for the preceding year, not projected or maximum emissions. Actual emissions are the emissions actually emitted by a source into the atmosphere on an annual basis, determined as accurately as is feasible using production or processing or combustion rates, and emission factors, or test results, or other accepted methods for estimating emission rates. These actual emission rates are the "actual emissions used in the PSD definition of "actual emissions", except that for PSD, an "actual emission" rate can be ignored if it is not representative of "normal" operation. The APEN forms should clearly distinguish an APEN filed with a permit application (which estimates maximum anticipated production or emission levels) and a revised APEN (which reports actual emissions when a significant change in emissions has occurred). Changes in emission rates reported on a revised APEN shall not be used to modify allowable emissions rates or permit conditions for the source unless the revised APEN is filed specifically for the purpose of modifying an existing permit or obtaining a new permit, in which case the APEN must (1) be accompanied by an application, written request, or letter of explanation from the applicant and (2) reflect maximum anticipated production or emission level changes resulting from the requested action, not "actual" emissions from the existing source.

B. Each affected source should discuss with the Division the most efficient format in which significant changes can be reported and the degree to which similar emission sources can be combined for reporting purposes. It is the intent of the Commission that the Division carry out this flexible approach to the maximum extent possible in order to reduce the burden on regulated sources.

The Commission has made these revisions economically reasonable by easing the burden of reporting by allowing the use of any mutually convenient reporting format in lieu of a "standard" form and by allowing individual, but similar, emission point sources to be grouped. It should be stressed that this grouping of emission point sources for purposes of reporting significant changes to the Division does not constitute, nor does it set any precedent for, any netting or bubbling or other emission trading approach; emission trading can be conducted only through specific regulations pertaining to this activity. These APEN groupings also do not relieve the source of any obligation to meet any emission control limitations for specific point sources within the group.

In general, the reporting requirements for significant changes have been given greater latitude than existed before, partly in response to concerns that, at certain reporting levels, the accuracy requested exceeds the accuracy of the available data, and in response to EPA requirements for reporting EIS changes which are in the range of 5 tpy for small sources or 5 percent for 100 tpy or larger sources. The adopted "significant change" definition reflects a deliberate selection based on the public hearing testimony and the exhibits and testimony submitted by the Division and interested parties during these deliberations. For odorous, hazardous or toxic pollutants, any emissions change must be reported (again, on an annual basis). With changes of only 0.0004 tpy (for beryllium), for example, considered "significant" by EPA, close scrutiny of all hazardous, toxic and odorous pollutants is needed.

III. REVISED APEN FEES

An issue raised is whether the Commission has statutory authority to require a $40.00 filing fee with a revised APEN. The statutory authority for a fee states, "Any person required by the Commission to file an air pollutant emission notice shall pay a nonrefundable fee of forty dollars...." C.R.S. 1973, 25-7-114(5)(a). The statutory authority for requiring the filing of APENs and revised APENs refers to: "air pollutant emission notice" and "revised emission notice", C.R.S. 1973, 25-7-114, the latter reference being to "revised (air pollutant) emission notice". Section 25-7-114(5)(a) does not limit the $40.00 fee to initial APENs filed for a source but refers simply to "air pollutant emission notice" which may be interpreted to include both initial and revised APENs. Testimony by the Division estimated the administrative costs of processing a revised APEN at over $40.00. For these reasons, the Commission finds that it has authority and should charge a $40.00 filing fee for revised APENs.

IV. NON-PERMITTED SOURCE APPLICABILITY

A source existing before the adoption of the first Colorado Air Quality Control Act and the date of its implementing regulations of February 1, 1972, is not required to obtain a permit. This revision is intended to clarify the date prior to which existing sources are considered "grandfathered" and exempt from a permit requirement.

V. STATIONARY INTERNAL COMBUSTION ENGINE EXEMPTION

The purpose of this revision is to decrease the extent of the exemption for stationary internal combustion engines. Prior to this revision, stationary internal combustion engines less than 1000 HP in attainment areas and less than 250 HP in nonattainment areas were exempt from permit requirements. The record shows that these sources not only constitute large individual sources (a 1000 HP engine can emit 96 tpy of NOx), but also can be situated close to each other (one compressor station in Colorado consists of 15 925 HP stationary internal combustion engines which can emit a total of 1340 tpy NOx). Small stationary internal combustion engines in terms of emissions (less than 5 tpy) or size (less than 50 HP) are excluded

from permit requirements. In addition, the Commission has retained the exclusion from permit requirements for emergency power generators and added exclusion for stationary internal combustion engines powering portable oil drilling rigs.

The exclusion for stationary internal combustion engines on portable oil drilling rigs is based on testimony and on information developed by the Division which indicates that these sources move frequently (average 10 days per well site), generally are located at remote sites, and emit only 1.3 tons N02 per well drilled. The Division indicated that the total estimated NOx emissions from portable oil drilling rigs in Colorado could be as high as 2200 tpy and that this could increase the total NO emissions inventory in specific active drilling areas by as much as 50 percent. To determine if an air quality problem exists for these sources, testimony from the Colorado Petroleum Association (CPA) indicates a willingness to provide the information needed by the Division to assess emissions by modifying existing data-gathering reports.

One party requested a delayed effective date for this revision so that compressor stations planned for construction during the summer of 1983 would not be held up by an unanticipated requirement that permits be obtained. Such a request is reasonable, and the delayed effective date of October 1; 1983, has been adopted.

VI. PUBLIC COMMENT FOR DEMOLITION AND NONATTAINMENT AREA PERMITS

Since the record shows that sources for which public comment has been received are in every case either large (greater than 25 tpy) or controversial (e.g., odorous emissions), the public comment requirement for sources in nonattainment areas is being raised from 5 tpy to 25 tpy, which makes it the same as for sources locating in attainment areas. Demolition projects have been exempted from public comment requirements because they often need to be completed, by contract agreement, in a short period of time, and the need for public comment has on occasion been an unnecessary time delay. Very few public responses have been received for small demolition projects. The Division retains the authority to require public comment for demolition projects if considered warranted for reasons of asbestos emissions or other significant concerns.

VII. CONSTRUCTION SCHEDULE DEADLINES

Under previous rules, owners and operators applying for new permits have not been held to any time limits for commencing construction or operation once the permit to operate has been obtained. Sources must be evaluated (C.R.S. 1973, 25-7-114(4)(b)) to determine whether operation of the source will comply with all applicable regulations, an evaluation that can be made with an acceptable degree of certainty provided that the source actually does construct and operate within a reasonable period of time following receipt of the permit. However, a source which delays construction for a number of years may finally initiate operation at a time when ambient air concentrations or other factors used in evaluating compliance have changed; in addition, delaying construction and operation results in the reserving of emissions that could have been used by other applicants.

This provision implements an 18-month construction deadline, imposed by the Division, to all sources, major and minor, statewide. Owners and operators will be prevented from applying for a permit without intending to construct in the near future, a form of "reserving" emissions or increments which makes compliance analysis difficult and could inhibit real economic growth in the state. Under these provisions, the Division will grant necessary extensions to permits that are issued, so a source with good reason for delaying a project would not be penalized by loss of a permit.

VIII. NON-REACTIVE VOLATILE ORGANIC COMPOUNDS (NRVOCs)

The EPA maintains a list of NRVOCs, which are considered either totally non-reactive or insignificantly reactive in the formation of ozone. NRVOCs can therefore be used to replace reactive VOCs as offsets.

A list of additions to this list appeared in the July 22, 1980 Federal Register. The revision to Regulation Number 3 updates the list of NRVOC5, which are non-hazardous, to conform to EPA's revised list of NRVOC. In addition to this, the revision extends the concept of NRVOC Statewide (instead of nonattainment areas only), and clarifies that NRVOCs will be reviewed separately during initial approval analysis of a new source. Previously, NRVOCs pertained to nonattainment areas only and were used only based on emission-offset credit. The revision clarifies that NRVOCs can be substituted for VOCs for banking and other emission reduction credits.

IX. CLEAN PORTION OF NON-ATTAINMENT AREA

No revisions to Sections IV.D.2.c. or IV.D.3.b. were made because the State Act provides for the exemption of Section IV.D.2.c. at C.R.S. 1973, 25-7-303.

I.E. Adopted March 19, 1987

Revisions to Regulation Number 3 Section II.C.1.

The specific statutory authority under which the Commission shall hold and conduct this hearing is prescribed by 24-4-103, 25-7-105, -106, -110, and the hearing will be conducted in accord with provisions of 24-4-103 and 25-7-110, C.R.S. 1982 and the Commission's Procedural Rules.

The revision to Regulation Number 3 Section II. C. 1. is an addition to the list of sources, which are exempt from filing Air Pollution Emission notices. Addition of Part l. (small L) to this regulation exempts petroleum industry flares, approved by the Oil and Gas Conservation Commission, from having to file an Air Pollution Emission Notice (APEN) if emissions of any pollutant do not exceed five (5) tons per year. This exemption only applies to flares, which do not combust gas containing hydrogen sulfide (H2S) except in trace amounts, since H2S is classified as a hazardous air pollutant. Previously APENS were required for these flares when emissions exceeded 1 ton per year.

The Air Quality Control Commission adopts this change for the following reasons:

1) Records of the amount of gas flared will be kept by the Oil and Gas Commission and made available to the Division;

2) The flaring is a temporary activity in most cases;

3) Statewide emissions from flares are relatively low, with nitrogen oxides (NO_X) being the main pollutant emitted (emissions of NO_x from flares is approximately 200 tons per year statewide, while total stationary source NO_x emissions are over 160,000 tons per year in Colorado);

4) Ambient impacts from flares are low;

5) No hazardous pollutants will be emitted;

6) Larger flares will still have to be permitted by the Division.

I.F. Adopted November 19, 1987

Addition of Section XV to Air Quality Control Commission Regulation Number 3 Regulation Requiring an Air Contaminant Emission Notice, Emission Permit Fees

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirement of the Administrative Procedures Act, C.R.S. 1973, Section 24-4-103 (4) for adopted or modified regulations.

This revision to Regulation Number 3, adopted November 19, 1987, is intended to bring the Colorado regulations into conformance with current U.S. EPA regulations. U.S. EPA's regulations were revised in response to a court order which required each state to develop a program to assess and remedy visibility impairment in Class I areas from new and existing sources, as established in Section 169A of the Clean Air Act.

Section XV. is added to Regulation Number 3 as part of the State's plan to meet the national goal of preventing future, and remedying existing, visibility impairment in Class I areas. Section XV. Together with this Statement of Basis, Specific Statutory Authority and Purpose and the monitoring and long-term strategies represents Colorado's State Implementation Plan (SIP).

This Regulation addresses a type of visibility impairment, which can be traced to a single source or small group of sources known as reasonably attributable impairment. The U.S. EPA deferred action on the regulation of regional haze and urban plumes due to scientific and technical limitations in visibility monitoring techniques and modeling methods.

The FLMs were consulted and their suggestions considered in developing the plan. In addition, the Commission provided public notice 60 days prior to the public hearing stating that interested parties would be given the opportunity to provide testimony concerning the Regulation and its requirements at the hearing. Wyoming, Utah and New Mexico were also sent notice of the hearing.

Section XV.D. allows the FLMs to certify visibility impairment to the Division Director at any time. At such time of certification the Division must assess the impairment, identify the contributing source(s), and conduct a Best Available Retrofit Technology (BART) analysis for any contributing sources located in Colorado. The FLMs have not certified reasonably attributable impairment as of this adoption date. Section D. also requires BART and is incorporated for future use, if necessary.

Any source subject to the BART requirements of this Section may apply to the U.S. EPA Administrator for an exemption. The application to the U.S. EPA must include a written concurrence from the Division and Commission; therefore, the source must first apply to the Division, as set forth in Section D.2.c. An exemption granted by the Division and approved by the Commission will constitute the written concurrence required by U.S. EPA.

The New Source Review requirement of Section XV.E. is included for purpose of reinforcing Sections IV.D.2.a. (vi) and IV.D.3.a. (vi).

In addition to existing and new source review, the Division must develop a visibility monitoring strategy to collect information on visibility conditions and must develop a long-term (10-15 year) strategy to assure progress towards the national goal. The monitoring plan and the long-term strategy are set forth in the SIP submitted to the U.S. EPA. Section XV.F. provides procedures for reviewing and revising the long-term strategy.

State Implementation Plan for Class I Visibility Protection State of Colorado

The purpose of this plan is to assure reasonable progress towards meeting the national goal of preventing future, and remedying existing, visibility impairment in Class I areas.

The plan includes provisions for existing and new source review (attached as Regulation Number 3, Section XV.), a monitoring strategy, a long-term strategy, and consultation with FLMs.

<u>Monitoring Strategy</u>

The State of Colorado's Class I Visibility monitoring strategy is based on meeting four goals:

1. Provide information for new source visibility impact analysis;

2. Determine existing conditions, in Class I areas and the source(s) of any certified impairment;

3. Determine actual effects from the operation of new sources or modifications to major sources on nearby Class I areas; and

4. Establish visibility trends in Class I areas in order to evaluate progress toward meeting the national goals of visibility protection.

The goals will be achieved through a combination of objectives concerning monitoring, gathering and evaluating existing visibility data, and mechanisms for the use of visibility data in decision-making.

Potential new major stationary sources or major modifications to existing stationary sources subject to the Air Quality Control Commission (AQCC) Regulation Number 3, Section IV.3, are required to perform an analysis of visibility impacts on potentially affected Class I areas. The analysis must be conducted utilizing existing visibility data, if any. The Division must consider and evaluate available data from potentially affected Class I areas or other areas that may be representative of background conditions in the Class I area(s) of interest. If data is adequate, the permittee will be notified of the background or base level of visibility against which impacts will be assessed (Regulation Number 3, Section IV.3.(a)(iii)(D)). If visibility data is not adequate, Regulation Number 3, Section XIV. allows the Division to require any source, which will have or is likely to have an impact on any Class I area to conduct monitoring to establish baseline status of visibility. The monitoring information will be used in the new source review analysis and will add to the background and trend data bank of that Class I area. No monitoring shall be required if it is currently being conducted by any federal, state, or local agency (AQCC Regulation Number 3, Section XIV.B.1).

FLMs may at any time identify to the Division Class I areas where emissions from a specific source or small group of sources may be causing or contributing to visibility impairment in the Class I area. The Division will determine if emissions from any local sources can be reasonably attributed to cause or contribute to the documented visibility impairment. In making this determination the Division will consider all available data including the following:

1. Data supplied by the FLM;

2. The number and type of sources likely to impact visibility in the Class I area;

3. The existing emissions and control measures on the source(s);

4. The prevailing meteorology near the Class I area; and

5. Any modeling, which may have been done for other air quality programs.

The Division may be unable to make a decision regarding "reasonable attribution" of visibility impairment from an existing source or sources using available data. The Division will make available to the affected FLML and the U.S. EPA a discussion of what data was considered and what measures the Division is taking, if any, to resolve the situation. The Division may consider modeling the impact of nearby suspected sources with existing visibility models. Funding and other factors may limit the Division's ability to unilaterally initiate studies designed to establish "reasonable attribution". Therefore, the Division may join with the FLMs, the suspected source(s), the U.S. EPA , and others in implementing special monitoring and analysis programs to address the specific problem.

The Division will sponsor or share in the operation of visibility stations with FLMs as the need arises and resources allow. Fiscal, logistical, and other considerations may constrain the Division in conducting visibility monitoring in Class I areas.

The Division will request from each FLM responsible for Class I areas in Colorado copies of any and all past or existing programs designed to monitor or evaluate visibility. All future visibility data gathered by each FLM will also be requested, including any analysis and interpretation.

The Division will assemble and evaluate the visibility data supplied by the FLM in addition to any other data collected by the Division or any other appropriate source (such as a proposed major stationary source) on an annual basis.

Long-Term Strategy (LTS)

The Commission shall review the strategy set forth below and prepare a public report as required in Section XV.F. The FLMs shall be consulted throughout all phases of the LTS development and revisions.

A Commission subcommittee will be established to address the following components of the LTS:

1. Statewide visibility standards

2. Smoke management

3. Vistas

4. PM10 and PM2.5 emissions

5. Any other components the subcommittee deems applicable.

The Division is pursuing the adoption of statewide visibility standards. The subcommittee will determine how and if standards should be set and how the standards will apply to various areas of the state. Although the end result may apply to regional haze, Class I areas will benefit from statewide standards.

The Division presently has smoke management agreements with the FLMs. The affected agencies are required to obtain an open burning permit from the Division. Virtually all controlled burns are for wildlife habitat and range management; little slash/timber management burning occurs.

The Division believes existing smoke management techniques do not adversely affect visibility in Class I areas. The subcommittee will address this issue to determine how smoke management should be integrated into the LTS. If necessary, the existing agreements may be revised during the LTS review process. The Division will continue to coordinate with the FLMs to insure that best smoke management techniques are employed.

The FLMs declined to identify integral vistas (important views of landmarks or panoramas that extend outside of the boundaries of the Class I areas and considered critical to the enjoyment of the areas). The Commission is therefore not required to address vistas but may do so under their own authority. The subcommittee shall determine if integral vistas and/or other scenic vistas should be identified, and if so, the criteria to be used for such identification. Any vistas shall be identified using the specific criteria developed by the subcommittee.

The Division is in process of studying PM10 emissions and their role in the formation of Denver's brown cloud. Conceivably, such studies could lead to information and strategies related to visibility impairment. The subcommittee will address the integration of this component into the LTS.

The FLMs and Division have not identified reasonably attributable impairment at this time, therefore the Commission will not address source retirement and replacement, construction activities, and enforceability of emission limitations. Should the FLMs or Division identify impairment from a specific source or small groups of sources, the Commission will address these issues during the LTS review process.

Each time the LTS is reviewed, the following six factors (at minimum) must be addressed.

1. Emission reductions due to ongoing air pollution control programs.

2. Additional emission limitations and schedules for compliance.

3. Measures to mitigate the impacts of construction activities.

4. Source retirement and replacement schedules.

5. Smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purpose, and

6. Enforcement of emission limitations and control measures.

Consultation with Federal Land Managers (FLMs)

The Division as part of the implementation of this Regulation will send within 30 days of its adoption written notification to the FLMs stating that the Division Director is the official to whom any recommendations may be sent regarding Colorado's SIP for Class I visibility protection, including but not limited to:

1. Integral vistas to be listed by the state;

2. Identification of impairment of visibility in any Class I area(s), and

3. Identification of elements for inclusion in the monitoring strategy.

The Division will provide the opportunity for consultation with the FLMs, in person and at least 60 days prior to any public hearing on any element of the SIP. The Division is interested in the FLMs opinion regarding:

1. Assessment of impairment of visibility in any Class I area, and

2. Recommendation on the development of the long-term strategy.

The FLMs may contact the Division Director at any time regarding the implementation of the SIP for Class I visibility protection.

I.G. Adopted August 8, 1988

Revisions to Regulation Number 3 and the Common Provisions Definitions

Revisions are made to Regulation Number 3 and definitions in the Common Provisions. Prevention of Significant Deterioration (PSD) and New Source Review (nonattainment) requirements are revised to conform to the Federal regulations. Provisions for the regulation of the National Ambient Air Quality Standard (NAAQS) for particulate matter (PM-10) are added. Section V, concerning certification of Emission reduction, is revised to conform to Federal requirements. Other minor changes are made to clarify existing policies. Requirements for Revised Air Pollution Emission Notices (APENS), Air Quality Related Value (AQRV) monitoring, solid waste fuel, and temporary sources are revised.

Dual Definition of Source

Federal regulations require the use of the dual definition of source for nonattainment areas. (See discussion, in the August 7, 1980 Federal Register, 45 FR52680 and 52693). The concept is intended to

provide for more air pollution control in nonattainment areas, such that more rapid progress can be made toward attaining the standards.

When determining if a source locating in an attainment area is major, emission increases and decreases at the entire facility are considered. When determining if a source located in a nonattainment area is major, two cases are examined. First, if the single piece of equipment or modification itself represents a major source or significant increase, nonattainment review applies. Second, if the piece of equipment itself is not major, examine the entire facility as for attainment area sources. If a significant increase occurs, nonattainment review applies.

The definition of "Stationary Source" in the Common Provisions indicates the Commission intended to use the dual definition (see also the Statement of Basis and Purpose, March 10, 1983). The definition of "Net Emission Increase", Part K, however, incorrectly stated that only the single piece of equipment is examined. This was less stringent than Federal law and allowed facilities to install a series of de minimus units whose aggregate emissions could be significant, without undergoing nonattainment review. Part K is corrected to allow the Division to use the dual definition.

When the dual definition is used, nonattainment review applies to reconstructed sources. Section IV.D.2.a clarifies this.

Section IV.D.2.a also clarifies that nonattainment review applies only to nonattainment pollutants emitted in major amounts. This differs from PSD requirements, which apply to attainment pollutants emitted in significant amounts if the source is major for any pollutant (attainment or nonattainment). (See discussion, 45FR52676.)

Fugitive Emissions

The Colorado Air Quality Control act includes fugitive emissions when calculating a source's potential to emit only if the Commission adopts regulations to include fugitive emissions for that source category. (See Statement of Basis and Purpose, March 10, 1983). Federal law requires that fugitive emissions are included for all "listed" sources (those listed in the definition of major source). The Commission is adopting the requirement to include fugitive emissions for all listed sources.

Portions of the Colorado Act not Allowed in Federal Act

Portions of Regulation Number 3 are not allowed in the Federal Regulations, but are contained in the Colorado Act and therefore cannot be removed from regulation Number 3 until removed from the Colorado Act. The items are discussed below. The Division will not honor these items unless an applicant insists, in which case a permit from the EPA will be required to meet Federal law.

Best Available Control Technology (BACT):

The Colorado Act's definition of BACT states that revisions to New Source Performance Standards (NSPS, Regulation 6) or National Emission Standards for Hazardous Air Pollutants (NESHAPS, Regulation 8) made after April 10, 1983 (the effective date of the definition) can't be used to determine BACT. The Federal Act requires that BACT can't exceed the NSPS or NESHAP in effect at the time of application. The Division will make BACT determinations taking into consideration the most current NSPS and NESHAP regulations.

Clean area in nonattainment area: The Colorado Act and Section IV.d.2.B.ii allows exemption from nonattainment requirements if the source proves they are located in a clean portion of a nonattainment area. This is not allowed in the Federal Act.

Shale oil exemption: The Colorado Act and Section I.B.2.C.viii excludes from the definition of major modification a fuel switch to shale oil or coal/oil mixtures. This is not allowed in the Federal Act.

Fugitive Dust Exemption: The Colorado Act and Regulation Number 3 does not include fugitive dust that does not adversely affect public health or welfare when calculating a source's potential to emit. The March 10, 1983 Statement of Basis, Authority, and Purpose discusses the Commission's previous position. •The discussion indicates that when the EPA promulgates new standards for particulate matter the fugitive dust issue will be resolved. The EPA has promulgated a new NAAQS for PM-10, which replaces the TSP NAAOS. The PSD increments, however, are still based on TSP. PM-l0 fugitive emissions can thus be used to determine potential to emit, but some question remains as to whether or not TSP fugitive emissions should be used. The EPA is developing PM-10 increment standards. In the interim, if a source does not want to include fugitive dust (TSP or PM-10) for a State permit, an EPA permit may have to be obtained.

Permit Review Time Frame: The Colorado act contains specific time frames for processing permits (60 days, etc.). Section IV.F of Regulation Number 3 states that a permit is automatically issued if the Division fails to meet the time constraints. This is not acceptable for major source review. PSD and major nonattainment applications are often complex. The Federal Act allows one year to complete the review process (including public notice, hearings, etc). The Division will automatically ask for a time extension for major source applications. If an extension is not granted and/or the time frame is not met, an EPA permit will be required.

Other Minor Revisions

These definitions are revised as follows to conform to the Federal Act: "construction" now includes demolition and modification; "enforceable" now includes Regulations Number 6 and 8; "Lowest Achievable Emission Rate" does not allow BACT to be exceeded.

References to the "Board" are deleted and replaced with "Commission" throughout the Regulation. The (Hearings) Board no longer exists.

Class I areas in neighboring states are recognized in Section VIII.

Section VIII.K is added to allow redesignation of an area to class III if a permit can't be obtained unless the area is redesignated and sufficient public notice is given. The Federal Act requires this.

Section XIII.B exempts Innovative Control Technology from BACT only, not all of the PSD requirements. This conforms to the Federal Act.

Public notice procedures (Section IV.C) for major sources are expanded and clarified to conform to the Federal Act.

The word "new' is removed from Section IV.D.2.a.iv to clarify that alternate sitting studies apply to new and modified sources.

Exemption c under the definition of modification is removed. This exemption allowed sources choosing to improve control of particulate matter to increase SO2 emissions without the need for>additional S02 control. (See Statement of Basis, Authority and Purpose, March 10, 1983). This exemption is no longer allowed, since it is inconsistent with the Federal Act.

The language pertaining to interim PSD authority is deleted. The State received full authority on September 2, 1986.

Annual fee requirements are added to Section VI. This provision was added to Section 25-7-114(5)(a) of the Colorado Act on July 1, 1987.

Household use of paints and solvents is exempt from APEN and permit requirements. The Division classifies these materials as toxic air pollutants which would require permits if emitted in any amount. The Division does not have available resources to regulate this activity.

The six-month, 25 acre APEN and permit exemption clarifies that all mining operations must obtain a permit (unless exempt elsewhere).

Temporary sources operating less than one month may receive initial and final permits at the same time. The Division will thus avoid issuing final permits for sources that no longer exist. The Division has discretion to issue the permits separately if the operator or owner of the source or the source type has a history of compliance problems.

PM-10 NAAQS

This new standard replaces the Total Suspended Particulate (TSP) standard for Federal purposes only. The State is adopting the PM-10 requirements and is also retaining the TSP standard at least until the EPA approves our PM-10 State Implementation Plan. This will ensure that Reasonable Further Progress will be maintained in the interim.

The PM-10 standard is implemented under Section 110 of the Federal clean Air Act. The other criteria pollutants are regulated under Section 107, which includes provisions for designated nonattainment areas, emission offsets, and sanctions for areas where the standard is exceeded. Section 110 does not utilize nonattainment areas; it requires that the standard be met in all areas. The State regulations applied specifically to designated attainment and nonattainment areas. Since there are no PM-10 designated areas, reference to pollutants regulated under Section 110 is added in several places to ensure regulation of PM-10.

PM-10 sources that impact an area where the standard is exceeded are "major" if they emit 100 tons per year or more of PM-10. Such a source is then subject to PSD requirements (Section I.4.a). Such sources must also offset their impact to the degree which it exceeds the standard (as opposed to sources of other criteria pollutants, which must offset total emissions). Offsets will be required as part of the PSD source impact analysis, as necessary.

PM-l0 fugitive emissions are included when calculating potential to emit. (See discussion under Portions of the Colorado Act not allowed in Federal Act in this Statement of Basis, Authority and Purpose).

PSD increments are still regulated in the TSP form, therefore significant emissions and impact levels exist for both PM-10 and TSP. PSD will apply to TSP until the EPA promulgates PM-10 increments.

New definitions are added to the Common Provisions to differentiate between particulate matter, PM-10 and TSP.

The EPA has left regulation of minor sources to the state. Section IV.D.3.E is added to require minor sources locating in areas where the PM-10 standard is being exceeded to apply BACT.

The Commission had the option to add PM-10 monitoring "phase in" provisions. Methods and equipment are reasonably available, therefore, phase in is not necessary.

Corrections to typographical errors are made for significant ambient levels of beryllium, lead, and hydrogen sulfide. (Section IV.D.3.b.iii)

Revised Air Pollution Emission Notices (APENS)

Section II.B requires Revised APENS when a significant change in emissions occurs. The definition of net emission increase requires that a Revised APEN be filed to receive credit for decreases. Historically, the

Division has not received all of the APENS required. The April 1 deadline and calendar year requirement are added for clarification. The removal of a piece of equipment represents a significant change and the requirement for submittal of an APEN to cancel a permit is added for clarification. These clarifications will help the Division update the Emission Inventory System; proper credit will be received for emission decreases; and sources will avoid being charged an annual fee for equipment, which no longer exists.

The Regulation now requires all portable sources to submit revised APENS prior to relocating, regardless of the length of time at the new site. This helps the Division track sources in the event complaints are received.

Air Quality Related Value (AQRV) Monitoring

Section XIV.B.4.c limited the cost of AORV monitoring to 1/4 of the cost of the Additional Impact Analysis, including preconstruction monitoring. The Federal Land Managers testified that such a limit is not sufficient to provide even minimal AQRV monitoring. The limit is removed and the Division will determine economic feasibility on a case-by-case basis.

Section XIV.B.1. is revised to require joint monitoring among all major sources affecting an AQRV in the same Class I area. This will provide for ongoing, high quality data.

Waste Fuel Exemptions

Sections I.B.2.C.iii and IV.D.1.c.i (F) exempted switches to fuel derived from municipal solid waste from new source review. Due to the public's increased concern for toxic/hazardous emissions, many sources now undergo scrutiny for such emissions. All sources should be treated equally when proposing to burn municipal solid waste and should be required to apply the best control for reducing toxic/hazardous emissions. The exemptions for solid waste fuel are deleted.

Emission Reduction Credits

Revisions made to this portion of the Regulation are based on the Emission Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits as published in 51FR43814. That Policy set out general principles that EPA will use to evaluate emission trades under the Clean Air Act. The goal of that Policy is to create more flexibility for the states and industry to help meet the goals of the Clean Air Act more quickly and inexpensively. The purpose of Colorado adopting the salient points of that Policy is to create a generic regulation, which is acceptable to EPA, and thereby eliminate the need for a SIP revision for every banking or emission trading action. Other than clarifications and procedural changes the key changes to this portion of the Regulation include:

a. A greater than 20% discount will be taken in areas without approved SIPs. The discount will be based on the level of reduction in emissions needed in that area to achieve attainment status.

b. Added provisions for trading of PM-10, lead and NOx

c. Added new criteria for modeling to determine ambient equivalence of trades.

d. Shutdowns and curtailments in production emission reductions may be used for on-site replacement of equipment only.

e. Specify no credit allowed for reduction in emissions from mobile sources unless those sources were subject to ambient impact and new source review.

f. Credit for switching to a cleaner fuel is given only if a permit is conditioned to require control equipment to achieve the same reduction if the source switches back to the dirtier fuel.

I.H. Adopted September 15, 1998

"A Regulation Requiring Air Contaminant Emission Notices, Emission permits and Fees"

With the passage of HB 1372, 1st session of the 56TH GA, two stationary source fees were established for FY 1987-88. An annual compliance-monitoring fee of $60.00 per source was to be charged .to each permitted source. An hourly rate of $96.00 was to be applied to all permit processing time. After 1987-88 these fees were to be set by the Commission. These fees were to cover the "direct and indirect costs of such permit] processing. In establishing such fees, the Commission shall provide a higher per hour charge for permits which require five hours or more than for permits which require less than five hours to process; except that for the fiscal year 1987-88, the fee shall be ninety six dollars per hour for all permits. In addition to such fee for processing, the Commission shall establish and as necessary revise non-refundable annual fees for each emissions source covered by a stationary source permit sufficient to cover the direct and indirect costs of administration and periodic inspections; except that for the fiscal year 1987-88, the fee shall be sixty dollars per year for each emissions source."

The Division has performed a thorough analysis of the direct and indirect costs of the permit and compliance monitoring programs and has proposed fees to the Commission designed to meet statutory requirements.

Statutory Authority

The statutory authority for this regulation is Section 25-7-114.

Section VI - Fees

A. General

Paragraph 1 of this Subsection requires that all persons required to obtain an emission permit or file an air pollution emission notice pay fees sufficient to recover the direct and indirect costs of processing and issuing permits in accordance with the fee schedule shown in the Regulation. With this regulatory change, the following language was struck to be consistent with the statutory language: '...to include the reasonable costs of such processing or administration, and of enforcement of the permit provisions. Such costs shall include the cost of predictive model utilization when the use of such models is deemed necessary by the Division for proper evaluation of the permit application." Paragraph 2 is unchanged.

Sub-Sections B and C are unchanged

D. Annual Fees

Sub-Section D is changed by noting that the annual fees to be charged are in accordance with the schedule shown in the Regulation.

Fee Schedule

The fee schedule shows what the fees are for the hourly processing charge, the annual charge, and the APEN.

I.I. Adopted August 20, 1992

Revisions Concerning the Long-Term Strategy to Protect Visibility in Class I Areas (Section XV.F)

Authority

Colorado Air Quality Control Act

The Colorado Air Quality Control Commission's (Commission) authority to revise Regulation Number 3.XV.F, concerning the Long-Term Strategy Review of Colorado's State Implementation Plan for Class I Visibility Protection, is in the Colorado Air Quality Control Act. Relevant Sections are 25-7-102 Legislative declaration and 25-7-105(1)(a)(I) Duties of Commission.

Federal Clean Air Act

Additional authority for the Commission to make the regulatory revisions can be traced to the 1977 Amendments to the Federal Clean Air Act. Section 169(A) requires the federal Environmental Protection Agency to promulgate regulations that in turn require states to amend their State Implementation Plans (SIPs) to provide for Class I visibility protection - including a long-term strategy for making reasonable progress toward the national visibility goal. On December 2, 1980, EPA released final regulations to states detailing the specific requirements - including the development and periodic revision of a long-term strategy as specified by federal law.

Statement of Basis and Purpose of Changes to Regulation Number 3 Section XV.F.

Section XV.F.1.c.

Commission Regulation Number 3 required a Long-Term Strategy (LTS) review/revision report from the Colorado Air Pollution Control Division (Division) to the Commission every three years following the effective date of the regulation (November 1987). The August 1992 LTS report from the Division is late in arriving to the Commission. The purpose of the regulatory change is to clarify when subsequent LTS review and revision report cycles will occur. Without a regulatory change, the next LTS review would be due September 1993 - approximately a year from adoption of the August 1992 report.

In order to maintain the intent that a report is to arrive to the Commission, and ultimately EPA, at least every three years and to allow the Division to get back on schedule with a report to the Commission in approximately three years, Section XV.F.l.c. was altered.

Old language:

> (c) The Division shall prepare a report for the Commission on any progress made toward the national visibility goal since the last long-term strategy revisions. The report will be made available on September First of every third year following the effective date of this regulation. This report shall include an assessment of:

New language (changes underlined):

> (c) The Division shall prepare a report for the Commission on any progress made toward the national visibility goal since the last long-term strategy revisions. The report will be made available by September First at least every third year following the submittal of the previous report. This report shall include an assessment of:

Section XV.F.l.c.vii

EPA regulations (CFR Part 40 Section 51.306) require that the LTS be reviewed in seven areas. There was a discrepancy between EPA requirements and State regulations regarding the seventh item to be assessed. The purpose of the regulatory change is to bring Commission Regulation Number 3 into conformance with EPA requirements.

Old language:

(vii) The progress achieved in developing the components of the strategy.

New language (changes underlined):

(vii) The need for BART to remedy existing impairment in an integral vista declared since plan approval. I.D. Adopted November 19, 1992

I.J. Adopted November 19, 1992

Revisions to Regulation Number 3, Common Provisions and Regulation Number 7

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedure Act, C.R.S. 1973, Section 24-4-103(4) for adopted or modified regulations.

Basis

The EPA has identified portions of the State's Prevention of Significant Deterioration and New Source Review (PSD and NSR) rules, which do not conform to the Federal rules. The State rules must be at least as stringent as the Federal rules in order for the EPA to approve the State Implementation Plans. In addition, the State must revise the rules to include the addition of new requirements that were set forth in the 1990 Federal Clean Air Act. The EPA has also identified additional non-reactive volatile organic compounds, and a significant level for municipal waste combustor emissions. All of these revisions must be made for EPA approval.

The 1992 State Legislature revised the Colorado Clean Air Act to include new definitions and fee requirements. In addition, the revisions allow the Commission to make necessary revisions to the State's PSD and NSR rules, as described above.

Specific Authority

The specific authority for this regulation is contained in the Colorado Air Quality Control Act, 1992 as amended. Section 25-7-103 sets forth definitions for use in implementing the new Colorado Act. Section 25-7-105 (1)(A)(I) requires the Commission to adopt into the State Implementation Plan all requirements of the federal act. Sections 25-7-105(1)(c), 203, 204, 205, 206, 210 and 301 provide authority to adopt a PSD and NSR program in conformance with the Federal and Colorado Acts. Section 25-7-105.1 sets forth the Commission's authority regarding Federal enforceability. Section 25-7-106 (1)(c) provides authority for adopting regulations, which are applicable to entire state, or only within specific areas or zones, or only to a particular pollutant. Section 25-7-114.5 sets forth time frames for the Division to review permit applications, and procedures for owners and operators to demonstrate compliance with construction permits. Section 25-7-114.7 sets forth fee requirements. Commission action in promulgating these revisions is taken pursuant to Sections 25-7-105 through 25-7-109 and 25-7-114, C.R.S., as amended.

Purpose

New Source Review Rules

Regulation Number 3 contains the permit requirements for major sources (Prevention of Significant Deterioration, PSD and New Source Review, NSR). The Common Provisions Regulation contains definitions that are used in the permit requirements of Regulation Number 3. The PSD and NSR requirements and definitions must be equivalent to the Federal requirements. The EPA has identified the portions of Regulation Number 3 and the Common Provisions, which do not conform to the Federal rules. On October 17, 1991, the Commission adopted revisions to Regulation Number 3 and the Common

Provisions, to address some of the EPA's concerns. Additional concerns remained, however, because some of them could not be addressed until the Colorado Clean Air Act was revised. On May 27, 1992, the Governor signed Senate Bill 105, which revised the Colorado Clean Air Act to allow the Commission to proceed with the remaining necessary revisions to Regulation Number 3 and the Common Provisions. The new Colorado Act is effective as of July 1, 1992.

The 1990 Federal Clean Air Act revisions set forth additional revisions, which must be made to all State PSD and NSR rules.

The Commission has adopted the necessary revisions, which address the remaining EPA concerns regarding the State's PSD and NSR rules. These revisions are required to eliminate discrepancies between the State and Federal rules, and for approval of our State Implementation Plan. The required revisions are as follows.

Regulation Number 3

1. The regulation previously allowed sources of fugitive emissions to be exempt from the NSR and PSD requirements. The Federal Act does not allow the exemptions. Several Sections throughout the regulation needed to be revised or eliminated:

   Section I.E. - Eliminate the reference to the definitions of major stationary source and major modification from the definition of fugitive dust;

   Section I.B.3.e. and f - Eliminate the references to fugitive dust from the definition of major source;

   Section IV.D.3.b.(i)(B) - Eliminate the fugitive dust exemption from the PSD rules;

   Section XI - Eliminate the fugitive dust exemption from increment consumption requirements.

2. Section I.B.2, Section (vii) of the regulation allowed sources, which switched from oil or gas to a coal-derived fuel (shale oil) to be exempt from the PSD and NSR requirements. This is not allowed under the Federal Act, therefore (vii) is removed from the definition of major modification.

3. The new Federal Act requires major sources in nonattainment areas obtain to offsets from sources that are also located in the same nonattainment area, unless a source outside of the area contributes to nonattainment in the area in which the major source is located. Section IV.D.2.a(iii) is revised to add this new requirement.

4. The Federal Act does not allow major sources located in a "clean portion" of a nonattainment area to be exempt from the NSR requirements. Section IV.D.2.c.(ii) is revised to eliminate the clean portion of a nonattainment area exemption.

5. Section IV.D.3.e. required minor sources which contribute to the exceedance of an ambient air standard in a non-designated area (not designated attainment or nonattainment) to apply best available control technology. This requirement was previously adopted to comply with the EPA's interim policy for the PM-10 ambient air quality standards. The provision applied until the EPA was able to formally designate areas as attainment or nonattainment for PM-10. Now that the EPA has designated areas, the PSD and NSR (nonattainment) rules apply and Section IV.D.3.e. has been removed.

6. The regulation previously stated that certain permit conditions had to be removed from the permit upon issuance of final approval. The conditions on a final permit were limited to the list of items required to obtain a permit. The Federal Act requires that permits must contain all conditions necessary to ensure compliance with all applicable requirements, and any conditions necessary to make limits on production rates, hours of operation, the potential to emit, etc. federally enforceable. The language that limits the enforceability of permit conditions after Final Approval is removed from Section IV.E.

7. The Federal Act does not allow automatic approval of permits if the State fails to meet processing deadlines. The language that provides for automatic approval of permits if processing deadlines are not met is removed from Section IV.F. Likewise, confidentiality determinations do not affect the time constraints in the regulation. Section VII is revised to reflect this.

8. The new Federal Act does not allow reductions of pollutants required to meet any Act requirements to be credited for use as offsets. Language is added to Section V.E.9 of the State's Emission Reduction Credit rules to clarify this requirement.

9. The new Federal Act no longer limits the boundaries of Class I areas to those that existed in 1977. Section VIII is revised to eliminate this restriction.

10. The Federal rules state that if innovative technology is used by a PSD source, they are only exempt from the BACT requirements, not all of the PSD requirements, and that the consent of governors of other affected states must be obtained. Section XIII previously exempted such source from all PSD requirements. The Section is revised to clarify this allowance.

Common Provisions Definitions:

1. The EPA has added visible emission standards to applicable emission limitations under the definition of Best Available Control Technology. The State's definition is likewise revised.

2. Under the new Federal Act, Asbestos, Beryllium, Mercury, and Vinyl Chloride are now regulated under new hazardous pollutant requirements (Maximum Achievable Control Technology). These compounds are no longer subject to Prevention of Significant Deterioration (PSD) requirements (which would require Best Available Control). The definition of significant, which determines when a source is subject to PSD, is revised to omit these pollutants.

The Federal rules do not allow an exemption from PSD and NSR rules for right of ways, pipelines, etc. The definition of stationary source is revised to delete this exemption.

Non-Reactive VOCs:

On March 18, 1991, the EPA added five halocarbon compounds and four classes of perfluorocarbons to the list of organic compounds, which are negligibly reactive, and thus exempt from regulation as Volatile Organic Compounds under Regulation Number 3, the Common Provisions, and Regulation Number 7. In addition, the EPA revised the definition of Volatile Organic Compound.

The Non-reactive Volatile Organic Compound (VOC) list, as amended by the EPA, is incorporated into Regulation Number 3, Section IV.D.4, the Common Provisions (definition of Net Emission Increase, paragraph h.), and Regulation Number 7, Section II.B. The State is not allowed to take credit for controlling these compounds in our SIP. In other words, sources cannot use reductions of emissions of these compounds to offset VOC emissions, and we are not allowed to include emissions of these

compounds in our SIP inventory. The EPA has determined that these compounds do not react in the atmosphere to produce ground level ozone.

The EPA also revised the definition of "Volatile Organic Compound" to make slight clarifications. The definition in the Common Provisions and in Regulation Number 7, Section II.A.1. is likewise revised.

Municipal Waste Combustor Emissions Significant Level:

On February 11, 1991, the EPA promulgated New Source Performance Standards for Municipal Waste Combustors. In addition, the EPA promulgated "significant emission levels" for municipal waste combustor emissions. These significant levels are used to determine if PSD requirements apply to major sources.

The Commission revised the definition of "Significant" in the Common Provisions Regulation, to add the emission level for municipal waste combustor emissions. This addition is required in order to conform to the Federal PSD and NSR rules.

Senate Bill 92-105 Revisions

Senate Bill 105 revised the Colorado Clean Air Act. The new Colorado Act contains some new and revised provisions which are relatively simple and straightforward, and which could therefore be easily adopted into Regulation Number 3 and the Common Provisions at this time. These particular revisions were adopted to facilitate transition from the old Act to the new Act, and to eliminate confusion that could occur due to differences between the new Act and the existing regulations. The proposed revisions are as follows.

Regulation Number 3

1. Sections IV.B.3, 4 and 5 - The new Act gives the Division 60 days (instead of the previous 20 days) to determine if an application is complete. In addition, the Division has 12 months to complete the application process for PSD construction permit applications (previously limited to 135 days).

2. Section IV.C.1.c - Change the reference date for the definition of hazardous pollutant. A new definition has been adopted in the new Act. The definition includes the list of 189 chemicals from the Federal Act, and an additional list contained in the Colorado Act.

3. Section IV.H - Change the procedures for granting of final approval construction permits. Previously, the Division had only 30 days once a source commenced operation to inspect the source to determine that all permit conditions were being met. The source now has 180 days to demonstrate compliance. Also previously, the Division could allow a source additional time to come into compliance before Final Approval was issued. Now the Division must grant Final Approval or revoke the permit.

4. Section VI - The new Act sets forth new fee schedules for permits, annual fees, and APENS. The permit fees have changed from a schedule based on the type of facility to $50 per hour for all applications. The Division cannot exceed 30 hours in processing time unless the applicant is first notified that 30 hours will be exceeded. The annual fees are no longer based on the number of sources at, or the size and complexity of a facility. Instead annual fees are based on actual emissions. The APEN fee has changed from $60 to $75 for fiscal year 92.

Common Provisions

1. Section I.C - Incorporates the new Legislative Declaration of the new Act. The new declaration adds to the existing declaration that an accurate emission inventory is necessary for implementation of the air quality requirements.

2. Incorporates the new Acts definition of Air Pollutant. The definition is the same as previous except that precursors are now also considered" air pollutants." Precursors can be emissions such as nitrogen and sulfur oxides, which can contribute to particulate matter emissions.

3. Revise definition of Emission Control Regulation. The new definition is the same, except such regulations can now include work practices and design, equipment, and operational standards. In addition, such regulations that apply to hazardous pollutants must be consistent with the new Act requirements concerning hazardous pollutants.

4. Revise definition of Federal Act to reference 1990. (Previously referenced 1977.)

5. Revise the definition of Federally Enforceable to indicate that the Division has authority to issue permits to synthetic minor sources.

6. Revise definition of Hazardous Air Pollutant. The new definition includes the pollutants listed under the Federal and Colorado Acts.

7. Refers to Adverse Environmental Effect, therefore this definition is added.

8. Add definition of Ozone Depleting Compound. The fee schedule requires the Division to charge fees for emissions of such compounds, therefore the definition is added. I.E.

I.K. Adopted June 22, 1993

Revisions to Regulation Number 3 Regarding Construction Permits

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedure Act, C.R.S. 1973, Section 24-4-103(4) for adopted or modified regulations.

Basis

The Colorado Clean Air Act requires stationary sources to report their emissions, obtain construction permits, and be subject to public notice before construction occurs. The Commission has authority to exempt sources from these requirements, if the sources do not have a significant adverse impact on air quality. Regulation Number 3 has been in effect for approximately twenty years, and contains exemption lists for APEN and permit requirements. Based on twenty years of experience, the Commission believes it is appropriate at this time to revise the exemption lists to include additional sources, which do not adversely affect air quality in Colorado. In addition, it is appropriate to revise the public notice requirements to address the sources for which is public comment is most likely to be received.

The 1992 State Legislature revised the Colorado Clean Air Act to include new provisions concerning non-criteria pollutants. The Commission needs to address these provisions and revise the APEN reporting, permitting, and public notice requirements regarding these pollutants.

A technical revision must be made to the definition of "significant," contained in the Common Provisions, to address major sources in nonattainment areas, as required under the Federal Act.

Specific Authority

The specific authority for this regulation is contained in the Colorado Air Quality Control Act, 1992 as amended. The Legislative Declaration, Section 25-7-102, recognizes that an accurate emission inventory is needed in order to adequately manage air resources in Colorado. Section 25-7-105 (1)(A)(1) requires the Commission to adopt into the State Implementation Plan all requirements of the federal act. Sections 25-7-105(l)(c), 203, 204, 205, 206, 210 and 301 provide authority to adopt a PSD and NSR program in conformance with the Federal and Colorado Acts. Section 25-7-105(12) provides authority to adopt regulations to implement the emission notice and construction permit programs. Section 25- 7-106 (1)(c) provides authority for adopting regulations, which are applicable to the entire state, or only within specific areas or zones, or only to a particular pollutant. Section 25-7-109.3 provides authority for regulating non-criteria pollutants. Section 25-7-111 provides authority for the Division to administer regulations adopted by the Commission. Section 25-7-114.1 provides authority for requiring APENS, and for allowing exemptions from the requirement. Section 25-7-114.2 provides authority for requiring construction permits, and for allowing exemptions from the requirement. Section 25-7-114.5 provides authority for requiring public notice of construction permits. Commission action in promulgating these revisions is taken pursuant to Sections 25-7-105 to -109 and 25-7-114, C.R.S., as amended.

Purpose

Definition of "Significant"

The Common Provisions Regulation contains definitions that are used in the Prevention of Significant Deterioration (PSD) and New Source Review (nonattainment, NSR) permit programs of Regulation Number 3. The PSD and NSR requirements and definitions must be equivalent to the Federal requirements. The definition of significant lists emission levels at which modifications at major sources become subject to the PSD and NSR requirements. Currently, the language in the definition indicates that the emission levels only trigger PSD requirements. The definition is changed to indicate that the levels also apply to the NSR nonattainment rules.

APEN Requirements - General

This language is revised to clarify what emission estimates must be included in an APEN (actual emissions for annual fee purposes, and requested amount for permit limits). In addition, language is added to clarify that a source need not perform a stack test for the sole purpose of providing an APEN emission estimate. Other acceptable estimation methods are usually available for APEN purposes. In some instances, it is possible that an emission factor may supply a more accurate estimate than mass balance calculations, and vice versa. In such cases, a source may choose to use either mass balance, or emission calculations. If the Division believes that estimates can be better made using the method of these two that the source does not choose, the Division may question that source regarding the choice. The emission estimate included in an APEN is not required to be an exact calculation of emissions, but rather the source's best estimate, to the extent practical, of emissions. As stated in the Legislative Declaration of the Colorado Air Quality Control Act, the APEN information is to be used to achieve the most accurate and complete inventory possible, and to provide for the most accurate enforcement program achievable based upon that inventory.

The Colorado Clean Air Act states that APENs are valid for five years, unless a significant change in emissions occurs. This provision is added to the regulation.

Language is added to clarify that each unit is considered to be a "source" for APEN purposes, unless similar sources can be grouped together.

Emission calculations for purposes of determining if a de minimis emission level is triggered will be based on actual uncontrolled emissions. Sources will not be allowed to take credit for control devices in the de minimis calculation because the Commission has no method of determining if the control equipment will be used, or used continuously and properly.

The Commission believes there may be cases where the source demonstrates that it is not feasible to estimate the control efficiency of a device for non-criteria pollutants. In such instances, the Commission gives the Division discretion to allow the de minimis level to be triggered based on actual, instead of uncontrolled actual, emissions. New language is added regarding non-criteria pollutant APEN requirements.

Revised APEN Requirements

The Colorado Act requires revised APENs to be submitted whenever a "significant change" in emissions occurs. The significant levels for criteria pollutants remain unchanged from the previous regulation, except that a significant level has been added for lead emissions. For non-criteria pollutants, the significant change level is set at 50% or five (5) tons per year, whichever is less.

Sources should note that APENs must be submitted if the source begins to emit a pollutant which was previously not included on an APEN. Also, the Commission may add pollutants to the list of non-criteria reportable pollutants. When chemicals are added, the Commission will determine the schedule for submitting new or revised APENs to report the new pollutant emissions.

NOTE: Significant change criteria are used to report changes in emissions for inventory purposes only. If a planned change in emissions requires a new permit, or modification of an existing permit (violates an emission limit, triggers PSD or NSR), then an APEN must be filed and the permit must be revised before the change at the facility occurs.

Revised APENs for emission updates must be submitted by April 30 of the following year. The EPA requires states to update the emission inventory by July 1 of each year, to include the previous year's emissions (Code of Federal Regulations, 40 CFR 51.321). The Commission believes the April 30 date should give sources enough time to compile their inventory, and will also give the Division enough time to update the system by July 1. Sources should plan ahead and have as much of their inventory completed as possible before the end of the year. In this way, the source would then only need to add December, or at worst information for the last couple of months of the year, to the data in order to meet the April 30 deadline.

Revised APENs are required when a change in the type of control equipment being used is made. This allows the Commission to ensure that the new control equipment will meet the applicable requirements, and to verify that actual emissions have decreased or increased due to the use of the new equipment. Oftentimes, stack tests are required to ensure that control equipment meets applicable requirements. A change in the control equipment can affect this compliance determination. Revised APENs will not be required for routine maintenance, repair and replacements. These routine activities should not affect the effectiveness of the equipment.

Permit applications must include an APEN on which the owner or operator indicates what production or emission level the source wishes to be permitted at. Any desire to increase the permitted emission level requires the submittal of a revised APEN, so that the Division can evaluate the change against the regulations before modifying the permit.

Portable Facilities

Revised APENs are no longer required when a portable source changes location. The Commission does not believe it is reasonable to charge the APEN filing fee each time a source moves. Portable sources will still be required to notify the Division at least ten (10) days before relocating. This allows the Division to be aware of a source's location if any concerns regarding the source are raised by the public.

Emergency and Backup Generators

Electric utilities may use emergency or backup generators to ensure that blackouts do not occur in the electrical grid. These units are usually operated instead of, or for short periods in addition to, main utility boilers. Facilities that include the main boilers are usually major sources, and therefore have a major source construction permit, or will in the future have a major source-operating permit. Once the facility is covered under one of these permits, the Commission sees no need for the owner or operator to submit annual updates regarding the emissions from the emergency units.

Other emergency units are not located at the main unit facility, but are located individually in the field. These units will most likely obtain a synthetic minor permit to avoid major source permit requirements, since operation is usually intermittent. Once such sources obtain a synthetic minor permit, the Commission again will not require the source to submit annual emission updates.

APEN Requirements - Non-Criteria Pollutants

There are 363 non-criteria reportable pollutants. The Commission divided the pollutants in two major groups: those that are required to be reported in 1993, and those that have to be reported in 1994 and subsequent years. There are also two groups of chemicals (Radionuclides and Polycyclic Organic Matter) whose reporting requirements were postponed until such time as the Commission determines that they can be accurately quantified and reported.

APEN Requirements - De Minimis Levels

All de minimis levels are based on uncontrolled actual emissions (except where the control efficiency cannot be estimated), as discussed above under General APEN Requirements.

APENs are required of sources in attainment areas when the emissions of any criteria pollutant from a source exceed two tons per year (except for lead).

Sources in nonattainment areas must file when emissions of any criteria pollutant exceed one ton per year. Note that the pollutant being emitted above the de minimis level does not have to be a nonattainment pollutant. Any pollutant triggers the one-ton per year level, regardless of the pollutant's attainment designation.

Because the area is a growth area, and inversions occur in the area, a Grand Junction group requested that APENs be filed when emissions of any criteria pollutant exceed one ton per year. The Commission determined that hearings should be held in the Grand Junction area, and that Grand Junction should pursue their own rules. Language that would have treated Pueblo likewise is not included, due to requests from industries in Pueblo, and the Pueblo County Health Department.

The de minimis level for lead in all areas is 100 pounds per year.

For non-criteria pollutants, the Commission assigned each pollutant to one of three "bins" based on information concerning the health effects of the pollutant. The Commission also developed a series of three scenarios for an emission point based on the release height of the pollutant and the distance from the release point to the property boundary. The resulting three by three grid as well as instructions on how to apply it can be found in Appendix A. Note that future actions by EPA may effect the de minimis reporting levels for certain chemicals that appear on the EPA list of 189 toxic chemicals.

APEN Requirements - Exemption List

Numerous new source categories have been added to the APEN exemption list. Each category was examined for its impact on air quality in Colorado before being added to the list. Each category that was added is believed to have a negligible impact on air quality.

The source category exemptions override the de minimis levels. Sources that fit into the category are exempt, even if emissions exceed the de minimis levels.

Each category will not be addressed individually in this statement, however the following categories deserve specific comment.

Fires and equipment used for cooking of food for human consumption: Not all cooking equipment has been exempted in this category. The Commission has concerns regarding equipment in which grease from the food being cooked comes into contact with the flame of the equipment, thus leading to potential opacity and particulate matter problems. This is especially of concern in PM-10 nonattainment areas. This exemption applies only to noncommercial cooking and to food service establishments, such as restaurants and cafeterias. The exemption does not apply to manufacturing facilities.

Fuel burning equipment: The design rate cutoff for fuel burning equipment has been raised from 750,000 BTU/hour to 5 MMBTU/hour. The fuel use is still restricted to gas, and does not include oil or coal, since the latter two fuels may result in significant sulfur dioxide emissions. Fuel burning equipment which uses gaseous fuel and which is used solely for building heat is exempt if the design rate is below 10 MMBTU/hour. The Commission has determined that the emissions from the exempted unit, based on EPA AP-42 emission factors, are negligible.

Chemical storage areas where chemicals are stored in closed containers...: This exemption only applies to the storage of chemicals at qualifying facilities. The exemption does not include facilities where chemicals are loaded into or out of, or transferred between, storage containers. Bulk storage tanks would not qualify for this exemption, since often the material is loaded and unloaded, and such tanks have vents from which emissions occur due to breathing losses. See Sections II.D.1.n., ee., uu., ddd. and fff. for storage tank exemptions.

The Commission will require APENs only for pollutants that are defined as “criteria” pollutants or "reportable non-criteria" pollutants (HAPs, CFCs, SARA 313). Any other pollutants such as carbon dioxide, methane, nitrogen, oxygen, do not require APEN submittals.

Aerosol Can Usage: There may be instances where a source may exclusively use large amounts of aerosol cans, or may use large amounts in addition to other processes. The Commission expects that these instances will be rare. If the Division, a local agency, or others discover such a source, and if the source emits amounts of pollutants, which are believed not to be negligible, such concern can be brought before the Commission as a request to require such source to file APENs and/or obtain a permit. (See discussion under "Adding and Deleting Exemptions," below)

Odorous emission sources: This exemption only applies to odor emissions, and not to any other emissions of criteria or non-criteria pollutants, which may be associated with the odor. This exemption does not absolve any source from the requirements of Regulation Number 2 (regarding odor limits). <u>If a source emits any pollutant that is above an APEN de minimis level, the source must file an APEN, regardless of odor.</u>

Portable 5 mm btu/hour engines: One party requested that these sources be exempt from APEN and permit requirements. The Commission has determined that sufficient evidence is not available to indicate that emissions from these sources have a negligible impact on air quality in Colorado, therefore they are not exempt until such evidence is forthcoming.

Laboratory equipment and pilot plants: The subcommittee for these rule revisions held extensive discussions regarding exemptions for laboratory equipment and pilot plant activities. More work is needed to define these activities, determine if the emissions are negligible, and if such activities should be exempt from APENS, permits, or both. The Commission recommends that subcommittee discussion of this issue continue, and that it be addressed when Regulation Number 3 is revised to include the Title V operating permit rules (currently scheduled to occur in July of 1993).

Adding and Deleting Exemptions

The Commission has delegated authority to the Division for adding source categories and activities to the APEN and permit exemption lists. If any person believes that a source category or activity should be removed from the exemption lists, because it is discovered that emissions have an impact on air quality or health that is not negligible, such person may at any time go before the Commission to request that such source category or activity be required to file APENs and/or obtain permits.

Oil and Gas Exploration Activities

Oil and gas exploration activities are activities for which it is difficult for the owner or operator to estimate what emission equipment will be required, and therefore what emissions will occur, until the exploration activities are already underway, and near completion. For this reason, the Commission has extended a temporary exemption from APEN and permit requirements for such activities. Before commencing exploration activities, the source must notify the Division. In this way, the Division is aware of the activities and will be able to address any concerns that are raised by the public. Once an owner or operator has determined that an oil or gas well will be produced, and has filed well completion information, the owner or operator must file an APEN and a permit application within 30 days of that completion filing. The permit application must indicate what regulations are applicable to the source, and how compliance will occur, until the construction permit is issued. This helps the source and the Division to ensure that air pollution regulations are being met. If the well will not be produced, the source must notify the Division so that the Division does not expend resources following up on unproduced wells.

APEN Reporting Deferrals for Source Categories

Due to ongoing studies aimed at quantifying their emissions of non-criteria pollutants, the Commission has deferred APEN reporting requirements for five source categories until six (6) months after the studies have been completed or December 31, 1994, whichever is earlier. The categories are industrial boilers, municipal wastewater treatment plants, publicly owned water treatment plants, municipal power generators of less than ten (10) megawatts, which operate for 250 hours or less per year, and natural gas glycol dehydration units. The EPA is conducting studies regarding the first four categories. The oil and gas industry is conducting studies to quantify emissions from dehydration units. This study is currently underway and is expected to be completed in the near future.

In addition, sources which are not undergoing study, but which believe sufficient information is not available for estimating their non-criteria pollutant emissions, may petition the Division for deferral of those emissions until sufficient information is available.

HAP Permit Requirements

Of the 363 non-criteria pollutants/compounds, 330 are defined as hazardous air pollutants (HAPs). Sources emitting HAPs are required to obtain permits if they are subject to Colorado MACT or GACT or the Federal Title III or Title V provisions.

Synthetic Minor HAP Sources

Some parties to the hearing requested that sources which emit HAPs be allowed to avoid future Maximum Achievable Control Technology (MACT) and operating permit requirements by obtaining "synthetic minor" permits. These permits would contain federally enforceable limits, which would keep emissions below the levels, which trigger the MACT and operating permit requirements. The Colorado Act appears to restrict synthetic minor permits to criteria pollutants only. The subcommittee recommended that this issue be deferred to the HAP subcommittee, which will meet in the near future to address Colorado MACT and other HAP issues. Synthetic minor permits for HAP sources are therefore not addressed in this revision.

Permit Transfer of Ownership

The party to which a permit is issued, whose name is included on the permit, is legally responsible for ensuring that all conditions and terms in the permit are met. The permit must contain the correct legal name, reflecting the correct responsible party, in case an enforcement action needs to be taken. In some cases, the legal name of a company may change, while no modifications are made to the equipment. In such cases, the source need only file a single APEN indicating the change. In all cases, the Division must have on file an application and APEN form with the correct name of the responsible party, and including the signature of the person legally responsible for the information.

Permit Requirements - De Minimis Levels

Permit de minimis levels for criteria pollutants have been increased. Levels differ based on the attainment status of the area. As for the APEN de minimis levels, the nonattainment area levels are triggered by any pollutant, not just the nonattainment pollutants.

Language, which would have set permit levels for the Grand Junction area lower than the levels for attainment areas, was not adopted. See discussion above under APEN de minimis levels.

Emissions are compared against the de minimis levels by adding emissions from all sources at the facility that are required to file and APEN. In some cases, a source may initially be below the de minimis levels, but as new units are added to the facility, the de minimis level is eventually exceeded. At such time that addition of new units causes the permit de minimis level to be exceeded, the source must file a permit application for all units at the facility.

Permit de minimis levels for sources of HAPs will be set at the time that the MACT or GACT for that source category is determined.

Permit Requirements - Exemption List

A few new source categories have been added to the permit exemption list. As for APENs, the source category exemptions override the de minimis levels.

Domestic wastewater treatment works: This exemption applies only to treatment facilities which handle wastewater strictly from domestic homes, or wastewater that is similar in nature. It does not include facilities that treat wastewater from municipalities or other sources. The facility may be publicly or privately owned. Wastewater other than domestic wastewater, including municipal wastewater, may contain contaminants from industry and other sources which would result in emissions which are much more significant than the emissions from domestic wastewater.

Fuel burning equipment: Fuel burning equipment with a design rate less than 10 MMBTU/hour, using natural gas as a fuel, are exempt from permit requirements because this is the rate at which the New Source Performance Standard for small boilers is applicable (Regulation Number 6).

Surface Mining Activities: 70,000 tons per year is the production rate at which the Mine Land Reclamation Bureau exempts mining operations from MLRB permit requirements. Oftentimes, these small operations are only temporary, in order to provide material for highway construction projects. The source has often ceased operation before an Air Pollution Control inspector can visit the source to determine compliance. Crushers, screens and other processing equipment are not exempt because these activities may be subject to specific air quality emission limit regulations.

Applicable Requirements Override APEN and Permit Exemptions

To ensure that sources comply with all applicable air quality regulations, an APEN or permit exemption may not be used if taking the exemption would allow a source to avoid any air quality regulation

requirements. This provision applies to the source category exemptions and to the de minimis level exemptions. For example, a source may not claim that it is exempt from permit requirements because it has numerous sources, which are below a de minimis level, if the potential emissions from those sources would exceed the PSD major source limit of 100 or 250 tons per year. In such a case, the source would be required to apply for a PSD permit, or must obtain a permit to limit its potential to emit. In order to limit potential to emit, the permit must contain federally enforceable conditions, which limit the physical or operational capacity of the source so that emissions are below the 100 or 250 ton per year level.

Sources, which are subject only to the opacity or general fuel burning and manufacturing requirements of Regulation Number 1, may take any applicable exemption. Likewise, sources, which are subject to the general RACT requirements (but not the specific RACT requirements) of Regulation Number 7, and sources, which are subject to the current Regulation Number 8 provisions, may take any applicable exemptions (i.e., they are exempt if their emissions are below de minimis levels). RACT for sources that would qualify for the APEN exemptions is usually "no control."

Similarly, sources which are subject only to Regulation Number 1 opacity, general fuel burning, and general manufacturing requirements are exempt from permit requirements. Sources which are subject to Regulation 7, but which must adopt only work practice standards, are exempt from permit requirements if their emissions fall below the de minimis level (two tons per year of VOC). Sources, which are subject to State-only requirements of Regulation Number 8, are exempt from permit requirements.

Regulation Number 1, 7 and 8 sources, which take APEN or permit exemptions must still meet the regulation requirements, even though an APEN or permit is not required. The provisions that would apply to these sources are straightforward and can therefore be easily enforced by the Commission through the regulation, without requiring a permit.

Public Notice Requirements

The criteria pollutant emission level at which a source in an attainment area must go to public notice has been increased from 25 to 50 tons per year (except for lead). In nonattainment areas, the level remains at 25 tons per year. Lead sources are required to go to public notice when the emissions exceed 200 pounds per year. The Commission has determined that raising these levels will not impact the number of public comments the Division receives. Any source requiring a permit for HAPs is required to go to public notice.

Note that Section I IV.C.3 provides that the Division may require any source to be subject to public comment, if it is determined that such source warrants public comment. The EPA requires that all sources subject to PSD or NSR go to public comment. In addition, in order to make limits on potential to emit federally enforceable, permits containing such limits must go to public notice. At this time, the Commission will use this Section to ensure the EPA requirements are met. Language will be added to clarify these requirements when the next revision to Regulation Number 3 occurs (currently scheduled to occur in July of 1993).

I.L. Adopted July 15, 1993

Revisions to Regulation Number 3

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedure Act, C.R.S. 1973, Section 24-4-103(4) for adopted or modified regulations.

Basis

The 1990 Amendments to the Federal Clean Air Act requires states to implement an operating permit program. This program is applicable to certain sources, and requires the sources to obtain detailed permits, which are to be renewed every five years.

Failure of a state to implement an operating permit program will result in EPA sanctions, such as loss of highway funds and increased offset requirements for sources wishing to locate in Colorado nonattainment areas. In addition, the EPA may implement the operating permit program if a state fails to implement a program.

The existing construction permit program will continue to exist, however changes have been made to the program so that the two permit programs (construction and operating) compliment each other.

Specific Authority

The specific authority for this regulation is contained in the Colorado Air Quality Control Act, 1992 as amended. Section 25-7-105(1)(A)(I) requires the Commission to adopt into the State Implementation Plan all requirements of the federal act. Sections 25-7-105(12) provide authority to implement the operating permit provisions of Title V of the Federal Act. Section 25-7-105.1 sets forth federal enforceability provisions. Section 25-7-106(6) provides authority for monitoring, recordkeeping and reporting requirements, Section 25-7- 109.3 provides authority for regulating hazardous air pollutants (HAPs). Section 25-7-111 provides authority for the Division to administer regulations adopted by the Commission. Section 25-7-114.1 provides authority for requiring APENS, and for allowing exemptions from the requirement. Sections 25-7-114.2 through 114.5 set forth construction and operating permit requirements, and application and public participation requirements. Commission action in promulgating these revisions is taken pursuant to Sections 25-7-105 to -109 and 25- 7-114, C.R.S., as amended.

Purpose

NOTE: Subcommittee documents, which discuss the issues and decisions regarding this regulation in detail, and provide fact sheets for various provisions, are available at the Division and Commission offices.

I. Operating Permit Program:

A. Who is subject to the Operating Permit Program?

1. Definition of Air Pollutant

Sources with potential to emit* 100 tons per year of any air pollutant must obtain an operating permit (these sources are referred to as 'major sources"). For purposes of the operating permit program, air pollutant means any pollutant for which an ambient air quality standard has been set (and their precursors), any pollutant which is regulated under the New Source Performance Standard regulations (NSPS, Regulation Number 6), any Class I or Class II ozone depleting compound, and any hazardous air pollutant (all HAPs listed in either the Federal or Colorado Acts).

The Commission has determined that it is not appropriate to use the Colorado Act definition of air pollutant for operating permit purposes. The Act defines air pollutant as being any substance emitted to the ambient air, except for water vapor. Since many substances occur naturally in ambient air, and others will never be subject to any air regulations, operating permits are not needed for emissions of such pollutants.

Major sources of any air pollutant as defined for operating permit purposes must obtain an operating permit, even if no specific standard has been set for the particular air pollutant (see further discussion under "regulated pollutant," below).

2. Major HAP Sources

Sources, which have potential to emit 10 tons per year or more of a single HAP or 25 tons per year or more of a combination of HAPs, are considered" major sources," and must obtain an operating permit, even if no standard for the HAP has yet been set.

Major sources of Colorado HAPs must obtain an operating permit. Permit conditions related to Colorado HAPs will be treated as state only conditions (see further discussion below).

*See definition of potential to emit, Part A of this regulation. Potential emissions are calculated assuming the source operates continuously, at full design rate, using no pollution control equipment. See additional information and details in subcommittee papers (Group D, Synthetic Minors Issue Paper and Fact Sheet).

3. Fugitive Emissions

Fugitive emissions must be included when determining if a source is major for HAPS. Fugitive emissions must be included when using the 100-ton per year threshold (to determine if the source is major) if the source is listed, or if the source and pollutant is subject to any NSPS or Title III regulation.

Fugitive emissions must be included as required for the Prevention of Significant Deterioration (PSD) and nonattainment new source review (NSR) programs.

The Commission has not included language, which exempts fugitive dust sources from the major source definitions at this time. Further investigation is occurring regarding HAP emissions from such sources, and discussions with EPA will continue to determine how to treat such sources. Once these activities are completed, the Commission will consider this issue.

4. Applicability Determinations

Sources are ultimately responsible for determining if they are subject to operating permit requirements. The Small Business Assistance Program is available to assist small businesses in understanding the requirements, in determining applicability, and in complying with the requirements. No "applicability determinations" are available for other sources. The Division must recover the cost of implementing the operating permit program. Time spent reviewing informal requests for applicability determinations would not be recovered. Sources who believe they are subject to the operating permit program should file an application. During the sixty-day completeness determination, if the Division discovers that the source is not subject to the operating permit requirements, the source will be notified. In addition, if the source has obtained a construction permit, it will most likely have been determined then if an operating permit is required. Also, preapplication meetings with the Division are available to sources. All time spent by the Division in reviewing applications will be charged to the source.

5. Synthetic Minor Sources

Existing sources are subject to the operating permit requirements. Some existing sources may want to obtain federally enforceable limits on their production rates or hours of operation, or emission limits in order to avoid the operating permit requirements (known as synthetic minor sources because such limits are needed to make them minor). Construction permits can be obtained to keep emissions below the major source thresholds. Some existing sources do not have

construction permits. Others may have construction permits, which do not currently limit emissions below the major source thresholds. Sources may avoid the operating permit requirements by obtaining an emission-limiting construction permit before they are required to apply for operating permits. Sources must obtain a synthetic minor construction permit before the November 1994 due date, or before one year after EPA program approval, whichever applies (see discussion below). If a synthetic minor permit is not obtained before the applicable date, an operating permit application must be submitted.

The Division will review all existing construction permits over a period of time as resources allow, to determine if the existing permits are federally enforceable. In the interim, the Division will assume that all previously issued construction permits are federally enforceable.

New sources may likewise obtain synthetic minor construction permits before they construct in order to avoid the operating permit requirements. All synthetic minor permits must go to public notice in order to be federally enforceable (see discussion below).

"Once in always in" does not apply to the operating permit program (however it does apply to the PSD program). If a major source has an operating permit and reduces its emissions below major source levels, the source may apply for a synthetic minor permit in order to cease being subject to operating permit requirements.

6. Minor Source Exemption

The EPA allows states to give minor sources subject to existing New Source Performance Standards (NSPS) a five-year deferral from the operating permit requirements. Within five years of the approval of any State program, the EPA will determine if the deferral should be extended further, or if some or all minor sources should be permanently exempt from operating permit requirements. If the EPA first approves any State program in November of 1994, this means that minor sources may be exempt until November of 1999. The EPA will decide if minor sources subject to new MACT or GACT (Maximum or Generally Available Control Technology) standards and NSPS should be exempt on a case-by-case basis as the new rules are promulgated.

The Commission has exempted existing minor NSPS sources from the operating permit program at this time. New NSPS and MACT standards will be adopted by the Commission as EPA promulgates them, and at such time, the Commission shall determine operating permit applicability.

7. Voluntary Operating Permits

Any source which is not required to obtain an operating permit (minor sources) can request an operating permit, if desired. An operating permit allows minor sources to obtain the operational flexibility and permit shield provisions allowed in the operating permit program (note, however, that most of the operational flexibility provisions are available under the construction permit program, see discussion under construction permit program Section). The operating permit will replace the source's construction permit. A construction permit is a SIP requirement, and conditions in the construction permit are federally enforceable (except for state only conditions). All conditions in the operating permit must therefore be federally enforceable. Operating permits, which are issued to

sources voluntarily applying, will be subject to all of the operating permit procedural requirements (public notice, EPA review, etc.).

B. When is operating permit applications due?

1. Existing Sources

The federal act allows states to phase in processing of existing source applications over a three-year period. One third of the applications must be acted upon within each year after EPA approves the state's program. The program will be submitted to the EPA by November 15, 1993. The EPA has one year to approve the program, therefore the Division must begin processing applications beginning November 15, 1994.

The Commission has directed the Division to divide the existing sources into thirds. One third of the existing sources must submit their operating permit applications by November 15, 1994. The Division will use the new APEN information to identify the first third, and will notify the first third by November 15, 1993. The first third will consist of the least complex sources. The least complex sources should find it easier to prepare their operating permit applications, and the Division should find it easier to process these applications first. The Division will be able to identify any problems with the review procedures, etc. during the first year.

NOTE: The Division cannot issue an operating permit until the EPA has approved the program and is thus ready to begin receiving permits for review. The Division will therefore "hold" applications processed during the first year until the EPA is ready to accept them for review. Once EPA has reviewed and approved the permits, the permits can be issued.

The remaining existing source applications will be due one year after the EPA approves the state's program. The Division will provide notice of the EPA approval date and sources are responsible for submitting their applications on time.

The Division must determine if each application is complete within 60 days of receipt. This may not be possible during the three-year phase in, as many applications will be received at once. The Division will make its best effort to make the completeness determination for all permits within 60 days. If the Division fails to do this, the application shield applies, and the Division cannot enforce against the source for failure to have a complete application on file. The Federal rule provides, however, that the Division has the authority to ask for additional information at any time during the process, and to set a reasonable date by which the information must be submitted. If the source fails to submit the additional information by the due date, the application shield no longer applies. The Commission is confident that under these provisions sources and the Division can effectively work together to ensure that applications are processed in a timely fashion.

2. New Sources and Relationship to the Construction Permit Program

New sources that wish to locate in Colorado must obtain a construction permit, or a combined construction/operating permit before commencing construction. The source may choose to obtain a construction permit or a combined permit.

Sources that choose to obtain a construction permit must apply for a construction permit according to the provisions of Part B of this regulation. Once a construction permit is obtained, the source can commence construction and begin operating. Within 180 days of commencing operation the source must undergo a "final approval" inspection to demonstrate that all permit conditions are being met. Within 12 months of commencing operation, the source must apply for its operating permit. Once a complete operating permit application is submitted, the source can continue to operate under its construction permit until it receives its operating permit.

Sources that choose to obtain a combined construction/operating permit must apply for such permit before commencing construction. The application for a combined permit must contain all of the required information for an operating permit. The Division will issue the permit, which will essentially be an operating permit. The source can then commence construction and operation. Within 180 days of commencing operation, the source must demonstrate compliance with all permit conditions (this 180 day requirement will be a permit condition, and the appropriate hourly processing fee will be charged for the associated inspection). The source continues to operate under its operating permit and no further action is required until permit renewal.

The procedures for obtaining construction permits are not as intense as those required to obtain an operating permit. More extensive public and EPA participation is required in the operating permit process. In addition, more information and requirements must be incorporated into an operating permit than into a construction permit. Nevertheless, it may be advantageous for sources to combine the processing of these two types of permits in order to avoid duplication of effort.

The advantage of a combined permit is that an additional application step is avoided. Sources should note, however, that an operating permit application requires more specific information regarding compliance monitoring, recordkeeping, etc., than a construction permit application. Sources that choose to obtain an operating permit before construction must be able to supply all of the required information for a complete operating permit application.

Sources that choose to obtain an operating permit before construction will be subject to the operating permit timeframes for processing instead of the shorter construction permit timeframes. Construction permit applications can take up to 90, 135, or 365 days, depending on type and size of source. Operating permit applications can take up to 540 days. Construction permits require public notice and opportunity for comment only for sources emitting more than 25 or 50 tons/year of any criteria pollutant, and requires opportunity for public hearing for Prevention of Significant Deterioration (PSD) sources only. The operating permit program requires public notice and opportunity for hearing for all sources. If the programs are not combined, a source may have to undergo public notice twice, once under each process. PSD sources may have to undergo public hearings twice. The EPA only reviews certain applications and draft permits under the construction permit program, and usually does so during the public comment period. The EPA is allowed 45 days to review draft operating permits near the end of the process, and then the Division has 90 days to revise the permit, if necessary.

Sources should consider carefully their confidence in their ability to operate as expected or planned after construction before choosing to obtain a combined permit.

3. Application Shield

Once a source has submitted a complete operating permit application the source is protected from enforcement action for operating without an operating permit, and can continue to operate until the operating permit is issued.

Sources that submit an application for a combined permit may not construct the source until they receive their combined permit.

C. What must be addressed in operating permit applications and permits?

1. Configuration and Grouping of Sources

Total emissions at an entire site (including fugitive emissions at listed and HAP sources) must be considered to determine if a source is subject to the operating permit requirements. Once a source is subject, however, the owner or operator may choose how many operating permits to obtain for the source. A single permit may be issued for the entire source, or individual permits may be issued for individual units, buildings, processes, etc. For example, research and development activities may be permitted separately from the rest of a facility, in order to take full advantage of the operational flexibility provisions for constantly changing research and development activities. In addition, portions of a source could be covered under general permits. See discussions below under operational flexibility and general permits.

The configuration for operating permits may, but is not required to, conform to the way in which a source chooses to file APENS. For example, a source may file separate APENs for all of the units at its facility, but a single operating permit can be obtained. Similarly, a source may file grouped APENs for similar units at its facility, and the operating permit could contain a general statement that the types of units exist at the facility, and could then state what the applicable requirement and associated monitoring, recordkeeping and reporting requirements are for that group of sources. The permit does not have to list the requirements separately, and the monitoring, recordkeeping and reporting requirements can be tailored to meet the needs of the source and the Division for that group of sources. SPECIFIC EXAMPLE: Numerous degreasers are located throughout a facility, which is located in the ozone nonattainment area (metro-Denver). A grouped APEN is filed for all of the degreasers. Since Regulation Number 7 applies to the degreasers, they must be addressed in the operating permit. The operating permit choices are: 1) obtain an operating permit for the degreasers only, separate from the rest of the facility; 2) obtain a single permit for the whole facility, and include a general statement/applicable requirement condition as described above for the degreasers; 3) obtain more than one operating permit for the facility, placing the degreasers in whatever permit(s) the owner or operator chooses. The Commission believes substantial flexibility is available for issuing operating permits that the source can most efficiently deal with, while still meeting the Clean Air Act requirements.

2. "Regulated Pollutants"

Once subject to operating permit requirements, a major source must include all applicable requirements and emission units in their application and must address each "regulated pollutant" associated with the source (except for insignificant activities, see below).

The definition of regulated pollutant is to be used strictly for determining what must be addressed in an operating permit once a source is required to obtain the permit. The definition of regulated pollutant has nothing to do with the definition of major source. (See discussion above, regarding the definition of air pollutant).

Pollutants to be addressed in the application include each pollutant for which an ambient standard has been set (and precursors to such standards, such as volatile organic compounds), ozone depleting chemicals (CFCs), any pollutant subject to a standard under regulation Number 6, and any pollutant subject to a standard under the HAPs requirements (including Colorado HAPs).

"Regulated HAPs"

Note that a HAP must be subject to a standard before the applicant is required to address it in the permit application. Once the EPA adopts a MACT standard for a particular HAP, all sources, even those not subject to the particular MACT standard, and even those not in the source category, must address that HAP in applications. In cases where the Commission or Division determines MACT on a case-by-case basis because the EPA has not, the HAP becomes regulated only for the particular source subject to the case-by-case standard. Once the EPA promulgates the list of 112(r) (accidental release) pollutants, those pollutants will be considered to be "regulated" for all sources.

Fees

The definition of regulated pollutant contained in Part A of this regulation is not used for fee purposes. The Colorado Act specifically sets forth which pollutants are to be assessed fees, and the fee pollutants are set forth in Section VI of Part A. A pollutant does not need to be subject to a standard before the Commission can assess fees.

3. Insignificant Activities

Once subject to operating permit requirements, a major source must include all applicable requirements and emission units in their application and must address each "regulated pollutant" associated with the source except for activities, which the Commission has determined are "insignificant." This regulation sets forth to what extent each activity or piece of equipment at a facility needs to be fully described and included in an operating permit.

The Commission has tailored the insignificant list after the Air Pollution Emission Notice (APEN) and construction permit exemptions, to promote consistency and reduce confusion. The lists are repeated in Part C of the regulation, for convenience. The activities and sources listed in the APEN and construction permit exemption Sections are considered to be insignificant activities, with two exceptions. The lower APEN emission de minimis levels are used instead of the higher construction permit de minimis levels for insignificant activity purposes. Since the permit de minimis levels apply to the facility, the Commission does not believe it is appropriate to use the permit levels. The APEN 5 MMBTU per hour boiler design rate is controlling, rather than the higher 10 MMBTU per hour permit boiler exemption. All boilers with design rates greater than 5 MMBTU per hour must be addressed in the application and operating permit.

Exemptions based on emissions, size or production rate must still be listed in the permit. Enough information must be submitted in the application just to identify

the equipment as qualifying for an exemption. An asterisk appears next to each activity listed in Part C, which must be listed in the application.

Applications do not have to list activities that are exempted based on category.

Applications cannot omit information needed to determine the applicability of, or to impose any applicable requirements on a source. In addition, the exemptions cannot interfere with fee determinations. Since the mechanism used to assess fees is the APEN and not operating permits, this should not pose a problem for purposes of insignificant activities.

The Commission has added APEN exemptions for research and development and laboratory activities. The exemptions apply to small research and development facilities, and to lab activities that the Commission has determined have a negligible impact on air quality in Colorado. Owners and operators of research and development facilities that are subject to APEN reporting are expected to report emissions from samples received from clients for evaluation, but only to the extent, the information is available. The Commission believes that facilities that accept material for evaluation should have some responsibility and knowledge regarding what is being accepted.

Research and development facilities may continually change the types of projects under investigation, therefore the control efficiency of equipment may not always be known. The Commission has determined that research and development facilities may base APEN reporting thresholds on actual instead of uncontrolled actual emissions. In addition, since owners and operators of such facilities do not always know in advance what projects will be undertaken, the Commission has allowed such sources to report emissions after the fact, in annual APEN updates to the inventory.

Research and development activities are prime candidates for the types of operational flexibility allowed in this regulation (see discussion below). The Commission encourages research and development activities to use the operational flexibility provisions.

Some of the activities were described in the Statement of Basis and Purpose for the Commission's May 1993 Regulation Number 3 hearing. Parties to this hearing have asked for clarification regarding some of the provisions.

The emission levels for triggering APEN reporting requirements are based on uncontrolled actual emissions. The Commission recognizes that in some cases, “uncontrolled” emissions are not easily defined. For example, the uncontrolled emissions from a degreaser may be subject to interpretation. The emissions from this type of operation depend on how often it is used and how fast objects are cleaned in the unit. Uncontrolled emissions could possibly mean that a person is standing at the degreaser using the machine continually, and as rapidly as is humanly possible. The Commission recognizes that calculation of emissions for this and similar operations involves some judgment, and will take into consideration reasonable assumptions used in determining uncontrolled emissions.

The exemption for land development (less than 25 acres in size and 6 months in duration) applies to all land clearing activities, such as preparation of land for housing development, or preparation of land for oil and gas activities to occur.

As stated above, insignificant activity exemptions cannot be used if it, would result in an applicable requirements being avoided. The EPA requires all applicable requirements to be addressed in operating permits. Similarly, APEN and construction permit exemptions cannot be taken if an applicable requirement would be avoided. The Commission has given certain sources an exemption from the applicable requirement provisions, for APEN and construction permit purposes. For example, a source that is subject to Regulation Number 7, but not to a specific source category requirement of regulation Number 7 (i.e. the source is subject only to a case by case RACT determination), may take the APEN exemption based on the 1 ton per year de minimis level. The Commission has determined that RACT for such small sources is usually no control. For construction permits, a source may take an exemption if it is subject solely to a work practice standard of Regulation Number 7. For example, degreasers used in the ozone nonattainment area (metro-Denver) are subject to a specific Section of Regulation Number 7, which requires covers and proper operation. Degreasers in the nonattainment area are subject to a specific Section of the regulation, therefore they must file APENs, however since the Section only requires work practice standards, no permit is required if the emissions are below the permit de minimis levels. It should be noted that since an applicable requirement exists, the degreaser and associated work practices must be addressed in the operating permit. Degreasers in the rest of the State are exempt from APEN and permit requirements if they are below the de minimis levels. Note that the EPA is required to set Maximum Achievable Control Technology (MACT) limits for degreasers in 1994. When the Commission adopts the MACT standards for degreasers, all degreasers subject to the MACT standard will be required to file APENs and obtain permits.

4. Inapplicability Determinations

Operating permits must list all applicable requirements and must state how continuous compliance with the requirements will be demonstrated. The source is provided with protection from enforcement as long as each permit condition and compliance requirement is met (known as the permit shield). The source may wish to obtain enforcement protection for regulations, which do not apply. In such cases, the application must identify which regulations do not apply to the source. These regulations will then be identified in the permit, and the permit shield will apply.

This protects the source in the event that a mistake is made and the regulation really does apply to the source. The source is protected from enforcement action until the permit can be reopened and the correct requirements inserted.

5. Application Form and Checklist

Operating permit applications must contain a lot of complex information, including identification of all applicable (and inapplicable, if the permit shield is to apply) requirements. This can be a daunting task for the applicant. The Commission has directed the Division to develop checklists for use by the applicant. One checklist will identify all data that must be included in an application. Another checklist will identify all air regulations. The applicant can use the latter checklist to identify which regulations apply to their source, and which don't.

The State must submit an application form to the EPA along with the operating permit regulations. The Commission has directed the Division to develop an application form, taking into account suggestions and comments from the public.

6. SIP Equivalency

The Commission has determined that it is appropriate to allow sources to set forth procedures in their permit that will show that a SIP limit is being met through methods that are equivalent to, but do not exactly follow, procedures set forth in the SIP.

For example, suppose a source is required to meet a volatile organic (VOC) compound limit by using a coating that does not contain more than a certain amount of VOC. The source could propose to meet the limit by some other means than using such a coating. Their application would set forth quantifiable, replicable, accountable procedures that would show that they could still meet the limit even though they would not be using the required coatings. Such procedure could consist of using control equipment, or using a combination of complying and non-complying coatings for which the average emissions would meet the VOC limit. Monitoring, recordkeeping and reporting procedures would be set forth in the permit. The procedures must be sufficient to show continuous compliance with the underlying applicable requirement.

This procedure allows sources to show compliance through alternative methods without having to go through the Commission and the EPA for a case-by-case SIP revision. The EPA would review the process during its 45-day review period. The public would have opportunity for comment and hearing.

NOTE: This procedure overrides the requirement in Regulation Number 7, which states that all such alternatives will undergo a case-by-case SIP revision.

7. 112(r) (Accidental Release) Requirements

Operating permits must address any requirements established under Title III (hazardous air pollutants) of the Federal Act, except that the accidental release plans required under Section 112(r) do not have to be incorporated into the permit. The permit must merely state that the source is required to submit a plan to the appropriate entity. The Commission can take enforcement action against a source for failure to submit a plan. Enforcement action cannot be taken for failure of the source to meet any of the requirements contained in the plan.

8. Compliance Monitoring

Operating permits must contain monitoring sufficient to demonstrate compliance with the applicable requirements. Methods and procedures may be set forth in the applicable requirements. If methods and procedures in the applicable requirement are insufficient to demonstrate compliance, the operating permit must "fill the gap" by specifying appropriate methods. Compliance methods may be as simple as recordkeeping, or may require continuous monitoring equipment. The source must state in their application how they will demonstrate compliance. The Division reviews this proposal and agrees with it or recommends something else. The Common Provisions provides the Division with the authority to require monitors. The Division has used, and will continue to use, best engineering judgment to determine when monitors are necessary and feasible. The Commission has determined that in some instances it may be appropriate to require continuous emission monitors, even in cases where the applicable requirement does not specify monitors, and that sufficient opportunity for discussion and appeal are available to the source, therefore monitors can be required even if the applicable requirement does not specifically require monitors.

The EPA is in process of developing and promulgating their enhanced monitoring rules. These rules may speak specifically to continuous monitoring. The Commission will take into account this new rule and determine if the operating permit monitoring requirements should be revisited once the EPA rule is promulgated.

By January 1994, the EPA will publish a list of existing rules, which do not contain sufficient monitoring, or recordkeeping methods, and will develop criteria that could be used to determine what is sufficient. After the rules are identified, the EPA will proceed to revise the rules to make them sufficient. The need for "gap filling" will then decrease.

9. Compliance Certifications

Each operating permit application must be accompanied by a "compliance certification" indicating that all information presented is true and accurate. The certification must be signed by a "responsible official," usually a CEO, of the company. Likewise, compliance certifications must be submitted every six months, indicating the compliance status of the source. Such certifications must also be signed by the responsible official. The burden is on the source owner or operator to ensure that all permit conditions are addressed in the certification, and all information is complete and correct.

The Commission's definition of "responsible official" allows delegation of responsible official authority to plant managers under certain conditions, including prior approval from the Division.

10. Recordkeeping and Reports

The operating permit must contain all recordkeeping necessary to ensure compliance with the applicable requirements. The Federal Act requires such data to be maintained for five years. The Commission has determined that sources need not keep a full five years of data on site for inspection review. Instead, sources are required to make immediately available to the Commission or Division data for the past year, along with the compliance certifications for the past five years. The actual data for the remaining four years must be provided to the Commission or Division within 48 hours of request.

Monitoring data must be reported at least every six months.

The Commission will allow sources flexibility in determining what records are appropriate, and in determining the schedule for reporting, in order to allow coordination with other reporting requirements (such as Community Right To Know, etc.). Such flexibility is allowed provided the requirements of the Clean Air Act are met.

Malfunctions and emergencies - The Commission has adopted the Federal provisions for emergency and malfunction protection, except that sources are required to provide oral notice within two hours of the next working day, and written notice with one month after the emergency occurs. Past experience indicates that sources will most likely not be able to meet the EPA's recommended two-day written notice.

The Commission does not include continuous monitor malfunctions in the emergency provisions. The emergency provisions serve to provide an absolute

defense if an applicable requirement is violated. Since the Commission cannot tell if a source is in or out of compliance with an applicable requirement when monitors malfunction, it is not appropriate to include monitor malfunctions in the emergency provisions. Monitor malfunctions which would violate provisions which set specific operating conditions and specifications for the monitor, however, could be granted the emergency protection for those specific performance conditions, if such malfunctions were due to unforeseen circumstances and reported as set forth in the emergency provisions. The Commission has determined that extra protection for monitor malfunctions is not warranted, as procedures and specifications for monitors include performance requirements which take into account the inherent operational fluctuations and abilities of the monitors.

Sources must report any exceedances of standards, which are not due to malfunctions or emergencies "promptly." The Commission has determined that including such deviations in the six-month monitoring report is sufficient. This will not impair the Division or Commission's authority to assess penalties regarding the deviation.

Public Availability of Reports: Copies of all reports and compliance certifications will be made available at the local health departments. As always, such information is available at the Division offices.

11. State-Only Conditions

Certain Commission regulations are not part of the State Implementation Plan, and therefore are not federally enforceable. The Commission has given sources the option of including state only conditions in operating permits, or of maintaining such conditions in a separate construction permit. This option is available for all state-only conditions except those pertaining to major Colorado HAP sources. Major Colorado HAP sources are required by statute to obtain an operating permit. "State-only" conditions will be listed separately from federal conditions in operating permit. (Sources that are major for federal HAPs must obtain an operating permit, and provisions pertaining to the federal HAPs are federal, not state conditions.)

Since the operating permit is meant to be used as an all-encompassing document for sources and the Division, the source may want to refer to only one document to determine what needs to be done to remain in compliance. If the conditions are included in an operating permit, the source may choose whether or not to have the permit shield, operational flexibility, and other operating permit allowances and requirements apply to the conditions.

State-only conditions do not have to undergo the same procedural requirements as other operating permit conditions. Affected state and EPA review is not required.

Currently, the following regulations are state-only requirements: odor Regulation Number 2, municipal waste combustor Regulation Number 6, Part B. Future Colorado MACT/GACT standards will be state-only requirements.

12. Confidentiality

Applicants are allowed to classify certain information as being confidential in terms of product or processes. In no case may emission information be kept confidential, and in no case may compliance certifications be kept confidential.

Records and reports may be kept confidential, however, instances where this will be allowed will most likely be rare, since emissions data or information related to emissions data may not be kept confidential.

The current confidentiality provisions and procedures remain in effect, however the Commission has directed the Division to examine the provisions and procedures and to recommend improvements.

D. How Long Does It Take To Obtain the Permit?

1. Completeness Review

The Division has sixty days from receipt of an application to determine if all information necessary to process the application is included. If the application is incomplete, the Division must notify the source and request the additional information. Additional information must be submitted by the applicant within a reasonable amount of time. Once a complete application is received, the Division must act on the application within 18 months. The Division must analyze the application, prepare the permit, and ensure that all of the procedural steps as set out below are met. Once all requirements are met, the Division will send the source its fee letter, and will not issue the permit until all applicable processing fees are paid. The fee letter must be sent within 18 months of receipt of a complete application.

2. Public Notice and Hearing

Once the Division analyzes the application and prepares a draft permit, the permit and application must undergo a thirty-day public notice. If a hearing is requested during the public notice, thirty-day notice of the hearing must be provided, and the hearing must occur within sixty days of the notice.

The Commission has provided an opportunity for sources to respond to any public comments received. This source response in no way affects the Division's time constraints for issuing the permit, nor does it affect the permit, which the Division ultimately issues.

3. Affected State Review

During the public notice, a copy of the draft permit will also be sent to any affected, nearby states, for their review.

4. EPA Review

Once public notice and hearing are completed, the Division will make any necessary revisions to the draft permit, and will submit a proposed permit to the EPA for their review. The EPA has 45 days to review the permit. The Division then has up to 90 days to make any necessary revisions to the permit to address EPA concerns, before the permit can be issued.

5. Copies of Application

The applicant must provide a sufficient number of copies of the application for submittal to the EPA, affected states and public notice, including copies for County Commissioners.

E. Renewals

1. Renewal Application Content

Operating permits must be renewed every five years. Renewal applications must undergo all of the review procedures (public notice, EPA review) as the initial operating permit.

Applicants may incorporate by reference any previous application material or permits for portions of the operation which will not change from the initial application. The renewal application may only address operations which will change and which will require new permit terms or conditions. Copies of all material incorporated by reference must be included with the renewal application. All material must be provided for public comment, affected state review, and EPA review.

2. Renewal Application Due Date

The federal rule states that permitting authorities should be able to process "90%" of renewal applications within six months. The federal rule does not mandate that states process renewals within six months. The rule gives states flexibility to require applications for renewals, and specifically states that other times may be approved, which are necessary to issue the permit before it lapses. The application can be due as soon as 18 months before expiration, and as late as six months. Renewed permits must be issued before the old permit expires.

As described above, the public comment, hearing notice, hearing, EPA review, and revision periods required in the Federal rule take up 220 days, or approximately seven and a half months. The time allotted for these activities is fixed in the Acts and rules (except for the time allowed for States to revise draft permits, based on EPA review). The amount of time for actual review of the application itself varies depending upon the type of application. A breakdown of the allotted times follows:

Public Notice:	30 days
Hearing:	60 days
EPA Review:	45 days
Division Response:	90 days
TOTAL	220 days

Two hundred and twenty (220) days is the minimum required. No time is allotted for revising the permit between each step as necessary, nor for transmitting the permit from one step to the next. The 220 days is required for public notice and EPA review only, it does not include any time for the Division to actually review the application and draft a permit.

Sources are allowed to seek judicial review if a permit is not issued in time. This could potentially result in wasted Division and court resources dealing with an impossible situation. In addition, the EPA may determine that the program is not adequate if the Division continually fails to issue renewed permits before expiration. Finally, if permits are not issued in time, the EPA can revoke and reissue permits, or can terminate the permits, in which case the source's right to operate ceases.

Given that the notice and review procedures alone take 220 days, and the allowed flexibility, and the requirement that renewed permits be issued before expiration, the Commission has determined that it is not reasonable to allow renewal applications to be submitted as late as six months before expiration. Nine months may be adequate if hearings are not requested for such renewals, however, no one can predict how many applications will or will not require public hearing. It would not make sense to accept applications only six or nine months before expiration, knowing that if a hearing is requested, the new permit will not be issued before expiration. The twelve months will give the Division sufficient time to review the application, and in addition, will give the source some time to ensure that they have submitted a complete application before the permit expires. Sources are allowed to update their applications up to the time a draft permit is issued for public notice. This will allow sources a chance to address any last minute market considerations or changes in their application.

The Division will send written notice of the need to apply for a permit renewal to permittees six months prior to the date a renewal application is due. This notice is to aid permittees, and the failure of the Division to provide notice to any individual permittee is not contended to be used as a defense for the failure to apply for a permit renewal.

As sources and the Division gain experience with the new operating permit program, the Commission and the Division will determine if the timeframe for renewals can be shortened. The first renewals will not be due until the year 2000.

F. Reopenings

Operating permits must be "reopened" during the term of the permit if new regulations become applicable to the source, if a mistake is found in the permit, or if additional measures need to be incorporated to ensure compliance with applicable requirements. A permit is reopened to address only the new requirement or correction, not to address the entire permit. The Division must give the source 30 days notice before reopening the permit. Reopenings must undergo all of the same procedures and requirements as the original permit (notice, EPA review, etc.). The Commission will allow sources the option to reopen an entire permit instead of just the necessary portion. This would require, however, that a source be able to submit a complete application for renewal within 30 days of notice, so that the Division can meet the 18-month deadline.

G. Modifications

States must adopt expeditious procedures for processing changes that require a modification to a permit.

1. Administrative Modifications

Administrative modifications are *minor changes to the permit, such as change in owner, more stringent monitoring requirements, or correction of typographical errors. The change at the source can be made upon submittal, and the Division must revise the permit within 60 days. No public notice or EPA review is required. The original expiration date does not change when administrative modifications are made.

2. Minor Modifications

The existing construction permit program requires sources to obtain construction permits before they construct or modify. Revisions to construction permits are required before any changes at the source are made. In contrast, the Federal rule allows changes to be made without revisions to the operating permit, provided no SIP requirements are violated. Sources are allowed to make "minor modifications" upon notice to the Division. The source must supply a draft permit, which is submitted for affected state and EPA review. The permit is revised within 90 days. No public notice is required at the time the modification is made. The Commission was faced with a dilemma. Since the construction permit program is a SIP requirement, sources would not be allowed to make minor modifications without first obtaining a construction permit. This in effect would negate the operational flexibility envisioned in the Federal Act.

Only certain modifications at the source may qualify as "minor modifications" for operating permit purposes. The change cannot be a "Title 1" modification. Title I contains requirements applicable to new sources. Title I revisions include the following changes:

1. Modification that triggers Prevention of Significant Deterioration and New Source Review (significant net emission increase)

   The significant levels (defined in Part A of this regulation) are based on the potential to emit of a source or modification. Since no construction permit is in place to limit the potential to emit of a minor modification, <u>all minor modifications will be triggered based on potential emissions, not actual emissions.</u>

2. Modification which triggers New Source Performance Standards (NSPS) (Any change that increases the amount of any air pollutant) - This definition only applies to specific NSPS sources, unless it is referenced in an applicable requirement

3. Modification that triggers Section 112 (hazardous pollutants). EPA will be adopting "de minimis" levels that will trigger a modification.

Minor modifications cannot involve any significant change or relaxation in monitoring, recordkeeping, or reporting requirements. Minor modifications also cannot violate any permit condition, which the source has voluntarily obtained in order to limit potential emissions for avoidance of requirements (such as PSD requirements).

The EPA expressed their concern regarding the construction permit SIP requirements and minor modifications. The Commission has determined that it is appropriate to submit a SIP revision for the construction permit program, in order to allow sources the flexibility allowed under minor modifications. The Commission will allow minor modifications under the operating permit procedure,

and changes before obtaining a permit, however all substantial requirements needed for a construction permit must be met. These requirements include ambient modeling to assess the modification's impact on air quality in Colorado, as required in the SIP. As under the current construction permit program, minor modification procedures cannot be used to circumvent PSD or NSR requirements by making individual changes, which together would otherwise trigger PSD or NSR. The enforcement protection of the permit shield does not apply to these modifications. Sources should be confident that all applicable requirements would be met before submitting a change as a minor modification. If the source errs in its determination, the Division, the Commission, and the EPA can take enforcement action against the source and the source's right to operate under the modification is terminated (the source must revert back to the permit as it existed before the modification was requested).

Upon permit renewal, the minor modification undergoes public notice along with the rest of the permit, and the permit shield can be extended to the minor modification provisions.

3. Significant Modifications

Significant modifications are changes at the source which are not administrative modifications, and which do not qualify as minor modifications. Such changes trigger PSD or NSPS, etc., or involve significant changes in or relaxation of monitoring, recordkeeping and reporting requirements. A revised permit must be obtained before the source is allowed to commence construction for the change.

A source may choose to obtain a revision to its operating permit, or it may choose to obtain a construction permit before making the change. Significant modifications to operating permits must undergo all of the public notice and EPA review requirements, therefore a source should plan on submitting its application well in advance of making the change. If a construction permit is obtained first, the source should apply at least three to four and a half months in advance (except for PSD sources, which should plan 12 months in advance). Once the construction permit is obtained, the source may commence construction. The conditions of the construction permit do not need to be incorporated into the operating permit until renewal, unless more than three years remains in the term of the operating permit, in which case the operating permit must be reopened, and the significant modification provisions incorporated.

H. Operational Flexibility

The Federal rule requires a State's program to include operational flexibility provisions, which allow a source to make certain changes without having to obtain a modification to their operating permit. The changes are simply incorporated into the operating permit when it is renewed. The types of operational flexibility are described briefly below. Subcommittee papers and fact sheets, which explain the provisions in more detail, and give specific examples, are available at the Division and Commission offices. The Commission has directed the Division to devise simplified explanations of all of the provisions.

"502(b)(10)" Changes (named after a Section of the Federal Act): A source is allowed to make a change, which would violate an express permit term, provided no applicable requirements are violated. The source can make the change after a seven-day advance notice to the Division. The permit shield does not apply. The Commission will allow sources to revert back to the original permit term, provided seven-day notice is given to

the Division. The permit shield can then apply again to the provision, which is contained in the permit.

Permit Caps: A source may ask for an upper limit in total facility emissions. Changes may occur within the facility, as long as the upper limit is not exceeded, and all applicable requirements are met. The permit shield applies to these changes. Seven-day notice is required before the change is made. This type of operational flexibility may be suitable for research and development facilities.

Alternative Scenarios: The source can identify various operational scenarios in its application, along with the applicable requirements and compliance demonstrations. The source can then switch from one scenario to another without notification to the Division. The permit shield applies to these changes.

Emission Trading Based on the Permit: The applicant can request that the trading provisions (for netting out) provided for in Part A of this regulation be incorporated into their operating permit. As long as all of the provisions are met, the source can use the provisions to make changes without notification to the Division.

Off Permit Changes: These changes can be made at the source with seven-day notice to the Division. The changes involve activities that are not addressed in the operating permit. The same qualifications as those for minor modifications apply to these changes (cannot be Title I modifications, significant monitoring changes, etc.) Note that the same SIP concerns apply to these changes that are discussed above under minor modifications. A construction permit would be required before these changes could be made. The Commission has decided to submit a SIP revision to allow these changes.

Emission trading based on the SIP: This is the only federally allowed operational flexibility provision that the Commission did not adopt. This provision would allow sources to use the emission trading provisions of Part A without specifically stating the procedures in the permit. The Commission does not currently have an approved SIP that would allow this, therefore the EPA would not approve this procedure at this time. The EPA is expected to develop guidelines for approvable SIPs within two years. The Commission will consider this provision once it is apparent what the EPA would approve.

I. General Permits

General permits are standard permits that apply to specific source categories. The sources in the category have similar applicable requirements and similar monitoring, recordkeeping and reporting requirements. The general permit will include criteria by which a source may qualify for the permit. Sources that are out of compliance may not qualify for a general permit, since a separate individual compliance plan would be required. The general permit undergoes one-time public notice and hearing and EPA review when it is initially developed. Qualifying sources can use standard, simplified applications and obtain the general permit without having to go through the entire application process (public notice and hearing) individually. A list of all sources that have been issued a general permit shall be maintained by the Division and made available upon request.

The general permit (as originally developed) undergoes five-year renewal, including public notice and EPA review.

General permits will also be developed for the construction permit program, and will usually be identical to the general operating permit for that source category. Existing sources that have <u>not</u> obtained a general construction permit through the construction

permit program (probably because a general permit did not exist at the time a construction permit was obtained) may operate under the general operating permit within 60 days of submitting a complete application for the permit, which corresponds with the amount of time allowed for a completeness determination. The application shield becomes effective upon submission of a complete application. The Division will issue the general permit to the source upon completion of the analysis. The permit shield becomes effective upon issuance of the operating permit.

Sources which receive a general construction permit through the construction permit program may operate under the general permit as an operating permit 60 days after a complete operating permit application is submitted, provided the required compliance demonstration has been performed in the required time (180 days). Such source must apply for the operating permit within 12 months of commencing operation. Once such application is received and determined to be complete, the Division will issue a certification, which states that the construction permit now becomes the operating permit.

General permits will ideally be useful for minor sources that will be subject to operating permits at a later date. Minor sources are more likely to be subject to similar applicable requirements. The Commission has directed the Division to devote resources as they become available to identification of sources that would be suitable for general permits and to the development of general permits. Candidates for general operating permits include sources that become subject to new MACT/GACT standards (i.e. dry cleaners), or existing and new NSPS sources (i.e. asphalt plants).

The Commission will allow major sources to have general permits as part of their overall operating permit. As general permits are developed, major sources may use them. The source would just reference in their initial or renewal application that they have a general permit. General permits, however, cannot be issued to major sources if the issuance of the general permit would cause a violation of any of the applicable requirements in any other operating permits they have, or if issuance of a general permit would trigger a Title I or Title Ill modification. The Commission will allow general permits to be used for an entire major source only in those instances where the use of general permits is appropriate (homogenous, straight-forward sources).

J. Title III (Hazardous Air Pollutant Requirements)

The provisions of Title Ill must be implemented through the operating permit program. As discussed above, all major sources of HAPs must obtain an operating permit. As the Commission adopts MACT standards, the permit must be reopened to include the new requirements.

As the EPA promulgates new MACT standards, they will decide if minor sources as well as major sources affected by the standard must obtain operating permits.

Once the EPA approves the State's operating permit program, the Division and Commission must begin making case by case MACT determinations for new major sources and modifications, if the EPA has not yet set a MACT standard for that category. The EPA will be setting emission levels at which modifications are triggered.

Once the EPA approves the State's operating permit program, if the EPA fails to meet its mandated deadline for setting a particular MACT standard, the State must determine MACT for that source category within 18 months. Permits will be reopened to incorporate the State MACT standard. Once the EPA determines MACT for the category, permits may need to be reopened again, and sources may need to retrofit their units, depending upon the difference between the State and EPA MACT determinations.

K. Title IV (Acid Rain Provisions)

The Commission is required, and fully intends, to adopt the acid precipitation rules and requirements as promulgated by the EPA, and to implement the requirements through the Title V permits, as also required under the Federal Act.

Title IV sources (power plants) are required to submit the Title IV portion of their operating permits by January 1, 1996. The permits must be issued by December 31, 1997. The EPA is planning on having all of the requirements and forms finalized so that Title IV sources can apply for Title IV requirements at the same time they apply for their initial operating permit. This could help avoid re-opening of the permit. To facilitate this, the Commission has determined that Title IV sources should be included in the last group of existing sources required to apply for operating permits (due one year after EPA approves the program, see discussion above).

The Commission also intends to adopt provisions related to the WEPCO rule promulgated by the EPA, which deals with Clean Coal Technology Projects and other modifications at utilities. The rule is currently slated for the spring of 1994 in the Commission's regulatory agenda. In the interim, the Commission and Division will continue the existing policy of treating such projects as allowed by the EPA. Also, the Commission wishes to encourage Clean Coal Technology Projects, which are used to develop and identify better methods of controlling and preventing air pollution. The Commission has directed the Division to consider research and development factors, and the importance of developing new technologies, if enforcement action may be necessary due to violations related to such projects.

II. Construction Permit Program

A. Synthetic Minors

As discussed above, construction permits are the vehicles through which sources can obtain federally enforceable limits on their emissions in order to avoid the operating permit requirements. In some cases, sources may also choose to obtain limits to avoid PSD or NSR requirements. Such synthetic minor permits must undergo public notice in order to be federally enforceable.

B. SIP Equivalency

The Commission has determined that it is appropriate to allow construction permit sources to use the SIP equivalency procedure that is provided for operating permits in the Federal Act. Current regulations, such as Regulation Number 7, require a case-by-case SIP revision for equivalent procedures, which involves public notice, a mandatory Commission hearing, and EPA approval. The new SIP equivalency provisions override Regulation Number 7 provisions. All SIP equivalency proposals require public notice, opportunity for hearing (but not mandated if not requested), and EPA review. The Commission will require such construction permits to follow the PSD track, which requires public notice and an opportunity for public hearing. The EPA will review the proposal during the public comment period.

C. Minor Modifications and Operational Flexibility

The Commission has extended most of the operational flexibility provisions directly to the construction permit program, since no modification to a permit is required. These provisions include Administrative Modifications, Alternative Scenarios, Emission Trading Based on the Permit, and Permit Caps.

The remaining operational flexibility provisions, and the minor modification provisions are not available through the construction permit program, however sources may obtain these additional allowances by voluntarily applying for an operating permit.

D. General Permits

The Commission has determined that the general permit process will be allowed only for the operating permit program. The general application and permit forms, however, should be used for construction permits as they are developed. The Colorado Act requires new sources to obtain a construction permit before commencing construction, therefore the source must have their construction permit in hand before constructing. In addition, Regulation Number 3 requires certain sources to undergo public notice before construction. The Commission believes that notice should continue to be provided to the public where appropriate, before a source constructs near them.

As discussed above under general operating permits, the Division will identify candidates for general construction permits as resources are available. The same sources identified in the discussion above are candidates for general construction permits. In addition, general permits may be suitable for sources wishing to obtain synthetic minor status, such as emergency and backup generators.

III. Emission Fees

Though it was not noticed for this hearing, some parties indicated they had concerns regarding the Division's policies for charging annual emission fees. A request was made to include the Division's policy in the regulation. The Commission believes the Division should be given the flexibility to determine the most efficient and reasonable procedures and policies for assessing fees, therefore the policy will not be included in the regulation. The Division will prepare a written policy for public distribution on the methods it will use to calculate and collect emission fees.

IV. Where Can a Source Go For Assistance In Understanding the New Requirements?

A. Small Business Assistance Program

Even though existing minor sources (small businesses) are exempt from the operating permit program, small businesses will need help understanding the construction permit program requirements. In addition small businesses need to understand the operational flexibility requirements, and need to understand if it would be advantageous for them to apply for an operating permit. The EPA may decide that some minor sources should be required to apply for operating permits as new MACT and NSPS standards are promulgated.

Last September, the Commission approved a plan for developing a Small Business Assistance Program. The program is under development and is expected to be implemented and fully operational by November of 1994. In the interim, Division staff is available to answer any questions, which a small business may have regarding air quality regulations and requirements.

Some information has already been developed regarding APEN requirements and simplified calculation procedures.

B. Pre-application Meetings

This regulation provides opportunity for any source to request a preapplication meeting with the Division, to discuss what requirements may be applicable to a source.

C. Division Staff

Division staff will remain available to all sources and the public, to answer questions regarding the operating permit and construction permit programs.

I.M. Adopted March 17, 1994

Revisions to Regulation Number 3 Part A, Section II.E.

Pursuant to Section 112(n) of the federal Clean Air Act, the US Environmental Protection Agency (EPA) is required to conduct an extensive study to create a reliable estimate of the existence or quantity of hazardous air pollutants (HAPS) emissions from certain sources such as utility and non-utility industrial boilers. Another study under Section 112(n) relates to emissions from publicly owned treatment works (POTWs). Section 112(n) recognizes that technological limitations exist on the ability to reliably estimate these emissions. The required studies are complex and costly, and EPA has indicated that the utility and non-utility boiler study will not be concluded until the end of 1995. The original time frame contemplated by Congress anticipated that the study would be completed by November 15, 1993. Unlike the mandatory boiler study, the Clean Air Act merely authorized EPA to study POTW emissions and EPA has decided not to continue with the study. Thus, the emissions information that was originally expected will not be developed in time to facilitate APEN reporting by December 1994. Since the emissions from facilities that treat municipal-type wastewater are virtually identical to those from POTWs, the lack of POTW emissions data also affects this category of sources as well.

During rulemaking in 1993, a deferral for HAP reporting from boilers and other listed sources was granted until six months from the date federal studies are complete or until December 31, 1994. This deferral appears in Part A, Section II.E.

This was based in large part on the recognition that it would be unreasonable and infeasible to expect these sources to attempt to duplicate the EPA studies and to provide meaningful data earlier than EPA. The postponement was not intended to forgo reporting obligations (it applied to emissions points and processes only, not to entire facilities), but rather, to recognize technical limitations and to await (not duplicate) the results of the EPA studies. The Statement of Basis, Specific Statutory Authority and Purpose for the 1993 rulemaking session explained, "Due to ongoing studies aimed at quantifying their emissions of non-criteria pollutants, the Commission has deferred APEN reporting requirements for five source categories until six (6) months after the studies have been completed or December 31, 1994, whichever is earlier."

It is now apparent that neither the EPA boiler study nor the POTW study will be timely completed for effective implementation of ' II.E. The clear intent of the regulation is to postpone report of HAP emissions by sources such as utility and non-utility industrial boilers, POTWs and municipal-type wastewater treatment works, pending the results of the ongoing EPA studies. The rationale for this intention is that it is technologically infeasible for these sources to comply with this reporting requirement without the results and utilization of the EPA studies. The original intent and rationale for a postponement continue to pertain at this time and provide the basis for this rulemaking.

Additionally, highly costly tests would be required if reporting is required prior to the results of the EPA studies. There is a serious question about the accuracy of any reporting prior to the conclusions of the EPA studies. Moreover, if sources attempt to formulate tests, inconsistencies with testing procedures, resulting data and interpretation thereof would result, thereby further complicating issues for impacted sources and administration by the state. It is believed that using the EPA studies results will allow avoidance of such costs and result in more accurate APENS, which, in turn, will facilitate easier administration by the state.

During the Commission's prior deliberations on this matter, the Commission expressed intent to revisit this December 31, 1994 deadline if the EPA studies would not be timely completed. Impacted sources must be placed on notice as early as possible concerning any deadline because lead-time to conduct studies and extensive planning would be necessary. This rulemaking postpones to December 31, 1995, or six (6) months after the EPA studies are complete, whichever are earlier, for utility and non-utility industrial boilers, and POTWs and municipal-type wastewater treatment plants. This decision furthers the Commission's original intent concerning the underlying reporting. This issue may be revisited in the future if the information expected to be derived from the EPA studies continue to be delayed.

The specific authority for this regulation is contained in the Colorado Air Pollution Prevention and Control Act, 1992 as amended. The Legislative Declaration, ' 25-7-102, recognizes that an accurate emission inventory is needed to adequately manage air resources in Colorado. Section 25-7-109.3 provides authority for regulating HAPs. Section 25-7-114.1 provides authority for requiring APENS, and for allowing exemptions from the requirements. Section 25-7-109(4) requires the Commission to promulgate regulations pertaining to HAPs.

I.N. Adopted May 19, 1994

Findings Regarding the Basis for the Emergency Rule Revisions to Regulation Number 3, Concerning the Operating Permit Program

The Air Quality Control Commission held this emergency rulemaking hearing on May 19, 1994, after such notice of rulemaking as practical, to postpone the November 15, 1994 deadline for submission of operating permit applications by those existing major stationary sources previously notified by the Division to submit applications by that deadline. The revisions to Regulation Number 3 would phase-in the required submission of operating permit applications by these sources over a three-month period beginning January 1, 1995. The Commission finds that the immediate adoption of this emergency regulation is imperatively necessary for the preservation of the public welfare and to ensure compliance with the federal law, and that compliance wit normal notice requirements for rulemaking would be contrary to the public interest.

This emergency regulation is necessary for three reasons. First, the Environmental Protection Agency (EPA) has issued a formal letter to the State of Colorado advising the State that its Title V operating permit program submission, contained in the Commission's Regulation Number 3, must be revised in order to obtain federal approval of the State operating permit program in accordance with the mandates of the federal Clean Air Act. The earliest date by which the Commission is able, pursuant to law, to promulgate such revisions and make them effective is September 30, 1994. Sources that are subject to the operating permit application deadline of November 15, 1994 will not have sufficient time to complete their applications and submit them by that time after the promulgation of the revisions.

Secondly, and more importantly, it was not until the 1994 Colorado legislative session that the legislature appropriated money for the necessary FTE's at the Division to process operating permit applications and to implement the program. The money will not be available for the Division's use until July 1994, and given the shortcomings of the State personnel system, the new Division employees will not, in all likelihood, begin their employment until on or around November 1, 1994. If the Commission did not act on an emergency basis to postpone the application deadline of November 15, 1994, persons subject to the application deadline will be required to apply to the Division prior to its ability to fully train the new employees or to provide sources any services necessary under the mandates of the federal Clean Air Act. This imposes an unnecessary burden on sources, as well as the Division.

Finally, the federal Clean Air Act requires that the State have sufficient money to cover the direct and indirect costs of implementing the Title V program. These costs include those necessary for the Division to review permit applications and issue permits within certain established timeframes, as well as to perform inspections and other compliance monitoring actions. The EPA has indicated to the State, in a letter dated April 8, 1994, that if the State does not have sufficient money to cover these costs, the EPA cannot grant any type of approval, including interim program approval. In this event, EPA must take over

the Title V program in Colorado, and has threatened to impose sanctions on the State. Therefore, the Commission must act on an emergency basis to postpone the operating permit application deadline in order to give sources sufficient advance notice of the changed deadline and in order to ensure that the Division will be able to review and process those applications within the timeframes set forth in the federal Clean Air act.

In light of the evidence presented at the emergency hearing on the difficulty and cost to sources of completing operating permit applications, given the short timeframe between the Commission's ability to revise and make effective changes to Regulation Number 3 required by the EPA and the current deadline; on the difficulty and cost of evaluating operating permit applications filed with the Division and of the Division's inability to perform services required by the current Regulation Number 3 and deadline of November 15, 1994; and on the EPA's letter evidencing its concern that the Division will not be sufficiently financed to perform those federally-mandated services, the Commission finds that an emergency exists which warrants the passage of this emergency regulation. The Commission does not believe that this emergency regulation represents any risk to public health.

I.O. Adopted August 18, 1994

Revisions to Regulation Number 3

This Statement of Basis, Specific Statutory Authority, and Purpose comply with the requirements of the Administrative Procedures Act, Section 24-4-103(4), C.R.S. (1994) for adopted or modified regulations.

Basis

The 1990 Amendments to the Federal Clean Air Act require states to implement an operating permit program. Failure of a state to implement the operating permit program will result in EPA sanctions.

On July 15, 1993, the Air Quality Control Commission adopted revisions to Regulation Number 3 necessary to implement the State's operating permit program. The Commission also adopted revisions to Regulation Number 3 that were necessary to integrate the operating permit program with the existing construction permit program, and that were necessary to extend certain provisions of the operating permit program to minor sources not otherwise subject to the program.

On November 5, 1993, the Governor submitted Colorado's operating permit program to the Region VIII, Environmental Protection Agency (EPA) for its approval. The EPA reviewed Colorado's submittal and on April 8, 1994 responded to the State's submittal, noting certain deficiencies in the program. These deficiencies must be corrected and the revisions submitted to the EPA no later than October 1, 1994. The Commission promulgated these revisions to Regulation Number 3 in response to EPA's comments. EPA also noted certain legislative changes that are required in order for the State of Colorado to obtain full approval of its operating permit program. Therefore, at this time, the Commission contemplates that the State will receive interim approval of the operating permit program; within 18 months after receiving the interim approval from EPA, the State must submit legislation that will satisfy all of the federal requirements.

The EPA in its April 8 letter required the Commission to revise in certain respects the Statement of Basis, Specific Statutory Authority, and Purpose for Revisions to Regulation Number 3 that was dated July 15, 1993 and which was submitted to the EPA on November 5, 1993. The required revisions are reflected in this Statement of Basis, dated August 18, 1994.

Specific Authority

The specific authority for this regulation and its revisions is contained in the Colorado Air Quality Control Act, 25-7-101, et seq. (1989 & 1994 Supp.). Section 25-7- 105(l)(A)(1) requires the Commission to adopt into the State Implementation Plan all requirements of the federal act. Sections 25-7-105(12) provide

authority to implement the operating permit provisions of Title V of the federal act. Section 25-7-105.1 sets forth the federal enforceability provisions. Section 25-7-106(6) provides authority for monitoring, recordkeeping and reporting requirements. Section 25-7-114.1 provides authority for APEN requirements and for allowing exemptions from the requirements. Section 25-7-114.2 through 114.5 set forth construction and operating permit requirements, and application and public participation requirements. Commission action in promulgating these revisions is taken pursuant to Sections 25-7-105 to 109 and 25-7-114.

Statement of Basis and Purposes of Changes to Regulation

1. In Part A, I.B.9.e., the definition of "applicable requirement" concerning enhanced monitoring was changed to comply with the federal definition, incorporating all monitoring and enhanced monitoring requirements established pursuant to Sections 504(b) and 114(a)(3) of the federal act.

2. In Part A, I.B.22., the definition of "federally enforceable" was amended to mirror the definition found in Section 25-7-105.1 of the Colorado Air Pollution Prevention and Control Act.

3. In Part A, I.B.35.D.e., the Commission exempted any modifications that are not "major modifications" from the definition of Title I modifications, for sources with operating permits that utilize the minor permit modification procedures set forth in Part C, Section X.A. This is because EPA cannot allow the minor permit modification procedures to be used for Title I modifications; therefore, for the minor permit modification procedures to have any use at all, this change was necessary. All modifications must still comply with the requirements of 40 CFR Part 51.165, as reflected in Regulation Number 3, Part B, IV.D.1.a.-h. In effect, this change merely allows an operating permit source to modify without going through the procedural requirements of obtaining a construction permit, but still requires the source to meet all substantive requirements.

4. Part C, X.A.5., XII.A.1 and XII.B. were revised to reflect the change described in paragraph Number 3 above.

5. Part A, I.B.62, a definition of "state-only condition" was added. This term is used throughout Regulation Number 3.

6. In Part A, Section II.D.1.aaa. (APEN exemptions), and in Part C, Section II.E.3.aaa. (insignificant activities for operating permits), the Commission exempted storage of lubricating oils from notice and permit requirements. Because new source performance standards apply to storage tanks of capacity > 40,000 gallons, the Commission revised these provisions to ensure that the exemptions would not allow a source to avoid new source performance standards.

7. In Part A, II.D.5., the Commission established an administrative procedure whereby the Division could process and grant requests for exemptions from permit and APEN requirements. However, this amounted to a SIP revision without allowing EPA the opportunity to review and approve the revisions. Therefore, the Commission amended this procedure to require that the Commission adopt the exemptions pursuant to rulemaking, on an annual basis, and submit the revisions to EPA prior to a source being able to take the exemptions.

8. Part A, IV.B. contains operational flexibility provisions concerning "trading based on the permit." The federal rule allows a source to take advantage of any EPA-approved emissions trading program, without the need for a SIP revision. At this time, Colorado does not have an EPA-approved generic emissions trading program. To obtain EPA

approval of the State's operating permit program, the Commission amended this provision to clarify that the trading based on the permit may be utilized only if the SIP contains an EPA approved trading program.

9. At Part B, III.A.6., the Commission clarified that the provisions of IV.D.1.a.-h. must be met in order for the source to utilize the minor permit modification procedures. Previously, the Commission had merely cross-referenced Section IV.D.1., which contained time periods for review that conflicted with the minor permit modification procedures.

10. At Part B, IV.D.1.i. and in Part C, V.C.1.c., the Commission had provided authority for a source to use an alternative emissions limitation that is as stringent as an applicable requirement so long as the permit contained provisions to ensure that the limitation is quantifiable, accountable, enforceable and based on replicable procedures. The preamble to the operating permit rule, 40 CFR Part 70 makes clear that it is the SIP, not the permit that must contain these replicable procedures. Therefore, in Part C, the Commission amended V.C.1.c. to clarify that the alternative emissions limitation may be taken only if it is allowed by the SIP; then in Part B, IV.D.1.i., the Commission removed the alternative emissions limitation language because the SIP must itself contain the replicable procedures. EPA is expected to have guidance in the near future on alternative emissions limitation.

11. In Part C, III.B.7., the Commission clarified that a source applying for a combined construction/operating permit must first obtain the permit prior to commencing construction.

12. In Part C, III.C.12., the Commission clarified that ambient air quality standard considerations in issuing permits apply only to temporary sources (pursuant to the federal law), and to new and modified sources applying for a combined construction/operating permit (pursuant to state and federal law). Although this was always the case, the provision previously could have been read to allow consideration of these standards in issuing operating permits.

13. In Part C, V.B.3. & 5., the Commission allowed minor sources to voluntarily opt into the operating permit program in order to gain the operational flexibility of operating permits. These minor sources, however, could avoid the public participation, EPA and affected state review provisions. The EPA was concerned that synthetic minor sources would be able to opt into the program, and in so doing would lose their federally enforceable limitation (imposed by the construction permit which would be lost), without going through the required public participation and EPA and affected state review. The Commission revised these provisions to clarify that synthetic minors opting into the program must go through all the necessary reviews. In addition, major sources of Colorado-only HAPs need not go through the public review process attendant to operating permits. The EPA was concerned that the provision could be read to allow federal HAP major sources to avoid public participation and review. The Commission clarified these provisions to ensure that such was not the case.

14. In Part C.III.B., the Commission revised the schedule for submission of operating permit applications by the remaining two-thirds of sources in order to reflect the anticipated interim approval date of the operating permit program of January 1, 1995. This revision would also allow the Division to notify some sources of the need to submit an application before January 1, 1996, but on or after November 15, 1995, upon twelve months' notice.

<u>Changes to the Statement of Basis and Purpose dated July 15, 1993</u>

I.C.2. "Regulated HAPS"

Revise this paragraph to read:

Note that a HAP must be subject to a standard before the applicant is required to address it in the permit application. Once the EPA adopts a MACT standard for a particular HAP, all sources, even those not subject to the particular MACT standard, and even those not in the source category, must address that HAP in applications. In cases where the Commission or Division determines MACT on a case-by-case basis because the EPA has not timely promulgated a MACT standard for a source category or subcategory of sources, the MACT becomes applicable to all sources within that source category, pursuant to 112(g) of the federal act. In cases where the Commission or Division determines MACT on a case-by-case basis for an existing source that modifies prior to promulgation of an applicable MACT standard, the HAP becomes regulated only for a particular source subject to the case-by-case standard, pursuant to 112(g) of the federal act. Once the EPA promulgates the list of 112(r) (accidental release) pollutants, those pollutants will be considered to be "regulated" for all sources.

I.G.2. Minor Modifications

Revise the second paragraph under this heading to read:

Only certain modifications at the source may qualify as "minor modifications" for operating permit purposes. The change cannot constitute a "major modification" as that term is defined in Part A, Section II.B.35.B. The change cannot otherwise be a "Title I" modification. Other Title I requirements are applicable to new sources. These Title revisions include the following changes: (same).

I.H. Operational Flexibility

Emission Trading Based on the Permit: Revise this paragraph to read: The federal rule allows a source to change its operations, using the emissions trading provisions of an EPA-approved SIP to net out and avoid the need to revise its permit. At this time, the emissions trading provisions of Part A, Section V, have not been approved by EPA as generic trading provisions. Therefore, until the Colorado SIP contains a generic emissions trading policy approved by EPA, each emissions trade request will require a case-by-case SIP revision. EPA is intending to provide guidance for an emissions trading program in the near future.

I.P. Adopted March 16, 1995

Revisions to Regulation Number 3 Construction Permit Program

Background

At the request of the U.S. Environmental Protection Agency, Region 8, the Air Quality Control Commission adopted amendments to Regulation Number 3, Parts A and B, in order to clarify how the provisions relate to each and the federal regulations. These changes were necessary in order to gain federal approval of the State Implementation Plan.

Specific Statutory Authority

The Specific authority for this regulation is found in the Colorado Air Quality Control Act. Section 25-7-105(1) provides that the Commission shall promulgate such rules and regulations as are consistent with the legislative declaration and necessary for the proper implementation and administration of the Colorado Pollution Prevention and Control Act, including a comprehensive state implementation plan which shall meet all requirements of the federal act and shall be revised whenever necessary or appropriate. Section 25-7-109 provides that the Commission shall adopt, promulgate and from time to time modify or repeal emission control regulations that require the use of effective practical air pollution controls. Section 24-4-103 provides the rule making procedure followed during the promulgation of this rule. Section 25-7-110 provides the specific Commission procedures followed during the setting of

standards and regulations. Commission action in promulgating these regulations is taken pursuant to the above statutory provisions.

Purpose

Most of the amendments to Regulation Number 3, Parts A and B are of a general housekeeping nature. However, three provisions require greater explanation:

The Division originally proposed adding a definition of "construction" consistent with the federal definition for New Source Review and Prevention of Significant Deterioration. To eliminate the potential for confusion and conflict with the state statutory definition, the Division has removed that provision from the amendments. There is a definition for construction, which applies to Regulation Number 3, Parts A and B, in the General Provisions Regulations; that definition matches the state statutory definition.

The changes to the definition of "Net Emissions Increase" in Part A, Section I.B.37 needs some explanation. In order for an increase or decrease to be creditable, the Division could not have relied on the increase or decrease in issuing a permit under Regulation Number 3. Also, the source has two choices for proving the extent of the emissions increase or decrease: (1) the source submits or has on file an APEN indicating the baseline emissions rate and then submits a revised APEN within one year after making the increase or decrease (the difference between the two APENs is the amount of creditable increase or decrease) or (2) the source provides credible, demonstrable evidence to the Division of actual emission rates both before and after making the increase or decrease (the source can make the before and after demonstration any time during the contemporaneous period).

The general constructions permit provisions of Part B, Section IV.J. were amended to provide greater detail of how the Division would actually implement the provisions. The Division retains the discretion to determine whether it will issue a general construction permit, although a source or group of sources can request that the Division do so. These provisions are meant only for minor sources, including sources wishing to obtain federally enforceable limits on their potential to emit, making them synthetic minors. The contents of a general construction permit will vary depending on the type of source involved. The Division will state in the general construction permit that goes out for public notice all the criteria a source must meet in order to qualify for coverage under the permit, the method of application (including specific application forms if different from a standard construction permit), the deadline for application, and other requirements as necessary and specified in the permit (i.e. monitoring, reporting, and recordkeeping requirements). After receiving an application to be covered by a general construction permit, the Division will determine whether the source fits within the intended coverage of the general construction permit, meets all applicable requirements, and satisfies all the criteria as laid out in the general construction permit. If the Division grants a source the right to construct and operate under a general construction permit, there are still some situations under which the Division may require the source to obtain an individual construction permit (i.e., the source makes changes that bring it out of compliance with the general construction permit or circumstances change such that the source is no longer appropriately controlled under the general construction permit).

Overall, the amendments to Regulation Number 3, Parts A and B are meant to integrate with the existing rules and meet the federal requirements for the State Implementation Plan.

I.Q. Adopted May 18, 1995

Revisions to Regulation Numbers 8 and 3 Synthetic Minor Permit Program

This Statement of Basis, Specific Statutory Authority, and Purpose comply with the requirements of the Administrative Procedures Act, Section 24-4-103(4), C.R.S. (1994) for adopted or modified regulations.

Background

At the request of the Division, the regulated community and the state legislature (HB94-1264), the Air Quality Control Commission adopted rules that would allow the Division to issue permits to limit a source's potential to emit hazardous air pollutants (HAP). Such a mechanism is necessary and important because it enables the Division to issue a permit to a source of HAP in order to limit the source's potential to emit below emission thresholds requested by the applicant, thus allowing the source to avoid a variety of requirements such as Title V operating permit requirements, Title III maximum achievable control technology (MACT) requirements promulgated by the U.S. Environmental Protection Agency (EPA), or Colorado MACT requirements.

Specific Statutory Authority

The specific authority for these revisions is contained in the Colorado Air Quality Control Act, 25-7-101, et seq. (1989 & 1994 Supp.). Section 25-7-109.3(2) provides the specific authority for the Commission to adopt provisions allowing the Division to create synthetic minor sources of hazardous air pollutants. Section 25-7-109 provides that the Commission shall adopt emission control regulations requiring the use of effective practical air pollution controls. Section 25-7-109.3(2) provides that in order to minimize additional regulatory and compliance costs to the state's economy, any program created by the Commission shall contain a provision, which exempts those sources or categories of sources, which it determines to be of minor significance from the requirements of the program. Section 24-4-103 provides the rule making procedure followed during the promulgation of this rule. Section 25-7-110 provides the specific Commission procedures followed during the setting of standards and regulations. Commission action in promulgating these regulations is taken pursuant to the above statutory provisions.

Purpose

The rulemaking includes the permanent addition of Regulation Number 8, Part E, Section IV and amendments to Regulation Number 3, Part B. Following is a description of the purpose of each Section within Regulation Number 8, Part E, Section IV:

Section A of the rule clarifies that Regulation Number 8, Part E, Section IV applies to sources that choose to voluntarily limit their potential to emit HAP. This Section clarifies that although the Division shall issue permits to qualified applicants, the Division will not include in the permit any indication of the source's exemption status for other requirements (i.e. Title V or Title III of the federal Act) unless the source asks the Division to include all relevant emissions units and pollutants in the permit review. Under this regulation, the applicant chooses which emission units to cover in the particular permit: that can be all HAP emission points, some or one HAP emission points, all criteria pollutant emission points, and/or some or one criteria pollutant emission points. Unless there is a need for a state-only or federally enforceable permit condition, the Division will not impose any additional applicable requirements on criteria pollutants or HAPs for the emission unit or a number of emission units. If the permit applicant wants a thorough review of the facility and a determination by the Division that the facility qualifies as a synthetic minor from Title V and/or Title III, or other specific provisions of the state or federal Act, then the applicant can choose to have a comprehensive Division review in the permit. Sources choose in the permit application the threshold level below which they want to limit the potential to emit hazardous or criteria pollutants. Sources may want to bring their emissions below Title V major source thresholds or may want to limit their emissions below affected source thresholds under specific MACT standards or enhanced monitoring thresholds when those rules are eventually enacted. When a source applies for a permit under Regulation Number 8, the Division uses the procedural provisions of Regulation Number 3 to issue the permit. Finally, this Section clarifies that receiving a permit under this regulation will not relieve a source from possible future EPA requirements that apply to minor or area sources of HAP or state conditions; however, such sources may request a permit to further limit the potential to emit HAP below the trigger threshold.

Section B describes the elements of a permit issued under this regulation. The permit needs to include practically enforceable permit conditions. The Division makes the final determination on what those conditions are on a case-by-case basis for each permit. The monitoring, recordkeeping, and reporting requirements will depend on the specific source, for instance, practical enforceability may require

calculating mass balances, installing a continuous emission monitor, keeping track of consumption rates for various materials, etc. However, the permit conditions to limit a source's potential to emit shall be only as stringent as necessary to limit the source's potential to emit the pollutant of concern. For instance, the Division cannot require a source to add control equipment to reduce emissions significantly if the source can adequately reduce emissions without that control equipment. The applicant may consolidate reporting or monitoring requirements from this regulation and Regulation Number 3 for the emissions unit. Finally, if requested by the applicant, the permit may include alternative operating scenarios, approved by the Division. Such alternative operating scenarios shall include specific monitoring, recordkeeping, and reporting methods as needed. However, Section IV.B.4 for alternative operating scenarios is not intended to include modifications that trigger new source review unless such sources go through all the specific requirements of the construction permit program for modifications under new source review.

Section C tells the source what information to turn in to the Division, increasing the efficiency of communications between the source and the Division and streamlining the application process. The application forms will reflect the intent for the Division to be flexible in its approach to permitting these sources. Although the Division would prefer a consistent approach (i.e., all applications filled out fully), the Division recognizes that often these sources will have unique circumstances that cannot be adequately addressed in a standard application form. The Division further intends that the application forms be flexible enough so that sources can choose to have the Division calculate emissions and determine the permit conditions for them.

Section D, the public participation requirements, is a requirement of EPA. This Section makes mandatory what was previously discretionary for the Division.

Section E clarifies that the Division can combine the requirements from this Regulation with those for limiting the potential to emit criteria pollutants under Regulation Number 3 into a single permit so that it is easier for both the Division and the source to keep track of the overall permit requirements. Also, this Section IV of Regulation Number 8 is not intended to restrict the ability of a source to apply for and the Division to issue a construction permit under Regulation Number 3 with limits on the potential to emit criteria or hazardous air pollutants.

Section F explains to the source that if a physical or operational change triggers another requirement, the permit issued under this Section will not relieve the source of the obligation to comply with that requirement.

Section G informs the source that is must comply with the permit conditions at all times, i.e. on an ongoing basis.

Section H serves as an interim mechanism for gaining federal enforceability of the permit and is based on EPA guidance on potential to emit; this Section does not apply once EPA has approved these rules for limiting the potential to emit HAP. In order for a permit to be federally enforceable, EPA must receive a certification of compliance from the source indicating the source will comply with the permit terms. The source should send a copy of the initial permit approval with the certification of compliance to EPA and a copy of the certification to the Division (to keep in the permit file). The responsible official, defined in Regulation Number 3, needs to sign the certification.

The revisions to Regulation Number 3 are necessary to implement the provisions of Regulation Number 8, Part E, Section IV through the construction permit program. Note, that the operating permit program already has the necessary provisions to integrate Regulation Number 8, Part E, Section IV. The amendment to Section III.A.4 is not intended to extend any new rights to the applicant in the event the applicant declines permit conditions set by the Division, this amendment just makes explicit that the permit is strictly voluntary and that a dissatisfied applicant has normal rights of appeal associated with construction permits issued under Regulation Number 3. The addition of Section III.A.7 is to clarify that if a source wants to request a limit on the potential to emit in a standard construction permit, the source may do so. This Section also gives the Division the authority to limit the potential to emit HAP in a construction permit. The amendments to Section IV.C implement the public participation requirements of

Regulation Number 8, Part E, Section IV. The requirement that the Division submit a copy of the public notice to EPA for sources applying for a permit to limit the potential to emit criteria pollutants or federal HAP is meant to include criteria pollutants (already required under an agreement between the Division and EPA) and federal HAP listed in Appendix A of Regulation Number 8 (these are the HAP listed by EPA under Section 112(b) of the federal Act). Permits for sources limiting the potential to emit Colorado HAP do not need to be sent to EPA for comment.

Overall, these rules are intended to meld with the existing permit provisions within Regulation Number 3 while providing the added authority for the Division to issue permits to limit the potential to emit hazardous air pollutants and the opportunity for Colorado sources to get out of more rigorous permit requirements.

I.R. Adopted May 18, 1995

Revisions to Regulation Number 3 Part A, Section II.E.2 (As requested by Metro Wastewater Reclamation District)

This Statement of Basis, Specific Statutory Authority and Purpose for revisions to Regulation Number 3 complies with the requirements of the Administrative Procedures Act, C.R.S. ' 24-4-103(4) for adopted or modified regulations.

Basis

The 1990 Clean Air Act Amendments required states to inventory air emissions. C.R.S. ' 25-7-114.1 contains the requirements for this inventory. The Amendments also authorized EPA to conduct emissions studies for certain source categories, included publicly owned treatment works (POTWs). No adequate, reliable, and economically reasonable emissions estimations methods are currently widely available for these emissions.

Based on the expectation that publication of these studies would result in the creation and dissemination of practical emission estimation techniques, revisions to Regulation Number 3 were promulgated in March of 1994 which postponed reporting of non-criteria reportable pollutants for these sources until July 31, 1995, or until six months after the completion of the national studies, whichever occurred first. The postponement also applied to facilities, which treat municipal-type wastewater, since such facilities' emissions are virtually identical to those from POTWs.

EPA has eliminated funding for the federal POTW study. However, the Association of Metropolitan Sewerage Agencies (AMSA) has been assisting EPA in preparing its guidance document, and AMSA has also been preparing its own guidance. These documents are expected to be useful in estimating POTW air emissions. A final draft of AMSA's report is expected to be issued in the summer of 1995. EPA is also expected to issue its finding of presumptive MACT for POTWs for purposes of the Clean Air Act '' 112(j) and (g) at about this time.

Authority

The specific authority for this regulatory amendment is contained in C.R.S. ' 25-7-106(1), which authorizes the Air Quality Control Commission to promulgate such regulations as are necessary or desirable to carry out an effective air quality control program, and ' 25-7-114.1, which authorizes the Commission to promulgate the APEN inventory program.

Purpose

In order to give POTWs and facilities that treat municipal-type wastewater sufficient time to prepare reliable APENs, the Commission has extended the postponement of reporting for non-criteria reportable pollutants for these sources until December 31, 1995. The Commission finds that extending the APEN

reporting deadline is in the public interest because the information to be published by EPA and AMSA will not become available to these sources in time to allow for sufficiently reliable APEN reporting.

I.S. Adopted August 17, 1995

Revisions to Regulation Number 3 to Change TSP to PM-10 for PSD Increments and Housekeeping

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedure Act, C.R.S. 1973, Section 24-4-103(4) for adopted or modified regulations.

Basis

On June 3, 1993 the U. S. EPA promulgated changes to the Prevention of Significant Deterioration (PSD) rules replacing the Total Suspended Particulate (TSP) increment with particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM-10) increments. TSP continues to have a significance level for new sources but no longer influences the PSD increments.

Additionally the Division has identified several mistakes in the publishing of Regulation Number 3.

Specific Authority

The specific authority for this regulation is contained in the Colorado Air Pollution Prevention And Control Act, 1992 as amended. Section 25-7-105 (1) (a) (I) requires the Commission to promulgate a comprehensive state implementation plan that meets all requirements of the federal Clean Air Act. Section 25-7-105(1) (c) requires the Commission to promulgate a prevention of significant deterioration program.

Purpose

The Regulation Number 3 PSD rules implement the Federal PSD rules in Colorado. Under the PSD program areas that are in compliance with the National Ambient Air Quality Standards (NAAQS) are required to adopt a permit program for the preconstruction review of new stationary sources and modifications of existing stationary sources to prevent significant deterioration of existing air quality levels. The implementation of the new PM-10 increments will utilize the existing baseline dates and baseline areas for PM. The PM increments measured, and PM-10 already consumed since the original baseline dates established for TSP will continue to be accounted for, but all future calculations of the amount of increments consumed will be based on PM-10 emissions.

The Division is also proposing some minor housekeeping while revising this regulation. There were several Sections where the language published in the Colorado Register was either repeated or the changed paragraph and the original paragraph were both printed. There was also an outside request that submitted an outdated version of the regulation that was inadvertently published.

I.T. Adopted December 21, 1995

Part A, Sections I.B.37 & 67; Part B, Section IV.D.4

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

Regulations 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

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 These revisions to Regulations Number 3, 7, and the Common Provisions 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 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.

I.U. Adopted February 15, 1996

Revision to Part A, Section II.E.1 APEN Deferral for Utility and Non-Utility Boilers

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedures Act, CRS 1793, Section 24-4-103(4) for adopted or modified regulations.

Basis

The current provisions of Regulation Number 3, Part A, Section II.E.1., were designed to postpone reporting of non criteria reportable pollutants by sources such as utility and non-utility industrial boilers and small municipal generators pending the results of ongoing studies being conducted by EPA pursuant to Section 112(n) of the federal Clean Air Act. EPA was directed by Congress to complete those studies within three years after enactment of the federal act, i.e., by November 15, 1993; however, EPA has yet to do so.

During the Commission's last deliberations on this subject, it was stated that if EPA could not meet its deadline, then the Commission would revisit this deadline. Both the Commission and the regulated community were hopeful that EPA would be able to finish its work by the fall of 1995 so sufficient time was available for utilities to meet the December 31, 1995 deadline.

Specific Authority

Section 25-7-114.1 provides authority to the Commission to identify APEN reporting requirements. There currently are no federal reporting requirements concerning emissions of non-criteria reportable pollutants (NCRPs) or hazardous air pollutants (HAPs) from boilers. The current state regulations exceed federal regulatory requirements with respect to APEN reporting of emissions.

Purpose

A short postponement of the original deadline serves a significant dual purpose and both the state and the regulated community benefit from a deferral in this instance. The postponement avoids forcing an uneconomic and non-beneficial compliance requirement at this time on the regulated community. Since there are no compliance obligations respecting HAP emissions from boilers, either in effect or proposed, EPA and Division interpretations provide that an applicant for a Title V operating permit need only list - not estimate quantities of emission of - an application for an operating permit. This revision is administrative in nature, and is not intended to affect air emissions.

I.V. Adopted March 21, 1996

Revisions to Parts A, B & C for Insignificant Activities (Parties: Air Pollution Control Division, Colorado Association of Commerce & Industry and the Colorado Utilities Coalition for Clean Air Division - Part A, Section I.B.9.a; Section II.D.1.kk, 4.a, b.(iii) & (vi); Part C, II.E.3.kk

Basis

The Division reviews the addition of any requested insignificant activities to Regulation Number 3 once each year. The additions requested included small remote reservoir degreasers and torch cutting activities. Both of these items were reviewed by EPA Region VIII prior to the hearing date and given verbal approval.

The degreaser exemption provides that degreasers not using any chemicals covered by a Maximum achievable Control Technology (MACT) standard and meeting the definition of small remote reservoir are not required to submit an APEN to the Division. The torch cutting exemption clarifies the status of torch cutting as an exempt activity.

Authority

The specific authority for this regulatory amendment is contained in §25-7-114.1(2), C.R.S., which requires the Commission to exempt those sources or categories of sources, which it determines to be of minor significance from the requirement than an air pollutant emission notice is filed. Section 25-7-114.6(1), C.R.S., requires that the Commission designate those classes of minor or insignificant sources of air pollution which are exempt from the requirement for an emission notice or the payment of an emission notice filing fee because of their negligible impact upon air quality.

Purpose

This rule change provides some clarification and additions to the APEN exemption list for those sources that the Division believes to be of minor significance.

Colorado Association of Commerce and Industry - Part A, Section II.D.1.ttt; Part C, Section II.E.3.nnn.

Basis

The Division reviews the addition of any requested insignificant activities to Regulation Number 3 once each year. The Colorado Association of Commerce and Industry (CACI) requested the addition of

emergency power generators with limitations based on the size or hours of operation. The revisions rely on EPA guidance regarding emergency power generators.

Authority

The specific authority for this regulatory amendment is contained in C.R.S §25-7-114.1(2), which requires the Commission to exempt those sources or categories of sources, which it determines to be of minor significance from the requirement that an air pollutant emission notice be filed. C.R.S. §25-7-114.6(1) requires that the Commission designate those classes of minor or insignificant sources of air pollution that are exempt from the requirement for an emission notice or the payment of an emission notice filing fee because of their negligible impact on air quality.

Purpose

This rule change provides an addition to the APEN exemption list and clarification of the insignificant activities list for emergency power generators that are of minor significance base on size and/or hours of operation.

Colorado Utilities Coalition for Clean Air - Part A, Section II.D.1.aaa.(i), (ii); sss.(1).iv to vii; uuu; vvv; www; xxx; yyy; zzz; aaaa.(i), (ii); Part C, II.E.3.aaa.(i), (ii), xxx.(1).iv to vii; yyy; zzz; aaaa; bbbb; cccc; dddd; eeee

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedure Act, C.R.S. 1973, Section 24-4-103(4) for adopted or modified regulations.

Basis

The current provisions of Regulation Number 3., Part A and Part C both contain lists of activities and sources considered to be "insignificant" or exempt from reporting requirements. On December 29, 1995, the Commission proposed revisions to its existing Regulation Number 3, Parts A and C. Alternative proposals were submitted by members of the public, and after consultation, were endorsed by the Division.

Specific Authority

Section 25-7-114.1 provides authority to the Commission to identify APEN reporting requirements. Further, the rulemaking authority of the Commission is found in Sections 25-7-105 to 109 CRS, as amended. The regulations of the Commission currently contain lists of activities and sources exempt from APEN and reporting requirements. On July 10, 1995, the U.S. EPA issued a White Paper designed to streamline and simplify the development of Part 70, Title V permit applications. The White Paper explains that Part 70 provides permitting authorities considerable flexibility in defining certain activities or sources as "insignificant" upon proper showing of such. The White Paper itself contains substantial lists of activities or sources that are insignificant for reporting purposes.

Purpose

The addition of the following sources or activities to existing APEN exemption and reporting requirements serves a significant dual purpose and both the state and regulated community benefit from the alternate proposals. The revision of existing regulation avoids forcing an uneconomic and non-beneficial compliance requirement on the regulated community. Several of the following activities or sources are on federal lists as "insignificant," as well as those of neighboring states. These revisions are administrative in nature, and are not intended to affect air emissions.

Non-road Internal Combustion Engines:

Machinery utilized by the construction and service industries such as various types of pumps, light plants, compressors, and generators are powered by various sizes of internal combustion engines. Most are relatively small. Some emergency equipment such as fire pumps are powered by larger engines, but are operated infrequently. The exemptions listed above identify those within this category that have insignificant emissions. This exemption is consistent with other exemptions in the regulation (see, for example, Subsections k. and l.). As a practical matter, APENS have not been required from most of these machines in the past. The sizes of most of these engines are comparable to the thousands of light and heavy trucks (gasoline and diesel powered), which travel the roads in this state without any reporting requirements.

The EPA proposal of May 17, 1990 (58 Fed. Reg. 28809) and the EPA study it references contains useful findings. It exempts all spark-ignition (gasoline, propane and natural gas powered) engines. On page 28816 of the Federal Register notice, EPA finds that it did not propose manufacturing standards for spark-ignition engines because little to no emission benefit would be achieved for testing, record keeping and reporting requirements on these engines. Cost burdens industry would have to bear would not be reasonable. It also found that test procedures have not been demonstrated to be capable of accurately predicting the levels of hydrocarbons, carbon monoxide and particulate matter emissions generated by these engines in actual use. In addition, the economics and failure problems associated with gasoline-powered engines dictate that relatively small sizes of gasoline engines are used for the light commercial equipment described above. As a result, all spark-ignition engines should be exempt from APEN reporting and classified as an insignificant activity.

The EPA study found that it could also exempt engines located on a trailer or truck bed. These engines are relatively small (dictated by trailer size and carrying capacity limitations) and power light commercial equipment, such as welders, compressors and generators, see page 28815 of the Federal Register notice.

Larger machines are typically powered by diesel engines of varying sizes. A review of emission factor data from AP-42 supports a Division of diesel-powered engines into three categories for APEN exemption purposes. Using emission factors from AP-42, expected emissions from a 175 horsepower diesel engine operating 24 hours per day, 7 days per week, 52 weeks per year at a load factor of 0.5 would present a "worst case" estimate under the 8760 hours per year "potential to emit" methodology. The following emissions are calculated:

-0.5 ton per year of carbon monoxide
-0.2 ton per year of hydrocarbons
-0.2 ton per year of particular matter
-2.5 ton per year of nitrogen oxides
-0.2 ton per year of sulfur oxides

A 300 horsepower engine could operate up to 3 hours per day, or 1095 hours per year, and have the same emissions as the 176 horsepower engines. Similarly, an engine up to 750 horsepower could operate 1 hour per day, or 365 hours per year and have the same emissions as the 175 horsepower engine class.

This approach is consistent with the approach taken by the EPA in its Guidance Document for "Calculating Potential To Emit for Emergency Generators," issued September 6, 1995. There, the EPA agreed that the use of 8,760 hours per year for calculating the potential to emit for emergency generators did not control. Instead, EPA recommended that the potential to emit be based upon an estimate of the maximum amount of hours the generators could operate based on a case-by-case basis where justified by the source owner or permitting authority. Surface water storage impoundment of non-potable water and storm water evaporation ponds: Chemical analysis and observation of these sources has consistently demonstrated that they are a negligible emission source of any regulated air pollutant.

Non-potable water pipeline vents:

Proper flow through of non-potable water maintains these sources as insignificant. Proper flow keeps the water in line from becoming septic and therefore a negligible source of any regulated air pollutant.

1. Steam vents and safety release valves:

Safety release valve vents enable immediate reduction of pressure in steam lines. Emissions out of the safety valves consist only of pure water vapor.

2. Deaerator/vacuum pump exhausts:

These are negligible sources of emission of any regulated air pollutant.

3. Seal and lubricating oil systems for steam turbine electric generators:

Atmospheric vents exist in coal-fired utility turbine lube oil systems enable removal of water vapor from lube oil return lines from the turbine and generator bearings. This enables atmospheric pressure operation of lube oil storage tanks. These are not storage systems, but actual service operations. Calculations reveal that these activities would emit less than one ton of VOC's a year, per facility.

4. Venting of natural gas lines for safety purposes:

To enable the safe delivery of fuel gas to the utility boilers, and provide the ability to safely purge natural gas from fuel lines within a generation building, vent lines exist to allow the intermittent discharge of natural gas to safe areas away from personnel and ignition sources.

The intermittent discharge of natural gas would occur during start-up and shutdown of the natural gas supply to generating unit burners to purge air or natural gas from the piping system within the generation building. These activities are not expected to emit more than one ton of VOC's or more than 110 pounds of hexane a year.

Sulfuric acid storage tanks not to exceed 10,500 gallons capacity and sodium hydroxide tanks:

Sulfuric acid and sodium hydroxide, used to control pH, are stored in tank systems vented to the atmosphere. These vents will exhaust vapor from a tank system through vapor extraction and contraction because of changes in temperature and barometric pressure. These losses, which are referred to as breathing losses, occur without any significant change in liquid level in the tank, and are negligible.

Waste lubricating oil storage tanks not larger than 40,000 gallons and lubricating oil-conditioning systems:

Low volatility waste turbine and motor lube oil generated by utility plant machinery and mobile heavy equipment is stored in tanks. These tanks are equipped with atmospheric vents on the tops of the tanks. Emissions through these vents are expected to occur during the filling and emptying of the tanks. These emissions contain trace amounts of VOC's, with no other reportable emissions expected. Based on the low annual throughput of these tanks, emissions are insignificant, assuming that the tanks are emptied approximately five times per year or less.

Colorado Utilities Coalition for Clean Air - Part A, Section II.E.1

This Statement of Basis, Specific Statutory Authority and Purpose complies 24-4- with the requirements of the Administrative Procedure Act, C.R.S. 1973, Section 103(4) for adopted or modified regulations.

Basis

The current provisions of Regulation Number 3, Part A, Section II.E.1, were designed to postpone reporting of non-criteria reportable pollutants by sources such as utility and non-utility industrial boilers and small municipal generators pending the results of ongoing studies being conducted by EPA pursuant to Section 112(n) of the federal Clean Air Act. EPA was directed by Congress to complete those studies within three years after enactment of the federal act, i.e., by November 15, 1993; however, EPA has yet to do so.

Both the Commission and the regulated community were hopeful that EPA would be able to finish its work by the fall of 1995 so sufficient time was available for utilities to meet the original December 31, 1995 deadline. The EPA did not meet that deadline, and the Commission granted a deferral until June 30, 1996. The EPA study is now the subject of further delay due to one of the individual constituent hazardous air pollutant studies and the extensive federal government furloughs in both late 1995 and early 1996 that substantially contributed to further delay the study's progress.

Specific Authority

Section 25-7-114.1 provides authority to the Commission to identify APEN reporting requirements. There currently are no federal reporting requirements concerning emissions of non-criteria reportable pollutants (NCRPs) or hazardous air pollutants (HAPs) from boilers. The current state regulations exceed federal regulatory requirements with respect to APEN reporting of emissions.

Purpose

A short postponement of the amended deadline serves a significant dual purpose and both the state and the regulated community benefit from a deferral in this instance. The postponement avoids forcing an uneconomic and non-beneficial compliance requirement at this time on the regulated community. Since there are no compliance obligations respecting HAP emissions from boilers, either in effect or proposed, EPA and Division interpretations provide that an applicant for a Title V operating permit need only list - not estimate quantities of emissions of - HAPs reasonable believed to be contained in the boiler emissions in an application for an operating permit. This revision is administrative in nature, and is not intended to affect air emissions.

I.W. Adopted March 21, 1996

Revisions to Part B, Section III.D.1.f, Section IV.C.1.e, Section IV.C.1.f, and Section IV.C.

The changes to Regulation Number 3 were adopted in order to make it clear that the redesignation of the Denver metropolitan area as an attainment maintenance area for ozone does not change the requirement for gasoline stations in the Denver metropolitan area are to obtain a construction permit.

Section III.D.1.f appears to imply that, upon such redesignation, gasoline stations in the Denver area would not be required to obtain a permit because that area would become an attainment area. However, Section III.D.5 goes on to provide that such exemptions do not apply because gasoline stations are subject to the RACT requirements of Regulation Number 7, Section VI.B.3.b. The purpose of the revisions is simply to make it clear from the text of Regulation Number 3, Part B, Section III.D.1.f alone that gasoline stations in the Denver area are still required to obtain a construction permit. The revisions to Sections IV.C.1 and IV.C.4 were necessary to ensure that permits for de minimis exemptions from, and alternative means of compliance with, the requirements of Regulation Number7 are subject to review and comment by the public and by EPA. Such comment and review is necessary because the Sections I.A. and II.D of Regulation Number 7 provide the agency with the authority to revise the requirements that apply to a source without revising the SIP. The SIP requirements were developed and adopted following review and comment by EPA and the public. It follows that any change in those requirements with respect to any source or category of sources should also be subject to such public comment and review. The specific statutory authority to amend this regulation pertaining to exemptions from permit requirements is set out at § 25-7-114.2. Further statutory authority can be found in the Commission's

authority to redesignate the area because such redesignation must include an approvable 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.

This revision to Regulation Number 3 is not intended to reduce air pollution and will have no regulatory effect on any person, facility or activity.

For clarification, the Commission adopted these regulation revisions as follows:

Regulation Revision	Ozone SIP and Maintenance Plan
Part B, Section III.D.1.f	Exists in Appendix C of the Ozone Maintenance Plan to be come a part of that document approved March 21, 1996
Part B, Section IV.C.1.e and f; Section IV.C.4	Adopted as subsequent regulation revisions to be submitted to the Governor and EPA Separately and concurrently as a revision to the SIP (and Maintenance Plan).

I.X. Adopted June 20, 1996

Revisions to Part A, Section V.C.1.f (Fees Correction)

Basis

This revision corrects an erroneous regulation change requested by the Division in response to an EPA letter of September 19, 1994, which provided comments on the revisions to Regulation Number 3 for the operating permit program. The comment made by EPA was for clarification, not a requirement that the State should not charge for fugitive emissions. The change requested by the Division in 1995 included the term fugitive emissions in the paragraph of exclusions from the definition of regulated pollutant. Because of this change, the Division's authority under the statute to charge annual fees for fugitive emissions became confused which affected the Division's ability to cover its operating costs through fees. The regulation text also no longer conformed to Section 25-7-114.7, as revised in the 1996 legislative session.

Authority

Section 25-7-114.6.(3), C.R.S., requires that the revenues from fees collected by the Division approximate the annual appropriations to the Division to carry out its duties with respect to stationary sources. Section 25-7-114.7, C.R.S., requires imposition of an annual emission fee on stationary sources, and defines what is a regulated pollutant for purposes of these fees.

Purpose

These changes address an erroneous March 1995 revision made with respect to the charging of fees for fugitive emissions. The revision specifically exempted fugitive emissions and would significantly reduce the Division's ability to collect fees sufficient to cover duties with respect to stationary sources. In 1992 the General Assembly prohibited imposition of annual fees for fugitive dust or fugitive emissions as those terms were defined at the time in "Commission rule I.B.1 of regulation number 3, 5 CCR 1001-5." That rule defined only fugitive dust and the March 1995 regulatory revision inadvertently addressed fees on fugitive emissions as well. This rule conforms the regulation to statute, and eliminates any ambiguity between the two. Moreover, during the 1996 legislative session, the legislature in HB1271 amended Section 25-7-114.7(1) to clarify the authority of the Commission to assess fees for fugitive emissions. The Commission intends that all forms of "fugitive dust," regardless of whether the dust is of a size or

substance to adversely affect public health or welfare, is excluded from the definition of "regulated pollutant", for purposes of annual fees.

The Commission determines that these revisions are administrative in nature and are not intended to reduce air pollution.

I.Y. Adopted June 20, 1996

Revisions to Part A, Section I.B.9, 59, Section V.C.12; Part B, Section III.D.2; Part C, Section II.A.1.b, Section VI.A, E, H.3 and Section XII.A.1;Appendices B, C and D for Hydrogen Sulfide

Background

The Division requests that the Commission adopt changes to Parts A and C and the Appendices within Regulation Number 3 to better reflect current EPA implementation of the Title V operating permit program. These changes include: (1) noting that a source major only for Total Suspended Particulate (TSP) is not required to obtain an Operating Permit in Part C; (2) deleting the Hazardous Air Pollutant reference beside the pollutant Hydrogen Sulfide (H2S) in Appendices B, C, and D of Regulation Number 3 to reflect the federal delisting of this pollutant, and; (3) expanding the definition of "applicable requirement" in Part A to clarify that EPA-issued PSD permits are applicable requirements of the Operating Permit Program. A discussion of each of these changes follows.

The current notation under Regulation Number 3, Part C Section II.A, General Considerations, lists all major sources as being required to obtain Operating Permits. The EPA has issued a written guidance document indicating that the definition of regulated air pollutant for purposes of Title V applies only to emissions of PM-10, and not TSP. The current requirements reflected in Part C, Section II.A.1.b does not reflect the federal program requirements.

Currently, H2S is reflected as a Hazardous Air Pollutant in Appendices B, C, and D. The EPA stated that the inclusion of H2S on the federal list was a typographical error and removed the pollutant from the federal list. As a result of the reference to H2S as a hazardous air pollutant in the Appendices, sources emitting H2S have been charged annual fees for HAPs and sources major for H2S emissions could be required to get an Operating Permit.

The current definition of applicable requirement in Part A, Section I.B.9.a does not provide authority for EPA-issued PSD permits to be incorporated into Operating Permits. The definition of "applicable requirement" in Part 70 of the federal program includes permits issued by EPA. The State needs this regulatory change to make the rules consistent with the federal law. Currently, regulated entities subject to these requirements can obtain a permit from EPA or can voluntarily have the requirement placed in their Title V permits, but this situation does not support the intent behind the Title V program.

Specific Authority

The specific authority for changes to this regulation is found in the Colorado Pollution Prevention and Control Act. Section 25-7-105(12) provides authority to promulgate regulations, which are necessary to implement the minimum elements of Title V. Section 25-7-103(1.5) allows the Commission to define air pollutant consistent with the federal act. Section 25-7-114.4(1)(l) and Section 25-7-114.4(3)(a) provide authority for promulgating regulations for the effective administration of construction and operating permits, and complying with all applicable requirements for operating permits. Section 25-7-114.5 provides authority for evaluating permit applications to determine whether operation and emissions comply with all applicable emission control regulations. Relevant federal law includes 42 U.S.C. Section 7661a(b)(5)(A), and 40 C.F.R. Sections 70.1(b), 70.3, and 70.6(a)(1) regarding applicable requirements. Commission action in making changes to Regulation Number 3 is taken pursuant to the above statutory provisions.

Purpose

The amendments adopted by the Commission add language in Regulation Number 3, Part C, Section II.A.1.b indicating that a source that is major only for TSP is not required to receive an Operating Permit. This amendment ensures conformity with the federal law.

The amendments delete the reference to Hazardous Air Pollutant noted next to hydrogen sulfide in Appendices B, C, and D. This ensures consistency with the Federal delisting and eliminates the potential confusion for sources that will be major only based on emissions of hydrogen sulfide as a Hazardous Air Pollutant to obtain an Operating Permit. The amendments expand the definition of applicable requirement in Part A to include those permits issued by EPA under Part C and Part D of the federal act. This ensures conformity with the federal law.

The amendments correct a few typographical errors that existed in Regulation Number 3, Parts A, B, and C.

Finally, the amendment to Part C, Section II.A.1.b, regarding TSP, is administrative in nature and is intended to reflect current EPA policy; it is not intended to reduce air pollution. The amendment to Part A, Section I.B.9.a, regarding the definition of applicable requirement, is administrative in nature and reflects the requirements of Part 70. This action regarding the definition of applicable requirement maximizes air quality benefits in the most cost effective manner by enabling sources to incorporate federally issued PSD permit into their Operating Permit. Thereby, these sources will only be reporting to one enforcement authority. These revisions applicable to Part C are not to be submitted as part of the State Implementation Plan.

I.Z. Adopted October 24, 1996

Revisions to Generic Part A, Section V, (with Regulation Number 5, Emissions Trading and Banking

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, 25-7-110.5 and 25-7-110.8, C.R.S.

Basis

The Division has worked with the emissions trading and banking subcommittee to develop Regulation Number 5 and revisions to Regulation Number 3 for the purpose of implementing an EPA-approvable emissions trading program.

The subcommittee has developed a trading rule combining elements from the existing EPA guidance and the prior Commission rule. The subcommittee spent a great deal of time discussing the issues around the possible uses for credits, how credits could be certified, and how they should be traded and tracked.

Emission reduction credits are intended to be granted only for reductions beyond compliance levels that are actual, quantifiable, surplus and enforceable. This rule is not intended to impose additional control limitations on sources. The rule does impose requirements to ensure that these basic criteria are met in order to guarantee that the source flexibility afforded by this program does not occur at the expense of air quality.

This rule is a revision to the SIP done only under the Commission's general authority. Thus, the trading and banking rule will not be state enforceable until after legislative review. Section 25-7-133(2), C.R.S. Additionally, because EPA must approve this change into the SIP, the Commission finds it appropriate to delay the effective date of these revisions until EPA approval as a SIP revision. This will provide the sources that might wish to participate the assurance that the rule is approved and that the credits are

useable prior to the implementation of the program. The existing trading provisions in Regulation Number 3 will remain in effect until the new trading rules are approved by EPA. These constraints on the effective date of these revisions are reflected in the rule text approved by the Commission. In addition, in order to avoid confusion about what portions of the regulations are effective until EPA approval of the SIP change, the parts of Regulation Number 3 that will be repealed are printed in italics.

State implementation plans are to include, among other things, enforceable emissions limitations and other control measures, means or techniques to meet the requirements of the Clean Air Act. These are to include economic incentives such as fees, marketable permits, and auctions of emissions rights. 42 U.S.C. 7410(a)(2)(A). These regulation revisions are being submitted as a SIP revision pursuant to the foregoing Clean Air Act requirements.

The following issues were identified by the subcommittee and noticed by the Commission for further consideration. The Commission discussed and resolved these issues in the course of this rulemaking proceeding and makes the following findings regarding these issues.

Issue: Once used, does a permanent emission reduction credit (ERC) ever expire? Some believe that an ERC once used, even if from a permanent reduction, should expire after some period (e.g., 20 years).

Conclusion: The Commission, based on the experience in the previous trading rules, decided that the permanent credits should not expire after they are put into use.

5. Issue: Should a decrease in electrical demand be usable to generate emission reduction credits?

Conclusion: Because of the existence and operation of the national electrical grid system, the Commission believes that it would be far too difficult to verify that there had been a decrease in demand (a decrease in actual emissions) and not a variation in the grid structure, and therefore at this time finds it is inappropriate to allow a decrease in demand to generate ERCs.

6. Issue: As the proposed rule is written, inter-pollutant trading is allowed on a case-by-case basis subject to Division approval. The subcommittee and the Division recognized that a universal or standard protocol for approving such trades would be desirable, but that no officially approved protocols for any inter-pollutant trades exist.

Conclusion: The Commission agrees that there is currently insufficient scientific information available to support inter-pollutant trades in most cases. In order to ensure that the Division staff is not placed in the position of having to develop information and protocol to support an inter-pollutant trade proposal, the Commission finds that the burden of proving the acceptability of an inter-pollutant trade shall be placed on the source.

Because of concerns expressed by the EPA that the protocol for inter-pollutant trades has not yet been developed, the language of VI.B. was amended to allow proponents of such trades the opportunity to make their case to the Division and EPA for approval. This amendment attempts to address the EPA concern.

7. Issue: The proposed rule states that temporary credits must be credited and traded within the same "season" for seasonal pollutants. Should temporary credits be allowed to be traded from a season of lower concern to a season of higher concern?

Conclusion: The Commission finds that the use of temporary credits should be restricted to the same season in which they were generated, or a season of lower concern. This will help mitigate any significant increases in seasons that may cause a violation of the NAAQS.

Issue: At this time no internal provisions exist for program development and implementation. How should the cost of the program implementation and development be addressed?

Conclusion: The Commission acknowledges that the Division will monitor the activity in the trading program and, if needed, legislative fee authority will be sought. Fees for permit changes required by this rule will be charged pursuant to Regulation Number 3. Nevertheless, the Commission acknowledges that resources are not currently available and funding may be needed for this program.

8. Issue: Should the rule contain procedures or criteria specific to trading Hazardous Air Pollutants (HAPs)? The subcommittee and the Division agreed not to address this issue of HAPs in the proposed rule.

Conclusion: The Commission is concerned that use of ERCs for criteria pollutants that contain or consist of HAPs could unduly increase the risks to communities and the environment in the vicinity of the credit-using source. Assessing relative risk is difficult, time-consuming and highly fact-specific to a particular source and trade. In order to address this concern, the Commission adopted Section VI.G.8 that requires that the HAPs reduced to generate the ERC must be of equal or greater toxicity than the HAPs contained in the emissions for which the ERC will be used in lieu of satisfying an applicable requirement. Section VI.G.8 does not operate as an emissions control regulation on any HAPs, but is simply a limitation on participation in the trading program.

9. Issue: How is the base emission rate set? In order to show the level of actual emissions at a source before reductions for which credits are claimed, a period representative of normal operating conditions must be used.

Conclusion: The Commission adopts provisions that require using the last twelve months' actual emission rate unless the last twelve months are not representative. The source may propose to the Division to use any consecutive twelve months in the last ten years as more representative of normal unit operations. This allows most sources to use a period, which the Commission believes is likely to be representative of normal operating conditions. Where the source can show that the period is not representative, the rule allows source flexibility in determining their pre-reduction actual emissions.

10. Issue: Should the Commission give authority to the Division to allow discounts from the ten percent contribution of emission reductions for air quality benefits for generators that participate in a voluntary pollution prevention program or other voluntary "beyond-compliance" programs? Should a generator be allowed to contribute only five percent of its their emissions reductions for air quality benefits as an incentive for participation in pollution prevention programs?

Conclusion: The Commission agreed to provide such flexibility to the Division for generators that have voluntarily adopted comprehensive and facility-wide environmental programs such as a Pollution Prevention Program or other similar voluntary "beyond-compliance" programs.

11. Issue: Should ERCs be used to satisfy Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) requirements where a source triggers PSD or nonattainment New Source Review and must install BACT or LAER control technologies? Recent reports in the national press have indicated that EPA is giving serious consideration to allowing ERC use for BACT as it attempts to move away from command-and-control approaches to more contemporary market approaches.

Conclusion: The Commission believes that ERCs may appropriately be used in lieu of the emissions reductions which would otherwise be achieved by application of the BACT technology requirements in situations where such technology requirements are not cost-effective or exacerbate other pollutant emissions, and the use of an ERC would achieve the same purposes more efficiently. In such instances, it will be incumbent on the source to demonstrate that such a situation exists. In any case, however, the

other PSD provisions and required analyses would apply to the source. PSD requirements are performed on future allowable emission rates. Because of concerns about the use of ERCs for BACT requirements, although the Commission has allowed ERCs to be used to meet BACT requirements in limited instances, it believes that this provision should only be applied prospectively for new BACT requirements and not to allow a source to remove BACT where it has already been installed. The Commission concludes that use of ERCs in lieu of emissions reductions from LAER is not appropriate because of the potential impacts on nonattainment areas.

12. Issue: How will the local effect of "hot spot" pollutant trades be analyzed to prevent a local criteria pollutant exceedance due to emission credit transactions? Should the rule require modeling of criteria, pollutants to assure there are no exceedances of the National Ambient Air Quality Standards? Conclusion: The Commission adopts the language in Section VI.G.7 of Regulation Number 5 requiring modeling for all trades in order to ensure that trades do not cause or contribute to a NAAQS exceedance, an increment exceedance, or any violation of a required SIP provision. As that Section reflects, the source may request that the Division waive the modeling requirement if the source can document to the Division's satisfaction that the trade has a negligible impact.

13. Issue: How and who modifies the conformity budget for intersector trading? With mobile to stationary source trades, does the emission budget increase after the life of the credit has expired, and how is this accomplished?

Conclusion: The Commission has provided for ERCs to be available to satisfy conformity requirements in accordance with the federal rules. The Transportation Conformity requirements (40 CFR Parts 51 and 93) presently allow for trades among emissions budgets where either a SIP revision or a SIP establishes mechanisms for such trades. 40 CFR §93.124(c). The Colorado emissions trading rule is intended to be a SIP revision establishing such a "mechanism" to allow for such trades.

The Commission recognizes that, if mobile source emissions rise above the mobile source emissions budget in the state implementation plan, a plan revision may be necessary as otherwise required by state and federal law.

14. Issue: What becomes of the "buffer" between a credit-generating source's potential to emit and its actual emissions before the reduction for which the credit is claimed? Does the generator get to keep a portion, all, or none of it?

Conclusion: The Commission finds that methods exist to allow a source to retain the operating flexibility from a pre-reduction "buffer." When a source wants such flexibility, it may claim credits for less than the entire reduction in emissions accomplished; the difference constitutes a new "buffer." A source may use temporary credits to meet short-term operating needs.

These methods retain flexibility for the source without relying on "paper reductions." The Commission concludes that it is imperative that reductions for which credits are granted must be actual reductions. Allowing a source to retain a buffer from within the credits granted, as proposed by the Colorado Association of Commerce and Industry, would result in credits for "reductions" which did not actually occur. This result is unacceptable, particularly because sources determine their own permitted emissions levels when they file their Air Pollution Emission Notices.

For example, a source with a ninety-five ton per year permitted level that actually emits fifty tons reduces its emissions to forty tons. The source should take a new permit with a level between forty and fifty tons (e.g., forty-five tons) so that the source has a five-ton buffer. The source may then fluctuate its emissions between forty and forty-five tons without violating the permit, and generate temporary credits for any emissions reductions below forty-five tons.

In order to ensure that reductions are actual, an ERC-generating source will not be able to increase its permitted emissions in the absence of a process or control modification. The source cannot, for example, simply file an APEN with higher emissions estimates and thereby increase its permitted emissions. The effect would be to allow emissions for which credits were already granted, resulting in "paper reductions." This consequence is unacceptable.

15. Issue: Should a closer relationship be established between emission trades and the various pollutant-specific SIP elements? With regard to the spatial distribution of emissions, the rule as proposed did not acknowledge any sub-regional emission budgets, dispersion modeling requirements, or other spatial considerations contained in attainment and maintenance demonstrations for specific SIP elements.

Conclusion: The original proposed regulation did not have a modeling requirement for ERC use. The Division subsequently proposed that modeling be required prior to an ERC use unless the source requests that such modeling be waived and the source can show that the ERC use would have a "negligible" impact. The Colorado Association of Commerce and Industry expressed a concern that the Division would require costly or unnecessary modeling in most cases. This concern stems from the lack of definition of what is "negligible" in the judgment of the Division. The Commission believes that modeling should only be required where the location or circumstances of the ERC use would reasonably be expected to cause or contribute to a NAAQS violation, an increment exceedance, or violation of a SIP provision such as near a "hot spot" in a nonattainment area or where ambient conditions are within 5% of any applicable standard. The Commission, based on the explanation offered by the Division, believes that the modeling required by the rule as adopted will adequately address this issue.

16. Issue: Should the emission trading rule clarify whether trades can take place among different air sheds/Air Quality Control Regions.

Conclusion: The Commission adopts two levels of limitations on the geographic scope of trading. First, trades are limited to sources within the same nonattainment area or from a source in a nonattainment area to one in an attainment area. Second, all trades must be between sources within the same PM-10 PSD areas. These limitations are intended to avoid excessive impacts on local communities and Class I areas from long-distance trades.

In addition to the issues discussed above, the Commission also considered concerns about granting ERCs for emission reductions that occurred in the past. This rule allows a source to use credits generated under the old rule and to seek credit certification for reductions, which occurred prior to adoption of this rule. However, the Commission wants to emphasize that past emission reductions, which have been used to demonstrate attainment or reasonable further progress for SIP purposes are not eligible to qualify as ERCs.

The Commission recognizes that use of ERCs in lieu of compliance with an emission limitation may raise public concerns in the vicinity of the credit-using source. For this reason, the rule anticipates that notice to the Division will be required prior to use of ERCs. Permanent ERC use must be accomplished through a permit change. Temporary ERC use may occur only after an APEN is filed with the Division. Each of these documents is available to the public. Notices of ERC use will be published on the ERC Trading Network by the Division. The provisions of Regulation Number 3 requiring and allowing public notice and comment of proposed permits and modifications will also apply to permit actions to approve use of ERCs. The Commission believes that use of the Division's discretion to seek public comment needs to be supplemented in order to provide sufficient information to the public regarding proposed uses of ERCs. Accordingly, the Commission has included a requirement that the Division notify local governments in the affected area when the trade will result in the use of ERCs, which would exceed the threshold for, or otherwise trigger, public notice and comment pursuant to Section IV.C.1 of Part B, Regulation Number 3. The Commission anticipates that local governments will be able to use this notice to schedule informational meetings for citizens, which Commission members and appropriate Division staff will be able to attend. The Commission also emphasizes that the Division should exercise appropriate discretion

to provide public notice and comment for trades that involve HAPs, which would be implemented by notifying the local government pursuant to the process described above.

The Commission elected to preclude trading of elemental lead because of that pollutant's particular characteristics and modified the definition of criteria pollutant for the purposes of this regulation.

The Commission included Section IV.A.1.d. in this regulation to ensure that ERCs are granted only for real overall reductions in emissions. This provision ensures that reductions will be creditable only if the emissions are not replaced in the airshed by another generator in a business of like kind. In order to assure that this program does not grant credit for "paper" reductions, the rule prohibits generating ERCs where this business shift will replace emissions within the same airshed. This determination will be made on a case-by-case, fact-specific basis.

Specific Statutory Authority

These regulation revisions are adopted under the general authority of the Commission found in Section 25-7-105(1), C.R.S. and are consistent with 42 U.S.C. 7410(a)(2)(A).

Purpose

This rule was proposed in order to provide the maximum flexibility for sources in meeting the state and federal requirements outlined under the possible uses for credits. The Commission makes the following findings in regards to the adoption of this regulation:

1. The Commission has considered, and has based its decision, on the reasonably available, validated, reviewed and sound scientific methodologies and information made available by interested parties.

2. Where these revisions are not administrative in nature, the record supports the conclusion that the provisions adopted will result in a demonstrable reduction in air pollution. This reduction is accomplished through the retirement of 10% of the achieved reduction in emissions.

3. The revisions selected maximize the air quality benefits of the emissions standards that apply. The revisions selected are the most cost-effective based on the documents submitted by the parties under Section 25-7-110.5, and provide the regulated community with flexibility in meeting emissions limitations. Although the requirement for increased emissions modeling may impose additional costs, the Commission believes this requirement is necessary to ensure that no violations of air standards will occur as a result of using ERCs.

I.AA. Adopted November 21, 1996

Revisions to Appendices B, C

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

Regulations 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 Number 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)(l)(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 Regulations Number 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.

I.BB. Adopted November 18, 1999

Revisions to Part C Incorporation by Reference of New and Revised Federal Regulations Concerning Compliance Assurance Monitoring (40 C.F.R. Parts 64, 70, and 71) into Colorado Air Quality Control Commission Regulation Number 3, Part C, Addition of Section XIV.

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.

Pursuant to Section 114 of the 1990 Clean Air Act Amendments ("CAAA"), the U.S. Environmental Protection Agency ("EPA") promulgated new regulations in 40 C.F.R. Part 64 and revised regulations to 40 C.F.R. Parts 70 and 71 to implement compliance assurance monitoring ("CAM") for pollutant specific emission units at major stationary sources of air pollution that are required to obtain Title V operating permits. The requirements imposed by the CAM rule are separate from the requirements of EPA's "periodic monitoring" rule found at 40 C.F.R. Section 70.6(a)(3)(i). The periodic monitoring rule requires that each operating permit contain any emissions monitoring or test methods already required by an applicable requirement including any "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit . . . such monitoring shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement." See 40 C.F.R. Section 70.6(a)(3)(i)(B) (emphasis added).

Subject to certain exemptions, the new CAM regulations require owners or operators of such sources to conduct monitoring that satisfies particular criteria established in the rule to provide a reasonable assurance of compliance with applicable requirements of the Act. Monitoring requirements contained in the rules focus on emissions units that rely on pollution control equipment to achieve compliance with applicable standards. The CAM regulations also provide procedures for coordinating these new requirements with the Operating Permits Program regulations.

The CAM regulation generally will not require implementation of its requirements for most units subject to CAM until the first round of Title V permit renewals, which will generally be five years after initial Title V permit issuance.

The following table reflects the schedule by which CAM plans must be submitted by owners and operators of affected emissions units:

Pollutant Specific Emission Unit (PSEU) Size	CAM Plan Due as part of the Operating Permit INITIAL Application	CAM Plan Due as part of the Operating Permit REVISION Application	CAM Plan Due as part of the Operating Permit RENEWAL Application
"Large" PSEU (see 40 C.F.R. Section 64.5(a))	If Title V permit application is not complete by 4/20/98 OR if PSEU part of a greenfield permit application after 4/20/98	If a significant permit revision[1] at an existing Title V source	If Title V permit application was complete before 4/20/98
"Other" PSEU (see 40 C.F.R. Section 64.5(b))	Never	Never	Always

1. "significant permit revision" is defined as "significant permit modification" in Colorado Air Quality Control Commission Regulation Number 3, Part A, Section I.B.36.h. This definition is subject to change when the federal Part 70 revisions are promulgated and adopted by the Colorado Air Quality Control Commission.

In the event of a significant proposed operating permit modification that may trigger the earlier application of the CAM rule, the rule's provisions only become applicable with respect to those pollutant specific emission units for which the proposed operating permit revision is applicable. See 40 C.F.R. Section 64.5(a)(2).

Basis

Regulations to implement these CAAA mandates were originally proposed in 1993 as the "enhanced monitoring" program. The enhanced monitoring proposal focused on monitoring air emissions as a means of ensuring source compliance with CAAA emission limitations and operating permit conditions. The EPA received approximately 2,000 comment letters to the enhanced monitoring proposal. In response to these comments and through a series of stakeholder meetings, the agency decided to redesign the Part 64 program. In 1995, the EPA promulgated a revised draft Part 64 rule, which is now known as the CAM rule. The final CAM rule was promulgated on October 22, 1997.

The Commission heard testimony from members of the public who were concerned that the implementation of the rule would have the effect of making existing applicable requirements more stringent. It is the Commission's understanding however that this is not the purpose nor should be the result of implementation of the CAM rule. In adopting the CAM rule by reference, the Commission does not intend that existing applicable requirements become more stringent.

Authority

Section 25-7-105(12), C.R.S. (1997) provides authority to promulgate regulations that are necessary to implement the minimum elements of Title V of the Clean Air Act. Section 25-7-106(6), C.R.S. (1997) provides the Commission with the authority to require testing, monitoring and record keeping. Commission action in promulgating these regulations is taken pursuant to the above statutory provisions. The Commission is not adopting the CAM rule in this incorporation by reference as part of the Colorado State Implementation Plan. For that reason, the provisions of Section 25-7-105.1 C.R.S. (1999) regarding federal enforceability do not apply.

Purpose

Adoption by reference of the Federal CAM regulations contained in 40 C.F.R. Part 64, and the revisions to 40 C.F.R. Parts 70 and 71 make the regulations enforceable under Colorado law. Adoption of the regulations will not impose upon sources additional requirements beyond the minimum required by Federal law, and may benefit the regulated community by providing sources with up-to-date information.

I.CC. Adopted November 15, 2001

Revisions to Regulation Number 3, Part B: Concerning Construction Permits, Including Regulations for the Prevention of Significant Deterioration

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., and implements Sections 25-7-105(17) and 25-7-212, C.R.S.

Basis

The rule revisions adopted implement the provisions of House Bill 99-1351. Regulation Number 3 contains permitting, monitoring, reporting, visibility protection, and fee requirements.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, Section 25-7-105(17), C.R.S., provides the authority for the Commission to hold hearings to approve emission inventories related to state and federal lands. That subsection also directs the Air Pollution Control Division to prepare inventories for all state land management agencies with jurisdiction over state lands. Section 25-7-212, C.R.S., requires federal land managers to develop a plan for evaluating visibility in mandatory class I federal areas and to provide to the state an emission inventory for pollutants that affect any mandatory federal class I area within Colorado. This Section also directs the Commission to use the inventories to develop control strategies for reducing emissions within the state of Colorado as a primary component of the visibility long-term strategies.

The Commission's action is taken pursuant to procedures set forth in Sections 25-7-105, 25-7-110 and 25-7-110.5, C.R.S.

Purpose

In general, HB 99-1351 was intended to provide mechanisms for the state to develop information important to its efforts to protect and enhance visibility, particularly in mandatory federal class I areas. This bill specifies the types of information that must be reported, collected and approved for use in the state implementation plan.

Federal agencies own and administer approximately 36 % of the land in Colorado. Accordingly, the federal government has jurisdiction over many sources of emissions within the state. The inventory information developed under this regulation will provide additional information needed regarding these emissions, as well as those from similar state lands.

The rule requires that all federal and state lands have emission inventories approved by the Commission by December 31, 2002 and at least every five years thereafter. The emission inventories must include emissions in both Colorado and other states that may affect visibility in mandatory federal Class I areas in Colorado.

House Bill 99-1351 requires the first submittal of inventory information by the federal land management agencies by December 31, 2001. The Commission anticipates that the affected federal land managers may rely upon regional inventory information to satisfy in part the requirements of this rule. The regional inventory development process is in its early stages. In addition, this hearing has been continued once and accordingly this rule may not become effective before the statutory deadline for the initial federal public lands emission inventory submittal. The Commission recognizes that this created uncertainty for the federal land managers. Nevertheless, the General Assembly established the deadline for submittal of the federal public lands inventory in 1999 and the federal agencies have known about this requirement for more than two years.

The Commission anticipates that submittal of the regional emission inventory will provide enough information to reasonably meet the December 31, 2001 deadline. In order to ensure that inventories reflect the best information available, however, the Commission allowed the federal agencies an additional six months to provide supplemental information to fully meet the requirements of this rule. Any such additional information must be submitted to the Commission by July 1, 2002. The Commission is to hold a public hearing on the inventories and approve them by December 31, 2002. This schedule will still allow sufficient time for the Commission to consider and approve, if appropriate, the inventory information submitted.

The Commission believes that the emissions subject to the reporting requirements of this rule are in the order of hundreds of tons per day of criteria pollutants and that this level of emissions justifies application to federal and state land managers of reporting requirements similar to those that apply to owners and operators of other large emissions sources.

The Commission has the authority to exempt from the inventory requirements any sources or categories of sources that it determines to be of minor significance. This rule does not contain such an exemption because little is known about several of the source categories (e.g., biogenic sources). The Commission may consider at a later time whether such an exemption is appropriate based on additional information that may be gathered.

The Commission elected for the purposes of this regulation to define federal land management agencies as those agencies that own and manage at least 50,000 acres of land in Colorado. The Commission intended to exempt agencies with relatively small amounts of land (e.g., Department of Commerce, Bureau of Reclamation) from having to prepare inventories. In the Commission's view, the benefit of developing information relative to emissions from lands managed by smaller agencies did not justify the administrative burden and costs of preparing such emission inventories.

The Division is required by the bill's provisions to provide an inventory of emissions from activities of all state of Colorado land management agencies on state of Colorado lands that may affect visibility in Colorado's Class I areas. The inventory is to be delivered to the Commission by July 31, 2002 and at least every five years thereafter.

There are several requirements in the statute that have not been included in the regulation as they are largely policy directives to the Commission and Division from the General Assembly

The rule revisions adopted address the procedural mechanisms for accomplishing the mandatory requirements of House Bill 99-1351. The Commission concludes that these rule revisions are adopted to implement prescriptive state statutory requirements, where the Commission is allowed no significant policy-making options, for the purposes of § 25-7-110.5, C.R.S. The Commission also concludes that it has no discretion under state law to adopt alternative rules that differ significantly from these revisions, for the purposes of § 25-7-110.8(1), C.R.S. Accordingly, the Commission did not include in the record some of the portions of the rulemaking prerequisites addressed in § 25-7-110.5, C.R.S. and did not make specific determinations regarding the factors listed in § 25-7-110.8(1), C.R.S.

The Commission took into consideration the appropriate items enumerated in Section 25-7-109(1)(b), C.R.S.

I.DD. Adopted July 18, 2002

Revisions to Regulation Number 3

This Statement of Basis, Specific Statutory Authority and Purpose comply with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

Regulation Number 3 sets forth the Air Quality Control Commission's permitting and air pollutant emission notice programs for stationary sources. The regulation is organized into four parts: Part A contains general provisions and the Air Pollution Emission Notice (APEN) program; Part B deals with major and minor source Construction Permits; Part C sets forth the Operating Permit program; and, Part D provides the statements of basis, specific statutory authority and purpose for revisions to the regulation. Changes have been made to each of these parts to clarify ambiguous language, eliminate duplicative or unnecessary provisions and to make the requirements more understandable and easier to read. Additionally, some substantive changes have been made to address inconsistencies between the regulation and state and federal law, to improve the permit program from an air quality protection perspective and to eliminate unnecessary burdens on the regulated community. Appendices B and C to the regulation were deleted because they were duplicative of Appendix D. The majority of the revisions were proposed by the Air Pollution Control Division based on internal review and extensive discussions with interested parties. The Division's initial proposals were addressed at length during a subcommittee process involving the Commission, the Division, stakeholders and other interested parties. During this process, participants commented on the initial proposal and offered additional suggestions. The proposal presented to the Commission is a collaborative effort of the Division and interested stakeholders.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in various Sections of the Colorado Air Pollution Prevention and Control Act ("Act"). Section, 25-7-105(1), C.R.S., gives the Air Quality Control Commission authority to promulgate rules and regulations necessary for the proper implementation of the Act, including regulations to assure attainment and maintenance of national ambient air quality standards, emission control regulations and a prevention of significant deterioration program. Section, 25-7-105(12), C.R.S., provides specific authority to establish, emission notice, construction permit and operating permit programs. Some of the statutory parameters for these programs are set forth in Sections 25-7-114, through 25-7-114.7 of the Act, and these Sections in turn, provide statutory authority for the current revisions. Additional authority for these revisions is set forth in Section 25-7-106, C.R.S., in Section 25-7-119, C.R.S., and in Section 25-7-132, C.R.S.

Purpose

A review of the previous Regulation Number 3 revealed numerous stylistic, grammatical and formatting problems, language ambiguities and obsolete or duplicative provisions. These revisions are intended to update, clarify and streamline this regulation. Additionally, changes have been made to address developments in state and federal law, to eliminate inconsistencies between the regulation and state and federal law, and to improve the programs set forth in the regulation from an air quality perspective while eliminating or minimizing undue and unnecessary burdens on the regulated community.

I. Part A Revisions

Part A of Regulation Number 3 contains a definitional Section and provisions that set forth the Air Pollution Emission Notice program and other general provisions relevant to the notice and permit programs.

A. Definition Changes

Numerous changes to the definition Section were made. Primarily, these changes were designed to fix ambiguous language, to make the definitions more readable or to delete obsolete or duplicative definitions. For example, the definition of applicable requirement was modified to clarify that it included construction permit requirements that may have been modified during the operating permit process. This definition was always intended to include such modifications, but the old language failed to clearly explain that intent. Similarly, a change to the definition of major modification was necessary to clarify that the term included both physical changes and changes in the method of operation. The prior version omitted language resulting in an ambiguity regarding this intended meaning. Changes were made to the definition of net emissions increase to clarify that in calculating an increase or decrease of emissions, sources are not committed to use the emission numbers contained in an APEN. For example, when credible demonstrable evidence indicates a different amount of actual emissions exists, this information can be used to demonstrate a net emissions decrease. The definition of significant was also changed to clarify that the Prevention of Significant Deterioration (PSD) and New Source Review (NSR)-nonattainment area (NAA) programs do not apply to certain hazardous air pollutants. Specifically, the state PSD and NSR/NAA programs exempt those hazardous air pollutants that are exempt from the federal PSD and NSR/NAA programs pursuant to Section 112(b)(6) of the Federal Act.

In addition to the clarifications, formatting and readability changes made to the definition Section, a number of definitions were added or modified to reflect developments in federal law. For example, the Commission revised the definitions of actual emissions and major modification to include special provisions governing physical or operational changes at electric utility steam generating units. These changes were necessitated by changes in the federal regulations arising out of the decision in the Wisconsin Electric Power Company ("WEPCO") case. The changes are applicable only to coal-fired electric utility steam generating units. Colorado law has required that NSR provisions be interpreted consistent with federal requirements since 1994 when the Colorado General Assembly enacted HB94-1264, Section 25-7-109, C.R.S. The WEPCO definitions have been added, consistent with EPA's regulations, in order to clarify the meaning and scope of the changes to the definitions of actual emissions and major modification. Units need not have obtained a formal applicability determination from the Division before proceeding with the physical or operational change, although doing so is at the risk of the source. Actual emissions levels may be determined from the information found in periodic APENs which sources file pursuant to Regulation Number 3, Part A., or from other credible information, such as data from continuous monitoring systems. The filings by sources in the past, such as APENs, have enabled the Division to track sources' emission increases and decreases in a manner consistent with the provisions in the WEPCO rule, therefore, the Commission believes this formal adoption should not impose a greater burden on sources in Colorado than they have historically experienced. The Commission notes that, consistent with the legislature's intent, the WEPCO provisions have been implemented by the Division in recent years. One example is the flexibility provided a change qualifying as a pollution control project.

The definition of major modification was further changed to restrict what constituted a temporary activity. Under both the old and new regulations, temporary activities are not considered to be part of a major stationary source. The old definition could be read, however, to exclude activities that constituted temporary sources under the PSD program. Such sources are subject to certain limited PSD requirements, and could be classified as an exempt temporary activity resulting in an exemption from those limited requirements. The new version clarifies that only temporary construction or exploration activities are exempt, thus preserving the applicability of the PSD temporary source requirements.

Under the definitions for major modification and major source, while emissions from temporary construction are not included in determining whether there is a major modification or source, emissions from ongoing construction are included. Several parties requested clarification as to what constitutes ongoing construction. Such a determination must be made on a case-by-case basis, but generally, construction lasting more than two years will be considered ongoing.

At the suggestion of the regulated community, the definition of commenced construction was supplemented to identify the entire range of pre-construction activities that may be undertaken without obtaining a construction permit.

Provisions governing regulation of non-road engines have undergone a complete overhaul. In addition, the definition of non-road engines was moved from the APEN exemption provisions in Part A, Section II.D.1.sss., to the definition Section of Part A. The prior regulation (Section II.D.1.sss.) exempted certain non-road engines from APEN and permitting requirements, provided these exemptions did not apply where the engines would otherwise trigger PSD, NSR-NAA review or other applicable requirements. Since the promulgation of that regulation, Congress amended the federal Clean Air Act. These amendments, as interpreted by the D.C. Circuit Court of Appeals, precluded the states from enacting emission control regulations for non-road engines except under very restricted circumstances. The Court of Appeals held, however, that states could enact use restrictions such as restrictions on the hours of operation or amount of fuel usage. To address this situation, the regulated community requested that non-road engines be specifically identified as non-stationary sources, thus exempting them from most, if not all, of the requirements of Regulation Number 3. While agreeing that non-road engines should not be treated as stationary sources, the Division expressed a concern that a large aggregation of these engines might result in a violation of ambient air quality standards. To reconcile these conflicting concerns the regulatory revisions create a new state-only non-road engine program for certain non-road engines.

The Commission's authority to establish a non-road engine program and to regulate the operation of non-road engines is set forth in 27-7-106(1) C.R.S., and through the legislative declaration in 25-7-102 C.R.S. Non-road engines subject to the program must submit an APEN and pay appropriate APEN fees. If specified emission levels are tripped in the APEN, the program further requires that the source obtain a temporary permit and pay applicable permit fees. The permit will include such use restrictions as are necessary to prevent an exceedance of ambient air quality standards. Non-road engines that are mobile or self-propelled equipment such as bulldozers, haul trucks, water trucks, loaders, shovels, backhoes, road graders, cranes or similar mobile equipment are not subject to the state-only permit program and are not required to obtain an APEN.

Whether an engine qualifies as a non-road engine as opposed to a stationary source will depend on the facts of a particular case. To qualify as a non-road engine under Regulation Number 3, Part A, Section I.B.40.a.iii., the engine must be portable. What constitutes portable will be determined on a case-by-case basis. Additionally, such portable engines lose their status as non-road engines if they remain at a location for more than twelve consecutive months. The regulation narrowly defines location such that use of a portable engine at multiple sites at a given source does not constitute use at a single location. This provision, however, is not intended to allow a source to circumvent the regulation by moving a given engine for the purpose of avoiding expiration of the twelve-month period.

For sources that have voluntarily obtained permits for a non-road engine(s) as defined in Regulation Number 3, Part A, Section I.B.40., prior to the effective date of this rule revision, a source may continue to operate under the existing permit. A modification or re-opening of the existing permit will effectively subject a source to the requirements set forth in the non-road engine state-only permit program (Part A, Sections I.B.40.c. and I.B.40.d.)

During the public hearing on this rulemaking, the Commission raised concerns regarding the flexibility and responsiveness of the new state-only non-road engine permit program in emergency or other unforeseen situations. In these situations, it is an operator's obligation to file an APEN and obtain a state-only non-road engine permit under Sections I.B.40.c., and I.B.40.d., prior to the exceedance of any trigger level (i.e., hours of operation and/or emission limitation). This clarification is intended to increase program flexibility by ensuring that operators, including local and state government, will not be penalized when responding to emergencies and business planning conditions when such conditions subsequently trigger APEN and permit application requirements under the program.

To enhance and foster program responsiveness, the Commission expects that the Division shall act to complete state-only non-road engine permit applications as expeditiously as possible. In addition, under

the authority set forth in Section 25-7-114.5(5), C.R.S., the Commission has determined that state-only non-road engine permit applications shall not be designated as permit actions subject to public notice requirements.

B. Changes to APEN Program

The Division proposed to add record keeping requirements to a number of APEN exemptions. The Commission did not adopt the specific record keeping language in Part A of the regulation. The intent of the Commission, however, is that sources should have records or other information sufficient to verify that an exemption from APEN requirements can be taken in accordance with the regulatory requirements.

The Commission revised Section II.D.4.a.(vi), deleting the solvent return opening size requirement for small remote reservoir cold solvent degreasers contained in Section II.D.4.a.(vi)(A). The Commission also revised the emissions limit in Section II.D.4.a.(vi)(C) from 350 pounds of volatile organic compounds per year to one ton of emissions per year. These changes were requested by industry based on the argument that the existing provision was specifically designed for one particular source and is not useful for the broader industry. While sources are no longer required to meet the solvent return opening provision in order to claim the exemption, they are subject to the requirements contained in Regulation Number 7, Section X.B.

Measurement of the throughput threshold for the fuel storage and dispensing equipment APEN Exemption in Section II.D.1.ccc., was changed from a 30-day average to an annual average. In addition, language was added to clarify that sources in the Denver ozone attainment-maintenance area must still utilize Stage 1 vapor recovery on all tanks with a capacity greater than 550 gallons, as required by Regulation Number 7. While ordinarily sources subject to other applicable requirements would be precluded from taking the exemption under the APEN and constructions permit exemption catchall provisions, in this particular instance, it is the Commission's intent that sources may take this exemption providing that the Regulation Number 7 vapor recovery requirements are met.

An APEN exemption for wet screening operations was added at Section I.D.1.cccc. Certain wet screening operations are subject to New Source Performance Standard ("NSPS") Subpart OOO. This federal requirement requires that such facilities comply with a zero visible emissions standard. Ordinarily, a source that is subject to a New Source Performance standard precludes the source from taking an APEN exemption pursuant to the catchall provision in Section II.D.4. It is the Commission's intent that in this particular case, application of NSPS Subpart OOO shall not prevent a wet screening operation from taking the exemption.

A substantive change was made to the applicable de minimis levels for APEN exemptions in attainment and nonattainment areas. Under the prior regulation, if an area was nonattainment for any pollutant the lower nonattainment de minimis levels applied for all pollutants. This has been revised so that the lower levels will only apply to the pollutants for which the area is not in attainment.

The exemption for agricultural operations was changed to provide greater clarity and to be consistent with the requirements of the State Act. Conforming changes were also made to the agricultural exemption set forth in Part C.

Because Regulation Number 3 and the Common Provisions Regulation under went contemporaneous review, the primary focus with respect to duplicative provisions was to eliminate duplications between the two regulations. Duplicative provisions that were only applicable to Regulation Number 3 were deleted from the Common Provisions Regulation. Provisions applicable to multiple regulations remain in the Common Provisions and were deleted from Regulation Number 3. Certain non-Regulation Number 3 duplications were also addressed. A full review of all the Commission's regulations was not undertaken at this time. It is expected that there are additional duplications that should be addressed as other regulations are opened for revision.

C. Fee Schedule Revisions

The language governing the fee schedule for APENs and permit processing was simplified to provide that fees will be charged in accordance with the procedures and amounts set forth in the Act. This change alleviates the requirement of revising the regulation every time the statutory fee schedules change.

D. Confidentiality Provisions

The rules governing confidentiality of documents submitted in connection with APENs and permit applications were changed to be consistent with the Act, and to clarify ambiguities in the prior regulation. In addition, more specific provisions were added regarding the process involved in asserting confidentiality and determining whether documents are in fact confidential. Under the prior regulation, the evaluation of confidentiality claims was very ambiguous making it difficult for the Division to determine whether a document was confidential, and providing sources no guidance as to the steps they should take to ensure confidential treatment of documents. The new provisions clearly set forth the rules for claiming confidentiality and for evaluating such claims. This should benefit the Division and the regulated community by providing a clear understanding of confidentiality protections.

Pursuant to the State Act, information submitted as part of an air pollutant emission notice, Permit Application or Operating Permit reports is confidential only if it relates to secret processes or methods of manufacture or production. This limitation is reflected in the revised regulation. In contrast, Section 25-7-111(4), C.R.S. provides that information obtained by the Division in connection with an enforcement action may be entitled to confidential treatment if it constitutes a trade secret. The current regulatory revision is not intended to alter or affect the protections offered under Section 25-7-111(4), C.R.S.

In cases where the Division determines that certain information is not subject to confidential treatment the revisions shorten the notification period from fifteen to three days. This change was made based on the statutory mandate in the Colorado Open Records Act requiring release of public records within three days after a request for such records. The notification period is intended to allow the source the opportunity to obtain judicial relief from the Division's determination under the State Administrative Procedures Act prior to release of the information. While it is recognized that the three-day notification period may make it difficult for a source to institute a timely action, the requirements of CORA preclude a longer period. It is expected that the Division will take the steps necessary to provide actual notice to the source as soon as a determination is made, so that the source will have adequate time to protect its rights.

II. Part B Revisions

The majority of revisions to Part B involve stylistic changes intended to improve the readability of the regulation. A small number of substantive revisions were made as described below.

The provisions in Section IV.H., were changed to clarify the requirements for obtaining a final approval construction permit. The previous regulation required the source to demonstrate compliance with the initial approval construction permit. The Division was then required to conduct an inspection to determine compliance. Because an inspection during the initial approval period is not required by law, the new regulation makes the inspection discretionary. This provides necessary protections in those instances where an inspection may be needed. The provision was further modified to give the Division discretion as to whether to issue a final approval permit when there is a pending operating permit application. Requiring the issuance of a final approval permit was often an unnecessary step in situations where an operating permit would be issued shortly thereafter. To avoid confusion among sources when the Division elects not to issue a final approval construction permit, a notice will be provided to the source in writing. Similar flexibility was added to Section III.D.6., in cases where a previously permit exempt source loses its exemption based on addition of new emission points.

The prior regulation required submission of an operation, maintenance, and record keeping plan with the construction permit application. This provision ignored the reality that such plans are difficult to provide

until after the source has been constructed. The new regulation provides that these plans must be submitted prior to obtaining final approval.

Significant changes were made to the post construction monitoring requirements for the PSD program. The changes were made to be consistent with the federal PSD regulations. The revisions provide flexibility to either require or waive post-construction monitoring.

The revisions expand the provisions governing appeals of construction permits. The prior regulation provided that a source could appeal the Division's decision to the Commission, but failed to identify the process for such an appeal. The revision provides that the appeal must be made within thirty days after the issuance of the permit, denial or revocation, and will be held in accordance with the general rules for adjudicatory hearings. A similar provision was also added in Part C at Section V.E.

Section V.B. has been changed to reflect that the Black Canyon of the Gunnison has been reclassified as a National Park. The boundaries of this area remain the same, and there is no change in the classification of this area as Class I or Class II.

Revisions have been made throughout the regulation to address changes in areas from the nonattainment classification to the attainment/maintenance classification. A search of the regulation was conducted to identify those provisions that depended on the area being classified as nonattainment. When a requirement remains in place after the reclassification of an area, the word nonattainment was changed to attainment/maintenance. Otherwise, no change was made. A substantive change was made to the applicable de minimis levels for permit exemptions in attainment and nonattainment areas. Under the prior regulation, if an area was nonattainment for any pollutant the lower nonattainment de minimis levels applied for all pollutants. This has been revised so that the lower levels will only apply to the pollutants for which the area is not in attainment to be consistent with a similar revision in Part A.

III. Part C Revisions

As with Parts A and B, the majority of revisions to Part C include changes to improve readability and to clarify ambiguous provisions. Revisions were made to Section II.E., to fix poorly worded language. The new provision more clearly explains when an insignificant activity exemption can be taken. In addition, changes in II.E., and to other Sections regarding exemptions included in Part C were made to conform to exemptions in Part A and B.

Provisions regarding the phase-in of the operating permit program were deleted since these provisions are now obsolete.

Section III.B.2., sets forth certain timing requirements with respect to submitting operating permit applications. The prior regulation was unclear as to the new legal requirements for sources subject to the operating permit requirement after start-up by operation of law. The revised provision clarifies that sources shall submit an application within twelve months of the effective date of the new requirements or at such other time specified in those requirements. The revisions also clarify that when a source subject to an operating permit is modified, an application to revise the permit must be submitted within twelve months of the modification.

In the past, significant confusion has arisen when a source seeks an operating permit prior to obtaining a final approval construction permit under Part B. Revisions to Sections V.A., and IV.B.3., clarify the rules governing these situations. These revisions also conform to the changes made in Part B, Section IV.H. The flexibility given to the Division to issue an operating permit absent a final approval construction permit under Section V.A., is intended to apply regardless of whether the source has commenced operation of the emission unit(s) at issue.

IV. Appendices

Prior to this rulemaking, Regulation Number 3 included four appendices: Appendix A, Method for Determining De Minimis Levels for Non-Criteria Reportable Pollutants; Appendix B, 1993 Non-Criteria Reportable Pollutants; Appendix C, 1994 and Subsequent Years Non-Criteria Reportable Pollutants; and Appendix D, Non-Criteria Reportable Pollutants. This rulemaking deletes the original Appendix B and Appendix C because they are duplicative of Appendix D. Appendix D has been revised to Appendix B in order to maintain continuity in the regulation.

I.EE. Adopted October 17, 2002

Revisions to Regulation Number 3

This Statement of Basis, Specific Statutory Authority and Purpose comply with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

Regulation Number 3 sets forth the Air Quality Control Commission's permitting and air pollutant emission notice programs for stationary sources. Pursuant to its statutory authority, the Commission may exempt certain stationary sources from permitting and APEN requirements where emissions from such sources are deemed to be insignificant. The Commission is revising the exemptions for condensate and crude oil tanks and condensate and crude oil loading equipment to ensure that the exemptions apply only where the emissions are truly insignificant. Additionally, the Commission is revising the provisions designed to ensure that in exempting certain sources from APEN and permit requirements, the regulation does not allow sources to avoid other state and federal requirements. This revision clarifies when application of other requirements prohibit sources from claiming exemptions.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in various Sections of the Colorado Air Pollution Prevention and Control Act ("Act"). Section, 25-7-105(1), C.R.S., gives the Air Quality Control Commission authority to promulgate rules and regulations necessary for the proper implementation of the Act, including regulations to assure attainment and maintenance of national ambient air quality standards, emission control regulations and a prevention of significant deterioration program. Section, 25-7-105(12), C.R.S., provides specific authority to establish, emission notice, construction permit and operating permit programs. Some of the statutory parameters for these programs are set forth in Sections 25-7-114.1, and 25-7-114.2 of the Act, including the authority to exempt certain sources from APEN and Permitting requirements. These Sections in turn, provide additional statutory authority for the current revisions.

Purpose

I. Condensate Tanks and Truck Loading Equipment

Revisions to the crude oil and condensate storage tank exemption in Part A, Section II.D.1.ddd.and crude oil and condensate truck loading equipment exemption in Part A, Section II.D.1.ee., were proposed to address the issue of flashing emissions in condensate tanks. The exemptions, and a corresponding exemption in Part C, Section II.E.3.ee. and ddd., did not take flash emissions into account when the Commission initially adopted the exemption. The large quantity of volatile organic emissions that can be released during a flash event led to changes in the exemptions. Additionally, separate exemptions have been established for crude oil tanks and equipment and condensate tanks and equipment in recognition of the fact that flashing emissions from crude oil and condensate are significantly different.

The Commission recognizes that in changing these exemptions a number of tanks and equipment that were previously exempt from APEN reporting, and therefore exempt from construction permitting requirements, will now be required to file APENs. The Commission does not believe, however, that these

existing sources will now be required to obtain state construction permits, since such a requirement is triggered by construction or modification of a source, and not by a change in a previously applicable exemption. If, however, the tanks or equipment is modified after December 30, 2002, a construction permit will be required for the modification unless the tanks or equipment qualifies under the revised APEN exemption or constructions permit exemption. During the revision process there was some discussion about what might constitute a modification that would trigger construction permit requirements. Based on the information provided to date, the Division and Commission do not currently believe that reworking of an existing well would constitute a modification under the regulations. Additionally, sources subject to PSD, NSR-NAA and Title V permitting requirements are required to have such permits regardless of their exemption status. The Commission notes to permit applicants that this change becomes effective on the effective date of this regulation.

In connection with these revisions, the Commission has also looked at the timing requirements set forth in Part A, Section II.D.1.lll., for submitting APENs and obtaining construction permits for tanks at crude oil and natural gas exploration and production sites. The Commission enacted this provision in 1993 to allow sources sufficient time to determine production levels before being required to submit APENs or construction permit applications. To affect this, Section II.D.1.lll. provided that APENs for oil and gas exploration and production operations were not required until 30 days after filing the well completion or recompletion report with the appropriate state or federal agency. Additionally, Part B, Section III.D.8. provided that applications for construction permits for such operations were due at the same time as the APEN filing. Based on discussions during the regulation revision process the Commission discovered that the well completion report must be filed before production levels can be determined and that the provision should have referenced the report of first production. Therefore, the Commission has revised Section II.D.1.lll. to clarify and effectuate the intent of the 1993 revisions.

The Commission also recognizes the definition of condensate that appears in the Common Provisions Regulation does not include reference to an API gravity and therefore could be read to include crude oil. It is the Commission's intent that for the purposes of these exemptions, as well as APEN reporting, condensate should only include hydrocarbon liquids that fit within the Common Provisions definition and that have an API gravity of 40 degrees or above. The Commission anticipates revising the Common Provisions definition to more clearly reflect this intent the next time the Common Provisions regulation is opened for revision.

II. APEN Catchall

Changes to the APEN catchall in Part A, Section II.D.4. and the construction permit catchalls in Part B, Section III.D.5., were significantly reworked to add clarity. The prior versions were somewhat unclear as to both the effect of APEN and permitting exemptions on other applicable requirements and when otherwise exempt sources would be required to file APENs. While the revisions minimally change the substantive requirements of the two catchall provisions the new language is intended to more clearly express these requirements. The new language clarifies that sources that are exempt from APEN and/or construction-permitting requirements are not, by virtue of that exemption, exempt from any other applicable requirements. Thus, for example, a source that is exempt from APEN or permitting requirements, must still comply with the Regulation Number 1 20% opacity standard. Likewise, an APEN exempt emission point at a major source is excused from paying APEN fees but may still need to be listed as an insignificant activity under the requirements of the Title V program. Additionally, where the emissions from a particular emission point would cause a source to avoid PSD, NSR-NAA or Title V information regarding that emission point cannot be omitted from any permit application, notwithstanding the fact that the emission point standing alone might be exempt from APEN or Construction Permit requirements.

The Commission also requires that if the potential to emit, taking into account full design rate and continuous operation, triggers PSD or NSR requirements, the source must submit an Air Pollutant Emission Notice and apply for the appropriate permit, or must apply for a permit to limit the physical or operational capacity of the source such that the source is not considered to be a major source as defined

in Section I.B.59 of Part A of this regulation. This language previously appeared in the catchalls, but was relocated to this statement of basis.

Finally, the revised catchall provisions subject certain emission points and sources to APEN and Construction Permit requirements notwithstanding the fact that such points and sources would otherwise be exempt. Sources specifically identified in the applicability Section of any subpart of Part A of Regulation Number 6 (New Source Performance Standards), or Regulation Number 8 (Hazardous Air Pollutants), Parts A, C, D, and E. This provision allows the Division to keep track of these points and sources, and ensure that the requirements of these programs are being properly followed. It must be noted, however, that wet screening operations subject to the exemption set forth at Part A, Section II.D.1.cccc may claim exemptions notwithstanding the fact that such sources are subject to New Source Performance Standard OOO.

I.FF. Adopted April 16, 2004

Revisions to Colorado Air Quality Control Commission Regulation Number 3 Stationary Source Permitting and Air Pollutant Emissions Notice Requirements

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.

Basis

Regulation Number 3 sets forth the Air Quality Control Commission's ("Commission") permitting and air pollutant emission notice programs for stationary sources. The rule revisions adopted reorganize and clarify the permitting, monitoring, reporting and fee requirements of Regulation Number 3. In addition, new provisions were added to conform the state program to the federal rules.

The existing regulation was composed of four parts. Part A contained general provisions and the Air Pollution Emission Notice [APEN] program; Part B addressed major and minor source construction permits; Part C set forth the Operating Permit Program; and Part D included the statements of basis, specific statutory authority and purpose for historical revisions to the regulation.

The Commission reorganized the rule in order to make it easier for sources to find and comply with applicable requirements. Part A now contains general provisions applicable to reporting and permitting, including the Air Pollution Emission Notice requirements; Part B addresses construction permits; Part C includes the operating permit program; and Part D deals with the Nonattainment New Source Review and Prevention of Significant Deterioration ["New Source Review" or "NSR"] programs for major stationary sources. Minor sources will only be subject to Parts A and B; major sources (as defined for the Operating Permit program) are governed by Parts A, B and C. Major stationary sources must comply with Parts A, B, C and D. In particular, this reorganization separated the major stationary source NSR provisions from the construction permit requirements applicable to all sources. This will make it easier for minor sources to comply with the regulation. The Commission also made changes to each part in order to clarify ambiguous language, eliminate duplicative or unnecessary provisions, increase the level of certainty for the regulated community and make the regulation more understandable. Part E is now reserved for Environmental Management Systems and Part G contains the historical and current Statements of Basis, Specific Statutory Authority and Purpose for Commission rulemaking actions.

In addition, the changes incorporate modifications to the nonattainment new source review and prevention of significant deterioration programs. Changes to these programs were necessary to comply with federal rule revisions that must be incorporated into the Colorado State Implementation Plan ("SIP"). The Commission tailored the federal requirements to Colorado's air quality program to ensure efficient and flexible operation and administration of the program while eliminating or minimizing undue and unnecessary burdens on the regulated community.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, Section 25-7-105(17), C.R.S., gives the Commission authority to promulgate regulations necessary for the proper implementation of the Act, including rules to assure attainment and maintenance of national ambient air quality standards and a prevention of significant deterioration program. Section 25-7-105(12), C.R.S, provides specific authority to establish emission notice, construction permit and operating permit programs. Some of the statutory parameters for these programs are set forth in Sections 25-7-114 through 25-7-114.7 of the Act and these Sections, in turn, provide statutory authority for the current revisions. Additional authority for these revisions is set forth in Sections 25-7-106, 25-7-119 and 25-7-132, C.R.S.

The Commission's adoption of this rule is taken pursuant to procedures set forth in Sections 25-7-105, 25-7-110 and 25-7-110.5, C.R.S.

Purpose

The Commission took into consideration the appropriate items enumerated in Section 25-7-109(1)(b), C.R.S.

General Revisions to Regulation Number 3

The Commission's reorganization of this rule separates the provisions applicable to all sources (Part A), the construction permit program (Part B) and the operating permit program (Part C). The NSR provisions for major stationary sources are now contained in Part D. In the past, these various components of the rule were intermingled to an extent that caused confusion and unnecessary work for both sources and for the Air Pollution Control Division ("Division"). By separating the major components of Regulation Number 3, the Commission intends to make the provisions more readily usable, particularly for minor sources.

As part of the reorganization, the Commission relocated some definitions. If a definition relates only to one part, it can be found at the beginning of that part. Definitions that are used in more than one part are placed in Part A. This approach will allow minor sources to identify applicable provisions without having to address the differences between construction permit, operating permit and major NSR requirements.

The Commission in this rulemaking did not amend Section V. of Part A of the existing rule. That Section addresses emissions trading and changes to it are beyond the scope of this proceeding. Likewise, the Commission specifically concluded that this rulemaking should not extend to changes to the construction-permitting program for minor sources unrelated to the federal NSR revisions; this restriction appeared in the notice of rulemaking. The Commission understands that discussions between the Division and stakeholders prompted by this proceeding may lead to policy and implementation changes.

The Commission established the effective date for the NSR revisions as the date of EPA approval of the changes as part of the Colorado SIP. An earlier effective date would have created differences between federal and state rules that could expose the regulated community to inconsistent requirements. For the remainder of the rule, the Commission concluded that the effective date need not await EPA action. Those provisions will become effective following publication in the Colorado Register.

Finally, an issue arose regarding the use of the term "attainment/maintenance" areas. Although this terminology is used in Colorado's State Implementation Plan, its relationship to these rule changes is unclear. The Commission decided to address this question at a later time.

Finally, the Commission concluded that the revisions to Regulation Number 3 do not change the procedural, administrative nature of the regulation and are not specifically intended to reduce air pollution. Accordingly, the Commission did not make the determinations addressed in Section 25-7-110.8, C.R.S., although this Statement of Basis and Purpose includes discussion to inform interested parties of the Commission's intent.

Part A Changes

Changes to Part A largely clarify or correct existing provisions. Where EPA changed specific language used in this part, the Commission adopted identical phrasing absent an identified reason for a distinction.

The term "annual actual emissions" in Section I.B.9. replaces "actual emissions" throughout Part A in references to Air Pollutant Emissions Notices ("APENs") so that a source's reported emissions are those actually emitted during a single calendar year. This will distinguish reported emissions from the two-year average of "actual emissions" used for major NSR purposes.

Section II.D.1.g. has been modified to refer to a "major source" rather than a "major stationary source," a term that is specific to the major NSR program. This conforms to Section 25-7-109, C.R.S.

The Commission changed Section VI.C.3 to permit sources sixty days from issuance of an invoice to pay annual emissions fees. This approach will allow sources additional time to process fee payments. In addition, the Division is required to forward any bills more than thirty days overdue to the collections office for the state. This extended payment period will reduce the number of instances in which delays in payment result in a fee bill being sent to collections.

The Commission adopted a change to the definition of "stationary source" reflected in Section Part A, Section I.B.41 to conform it to federal and state law.

Changes to Parts B and C

The Commission made only conforming changes in Parts B and C after moving the provisions applying to major NSR to Part D.

Part D Changes

Nonattainment New Source Review and Prevention of Significant Deterioration Provisions

On December 31, 2002, the Environmental Protection Agency ("EPA") promulgated a final rule addressing the major NSR programs mandated by Parts C and D of Title I of the federal Clean Air Act. The Agency changed the requirements applicable to Colorado's SIP. The Commission adopted these revisions in order to comport Colorado's air quality program to the EPA rules. The revised regulation references to "NSR requirements" include both the nonattainment new source review and prevention of significant deterioration programs.

EPA's major NSR changes modified the method for determining whether a proposed facility modification results in a significant emissions increase, thus triggering major NSR evaluation and technology requirements. In addition, EPA added new applicability options, Plant-wide Applicability Limitations and Clean Units, and an exclusion from major modification provisions for Pollution Control Projects.

On October 27, 2003, EPA adopted further revisions to the major NSR program. In that rule, EPA provided a category of equipment replacement activities that would not be subject to the major NSR requirements under the routine maintenance, repair and replacement ("RMRR") exclusion. That rule has been challenged in U.S. Court of Appeals in Washington, D.C. The Court issued a stay, because of which the rule was not yet effective at the time of the hearing in this proceeding. The Commission elected to address RMRR issues in the future and not consider RMRR rule changes at this time.

In general, the Commission changed Part D of Regulation Number 3 to mirror the EPA major NSR rules. There are instances in which the Commission's rule differs from the federal provisions. These cases are specifically identified in this Statement of Basis and Purpose, as required by Section 25-7-110.5, C.R.S.

General

The Commission required Division review and/or approval of certain actions in instances in which the federal rule was either silent or contained no similar specific requirement. The EPA rule preamble anticipates that state minor source permit programs will continue and the Commission agreed. Colorado's Air Pollution Prevention and Control Act ("the State Act") specifically requires permits for construction and modification of air pollution sources. The Commission has historically used permits as the basic administrative structure for its stationary source programs. Exceptions to permit requirements exist in the rule for sources or activities with small emissions that have a minimal impact on air quality. In Section I.B.5., the Commission imposed a requirement that owners or operators using the actual-to-projected-actual applicability test for a project that requires a minor source permit or modification [pursuant to Part A, Section I.B.26., Part C, Section I.A.4. or Part C, Section X., or any minor source permit under any provisions of Part B], to submit an otherwise-required permit application and include documentation adequate to substantiate calculations made for the test. The federal rule requires that the owner or operator retain, but not report to the permitting authority, this information. However, the information listed in this Section would necessarily be generated by the owner or operator to satisfy the federal requirements and need only be submitted with an otherwise-necessary construction permit application. Accordingly, the Commission concluded that this requirement does not exceed federal requirements for the purposes of the Colorado Air Pollution Prevention and Control Act.

The Commission also concluded that the emissions calculated for the actual-to-projected actual test did not need to be the subject of a permit limitation. Accordingly, the information submitted will only be placed in an appendix to the major stationary source's Title V and/or in a construction permit note. This provision will assist the Division in evaluating the results of the applicability test before the relevant project is begun. Both the Division and the owner or operator will benefit from early identification of any disagreements about the applicability test.

The Commission noted discrepancies in the use in the federal rule of the terms "regulated NSR pollutant" and "regulated air pollutant." The latter includes Hazardous Air Pollutants by definition. In order to conform all of the Sections using these terms, the Commission used "regulated NSR pollutant" throughout Part D.

The federal rule allows a reviewing authority to establish a "reasonable period" for determining what constitutes a "contemporaneous" net emissions increase. Part A, Section I.B.37.b. of the old rule specified a period of five years. The Commission retained that five-year period in the revisions adopted. This period remains reasonable, just as it was under the prior version, serves to increase certainty and should assure that any net emission increase calculations are more accurate.

For calculation of Baseline Actual Emissions levels in Part D, Section II.A.4., the Commission concluded that emissions during periods of startup, shutdown and malfunction must be quantified based on the rate of operation during that period. For example, during a control equipment malfunction the calculation must assume that no controls were used to reduce emissions during that period unless the source can demonstrate the actual level of control provided during the malfunction. The Commission will allow a source to use estimation methods based on best engineering judgment, subject to approval by the Division; however, sources utilizing Continuous Emissions Monitors should be able to quantify these emissions with relative ease. In any event, the Baseline Actual Emissions calculations must be approved by the Division for use in the applicability test.

In calculating Baseline Actual Emissions, Part D, Section II.A.3., the emissions from malfunctions/upsets that exceed any enforceable limitations effective at the time of the event must be excluded. Allowing inclusion of these emissions in the calculation could reward a source for failing to limit, as much as possible, emissions during these events. Existing rules relating to these periods and "upsets" are not otherwise changed by the revisions.

The federal rule requires that emissions from "demand growth" be excluded from the Projected Actual Emissions calculation. Demand growth is any increased utilization that could have been accommodated by the source prior to any change. In no case, however, may demand growth emissions exceed an enforceable limitation existing prior to the change or modification.

The Commission elected not to elaborate on or further define some issues in the rule, instead relying on policy and practice that will be developed as necessary by the Division and/or EPA. These include what "could" increase emissions and what constitutes "regular operations" in Section VI.B.5.c. as well as the approach for evaluating "design capacity" in Section II.A.38.a. In another provision, Section VI.B.5., the Commission intends that the Division will implement the wording "reasonable possibility" consistent with, though not necessarily identical to, EPA's rule preamble and the Notice of Reconsideration issued by EPA regarding this issue. Likewise, when an owner or operator uses emission factors to monitor PAL pollutant emissions [Section V.A.7.c.(iii)], it and the Division will adjust, as appropriate, those factors to account for uncertainties or limitations inherent in the factor. The federal preamble may be consulted for guidance on such issues, including the option for the Division to exempt a source from having to validate the factors.

Sections II.A.4.a. and VI.B.5.c. include the concept of a period that is "more representative of normal source operations" in the definition of Baseline Actual Emissions. The Commission decided that such determinations will continue to be resolved on a case-by-case basis by the Division.

Plant-wide Applicability Limitations ("PAL")

For the purpose of setting a PAL, a unit planned but not yet constructed as of the date of PAL determination has Baseline Actual Emissions of 0 tons per year, as it does not have actual emissions as of that date. These units do not differ in practice from those later planned but not yet constructed under the PAL. Both types of units must meet the emissions limitations and other conditions assessed in the PAL. Emissions units constructed at the time the PAL is set, but that have not yet operated for more than two years are new units. The Division, after consultation with EPA, recommended that the Commission not allow PALs for major stationary sources that have not been in operation for at least two years. The Commission agreed. These sources would not have "actual emissions" for this purpose because they would not yet have operated during a representative period. Allowing PALs for these sources would effectively create an "allowable PAL." EPA clearly indicated in the December 31, 2002 preamble that it did not intend to create provisions for allowable PALs in that promulgation. The phrasing here comports with EPA's intent.

Process and control equipment changes under PALs require application and approval of a permit under existing provisions of Colorado law. PALs, since they establish a new emissions limitation for an entire facility, will necessitate a revision to the Operating Permit held by the owner or operator. The Division will act on any such permit application during the period otherwise provided in Part C. Once a source has obtained a PAL, the PAL emission limits and conditions must remain in place for the entire ten-year effective period of the PAL. Allowing a source to obtain and renounce a PAL at a shorter interval would create confusion and potentially allow manipulation of the PAL option to avoid major NSR.

The Commission adopted language differing in minor respects from the federal rule in Sections XVII.B.2. and XVII.I.2. The federal language used to construct Section XVII.B.2. was incomplete and unclear in that it did not specify that baseline actual emissions calculations must be provided for each emissions unit as parts of a PAL permit application. The phrase added creates no additional burden for sources that would have to evaluate emissions from these units in any event. In Section XVII.I.2., the Commission added the phrase "including any additional information requested by the Division." Although the Division's authority to request information in order to confirm an owner or operator's calculations is well accepted, this addition places the PAL applicant on notice that a request may be made.

The Commission also departed from the federal wording in Section XVII.N.1. that addressed the semi-annual report to be provided by PAL sources. The Commission concluded that requiring submittal with the report of all data relied upon imposed an unnecessary and undue burden on sources. Instead, the rule allows the Division to request these data if it finds it necessary to implement its administration of the PAL permit.

Clean Units

The CU provisions of this regulation address only the emissions from a specific unit. If a unit is designated as a Clean Unit, the source does not need to go through the major source NSR program if it makes certain types of changes in the future. This allows greater flexibility to a source. The source must accept the changes to its Title V permit that are required by the rule. Additionally, an owner or operator must apply for and obtain either a Construction Permit or Operating Permit for future changes at the CU that meet the definition of modification for Part B or C purposes even though it need not evaluate the project for major source NSR applicability. The Division will act on a permit application during the period otherwise provided in Part B or C of this regulation.

Section XV.A.3. requires an owner or operator to submit a request for designation as a Clean Unit ("CU"), although this requirement does not affect automatic qualification as a CU. This provision ensures that the Division may conduct an initial, cursory review to confirm the qualification. Absent this provision, sources mistakenly using the CU option might operate for years in the belief that the designation protects operation of the unit. One principal concern for the Commission in adopting any regulation is to provide a high level of certainty for sources to avoid delayed compliance issues. By allowing the Division to review the information the source used to qualify as a CU, the Commission is providing that certainty for sources. In addition, this provision simplifies field and other inspections by assuring that the Division has an accurate record of the operations and equipment at the source.

Pollution Control Projects

The Commission believes that the Pollution Control Project ("PCP") exclusion will only be used for projects that result in a significant emissions increase in a "collateral" pollutant. If the project does not cause increases in any regulated pollutant, it would not need an exclusion from major modification requirements. Therefore, Section XVI.A. requires that a source intending to use the PCP exclusion must submit an APEN and a permit application, whether the PCP is listed or unlisted, as a significant emissions increase is likely to occur. Under the federal rule, unlisted PCPs are required to obtain permits or permit modifications. The Commission omitted the provision in the federal rule requiring a written notice for listed projects to streamline duplicative requirements in the federal PCP provisions and Parts B and C of the regulation. However, recognizing the nature of PCPs, the Commission has retained the list of the information that must be submitted to the Division. This list differs in some respects from the information required in the permit provisions of Regulation Number 3.

The Commission also adopted a provision requiring owners or operators of PCPs to retain records for a minimum of five years, consistent with the Operating Permit recordkeeping timeframe. The federal rule does not specify a retention period. This Commission action was appropriate to assure that sources and the Division have a common understanding about the retention period. Finally, in order to comply with the federal rule, the Commission included a public notice and comment opportunity for PCPs.

I.GG. Adopted December 16, 2004

Revisions to Regulation Number 3

The primary purpose of this rule revision is to clarify the applicability of various permitting and APEN provisions to sources within areas designated as attainment/maintenance. Such clarification merely makes express the rule that applied by interpretation. In most cases, the revision makes the requirements applicable to attainment areas applicable to attainment/maintenance areas. One notable exception is the requirement for construction permits for gasoline stations within the Denver 1-hour ozone attainment/maintenance area, which requirement is specified in the SIP. 40 CFR 52.320(c)(94). This rule revision also includes other minor revisions, including reporting requirements for condensate storage tanks subject to Regulation Number 3, Section XII., and corrections for accuracy. This rule revision makes no significant, substantive changes to the regulation. Nothing in this rule change exceeds the requirements of federal law. This rule change is administrative in nature, is not intended to cause reductions in air pollution, and therefore is exempt from the requirement for findings pursuant to Section 25-7-110.8, C.R.S.

I.HH. Adopted July 21, 2005

Revisions to Regulation Number 3

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.

Basis

Regulation Number 3 sets forth the Air Quality Control Commission's permitting and air pollutant emission notice programs for stationary sources. The Commission amended Regulation Number 3, Part A, Section V. to make it consistent with the repeal of the Emissions Trading Rule in Regulation Number 5 in December 2004. It was originally anticipated that Regulation Number 5 would replace Part A, Section V. in Regulation Number 3 as the Commission's trading program, essentially identical to EPA's. The text of Part A, Section V. was italicized to represent provisions that would remain effective until EPA approved the program in Regulation Number 5. EPA decided not to finalize its trading program; therefore, it would never approve Regulation Number 5 as a SIP component. The Commission deleted Section V.A.3., Part A that contained the outmoded effective date. The Commission also replaced the italicized text with normal font in all of Part A, Section V. to conform the text to these circumstances. In addition, one hazardous air pollutant (2-butoxyethanol) was deleted to conform the State's list (in appendix b) to the Federal list of hazardous air pollutants.

The Common Provisions Regulation sets forth requirements and definitions that pertain or may pertain to all of the other Commission regulations. EPA added four compounds to its list of compounds (known as non reactive volatile organic compounds) to be excluded from the definition of volatile organic compound on the basis that these compounds make a negligible contribution to tropospheric ozone formation. The Commission adopted a conforming change to the definition of non-reactive volatile organic compounds in the Common Provisions Regulation, Section I.G.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act give the Commission authority to promulgate regulations necessary for the proper implementation of the act. Section 25-7-105(12), C.R.S, provides specific authority to establish emission notice, construction permit and operating permit programs. Some of the statutory parameters for these programs are set forth in Sections 25-7-114 through 25-7-114.7 of the act and these Sections, in turn, provide statutory authority for the current revisions. Additional authority for these revisions is set forth in Sections 25-7-106, 25-7-119 and 25-7-132, C.R.S.

The Commission's adoption of this rule is taken pursuant to procedures set forth in Sections 25-7-105, 25-7-110 and 25-7-110.5, C.R.S.

Purpose

The Commission took into consideration the appropriate items enumerated in Section 25-7-109(1)(b), C.R.S.

The purpose of removing the italicized text from Regulation Number3, Part A, Section V. was to prevent any ambiguity about the applicability of those provisions. Changing the font of the text does not have any regulatory impact since the provisions were already in effect and will remain in effect. Section V.A.3. was deleted because it was an outmoded provision that was only necessary if Section V. was to be replaced by Regulation Number 5. The Commission's repeal of Regulation Number 5 made that provision unnecessary. Removing the italics from Section V. also will eliminate confusion with the italicized text in Part D of Regulation Number 3.

The purpose of the deletion of one hazardous air pollutant in appendix b of Regulation Number 3 and the addition of four non-reactive volatile organic compounds to the list in Section I.G. of the Common Provisions Regulation is to conform the Commission's rules to Federal regulations. The Federal rule changes were published on November 29, 2004. If the Commission did not make these revisions, the State rules would be more restrictive than the Federal rules because these revisions serve to exempt the compounds from emission standards, monitoring, reporting and record keeping requirements.

I.II. Adopted December 15, 2005

Revisions to Regulation Number 3

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.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, Section 25-7-105, C.R.S., gives the Commission authority to promulgate regulations necessary for the proper implementation of the Act, including rules to assure attainment and maintenance of national Ambient Air Quality Standards and a prevention of significant deterioration program. Section 25-7-105(12), C.R.S. provides specific authority to establish emission notice, construction permit and operating permit programs. Some of the statutory parameters for these programs are set forth in Sections 25-7-114 through 25-7-114.7 of the Act and these Sections, in turn, provide statutory authority for the current revisions. Additional authority for these revisions is set forth in Sections 25-7-106, 25-7-119 and 25-7-132, C.R.S.

The Commission's adoption of this rule is taken pursuant to procedures and requirements set forth in Sections 25-7-105, 25-7-110 and 25-7-110.5, C.R.S.

Purpose

On December 31, 2002, the Environmental Protection Agency ("EPA") promulgated a final rule revising the Major New Source Review ["NSR"] programs mandated by Parts C and D of Title I of the Federal Clean Air Act. EPA changed the several Federal provisions that were reflected in Colorado's SIP and in 2004 the Commission made revisions to match the new Federal Rule.

In the 2002 Rule, EPA provided several new applicability options for stationary sources. Among those options is treatment of some sources as clean units. To qualify, the source operators must employ state-of-the-art pollution control technology as a result of a major NSR determination within the last ten years, or demonstrate that control technology being employed is comparable to the best available control technology or lowest achievable emission rate. A source that qualifies as a clean unit would not have to go through a traditional NSR applicability determination if it makes certain types of changes in the future. The Commission's 2004 Rule adopted the clean unit exemption virtually without change.

The 2002 Rule also expanded the exemption from major modifications for pollution control projects (PCPS), originally provided only to electric utility steam generating units in the 1992 WEPCO Rule. Under the 2002 Rule, collateral emissions increases resulting from a PCP at an existing unit would not be included in calculations to determine if a project involving that unit would trigger NSR.

As part of the 2002 rule, EPA allowed sources to calculate their actual and projected actual emissions to determine whether a modification will trigger NSR. If a source concludes that there is no "reasonable possibility" that emissions from a project will trigger NSR, the source is not required to keep records substantiating that calculation. However, the data and records would necessarily be generated by the owner or operator to calculate its emissions.

The Commission did not follow the Federal Rule in this regard. In Section I.B.5., the Commission imposed a requirement that owners or operators using the actual-to-projected-actual applicability test for a project that requires a minor source permit or modification [pursuant to Part A, Section I.B.26.; Part C, Section I.A.3.; or Part C, Section X.; or any minor source permit under any provisions of Part B], submit an otherwise-required permit application and include documentation adequate to substantiate calculations made for the test.

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its decision and opinion in the case of State of New York v. U. S. Environmental Protection Agency,---- F.3D---- 2005 WL 1489698, 35 Envtl. L. Rep. 20,135, D.C.Cir., June 24, 2005. The court concluded that, regarding the clean unit exemption from NSR, the plain language of the Clean Air Act indicated that Congress intended to apply NSR to changes that increase actual emissions instead of potential or allowable emissions. As a result, the court vacated the clean units portions of the Federal Rule. The court also concluded that EPA lacks the authority to create pollution control project exemptions from NSR and vacated the PCP portions of both the 1992 Wepco Rule and the 2002 rule. By vacating those portions of the Federal NSR rule, the court terminated those exemptions to new source review.

In view of the court's decision, the Commission concluded that there was no basis to retain the clean unit and pollution control project provisions in Regulation no. 3. The federal rule no longer allows operators to use those provisions to determine applicability of NSR to the source and Colorado law and the Colorado State Implementation Plan should be conformed to federal law in this instance.

The D.C. Circuit court also addressed the recordkeeping and reporting requirements of the federal rule. The 2002 rule excused a source from maintaining records of the information and calculations used in the actual-to-projected actual applicability test if the source determined that there was no "reasonable possibility" that the modification would trigger NSR. These are the same records necessary to substantiate calculations made for the applicability test. The court concluded that lack of evidence, in the form of data and records, could inhibit enforceability of the NSR program in this context. The court remanded this part of the rule.

By remanding this portion of the 2002 rule, the court allowed EPA to further consider its position and return to the court at some time in the future for more proceedings in support of the rule. In this case, EPA has the opportunity to explain how it can ensure NSR compliance without the relevant data. There is no deadline, or requirement, for EPA to take further action.

The Commission, in its 2004 rulemaking, elected to require that sources retain records that, among other things, are essential to substantiate sources' calculations using the actual-to-projected-actual applicability test. The Commission also chose to require that a source submit its data and calculations along with a permit application that would otherwise be required for the physical or operational change. The Division reviews the data and calculations only to confirm a source's conclusions whether it triggers NSR. The information submitted is then included in a non-enforceable appendix to a source's Title V Permit or as a permit note in the source's construction permit

The recordkeeping requirement adopted by the Commission has benefits to both sources and the Division, one of which is to avoid later uncertainty whether a project triggered NSR. Accordingly, the Commission elected not to modify this part of Regulation Number 3.

The recordkeeping requirement adopted by the Commission has benefits to both sources and the Division, one of which is to avoid later uncertainty whether a project triggered NSR. Accordingly, the Commission elected not to modify Part D, Section I.B.5. and to modify Part D, Sections V.A.7.c. and VI.B.5. in a manner, that maintains consistency with Section I.B.5.

I.JJ. Adopted March 16, 2006

Revisions to Regulation Number 3, Part F, Best Available Retrofit Technology

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5, C.R.S ("the Act").

Specific Statutory Authority

The Commission promulgates this regulation pursuant to the authority granted in C.R.S., Sections 25-7-105 (general authorities and duties of the Commission for air quality control); 25-7-105(1)(c), (authority to adopt a prevention of significant deterioration program); 25-7-106 (additional authorities of the Commission for air quality control); 25-7-106(1) (authority to exercise flexibility in developing effective air quality control program); 25-7-106(2) (authority to hold public hearings); 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); 25-7-114.4(1) (authority to adopt rules for the administration of permits); 25-5-114.5 (authority to require permit applications and make determinations, and to provide for public participation), and 25-7- 1002 (authority to maintain a program that complies with the requirements of the Federal act for prevention and remediation of significant deterioration of visibility in class I Federal areas).

Basis and Purpose

On July 1, 1999, the U.S. Environmental Protection Agency promulgated final regulations that require each state to submit a State Implementation Plan (SIP) to address regional haze. Those regulations require the State to establish a mechanism to identify sources that must analyze installation of Best Available Retrofit Technology (BART) and to require those analyses and implementation of resulting determinations.

The process begins with defining air pollution facilities that are “BART-eligible.” Among the BART-eligible sources, some sources are “subject to BART.” Sources that are subject to BART must complete an analysis and submit a proposal for determination by the State of the Best Available Retrofit Technology applicable to that source. This regulation establishes the mechanisms for this process. In many instances, the regulation matches the Federal BART rule, including provision for a BART-Alternative approach that would yield “better than BART” results.

The Commission elected to assume that all BART-eligible sources are subject to BART, but require the Division to perform modeling to determine whether BART eligible sources will cause or contribute to visibility impairment in any class I area. BART-eligible sources that do not cause or contribute to visibility impairment in any class I area would not be subject to BART. Individual sources would also have the opportunity to demonstrate that they are not eligible or not subject to BART. This approach will provide information necessary to develop the regional haze SIP on the schedule required by Federal law and allows for challenges to decisions on whether individual sources must complete BART analyses and to BART determinations by the State.

Sources subject to BART must evaluate all technologies through a five step case-by-case BART analysis. The five steps require sources to: 1) Identify All Available Retrofit Control Technologies; 2) Eliminate Technically Infeasible Options; 3) Evaluate Control Effectiveness of Remaining Control Technologies, 4) Evaluate Impacts and Document the Results and 5) Evaluate Visibility Impacts. The Commission intends that sources conducting a case-by-case analysis will follow EPA’s Appendix Y to 40 CFR, Part 51 – Guidelines for BART Determinations under the Regional Haze Rule. Sources must evaluate the visibility impacts of each technology option using CALPUFF and/or Division-approved modeling protocols.

This rule requires a source subject to BART to file an application for a construction permit as the mechanism for submitting its BART analysis and proposal, and for seeking a Division determination of BART for the source. The Commission concluded that using the existing permitting mechanism was the most expedient way to present the analysis for Division determination. The Commission further determined that applications for BART determinations should be subject to the public comment process applicable to construction permit applications for new or modified major sources.

When identifying the available retrofit control technologies, sources must include appropriate BACT, LAER, NSPS, Pollution Prevention (P2) and other controls used by similar sources. This can include new control technologies that are in the development stages of licensing and commercial demonstration or commercial sales. Where EPA has already conducted extensive analyses for a source category (e.g., EGUs) in relation to the Federal BART Rule and determined that certain control technology would not be required under the pertinent BART analyses, the Commission intends that a Colorado source subject to BART may adequately demonstrate that the same technology excluded under the EPA analyses would not be appropriate for the Colorado source by showing sufficient similarity between the source evaluated by EPA and the Colorado source.

Sources that identify specific options as technically infeasible must show to the Division's satisfaction that the technology is not commercially available or that specific physical or chemical characteristics of the unit(s) or emission(s) involved will not allow the technology to operate effectively.

The control effectiveness of any technology must be evaluated based on the highest removal efficiency available for the technology. Sources may also look at lower efficiencies in addition, but must include consideration of the best removal efficiency. If a source has existing controls in place, improvements to the existing controls or running the existing controls at a higher efficiency must be included in the analysis.

The Commission realizes that emission controls often have secondary impacts. Sources must evaluate the costs of compliance including the average cost effectiveness and the incremental cost effectiveness of each technology that is feasible for the source. Energy impacts including the direct energy consumption for each technology and any locally scarce fuels must be evaluated. Many control options have secondary impacts on other media. Sources must evaluate any increases in hazardous waste, wastewater, or other waste products, including increased usage of scarce resources such as water. In cases where a facility has a limited remaining operating life, the source can place a federally enforceable shutdown date in its operating permit.

The Commission intends that the Division use EPA's presumptive limits as guidelines when evaluating the BART analyses, with the understanding that there is a strong presumption that power plants capable of generating 750 megawatts or greater will meet these limits or do better, while the coal-fired electric generating units at smaller plants need to consider the presumptive limits as part of the BART analysis. Further, if a source submits an analysis demonstrating that it will meet the presumptive limits, then the source will be presumed to have met the BART-analysis requirements, absent an adequate showing to the contrary. If a source proposes a BART limit that exceeds EPA's presumptive limits, the Division would determine whether the BART analysis sufficiently supports the higher limit or whether other controls or increased control efficiencies are feasible. The Commission intends that the Division would establish a BART limit higher than the presumptive limit if supported by the BART analysis.

The Federal rules require the State to submit a SIP that identifies BART-eligible sources in the State, and requires the State to either adopt BART controls or adopt a BART Alternative. In some respects, the approach in the proposed State rule to applying the requirements of the Federal Act is not specifically mandated by the Federal rule, but left to the discretion of the State. The Federal Act does not specify the administrative decision-making process that will be used to make the relevant BART determinations. The State rule establishes such a procedure, relying on existing permitting procedures to the extent possible and appropriate. The procedure established by the State rule affords sources an opportunity for a hearing on the relevant BART decisions. This process is consistent with permitting practices and otherwise not more stringent than Federal requirements.

NOx emissions from coal-fired power plants vary considerably depending on the design of the boiler, the type of combustion controls and the type of coal used. Each of these factors has an impact on the BART analysis. In setting presumptive BART limits for NOx, EPA took into account available types of combustion control equipment, the differences between boiler types, and ranks of coal (bituminous, sub-bituminous and lignite), thereby indicating these factors should be a part of BART analyses—not solely for large power plants subject to the presumptive levels for NOx, but for all coal-fired power plants. These

NOx-related characteristics should be taken into account in setting BART limits. The BART guidelines allow states to take these characteristics into account and it is the intent of the Commission that the Division should evaluate this issue as part of BART analyses. Consistent with the Federal BART Guidelines, BART determinations should take into account possible local economic disruption and unemployment that might result from adverse impacts on coal sales related to BART determinations.

In consideration of the unusual number of significant and complex permit determinations under the BART rule that will be become open to public comment about the same time, the Commission intends that the Division consider reasonable flexibility in applying procedures and time periods for public comment. The Commission also intends that all agreements and BART alternatives be noticed together with the construction permit for public comment purposes.

The Air Quality Control Commission expects that the Division will provide the information required by 40 CFR 51.308.(d)(1) and (2) for the July 20,2006 regular monthly meeting of the Commission.

I.KK. Adopted August 17, 2006

Revisions to Regulation Number 3

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.

Basis

In accordance with the 1990 Amendments to the Federal Clean Air Act, the U.S. Environmental Protection Agency (EPA) has approved incorporation of the provisions for the New Source Review and Prevention of Significant Deterioration programs (collectively referred to as "NSR") into Colorado's state implementation plan (SIP). In June 2005, the Governor submitted revisions to Colorado's NSR program to EPA Region VIII for review and approval. During review of the submittal, Region VIII identified minor issues with provisions in Regulation Number 3 that the Commission is correcting to ensure continuing federal approval of Colorado's NSR program. The Commission is also adopting language to treat nitrogen oxides as an ozone precursor, consistent with EPA's promulgation of corresponding language on November 29, 2005.

Section 112 of the Clean Air Act requires EPA to maintain a list of hazardous air pollutants (HAPs) subject to regulation under that Section. EPA occasionally revises the list by adding or removing pollutants based on updated scientific evidence of health impacts. EPA removed methyl ethyl ketone (MEK) from the list on December 19, 2005. Therefore, the Commission is removing MEK from the list of HAPs in Regulation Number 3, Part A, Appendix B.

On November 29, 2004, EPA revised the federal definition of volatile organic compounds (VOCs) to specifically treat tertiary butyl (t-butyl) acetate as a VOC only for certain purposes, including reporting and photochemical dispersion modeling. The Commission is making corresponding changes to the definition of VOCs in the Common Provisions Regulation, and is adding t-butyl acetate as a non-criteria reportable pollutant in Regulation Number 3, Part A, Appendix B. Sources of t-butyl acetate will be required to report the pollutant separately from their VOC emissions on an Air Pollutant Emission Notice, and should not count their t-butyl acetate emissions when evaluating compliance with applicable VOC emission limitations. The Division should combine VOC emissions and reported t-butyl acetate emissions when conducting dispersion modeling for sources of t-butyl acetate.

The Commission is also correcting several regulatory reference errors in Parts A, C, and D.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, Section 25-7-105, C.R.S., gives the Commission authority to promulgate regulations necessary for the proper implementation of the Act, including rules to assure attainment and maintenance of national Ambient Air Quality Standards and a prevention of significant deterioration program. Section 25-7-105(12), C.R.S. provides specific authority to establish emission notice, construction permit and operating permit programs. Some of the statutory parameters for these programs are set forth in Sections 25-7-114 through 25-7-114.7 of the Act and these Sections, in turn, provide statutory authority for the current revisions. Additional authority for these revisions is set forth in Sections 25-7-106, 25-7-119 and 25-7-132, C.R.S.

The Commission's adoption of this rule is taken pursuant to procedures and requirements set forth in Sections 25-7-105, 25-7-110 and 25-7-110.5, C.R.S.

Purpose

The Commission is revising Regulation Number 3 to address issues identified by the U.S. Environmental Protection Agency (EPA) during review of Colorado's state implementation plan (SIP) in 2005, to incorporate federal changes to the New Source Review program, to revise the definition of volatile organic compounds and the list of hazardous air pollutants consistent with federal actions, and to make miscellaneous technical corrections. These changes will help to ensure continued approval by EPA of Colorado's New Source Review program and will provide consistent treatment by EPA and the Division of hazardous air pollutants and volatile organic compounds. These changes will also correct regulatory cross-references within Regulation Number 3, which will make the regulation easier to understand. Further, these revisions include any typographical errors within the regulation.

I.LL. Adopted December 15, 2006

Revisions to Regulation Number 3, Part A, Section VI.D.1.

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 to Part A, Section VI.D.1. in order to increase the annual emission fees charged to air pollution sources in Colorado commencing in 2007. The revised fees are within the statutory limit set by Section 25-7-114.7, C.R.S. The increase is necessary to address decreasing fee revenues used to fund existing programs, as well as to provide additional funding for requested additional permitting and inspection personnel. The proposed increase was addressed at length during a subcommittee process involving the Commission, the Division, stakeholders and other interested parties. The revision is a collaborative effort of the Division and interested stakeholders.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in Sections 25-7-114.7 of the Colorado Air Pollution Prevention and Control Act ("Act"), which allows the Commission to set annual emission fees for regulated and hazardous air pollutants.

Purpose

The revisions to Part A, Section VI.D.1. were adopted to cover anticipated revenue shortfalls and fund requested additional FTE that will be used to address the Division's permitting backlog and the increased workload arising from the rapid growth of oil and gas sources in Colorado.

I.MM. Adopted October 18, 2007

Revisions to Regulation Number 3, Part A, Section VI.D.1.

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 to Part A, Section VI.D.1. in order to increase the annual emission fees charged to air pollution sources in Colorado commencing in 2007. The revised fees are at the statutory limit set by Section 25-7-114.7, C.R.S. The increase is necessary to address decreasing fee revenues used to fund existing programs. These revisions are concurrent with other recent fee adjustments to ensure appropriate funding for the program.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in Sections 25-7-114.7 of the Colorado Air Pollution Prevention and Control Act ("Act"), which allows the Commission to set annual emission fees for regulated and hazardous air pollutants.

Purpose

The revisions to Part A, Section VI.D.1. were adopted to cover anticipated revenue shortfalls and fund requested additional FTE that will be used to address the Division's permitting backlog and the increased workload arising from the rapid growth of oil and gas sources in Colorado.

I.NN. Adopted December 21, 2007

Revisions to Regulation Number 3, Part E, Best Available Retrofit Technology

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5, C.R.S ("the Act").

Specific Statutory Authority

The 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); 25-7-114.4(1) (authority to adopt rules for the administration of permits); and 25-7-1002 (authority to maintain a program that complies with the requirements of the federal act for prevention and remediation of significant deterioration of visibility in class I federal areas).

Basis and Purpose

This regulatory change places the Division's BART determinations and associated requirements in a new section of Regulation Number 3, Part E - Section VI.

EPA has raised concerns regarding the practical enforceability of the Colorado's BART determinations. The emission limits and averaging times for each of Colorado's BART sources will be included in each Title V permit, and included in the proposed SIP. The Title V permits and the SIP are each federally enforceable when approved by EPA. Nonetheless, EPA believes that more is needed to ensure the practical enforceability of these BART limits.

To address EPA's concerns the BART emission limits and related provisions concerning the installation, operation and maintenance of BART controls have also been added to Regulation Number3, and new Section VI will become part of Colorado's SIP.

The foregoing approach is largely similar to the approach taken on the state's PM-10 SIP in 2001, where the state agreed to include certain emission limits in Regulation Number 1.

I.OO. Adopted February 21, 2008

Revisions to Regulation Number 3

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 and Purpose

The Colorado Air Quality Control Commission ("Commission") intends to revise the provisions of Regulation Number 3, Part A and B to include PM2.5 as a Colorado regulated pollutant, to address inadvertent removals of rule revisions previously adopted by the Commission, and finally to correct typographical, grammatical and formatting errors found throughout Regulation Number 3.

Regarding PM2.5 emissions, the EPA promulgated a revised national ambient air quality standard ("NAAQS") for PM2.5 emissions on October 17, 2006. The effective date for the new standard was December 18, 2006. The Commission intends to apply the Regulation Number 3 requirements to PM2.5 emissions.

Additionally, the Commission intends to reinstate several previously adopted revisions and to correct several typographical errors in Regulation Number 3.

Note that the Commission intends to defer any decision to exclude ethanol production facilities from the major stationary source definition of "chemical process plant" as proposed in the Federal Register on May 1, 2007 [see *72FR24060*] until all relevant pending matters at the federal level are resolved.

PM2.5 Emissions

The Commission intends to apply the Regulation Number 3, Part A and B requirements to PM2.5 emissions by 1) including PM2.5 emissions under the "air pollutant" and "criteria pollutant" definitions found in Part A, Sections I.B.6 and I.B.16, and 2) setting permitting thresholds as the same level as PM10 emissions (revise Part B, Sections II.D.2 and II.D.3). Note that the EPA has not yet promulgated the PM2.5 New Source Review ("NSR") Implementation Rule, which will specify how PM2.5 emissions should be treated for Prevention of Significant Deterioration ("PSD") and major source NSR sources. Upon promulgation, the Commission intends to incorporate those changes into Regulation Number 3, Part D as well.

Inadvertent Removals of Rule Revisions

Several previously adopted rule revisions were discovered as having been inadvertently removed from Regulation Number 3. The Commission intends to reinstate these previously adopted revisions.

Specifically, the Commission intends to:

Re-identify volatile organic compounds ("VOCs") as being subject to the Reasonably Available Control Technology ("RACT") requirements. During the December 16, 2004 Regulation Number 3 rulemaking, VOCs were inadvertently removed from the RACT requirements. Since the minor source RACT requirement for VOC emissions were part of the State Implementation Plan, EPA considers removal of

VOCs from minor source RACT requirements as backsliding. Therefore this revision should be reinserted into Regulation Number 3, Part B, Section III.D.2.

Re-insert the inadvertent removal of the following text previously adopted by the Commission on December 16, 2004:

Reference to “attainment/maintenance” areas in Part B, Sections II.D.1.c.(iii)(B), III.B.5.d., and III.C.1.a., and

Remove exemption reference to Denver Metropolitan PM10 attainment/maintenance area and change reference to “Denver Metropolitan PM10 and ozone attainment/maintenance area” to “Denver 1-hour ozone attainment/maintenance area” in Part B, Section II.D.1.f.

Typographical, Grammatical and Formatting Errors

The Commission intends to correct several specific typographical errors in Regulation Number 3.

Specifically, the Commission intends to:

Revise “citric acid plants” to “nitric acid plants” in Part A, Section I.B.23.b.(ix), and

Revise incorrect citation in Part B, Section I.A.

In addition, the Commission intends to correct grammatical and formatting errors in Regulation Number 3.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, Section 25-7-105, C.R.S., gives the Commission authority to promulgate regulations necessary for the proper implementation of the Act, including rules to assure attainment and maintenance of the NAAQS and a PSD program. Section 25-7-105(12), C.R.S. provides specific authority to establish emission notice, construction permit and operating permit programs. Key statutory parameters for these programs are set forth in Sections 25-7-114 through 25-7-114.7 of the Act and provide statutory authority for the current revisions. Additional authority for these revisions is set forth in Sections 25-7-106, 25-7-119 and 25-7-132, C.R.S.

The Commission's adoption of this rule is taken pursuant to procedures and requirements set forth in Sections 25-7-105, 25-7-110 and 25-7-110.5, C.R.S.

I.PP. Adopted May 14, 2008

Revisions to Regulation Number 3, Part F

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5, C.R.S ("the Act").

Specific Statutory Authority

The 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); 25-7-114.4(1) (authority to adopt rules for the administration of permits); and 25-7-1002 (authority to maintain a program that complies with the requirements of the federal act for prevention and remediation of significant deterioration of visibility in Class I federal areas).

Basis and Purpose

The original language in Section IV.B established that the Division could not require post combustion NOx controls for any BART source. The Division has reviewed the data available on post combustion NOx controls in the EPA BART regulation and requested that the Commission narrowly modify the exclusion of post combustion NOx control. The EPA BART regulation investigated post combustion NOx control for Electric Utility Generators (EGUs) and generally determined that post combustion NOx control was only necessary in limited cases. The Commission believes that this analysis should be extended to boilers, as they are similar types of equipment. The Commission does not believe that the analysis done by EPA in the BART rule can be extended to cement production because of the dissimilar nature of the overall process of operation between boilers and cement kilns. The Commission narrowly modifies the provisions regarding the analysis of post combustion NOx controls as it relates to non-EGUs and non-boilers. The Commission believes this narrow amendment to Regulation Number 3 is appropriate and supported by the evidence in the hearing record.

I.QQ. Adopted September 18, 2008

Revisions to Regulation Number 3, Part A

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103(4), C.R.S., for new and revised regulations.

Basis

The Air Quality Control Commission has adopted revisions to Part A, Section VI.D.1. in order to increase the annual emission fees charged to air pollution sources in Colorado commencing in 2008. The revised fees are at the statutory limit set by Section 25-7-114.7, C.R.S. The proposal increases the fees to the levels enacted by the General Assembly, and signed by the Governor, in SB08-055, reflected in Section 25-7-114.7, C.R.S. as amended.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in Sections 25-7-114.7 of the Colorado Air Pollution Prevention and Control Act ("Act"), which allows the Commission to set annual emission fees for regulated and hazardous air pollutants.

Purpose

The revisions to Part A, Section VI.D.1. were adopted to provide necessary revenue for existing and anticipated revenue shortfalls, and fund additional legislatively-authorized FTE and legislatively-directed air quality monitoring.

I.RR. Adopted December 12, 2008

Revisions to Regulation Number 3, Part A, B and C

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

As of November 20, 2007, the EPA's deferral of a nonattainment designation for the 8-Hour Ozone Nonattainment Area expired, signifying that the area is now considered nonattainment, or in violation of the 1997 8-Hour Ozone NAAQS of 0.08 parts per million (ppm) for ground level ozone. This area is now known as the Denver Metro Area/North Front Range Nonattainment (DMA/NFR) Nonattainment Area.

The DMA/NRF Nonattainment Area includes all of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties as well as portions of Larimer and Weld Counties.

Pursuant to the Federal Clean Air Act, Colorado must prepare and submit a State Implementation Plan (SIP) to the EPA no later than by June 30, 2009. This plan must propose measures designed to reduce ground level ozone precursor pollutants. The plan must provide for reductions in these precursor pollutants sufficient to ensure that ozone is reduced to below the 8-Hour Ozone NAAQS no later than 2010. If Colorado fails to submit a sufficient SIP by the aforementioned deadline, the Clean Air Act mandates that the U.S.E.P.A. prepare and implement a Federal Implementation Plan in Colorado.

Pursuant to C.R.S. § 25-7-105(1)(a)(I), the Commission must adopt such measures as are necessary to ensure compliance with the NAAQS. The Commission has adopted these rules to carry out this mandate. Specifically, the Commission has adopted revisions to Regulation Number 3, Parts A, B and C to address ozone formation in the DMA/NFR Nonattainment Area. 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 of the current 8-Hour Ozone NAAQS set at 0.08 ppm. Also, 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.

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 – within 0.001 ppm on a standard of 0.08 ppm. Photochemical dispersion modeling analysis is the primary tool used to assess present and future qir qulaity trends, and is requried for EPA to approve the state attainment demonstration in the SIP. Dispersion modeling results have an inherent level of uncertainty, as recognized in EPA guidance, and it is appropriate for a state to use other tools at its disposal, including further control measures, to address and mitigate any uncertainties that can be present in dispersion modeling. It is appropriate for the state to use such tools to increase the confidence in and otherwise ensure that the predicted modeling results are accurate and borne-out in future air qulaity monitoring demonstrating attainent with the 8-Hour Ozone NAAQS.

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 the evidence" analysis and other supplemental analysis 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, although by a narrow margin. To encrease the certainty of the model results and the weight of evidence demonstration, the Commission concludes that these additional control measures are necessary to carry out its mandate to adopt a SIP that contains those elements that are necessary to assure attainment of the 8-Hour Ozone NAAQS.

In order to maintain consistancy between state regulations and federally enforceable regulations contained in the SIP, specifically changes to the exemptions, the Commission intends these revisions be adopted into the SIP.

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(1)(a) (authorizing a comprehensive state implementation plan which will assure attainment and maintenance of the NAAQS), 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 rule s 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 3 are part of an overall ozone reduction strategy to be incorporated into Colorado's SIP for ozone. The Commission intends that this overall ozone reduction strategy accomplishes five objectives: A) reduce VOC and nitrogen oxides' (NOx) emissions from oil and gas operations in the ozone nonattainment area, B) revise the control requirements for condensate tanks by transitioning from a system-wide to an emissions threshold control strategy in the ozone nonattainment area, C) expand VOC RACT requirements such that all ozone nonattainment areas are subject to Regulation 7's RACT requirements, D) clarify how the RACT requirements in Regulations 3 and 7 interact in the ozone nonattainment area, E) improve the Division's inventory of specific source category emissions state-wide; and F) make typographical, grammatical and formatting changes for greater clarity and readability.

The Commission is adopting revisions to Part A to eliminate exemptions for certain facilities from air pollution emission notice requirements. These facilities include:

• Petroleum industry flares less than 5 tons per year (tpy) emissions,

• Specified crude oil truck loading equipment,

• Oil/gas production wastewater

• Crude oil storage tanks,

• Surface water storage impoundment, and

• Condensate tanks with production 730 BBL/year or less.

The Commission is also adopting revisions to Part B to exempt the following facilities from construction permit requirements:

• Petroleum industry flares less than 5 tons per year (tpy) emissions,

• Specified crude oil truck loading equipment,

• Oil/gas production wastewater, except for commercial wastewater processing facilities, and

• Specified crude oil storage tanks.

The Commission is adopting revisions to Part C to clarify that the chemical storage tank exemption and surface water storage impoundment exemptions do not apply to specified production wastewater.

In support of objectives A and E above, the Commission adopts these revisions to Regulation Number 3, Parts A, B and C to revise APEN reporting exemptions for specific source categories (Regulation Number 3, Part A, Section II.D., Part B, Section II.D., and Part C, Section II.E.).

Improve Emissions Inventory

The Commission is changing several categorical APEN reporting and/or permitting exemptions in Regulation Number 3, Parts A, B and C in order to improve the Division's emissions inventory and for the sake of equity. These changes fall in three categories: 1) specific APEN and permitting exemptions were removed altogether; 2) specific APEN exemptions were removed and permit exemptions were kept in place; and 3) specific APEN and permit exemptions were clarified, but kept in place.

Remove APEN and Permitting Exemptions

The Commission has eliminated the APEN exemption for condensate tanks because the exemption was based on an emission level used in attainment areas. The Division will now be able to develop a complete inventory of condensate tanks and their emissions.

Condensate tanks are now subject to the same APEN requirements as other source categories in the 8-Hour Ozone Nonattainment Area. Additionally, the condensate tank exemption is based on a standardized emission factor, 13.7 pounds of VOC emissions per barrel of production, which may not be representative of each natural gas field. Even though the exemption was removed sources may still make use of the generic APEN exemption, upon determining that actual annual uncontrolled emissions fall below the applicable de minimis levels identified in Regulation Number 3, Part A. If based on this generic exemption, a source is determined to be APEN exempt, the source is also permit exempt.

Remove APEN Exemptions, Keep Permit Exemptions

The Commission has removed specific source category APEN exemptions for petroleum industry flares, crude oil truck loading, oil production wastewater and crude oil storage tanks to improve the inventory of actual uncontrolled emissions. Sources may still use the generic APEN exemption, upon determining that actual annual uncontrolled emissions fall below the applicable de minimis levels. The Commission is maintaining current permitting exemptions until such time that the APEN data justify the need for permitting activities.

Revise APEN and/or Permitting Exemptions

Similarly, based on the Division's experience, actual emissions from several source categories specific to oil and gas-related operations may be higher than previously believed. Thus the APEN and permitting exemptions for surface water impoundments (Regulation Number 3, Part A, Section II.D.1.uuu. and Part C, Section II.E.3.yyy.) were revised to exclude from the exemption, oil and gas production wastewater (similar to Regulation Number 3, Part A, Section II.D.1.uu.). Also, the APEN and permitting exemptions for chemical storage tanks (Regulation Number 3, Part C, Section II.E.3.n.) were revised to exclude oil and gas production wastewater or commercial facilities' operations (similar to Regulation Number 3, Part A, Section II.D.1.uuu. and Part C, Section II.E.3.yyy.).

Finally, the APEN and permitting exemptions for fuel storage dispensing (Regulation Number 3, Part A, Section II.D.1.cccc. and Part C, Section II.E.3.cccc.) were revised to expand the applicability of the current exemption from specifically the 1-Hour Ozone Nonattainment or Attainment/Maintenance Area to any ozone nonattainment area for the sake of equity.

I.SS. Adopted December 19, 2008

Revisions to Regulation Number 3, Part F

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").

Specific Statutory Authority

The 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); 25-7-114.4(1) (authority to adopt rules for the administration of permits); and 25-7-1002(authority to maintain a program that complies with the requirements of the federal act for prevention and remediation of significant deterioration of visibility in Class I federal areas.

Basis and Purpose

This regulatory change updates the Division's BART determinations by adding determinations for Colorado Springs Utilities Drake Units 5, 6, and 7 and CEMEX Portland cement facility regarding limits and averaging times for sulfur dioxide, nitrogen oxides and particulates.

The proposed change provides state and federally enforceable limitations for the BART sources. States must ensure that "each source subject to BART maintain the control equipment required by this subpart and establish procedures to ensure such equipment is properly operated and maintained". 40 CFR 51.308(e)(v). This is required for SIP approval.

I.TT. Adopted October 21, 2010

Revisions to Parts A, B, C and D to Address Greenhouse Gases or GHGs

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

Regulation Number 3 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 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), Prevention of Significant Deterioration requirements addressed in C.R.S. Section 25-7-105(1)(c), regulations as may be necessary and proper for the orderly and effective administration of construction permits and renewable operating permits addressed in C.R.S. Section 25-7-114.4(1), as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal. The revisions were proposed by the Air Pollution Control Division based on EPA's GHG Tailoring Rule. On June 3, 2010, EPA promulgated the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule." See 75 Fed. Reg. 31514 (June 3, 2010). EPA's Greenhouse Gas (GHG) Tailoring Rule was designed to tailor the applicability criteria that determine which stationary sources and modification projects become subject to permitting requirements for GHGs under the Prevention of Significant Deterioration (PSD) and Title V Permitting Programs of the Clean Air Act (CAA).

Specific Statutory Authority

The Act, under C.R.S. Section 25-7-105(1)(a) authorizes the Air Quality Control Commission (Commission) to adopt rules necessary to implement the Act, and to adopt and revise comprehensive State Implementation Plans (SIP) to assure attainment and maintenance of national ambient air quality standards. C.R.S. Section 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. C.R.S. Section 25-7-109(2) authorizes the Commission to regulate oxides of carbon, oxides of nitrogen and other chemicals, which encompasses the pollutant GHG. Additionally, Colorado is authorized to regulate GHGs under PSD and Title V in C.R.S. Sections 25-7-103(1.5), 25-7-114(3), 25-7-114.3, and 25-7-201. Additional authority for these revisions is set forth in C.R.S. Sections 25-7-106 and 25-7-109, and 25-7-114.

In order to maintain consistency between state regulations and federally enforceable regulations contained in Colorado SIP, the Commission intends these revisions be adopted into the SIP.

Purpose

The Commission has adopted revisions throughout Regulation Number 3 to address GHG regulation in Colorado. These revisions were made to incorporate EPA's GHG Tailoring Rule into Colorado's Title V and PSD Permitting Programs, and to extend synthetic minor permitting to Colorado's stationary sources

seeking federally enforceable limits to avoid major source or major stationary source applicability thresholds specific to GHGs.

EPA's GHG Tailoring Rule establishes a phased approach for applying the CAA's PSD and Title V Permitting Programs to the sum of six GHGs[1]. The GHG Tailoring Rule has several different components including permitting thresholds and timing, commitments to the next steps, implementation options, and information requests.

On April 2, 2007, the U.S. Supreme Court held that GHGs are included in the definition of "air pollutant" under CAA Section 302(g). Massachusetts v. EPA, 549 U.S. 497 (2007). As part of this decision, the Court mandated EPA to determine under CAA Section 202(a) whether GHG emissions from new motor vehicles endanger public health or welfare, or if too much scientific uncertainty remains to make such a determination.[2]

On December 7, 2009, EPA issued the Endangerment Finding and the Cause or Contribute Finding, both addressing GHGs under CAA Section 202(a). See 74 Fed. Reg. 66496 (Dec. 15, 2009). EPA's Endangerment Finding found that GHGs endanger the public health and welfare of current and future generations. The Cause or Contribute Finding found that the combination of the six well-mixed GHGs from new motor vehicles contributes to the GHG pollution which threatens public health and welfare. EPA's findings were a prerequisite to establishing GHG standards for light-duty vehicles, but they did not in themselves impose any requirements on GHG stationary sources.

On May 7, 2010, EPA published the Light-Duty Vehicle Rule (LDVR) jointly with the National Highway Traffic Safety Administration to reduce GHG emissions and improve fuel economy of new passenger cars, light-duty trucks, and medium-duty passenger vehicles. See 75 Fed. Reg. 25324 (May 7, 2010). The new GHG emissions standards under the LDVR first apply to model year 2012 vehicles and become increasingly more stringent through model year 2016.

EPA addressed the implications of GHGs as a newly regulated pollutant under the LDVR through the Johnson Memo ("EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program"). See 75 Fed. Reg. 17004 (March 29, 2010). EPA concluded that a previously unregulated pollutant is subject to regulation once it is subject to actual control of emissions under the CAA or EPA regulation, and that control requirement takes effect. Accordingly, EPA concluded that once the LDVR takes effect on January 2, 2011 (the earliest date that a model year 2012 vehicle could be put on the market), GHGs will become regulated pollutants under the PSD and Title V permitting programs. Absent the Tailoring Rule, GHGs would then be subject to regulation at the existing PSD and Title V thresholds of 100 / 250 tons per year (tpy).

The foregoing federal actions now require appropriate changes to Colorado's regulations. Colorado law already provides the Commission authority and an obligation to regulate GHGs under the state's PSD and Title V permitting programs. Colorado's definition of "air pollutant" mirrors EPA's definition under the CAA. See C.R.S. Section 25-7-103(1.5) and CAA Section 302(g).[3] Following the U.S. Supreme Court's holding in Massachusetts v. EPA, GHGs are included in the definition of air pollutant under CAA Section 302(g). Colorado's PSD program applies PSD permitting requirements to new major stationary sources and major modifications. C.R.S. Section 25-7-210. Similarly, Colorado defines a Title V "major source"

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1 The GHG air pollutant consists of the aggregate sum of six GHG gases: carbon dioxide (CO_2), nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). These species of each GHG class are treated in aggregate, based on the total carbon dioxide equivalent (CO_2e).

2 2 CAA Section 202(a) requires EPA to "prescribe (and from time to time revise) … standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles … which … cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."

3 3. The CAA defines "air pollutant" as "… any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive […] substance or matter which is emitted into or otherwise enters the ambient air." CAA Section 302(g). Colorado's statute defines "air pollutant" as "… means any fume, smoke, particulate matter, vapor, or gas or any combination thereof which is emitted into or otherwise enters the atmosphere, including, but not limited to, any physical, chemical, biological, radioactive […] substance or matter …" C.R.S. Section 25-7-103(1.5).

as “any stationary source […] that directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant.” C.R.S. Section 25-7-114(3)(b). Furthermore, a Title V permit is required for any major source. C.R.S. Section 25-7-114.3(1)(b). The Division’s proposed changes to Regulation Number 3 align these key definitions to Colorado’s statute (which in turn map to the CAA) and add a definition of “subject to regulation,” as defined in the Tailoring Rule.

The Commission’s mandate includes promulgation of regulations to reduce air pollution, including the promulgation of a comprehensive state implementation plan which “shall meet all requirements of the federal act and shall be revised whenever necessary or appropriate.” C.R.S. Section 25-7-105; see also C.R.S. Section 25-7-102 (legislative declaration). Furthermore, Colorado’s statutes provide that “In the formulation of each emission control regulation, the commission shall take into consideration […] the state policy regarding air pollution, as set forth in section 25-7-102 [and] Federal recommendations and requirements.” C.R.S. Section 25-7-109(1)(b).

In addition to Colorado’s statutory authority, federal PSD and Title V provisions under the CAA also place requirements on states to maintain PSD and Title V Permitting Programs in compliance with federal requirements. The chain of events described above renders GHGs to be considered a regulated pollutant subject to the federal PSD and Title V permitting requirements. Under PSD, EPA mandates that “each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality …” CAA Section 161. Under Title V, the CAA provides that “Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator’s discretion, apply any of the sanctions specified in section 179(b).” CAA Section 502(i)(1).

In order to avoid both the possibility of sanctions for failure to comply with EPA’s permitting programs, as well as the unsustainable workload of regulating GHGs at the existing permitting thresholds of 100 / 250 tpy, the Division proposes regulatory revisions to comport with EPA’s GHG Tailoring Rule.

Permitting Thresholds and Timing

Regarding permitting thresholds and timing, EPA’s GHG Tailoring Rule identifies three steps – Steps 1, 2 and 3 – to phase in GHG permitting requirements over time. This rulemaking addresses **only** Steps 1 and 2, as discussed in EPA’s GHG Tailoring Rule. While EPA’s GHG Tailoring Rule generally discusses a Step 3,[4] it provides few details on any associated timing and thresholds; instead EPA’s GHG Tailoring Rule establishes an enforceable commitment to complete another rulemaking no later than by July 1, 2012 for Step 3 and beyond. The Commission intends to expressly address these future actions expeditiously as they arise.

This rulemaking establishes key definitions and the authority to regulate GHGs as well as addresses Steps 1 and 2 as identified in EPA’s GHG Tailoring Rule. Step 1 spans from January 2, 2011 through June 30, 2011, and applies PSD and Title V permitting requirements to GHG emissions at “anyway sources,” or stationary sources that are already subject to these permitting requirements for non-GHG pollutants. During Step 1, no source shall be required to obtain a Title V operating permit or PSD permit solely due to GHG emissions. Step 2 spans from July 1, 2011 through June 30, 2013. In Step 2, in addition to the requirements of Step 1, PSD and Title V permitting requirements apply to stationary sources which may be major[5] for GHG emissions and no other regulated pollutant.

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4. EPA proposes to promulgate a separate rule specific to Step 3 by July 1, 2012. It is anticipated that this Step 3 will span from July 1, 2013 through April 30, 2016. EPA offers limited regulatory details, but states that no stationary sources having potential to emit GHG emissions of less than 50,000 tons per year CO2e would trigger PSD or Title V Permitting Programs under the Tailoring Rule due to GHG emissions alone. No other details are provided.

5. Major source or major stationary source.

EPA's GHG Tailoring Rule sets a 100,000 tpy carbon dioxide equivalent (CO2e) applicability threshold for stationary sources that are major for GHG and no other non-GHG NSR regulated pollutant for PSD, and re-affirms that a significant emissions increase and a significant net emissions increase must occur in order to trigger PSD review. PSD and Title V permitting applicability thresholds and significance levels have traditionally been determined on a mass-basis. However, the Tailoring Rule sets a PSD significance level for GHG at 75,000 tpy on a CO2e basis. There are distinct units of measure used in identifying GHG applicability thresholds and significance levels. Some are mass-based and some are CO2e-based. The distinction between the two focuses on whether or not the global warming potential (GWP) is applied to each individual GHG species before summing the total of GHG classes for comparison to the appropriate value.

The Commission recognizes that the EPA is currently developing GHG permitting guidance. At its earliest convenience prior to January 2, 2011, the Division is instructed to provide permitting guidance to sources to minimize uncertainty.

Permitting and Application Requirements

The Commission recognizes the difficulties in developing a GHG inventory in short order, and directs the Division to request permit applicants which are required to provide a GHG inventory to submit one by a reasonable deadline set by the Division.

See the citations below for further information.

Complete Application

In Regulation Number 3, Part C, Section III.C.3.a., the Commission requires that all information related to the "emissions of pollutants sufficient to verify which requirements are applicable to the source" (which includes GHG) must be included in a complete application. Similarly, 40 C.F.R. 70.5(c)(3)(i) requires that Title V applications must include emissions of all regulated air pollutants.

Further, in Regulation Number 3, Part C, Section IV.B.4, the Commission requires that a source update its permit application to address any requirements that become applicable after the date the source has submitted its application, prior to issuance of the draft permit for public comment.

Application Shield

In Regulation Number 3, Part C, Section II.B., the Commission grants a defense to an enforcement action to sources which submit a timely and complete application under Part C until a final determination on the permit has been made. Per Regulation Number 3, Part C, Section IV.D., after an application is deemed complete, the Division may request additional information in writing and set a reasonable deadline for response. However, the application shield defense is not available if the source "fails to submit by the deadline specified in writing by the Division any additional information identified as necessary to process the application, or to otherwise supplement its application in accordance with the provisions of Regulation Number 3, Part C, Sections IV.B.3. and IV.B.4."

Applicable Requirement

In Regulation Number 3, Part A, Section I.B.9., the Commission defines applicable requirement consistently with that definition found in 40 C.F.R. Part 70, Section 70.2. Based on these definitions the mandatory GHG Reporting Rule requirements codified in 40 C.F.R. Part 98 do not meet the definitions of applicable requirements at this time; however, any GHG BACT requirement or other federally enforceable GHG requirements, including GHG synthetic minor permit conditions necessary to avoid major source or major stationary source thresholds are considered applicable requirements.

Regulation Number 3, Part C, Section V.B.4. requires that any operating permit address "all applicable requirements," however existing Title V sources that do not undergo PSD review should not trigger any GHG applicable requirements.

"Subject to Regulation or Requirement"

Prior to this rulemaking the Title V operating permit requirements of Regulation Number 3, Part C, Sections II.A.1.g., II.E.1. and II.E.2. already contained the language "subject to regulation or requirement", followed by a specific reference to the Federal Act or another part of Regulation Number 3. The phrase "subject to regulation" was addressed in the Johnson Memo, "EPA's Interpretation of Regulations that Determine Pollutants Covered by the Federal Prevention of Significant Deterioration (PSD) Permit Program" and later codified in the GHG Tailoring Rule and Regulation Number 3, Part A, Section I.B.44. See 75 Fed. Reg. 17004 (March 29, 2010). For the purpose of these sections, the definition of "subject to regulation" is not applicable and the full phrase "subject to regulation or requirement" relates to the reference at the end of those statements.

Rescission Clause

The Commission recognizes the uncertainty facing GHG stationary sources, given the potential for future federal legislation and the extensive pending legal challenges to GHG regulation under the CAA. The Commission intends GHG regulation in Colorado be consistent with the Federal Act, and has inserted a rescission clause making the effectiveness of the term Subject To Regulation dependent upon federal enforceability. Should either federal legislation or Court rulings from the District of Columbia Circuit Court of Appeals or the U.S. Supreme Court limit or render ineffective the regulation of GHG emissions under the PSD or Title V provisions of the Federal Act, then GHGs shall only be subject to regulation under this Regulation Number 3 for the affected permitting program(s) to the same extent. Example 1: if the regulation of GHGs under both PSD and Title V is vacated in whole, then all GHG emissions limitations or requirements included in any construction or operating permit issued under this Regulation Number 3 shall no longer be enforceable. Example 2: if the Court remands the regulation of GHG emissions to EPA such that GHG regulation under the Federal Act is temporarily ineffective, either in whole or in part, any GHG emissions limitation or requirement included in any permit issued under this Regulation Number 3 shall be limited or rendered ineffective to the same extent. Sources may actively seek to maintain those permit conditions if they so choose pursuant to Regulation Number 3, Part A, Section I.A. These examples are not intended to address all potential outcomes, but rather to provide some degree of implementation guidance. The Commission intends that this rescission will be automatically and immediately effective final of applicable court action or legislation. When triggered, this clause prevents regulation of GHG under Regulation Number 3 to the same extent of the federal action or court ruling and may require a new rulemaking action by the Commission to regulate GHGs for the affected permitting program, including any new details of such future regulation.

Synthetic Minor Permits for GHGs

No minor source air pollution construction permits are required at this time for GHGs, except where stationary sources voluntarily seek federally enforceable limits for GHGs to avoid major source PSD and Title V permitting requirements. (Regulation Number 3, Part B, Section II.A.7.) An application for a voluntary synthetic minor construction permit must include GHG emissions reported on Division-approved forms. Construction permits shall be issued based on production/process rates requested in the application, and the emission limit requested shall be a permit condition. (Regulation Number 3, Part B, Section II.A.4.)

If the above-mentioned rescission clause is triggered, any federally enforceable GHG emission limits contained in synthetic minor permits are no longer enforceable. The stationary source is requested to submit a cancellation request to the Division to cancel GHG emissions points and permits.

Regulation Number 3 Revisions:

The revisions to Regulation Number 3 as approved by the Commission are summarized below.

Part A

- Add Regulation Outline

- Add new definitions of Greenhouse Gas and Carbon Dioxide Equivalent. The CO2e definition incorporates by reference EPA's GWP codified via the GHG Mandatory Reporting Rule (Sections I.B.10., I.B.23.)

- Revise Major Source definition so that it applied to regulated NSR pollutant (which includes GHG) as well as to air pollutants (which does not included GHG) so that GHG is addressed and the definition may be used to establish the mass based GHG threshold (Section I.B.25.b.)

- Add new definition of Subject to Regulation consistent with EPA's GHG Tailoring Rule and include the rescission clause as discussed above (Section I.B.44.)

- Revise annual emission fees to exclude GHGs (Section VI.D.)

Part B

- Revise general permitting requirements to authorize the Division to issue synthetic minor permits for GHGs where stationary sources voluntarily choose to seek federally enforceable limits for GHG if they would otherwise be subject to PSD or Title V Permitting Programs (Sections II.A.4., II.A.7.)

Part C

- Clarify that complete Title V Operating Permit applications include the reporting of GHG emissions as they are pollutants which may be subject to requirements applicable to the source, but not air pollutants, under Regulation 3 definitions (Section III.C.3.a.).

Part D

- Revise the Definitions (Section II.A.):

- Revise BACT, Major Modification and Major Stationary Source Definition to use the term Regulated NSR Pollutant for consistency and remove italics consistent with EPA's GHG Tailoring Rule so that these definitions become effective by January 2, 2011 (Sections II.A.8., II.A.22., II.A.24.a., II.A.24.a.(ii) and II.A.24.b.)

- Revise Regulated NSR Pollutant definition and remove italics consistent with EPA's GHG Tailoring Rule so that it becomes effective by January 2, 2011 (Section II.A.38.)

Additionally, the Commission approves typographical, grammatical and formatting changes, as necessary.

I.UU. Adopted January 7, 2011

Regulation Number 3, Part D (Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration) and Part F (Best Available Retrofit Technology (BART) and Reasonable Progress for Regional Haze)

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 under Colorado Revised Statutes, Sections 25-7-105(1)(c), (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); 25-7-114.4(1) (authority to adopt rules for the administration of permits); and 40-3.2-208 (authority to incorporate emission reduction plans for rate-regulated utilities within the state's Regional Haze State Implementation Plan).

Basis and Purpose

PART D

These revisions to Regulation Number 3, Part D change the review and revision period for the Regional Haze Long Term Strategy (LTS) from every three years to every five years. This change aligns the reporting periods for the Regional Haze LTS and the Regional Haze progress reports that are required every five years pursuant to 40 C.F.R. Section 51.308(g).

PART F

On July 1, 1999, the U.S. Environmental Protection Agency (EPA) promulgated the final Regional Haze Rule (Rule), which went into effect, on August 30, 1999, and which requires each state to submit a State Implementation Plan (SIP) to address regional haze. The Rule is intended to achieve the national visibility goals as expressed in Section 169(a) of the Clean Air Act, 42 U.S.C. Section 7491. Colorado must develop a SIP revision in coordination and consultation with other states, tribes, federal land managers, EPA and Regional Planning Organizations (RPOs) designated by EPA. In the west, the RPO is the Western Regional Air Partnership (WRAP).

Regional Haze is a visibility impairment that is caused by multiple sources over a broad geographic region. EPA's Regional Haze Rule requires every state to submit a SIP designed to improve visibility in its mandatory Class I federal areas (Class I areas). Class I areas are areas of great scenic importance, such as national parks and wilderness areas. There are 12 Class I areas in Colorado, and 156 nationwide.

A key element of EPA's regional haze program is Best Available Retrofit Technology (BART) for certain emission sources. Section 169A(b)(2)(A) of the Clean Air Act requires BART for certain existing major facilities, placed into operation between August 7, 1962 and August 7, 1977, that have the potential to emit more than 250 tons of visibility-reducing pollution a year. EPA's Regional Haze Rule requires SIPs to include BART emission limits for each subject-to-BART source that may reasonably be anticipated to impair visibility in any Class I area, unless the state demonstrates that an emissions trading program or other alternative measures will achieve greater reasonable progress toward natural visibility conditions. See 40 CFR Part 51 Section 308(e). EPA promulgated a BART Rule separate from its Regional Haze Rule. EPA's BART Rule includes guidelines (Appendix Y) regarding how states should make BART determinations. See 70 Fed. Reg. 39104 (July 6, 2005). EPA also promulgated a "BART Alternative" Rule. See 71 Fed. Reg. 60612 (October 13, 2006). The BART Alternative Rule allows an alternative program to source-by-source BART, if the program results in greater reasonable progress than would occur pursuant to individual BART.

States were required to submit their regional haze SIPs to EPA by December 17, 2007. The Regional Haze Rule establishes the year 2064 as the date by which a goal of visibility at natural background levels

is desired in all Class I areas. The Rule divides the 2007-2064 time periods into numerous planning periods. States were required to submit their initial RH SIP by December 31, 2007, then a revised Regional Haze SIP to EPA by July 31, 2018, and every ten years thereafter. See 40 CFR Section 51.308(f).

Colorado submitted much of its regional haze SIP (including most of its BART determinations) to EPA in early 2008 for review. Following additional revisions, the Commission approved the remainder of Colorado's BART determinations in December 2008, and submitted Colorado's Regional Haze SIP to EPA's Region 8 for review in 2009.

Upon review, EPA Region 8 informed Colorado that its regional haze SIP submittal was not approvable and needed to be revised before EPA could reconsider it for inclusion in the State Implementation Plan. EPA has identified deficiencies with Colorado's Regional Haze Element of the SIP, including the basis for and enforceability of BART determinations and the lack of reasonable progress goals (RPGs) and RP source determinations. These alleged deficiencies must be addressed in order for EPA to approve the Regional Haze element of the SIP. This regulation is the second part of a bifurcated rulemaking process in which the Commission adopted the remaining outstanding Regional Haze SIP elements.

EPA made a finding on January 15, 2009 that 37 states, including Colorado, had failed to make all or part of the required Regional Haze SIP submissions. See 74 Fed. Reg. 2393 (January 15, 2009). This action started a clock by which states must have approved SIPs, or EPA must promulgate Federal Implementation Plans (FIPs) within two years (*i.e.*, by January 15, 2011). EPA initiated actions in Colorado to begin preparing a FIP, and this action by the Commission is taken to complete the adoption of a regional haze element of the SIP, address the deficiencies that Region 8 EPA has identified, and to prevent such a federal action in Colorado, with its attendant consequences (*e.g.*, federal determinations of BART, federal reasonable progress determinations, federal permits, and state loss of CAA grant monies so EPA can prepare a FIP).

During the 2010 legislative session, the Colorado legislature passed House Bill 10-1365, the "Clean Air - Clean Jobs Act" (CACJA). The CACJA sets forth requirements applicable to investor owned utilities in Colorado (Public Service Company of Colorado (PSCo) and Black Hills Energy) and certain of their electric generating units. The CACJA requires the investor owned utilities to submit emission reduction plans to the Colorado Public Utilities Commission (PUC), and provides that the Commission shall consider the air quality provisions of the emission reduction plans for incorporation into the regional haze element of Colorado's SIP. See Section 40-3.2-208, C.R.S. PSCo and Black Hills submitted their emission reduction plans to the PUC on August 13, 2010, and the PUC approved the plans on December 15, 2010.

The Commission adopted into Regulation Number 3 BART determinations for PSCo's Hayden and Comanche plants, two units at CENC's Golden plant, CEMEX's Lyons Portland cement plant, and Colorado Springs Utilities' Drake power plant. The Commission also adopted an Alternative to BART program for two units at Tri-State Generation and Transmission Association's Craig power plant. The Commission determined that, for nitrogen oxide (NOx) emissions, the appropriate BART control for Craig Units 1 and 2 would be emission rates associated with the assumed installation and operation of selective non-catalytic reduction (SNCR). As an alternative to BART, it was proposed and the Commission adopted, a more stringent NOx emissions control plan that consists of emission limits associated with the assumed operation of SNCR for Unit 1 and the assumed operation of SCR for Unit 2. The state has determined that the alternative program achieves greater reasonable progress than would be achieved through the installation and operation of source-by-source BART, and thus meets the requirements of the regional haze rule.

The Commission also adopted into Regulation Number 3 a BART Alternative for a number of PSCo plants and incorporated it into the Regional Haze SIP. The BART Alternative is based on reductions achieved as a result of a combination of shutdowns and retrofit emissions controls at certain PSCo facilities planned as part of HB 10-1365. The BART Alternative includes ten units at four PSCo facilities. The facilities included in the BART Alternative include Arapahoe Units 3 and 4, Cherokee Units 1-4, Valmont

and Pawnee. The BART Alternative includes both BART and non-BART sources. The non-BART sources are older than the BART timeframe, and in effect will all be controlled by 2017 and reduce their NOx and SO2 emissions as a result of enforceable facility retirement dates and, for one unit, fuel switching to natural gas as a peaking unit. For the BART sources, Cherokee 4, Pawnee and Valmont, Valmont will be retired by 2018, Pawnee will be fully controlled by mid-2015, and Cherokee will operate on natural gas by 2018. The state has determined that the BART Alternative achieves greater reasonable progress than would be achieved through the installation and operation of source-by-source BART and RP determinations at the covered sources, and thus meets the requirements of the Regional Haze rule. PSCo has designed and proposed the BART Alternative to meet the state CACJA. The Commission determined that to the extent there is any inconsistency between the CACJA and older, more generic legal requirements, the more recent and specific CACJA controls. The state has used simplifying assumptions to compare the emission reductions and visibility impacts associated with the PSCo BART Alternative, and believes that the BART Alternative is clearly superior to, and will result in greater reasonable progress than, source-by-source BART. For example, the state has determined and demonstrated that PSCo's BART Alternative emissions reductions are greater than, and would provide greater reasonable progress than, the presumptive or source-by-source BART limits. The Commission also adopted retirement dates of "no later than" July 1, 2012 and December 31, 2016 for Cherokee Units 1 and 3, respectively. In doing so, the Commission is no way rejecting any portion of PSCo's emission reduction plan as approved by the PUC on December 15, 2010 (Decision No. C10-1328). Rather, the Commission's action is intended to provide flexibility and consistency in light of PSCo's pending application for rehearing, reargument or reconsideration (RRR) before the PUC, in which PSCo states that the revised dates are important for providing sequencing of activities that will ensure electrical system reliability in the Denver Metropolitan area. These dates are also wholly consistent with the PUC's decision because PSCo can comply with the dates established by both the PUC and the Commission, regardless of how the PUC rules on PSCo's RRR application. The Commission also notes that Hayden, another PSCo BART source, is not part of the BART Alternative program. The PUC approved controls for Hayden as part of PSCo's emission reduction plan under HB 10-1365, consistent with the state's BART determination for that source.

The Commission also established non-binding goals for each Class I area in Colorado (expressed in deciviews) that provide for Reasonable Progress (RP) towards achieving natural visibility conditions in 2018 and to 2064. See 40 C.F.R. Section 51.308(d)(1). The reasonable progress goals (RPGs) provide for improvement in visibility for the most-impaired (20% worst) days over the period of the SIP and ensure no degradation in visibility for the least-impaired (20% best) days over the same period. The Commission adopted into Regulation Number 3 emission limits for "reasonable progress" sources that have a significant impact on visibility impairment in Class I areas, in order to help the state make reasonable progress towards improving visibility in this first planning period. These sources include Black Hills Energy Clark Station (a HB10-1365 facility), the Holcim Cement Plant, Tri-State Generation and Transmission Association's Craig Station Unit 3 and Nucla Station, Platte River Power Authority's Rawhide Station, Colorado Springs Utilities' Nixon Power Plant, PSCo's Cameo plant, and CENC's Unit 3.

For all BART and BART Alternative determinations made by the Commission in the November 2010 – January 2011 proceedings, a source that has installed BART or implemented a state-approved BART Alternative is exempted from the imposition of further regional haze controls during this first regional haze planning period (i.e., through December 31, 2017). This exemption applies only to regional haze, and does not apply to controls or emission reductions that may be required or otherwise imposed pursuant to other air pollution programs (including, but not limited to, ozone standards).

The revisions to Regulation Number 3, Part F also apply Monitoring, Recordkeeping and Recording (MRR) Provisions to BART, BART Alternative and Reasonable Progress emission limits.

In addition to the regulatory changes described above, the Commission adopted changes to Colorado's Regional Haze SIP. Many of the changes are non-substantive edits while other changes address comments from Federal Land Managers, incorporate the justification for the BART and reasonable

progress determinations, and provide the justification for the reasonable progress goals. The following presents an overview of the content of Colorado's Regional Haze SIP document:

Chapter 1 – Overview

Chapter 2 – Plan Development and Consultation

Chapter 3 – Monitoring Strategy

Chapter 4 – Baseline and Natural Visibility Conditions in Colorado, and Uniform Progress for Each Class I area

Chapter 5 – Sources of Impairment in Colorado

Chapter 6 - Best Available Retrofit Technology

Chapter 7 – Visibility Modeling and Apportionment

Chapter 8 – Reasonable Progress

Chapter 9 – Long Term Strategy

Chapter 10 – Commitment to Consultation, Progress Reports, Periodic Evaluations of Plan Adequacy, and Future SIP Revisions

Chapter 11 – Resource and Reference Documents

Appendix A – Periodic Review of Colorado RAVI Long Term Strategy

Appendix B – SIP Revision for RAVI Long Term Strategy

Appendix C – Technical Support for the BART Determinations

Appendix D – Technical Support for the Reasonable Progress Determinations

The revised chapters are intended to fully replace previously adopted SIP chapters.

Additional Considerations

The Commission provides the following additional statement, consistent with Sections 25-7-110.5(5)(a) and 110.8, C.R.S.

() Colorado's proposed Regional Haze regulations and SIP revisions are consistent with EPA's federal requirements under the Regional Haze rule. There is no binding requirement on how a State may "consider" the federal statutory and regulatory factors in determining BART and RP and establishing RPGs. The manner and method of consideration is left to the state's discretion. States are free to determine the weight and significance to be assigned to each factor. See 70 Fed. Reg. 39104, 39170 (July 6, 2005). State discretion is a cornerstone of the regional haze rule. See id., at 39137 ("Congress evinced a special concern with insuring that States would be the decision makers."). States also have flexibility to consider any other factors that the state determines to be relevant. See U.S. EPA, "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," p. 5-1 (June 2007). Federal law also allows states flexibility to adopt alternative programs that provide greater reasonable progress than BART. The Commission has adopted such alternatives for PSCo and Tri-State sources. The Commission finds that the revisions adopted in this hearing are wholly consistent with the discretion and

expertise to be applied by state agencies under the federal act. Accordingly, the proposed revisions are no more stringent or different than federal law, and Sections 25-7-110.5 and 110.8 do not appear to apply.

Additionally, HB10-1365 provides, in part, that the Commission must vacate this rulemaking proceeding and must initiate a new proceeding for the consideration of alternative proposals for the appropriate controls for those units covered by the utility plans for inclusion in the regional haze element of the state implementation plan if, among other things, the Commission rejects any portion of the plans as approved by the PUC. Section 40-3.2-208(2)(b), C.R.S. If the Commission were to reject any portion of the utility plans, this proceeding would be vacated and a new proceeding initiated, making it impossible for Colorado to submit a timely and complete SIP revision to address Regional Haze, and resulting in a FIP. Under these circumstances, it is reasonable to conclude that the Commission rules regarding "1365" sources are being adopted to implement prescriptive state requirements, that the Commission has no significant policy-making options with respect to these sources, and that many provisions of Sections 25-7-110.5 and 110.8 do not apply. See Section 25-7-110.5(2), C.R.S.

Despite the foregoing, certain elements of this proceeding could be viewed (as certain parties have alleged) as exceeding the federal act or differing from the federal act. For example, the closure or repowering of PSCo facilities would not be required solely by EPA's Regional Haze Rule. Accordingly, the Commission is providing this additional statement, consistent with Sections 25-7-110.5(5)(a) and 110.8, C.R.S.

(II) EPA's regional haze requirements are performance based, and the regional haze rule sets forth factors that states must consider when assessing controls and emission limits for sources emitting visibility impairing pollutants. Section 169A of the federal Clean Air Act (1977) sets forth the following national visibility goal: "Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from man-made air pollution." 42 U.S.C. Section 7491. To help facilitate this goal, EPA finalized the regional haze rule in 1999. The Rule requires States to adopt SIPs to address visibility impairment in the Class I areas. Critical components of such SIPs (particularly the SIP for the first planning period) are BART and RP. EPA provides flexibility to states regarding how to apply the relevant factors to BART and RP analyses.

(III) Applicable federal requirements specifically address the issues regarding visibility impairment in Class I areas that are of concern to Colorado. Applicable federal requirements do not specifically address all of the issues that are of concern to Colorado. House Bill 10-1365 is intended to address Colorado's compliance with a number of federal Clean Air Act requirements in a comprehensive and more efficient fashion than in a step-by-step (or regulation by regulation) approach. The legislation specifically declares that it is intended to create "a coordinated plan of emissions reductions…to meet the requirements of the federal act…at a lower cost than a piecemeal approach." Section 40-3.2-202(1), C.R.S. While regional haze is an important consideration in the context of HB10-1365, it is not the only one. HB10-1365 aims to address other air pollution issues as well, including national standards for ozone. See, e.g., Sections 40-3.2-204(1), 204(2)(b)(II)(B) and 205(1)(c), C.R.S. Data regarding visibility impairing emissions and control technologies was considered in the federal process leading up to the promulgation of the Regional Haze Rule. See, e.g., EPA's "Technical Support Document for BART SO2 Limits for Electric Generating Units," April 1, 2005, and "Technical Support Document for BART NOx Limits for Electric Generating Units and Technical Support Document for BART NOx Limits for Electric Generating Units Excel Spreadsheet," April 15, 2005, Memoranda to Docket Number 2002-0076. These Memoranda reflect an analysis of all individual BART-eligible units in the country, including Colorado. See 70 Fed. Reg. at 39131-35. See also EPA's "Regulatory Impact Analysis for the Final Clean Air Visibility Rule or the Guidelines for Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Regulations," U.S. EPA, June 2005. Additionally, the state determines that the regulatory requirements do not exceed the requirements of the federal act because the state is not imposing the BART alternative measures on an unwilling entity.

Rather, the sources voluntarily proposed the packages as BART alternative measures and, in the case of PSCo, in order to comply with HB10-1365.

(IV) The adopted rule will provide certainty to sources, by providing necessary monitoring, recordkeeping and reporting mechanisms and clear timing requirements to ensure the achievability of the specified closure or performance based standards. With respect to the "1365" sources in particular, the requirements improve the utilities' ability to comply in a cost-effective manner while preventing or reducing the need for costly retrofits to meet more stringent requirements later.

(V) If the state does not take action by January 2011, EPA has indicated it will promulgate a FIP. The state and federal rules also have similar time frames for implementation. BART controls must be installed as soon as practicable but in no event later than five years after EPA approval of the regional haze SIP, and all BART, BART alternatives and RP controls must be implemented within this first planning period (i.e., before January 1, 2018).

(VI) The adopted rule will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth.

(VII) The adopted rule establishes reasonable equity for sources subject to the rule by providing the same standards for similarly situated sources. BART and RP determinations are very source specific; different controls and emission limits are to be expected and reflect the State's source-specific consideration of federal statutory and legal factors, and of the state's implementation of HB10-1365.

(VIII) If the state rule were not adopted, EPA has indicated it will promulgate a FIP. This would likely result in more costly control requirements for sources which would be passed on to consumers.

(IX) The Regional Haze Rule requires associated State procedural, reporting and monitoring and recordkeeping requirements. The procedural, reporting, monitoring and recordkeeping requirements provided in Colorado's rule do not differ from, and often incorporate by reference, federal requirements.

(X) Demonstrated technology is available to control and monitor visibility impairing emissions.

(XI) The adopted rule will contribute to the prevention of pollution by reducing visibility impairing emissions.

(XII) A no action alternative would not address the required standard, and could result in EPA's promulgation of a FIP.

(XIII) All regulatory changes in this proceeding are based on reasonably available, validated, reviewed, and sound scientific methodologies. All information made available by interested parties has been reviewed and considered by the Commission.

(XIV) Evidence in the record supports the finding that the rule shall result in a demonstrable reduction of pollutants that contribute to regional haze.

(XV) Evidence in the record supports the finding that the rule shall bring about reductions in risks to human health or environment, and provide other benefits (e.g., protection of visibility) that justify the cost to government, the regulated community, and to the public to implement and comply with the rule.

(XVI) The Commission has chosen the alternative that is the most cost effective, provides the regulated community flexibility, and which achieves the necessary reductions in air pollution. The alternative will maximize the air quality benefits of regulation in the most cost effective manner. The Commission notes that no parties provided alternate proposals to the PSCo BART Alternative during this proceeding. The Commission also notes that in approving PSCo's emission reduction plan, the Colorado Public Utilities Commission thoroughly considered the economic impacts and concluded that that the approved plan comes at a lower cost to ratepayers than an all-controls option. Even if for some reason PSCo's BART Alternative were not determined to be the most cost effective option, the Commission finds that approval of the BART Alternative and incorporation of the alternative into the Regional Haze SIP is consistent with the legislature's intent in adopting the CACJA.

I.VV. Adopted October 20, 2011

Regulation Number 3, Part A, B, C and D – addressing federal changes to the New Source Review (NSR) Program related to PM2.5 National Ambient Air Quality Standards (NAAQS), several recent Environmental Protection Agency (EPA) State Implementation Plan (SIP) actions in which EPA partially disapproved various SIP revisions, EPA's Deferral of Biogenic Sources of CO2 Emissions, other miscellaneous revisions, and typographical, grammatical and formatting errors.

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 (AQCC) promulgates this regulation pursuant to the authority granted under Colorado Revised Statutes, Sections 25-7-105(1)(c), (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

EPA promulgated federal changes to the New Source Review (NSR) Program, which must be incorporated into Regulation Number 3 in order to maintain consistency with the federal NSR Program related to PM2.5 National Ambient Air Quality Standards (NAAQS). Subsequently, EPA disapproved and proposed to disapprove Air Pollutant Emission Notice (APEN) exemption provisions in Regulation Number 3, associated with Colorado's September 1997, April 2003 June 2003, July 2005, August 2006, and August 2007 SIP submittals. Also, EPA proposed its Deferral of Biogenic Sources of CO2 Emissions, deferring biogenic carbon dioxide (CO2) from regulation under the federal Prevention of Significant Deterioration (PSD) and Title V Permitting Programs for three years. In addressing the above actions, several additional Regulation Number 3 provisions were identified in need of revision.

Sources affected by this proposal include PM2.5 and CO2 emission sources, as well as open burning sources, mobile sources, stationary internal combustion engines, emergency generators, oil and gas surface water impoundments, deaerator/vacuum pump exhaust, and air curtain destructors.

PM2.5 Related Rules

On February 21, 2008, the AQCC adopted revisions to Regulation Number 3, Parts A and B to identify PM2.5 as a criteria pollutant, triggering reporting and minor source permitting requirements. However, the AQCC did not make corresponding revisions to major stationary source permitting requirements under the New Source Review (NSR) Program as the EPA had not yet promulgated the associated PM2.5 implementation rules. Since that time, EPA promulgated a series of rules regarding the regulation of

PM2.5 under the NSR program. See "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM2.5)" (*73 FR 28321*, May 16, 2008), "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM2.5) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (*75 FR 64864*, October 20, 2010), "Requirements for Preparation, Adoption, and Submittal of Implementation Plans" (76 FR 18870, April 6, 2011), and "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM2.5); Final Rule to Repeal Grandfather Provision" (*76 FR 28646*, May 18, 2011). The 2008 and 2010 rules, combined with the December 21, 2010 promulgation of the methodology to test for PM2.5, provide a complete framework establishing how to apply PM2.5 to the NSR Program. Prior to the promulgation of the December 2010 rules, application of PM2.5 to the NSR Program made little sense. See *75 FR 80118*. Consequently, the AQCC chose to wait to adopt the suite of PM2.5 implementation rules until after the last of the PM2.5 implementation rules and the 2010 PM2.5 testing methodology were finalized.

The May 16, 2008 rule provided flexibility in designating PM2.5 precursor pollutants. While sulfur oxides (SO2) must be treated as a PM2.5 precursor in all areas of the state, more flexibility is afforded to nitrogen oxides (NOx), volatile organic compounds (VOCs) and ammonia (NH3). This rule requires that NOx be presumed a PM2.5 precursor state-wide unless a state demonstrates that NOx is not a ''significant contributor'' to PM2.5 concentrations within any area. See *73 FR 28328*. However, VOCs and NH3 are not required to be treated as PM2.5 precursors, except that high molecular weight VOCs (equal to or greater than 25 carbon atoms and low vapor pressure) will be addressed as a condensable particulate. See *73 FR* 28329-283330.

At this time, the AQCC has identified SO2 and NOx as PM2.5 precursors, state-wide. Based on the limited PM2.5 modeling and monitoring data available for Colorado, the AQCC determined that there is insufficient evidence to claim either way that NOx emissions do or do not contribute significantly to the concentration of PM2.5 in any area in Colorado. Without evidence to narrow the identification of NOx as a precursor to specific areas, Colorado must identify NOx as a PM2.5 precursor state-wide. Less is known about VOCs and NH3 and their contribution to PM2.5 in Colorado, and so Colorado has chosen to not identify them as PM2.5 precursors at this time.

<u>EPA Partial Disapproval Actions</u>

On October 3, 2011, EPA's action granting partial disapproval and partial approval of revised Air Pollution Emission Notice (APEN) and permitting exemptions that the Commission submitted to EPA as SIP revisions in September 1997, June 2003, July 2005, August 2006, and August 2007, was published in the Federal Register. See *76 FR 61054*. EPA partially disapproved APEN exemptions for open burning, mobile sources, stationary internal combustion engines, emergency generators, oil and gas surface water impoundments, deaerator/vacuum pump exhaust, and air curtain destructors. The basis for EPA's disapproval of the subject provisions and the revisions intended to address each provision are as follows:

Open burning APEN exemption was corrected to reference federally enforceable Regulation Number 1 (Part A, Section II.D.1.q.). EPA commented that the change in reference from Regulation Number 1, which is part of Colorado's SIP, to Regulation Number 9, which is not part of Colorado's SIP, was not approvable.

Mobile sources APEN exemption was clarified (Part A, Section II.D.1.ppp.) and associated revisions were made to the insignificant activities list (Part C, Section II.E.3.uuu.). EPA commented that these exemptions only apply to stationary sources, not non-road engines and not sources being used for transportation purposes.

Stationary internal combustion engine APEN exemption was repealed (Part A, Section II.D.1.sss.) and related revisions were made to the associated permitting exemption (Part B, Sections II.D.2.c., and II.D.2.c.(i)-(iii)) and insignificant activities list (Part C, Section II.E.3.nnn.). EPA commented that the APEN exemption should require recordkeeping and reporting. The AQCC repealed the APEN exemption and revised the permit exemption to be consistent with current SIP approved language instead of requiring

additional recordkeeping and reporting. Note that while the categorical exemption is being repealed, sources may still utilize the general one and two ton APEN exemptions found in Part A, Section II.D.1.a.

Emergency generator APEN exemption was repealed (Part A, Section II.D.1.ttt.), and related revisions were made to the associated permitting exemption (Part B, Sections II.D.2.c., and II.D.2.c.(i)-(iii)) and insignificant activities list (Part C, Section II.E.3.nnn.). EPA commented that the APEN exemption should require recordkeeping and reporting. The AQCC repealed the APEN exemption, and revised the permit exemption to be consistent with current SIP approved language instead of requiring additional recordkeeping and reporting. Note that while the categorical exemption is being repealed, sources may still utilize the general one and two ton APEN exemptions found in Part A, Section II.D.1.a.

Surface water impoundment APEN exemption was clarified (Part A, Section II.D.1.uuu.) and related revisions were made to the associated permitting exemption (Part B, Section II.D.1.m.) and insignificant activities list (Part C, Section II.E.3.yyy.). EPA commented that the APEN exemption should be clarified to confirm that the exemption applied to oil and gas produced water. In addition to making this revision, the AQCC also clarified exceptions to these exemptions and insignificant activity.

Deaerator/vacuum pump exhaust APEN exemption was repealed (Part A, Section II.D.1.xxx.) and associated revisions were made to the insignificant activities list (Part C, Section II.E.3.uuu.). EPA commented that it was unclear what these activities were. The AQCC is unaware of any source making use of this exemption, and thus has removed this exemption and associated insignificant activity.

Air curtain destructor APEN exemption removal (Part A, Section II.D.1.ffff.). EPA commented that because air curtain destructors meet the SIP approved definition of an incinerator and as such are required to submit APENs and obtain permits, that this exemption should be removed.

On February 4, 2011, EPA's action granting partial approval and partial disapproval of SIP revisions submitted to EPA in April 2003 and June 2003, was published in the Federal Register. See *76 FR 6331*. Those 2003 SIP revisions to Regulation Number 3 revised APEN exemptions and permitting exemptions in Regulation Number 3, Parts A and B, respectively. To address EPA's concerns, the following provisions that EPA disapproved or on which EPA otherwise provided comment, were revised or removed as follows:

Stationary internal combustion engines 10 ton per year permitting exemption in attainment areas (Part B, Sections II.D.1.c., and II.D.1.c.(iii)). EPA commented that Colorado did not make the anti-backsliding demonstration necessary to increase the permitting exemption threshold from 5 tons per year to 10 tons per year. The AQCC opted to revert back to the 5 tons per year threshold that EPA previously approved instead of making the necessary demonstration at this time. Note that this revision does not prevent any source from making use of the facility-wide permit exemptions found in Part B, Sections II.D.2. or II.D.3.

Non-road engine state-only requirements (Part A, Sections I.B.31.c. and I.B.31.d.). EPA commented that it could not approve provisions which are identified as state-only provisions. The AQCC agrees and has further placed "(State-only Requirement)" at the beginning of these sections to clearly identify that they are state-only provisions.

<u>Biogenics Deferral Revisions:</u>

On June 3, 2010, EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas (GHG) Tailoring Rule," commonly called the GHG Tailoring Rule, was published in the Federal Register. See *75 FR 31514*. EPA's GHG Tailoring Rule was designed to tailor the applicability criteria that determine which stationary sources and modification projects become subject to permitting requirements for GHGs under the Prevention of Significant Deterioration (PSD) and Title V Permitting Programs of the Clean Air Act (CAA).

On July 20, 2011, EPA's "Deferral for CO2 Emissions from Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs," commonly called the Biogenic Deferral, was published in the Federal Register. See *76 FR 43490*. Beginning July 1, 2011, EPA's Biogenic Deferral temporarily excludes biogenic CO2 emissions from the definition of "subject to regulation" to allow biogenic sources of carbon dioxide (CO2) emissions a three year deferral from the PSD and Title V permitting requirements; the three year deferral applies even if the source's GHG emissions exceed the threshold established in the Tailoring Rule. To maintain consistency with implementation of federal requirements associated with the Tailoring Rule and the associated Biogenic Deferral, the AQCC incorporated EPA's Biogenic Deferral into Colorado's PSD and Title V Permitting Programs, as follows:

Revise the existing definition of Subject to Regulation consistent with EPA's proposed Biogenic Deferral (Part A, Section I.B.44.b.).

Other Revisions:

In addressing the above actions, the AQCC made several additional Regulation Number 3 revisions that relate to: revising the time frame for reporting the Notice of Startup to the Division from thirty days prior to fifteen days after commencing operation, which is consistent with Colorado's House Bill 10-1042, as codified in 25-7-114.5(12)(a), C.R.S.; including NOx as a precursor to ozone in ozone significant monitoring concentration (SMC) and removing the total suspended solid SMC, both consistent with federal requirements; and making typographical, grammatical and formatting corrections.

Additional Considerations

These adopted rules are mandated by federal law and necessary to maintain EPA approval of Colorado's SIP. The revisions associated with the PM2.5 Implementation Rules and Biogenics Deferral mirror the federal requirements. While the PM2.5 Implementation Rules do allow States the opportunity to deviate from the specified PM2.5 precursor pollutants, Colorado does not have sufficient modeling and monitoring data available to support a decision to identify VOC and NH3 as PM2.5 precursors or narrow the area in which NOx is identified as a PM2.5 precursor in Colorado. The related revisions adhere to federal requirements [as required by Sections 25-7-105(1), 25-7-201(a) and 25-7-203, and 25-7-302, C.R.S.], and therefore the provisions of Sections 25-7-110.5(5) and 110.8, C.R.S. do not apply to these revisions.

With respect to EPA's SIP disapproval actions, while the AQCC must address EPA's comments, Colorado has some flexibility in addressing those comments. Here, the provisions of Sections 25-7-110.5(5) and 110.8, C.R.S. apply to this rulemaking. Thus, the AQCC makes the following determinations only as they pertain to the SIP disapproval actions, and only where the AQCC has flexibility in addressing EPA's comments.

Pursuant to 25-7-110.5(5). C.R.S., the AQCC makes the determination that:

(I) EPA's SIP disapproval actions are federal requirements that may apply to this rulemaking.

(II) The applicable federal requirements imposing emission reporting and permitting are performance based. While the AQCC must address EPA's comments, there is some flexibility in how best to address those comments.

(III) Regarding EPA's comments on the APEN exemptions, accurate actual emissions data for open burning sources, mobile sources, stationary internal combustion engines, emergency generators, oil and gas surface water impoundments, deaerator/vacuum pump exhaust, and air curtain destructors is limited, although more is known about the engines, generators and air curtain destructors. The AQCC concluded that the adopted rule will clarify and generally improve Colorado's inventory of emissions from these sources in Colorado, and thus the reporting components are essential to this effort.

(IV) With respect to APEN associated permitting exemption revisions, these revisions strike an appropriate balance between exempting small emission sources, ensuring that Colorado has a reasonably accurate inventory, as well as ensuring that reporting and permitting requirements are reasonably uniform and equitable.

(V) The AQCC is not aware of any timing issue that could justify changing the timeframe in which these rules are implemented. There are deadlines by which states are expected to implement federally mandated changes, with potential sanctions for failing to meet these deadlines.

(VI) The APEN and associated permitting exemption and insignificant activity requirements in question are not specifically designed with a margin for accommodation, but instead will rely on the opportunity for future revisions, as necessary, to adjust for uncertainty and future growth.

(VII) The adopted revisions establish reasonable equity for sources subject to the revisions by providing the same requirements for similarly situated sources.

(VIII) If revisions to the APEN and permitting exemptions and insignificant activities are not adopted, while there would be no change in cost to industry, Colorado's emissions inventory accuracy will not improve. Emissions inventories are essential tools in protecting public health and the environment. A less accurate emissions inventory may translate into a public health and welfare and environmental cost, by delaying the time necessary to improve the inventory when developing plans to address future NAAQS.

(IX) The proposed revisions include no requirements that differ from applicable federal requirements.

(X) Demonstrated technology is available to comply with the particulate matter permitting requirements. Sources are already using the control devices intended to be used to comply with this rule.

(XI) The adopted rules will contribute to prevention of pollution, by having sources more accurately assess emissions to determine if APEN reporting or permitting requirements apply. Understanding emissions is essential in preventing pollution.

(XII) Because these rules are federally mandated, no alternative rules would address the requirements in question.

Further, pursuant to 25-7-110.8(1), C.R.S., the AQCC makes the determination that:

(I) The rule is based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the AQCC has considered all information submitted by interested parties.

(II) These amendments are largely administrative in nature as they relate to APEN reporting, permitting exemptions and insignificant activities.

(III) Evidence in this record supports the finding that the rule shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rule.

(IV) The rule is the most cost effective, provides the regulated community flexibility, and achieves 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.

I.WW. Adopted December 20, 2012

Regulation Number 3, Parts A, B, C, D, and Appendix B of Part A – revising language for conformity with the New Source Review (NSR) Program and approved State Implementation Plan ("SIP"); streamlining the permit issuance process; and correcting other typographical, grammatical, and formatting errors.

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.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, Sections 25-7-105(1)(a), 25-7-201 though 25-7-206, 25-7-210, 25-7-301, and 25-7-302, C.R.S. authorize the Air Quality Control Commission ("Commission") to promulgate a comprehensive State Implementation Plan ("SIP") which will assure attainment and maintenance of national ambient air quality standards ("NAAQS") and prevent significant deterioration ("PSD") of air quality in conformance with the Federal and Colorado Acts. Section 25-7-105(1)(c) further states that definitions used in the PSD program shall not differ from definitions pertaining to the federal PSD program in the Clean Air Act Section 169. Section 25-7-105(12) authorizes the Commission to promulgate regulations necessary to implement the provisions of the emission notice, construction permit, and Title V programs. Section 25-7-106(7)(a) authorizes the Commission to develop a program to apply and enforce relevant provisions of the SIP including the imposition of any fees necessary to administer the program. Section 25-7-114.7 requires owners or operators of air pollution sources to pay permit application processing fees. Section 25-7-114.4 authorizes the Commission to promulgate regulations necessary and proper for the orderly and effective administration of construction permits and renewable operating permits. And, Section 25-7-114.5 authorizes the Commission to designate which projects or activities requiring a construction permit application warrant public comment.

Basis and Purpose

The Commission revised the Permit Processing Fees, Section VI.B.5., to streamline construction permit issuance by allowing the Division to issue a construction permit prior to receiving full payment for the assessed permit processing fees. Currently, the Division cannot issue an approved construction permit until the Division receives the applicant's complete processing fees payment, which delays the applicant's ability to commence construction due to the invoicing and payment process. This revision eliminates this delay as, under the revised issuance process, applicants will receive the approved construction permit and be able to commence construction during the invoicing and payment process. Also under the revised issuance process, failure to pay the assessed permit processing fees may result in late fees according to Section 25.7.114.7(2)(a)(I)(A.5), C.R.S. and/or revocation of the permit utilizing the current Division revocation procedures. Applicants will be notified of the potential consequences of nonpayment as well as corrective actions in the written request for processing fees and the written request for late processing fees, if applicable. This revision will not negatively impact permit applicants who pay their permit processing fees on time.

The Commission amended Appendix B to Part A to identify non-criteria reportable pollutants first alphabetically by Chemical Bin ("BIN") and then by chemical abstract service ("CAS") number to increase the clarity and usability of the Appendix.

The Commission amended the Part B, Section III.C.1.a., Public Comment and Hearing Requirements to include attainment/maintenance areas.

The Commission removed the italic font and deleted the underlined text throughout the regulation, primarily in Part D, in response to EPA's approval of the corresponding language into Colorado's SIP on January 9, 2012 (*77 Fed. Reg. 1027*), and April 10, 2012 (*77 Fed. Reg. 21453*). The provisions under review by EPA were italicized to indicate the text was not yet effective while other text was underlined to indicate it would only be effective until EPA approved the italicized text into the SIP. Based on EPA's final actions in January and April, the italicized rule language, minus the underlined text, became effective on May 10, 2012. Paragraph (b) of the definition of Representative Actual Annual Emissions, II.A.40.5, was

also deleted to conform with the NSR Program and SIP because, though not underlined in Regulation Number 3, the NSR Program removed the entire definition from 40 C.F.R. Part 51.

The Commission corrected the PM2.5 Major Source Baseline Date, Part D, Section II.A.23.c., which was inadvertently adopted as October 20, 2011, to reference the major source baseline date of October 20, 2010, set by EPA on October 20, 2010 (*75 Fed. Reg. 64864*).

The Commission corrected a regulatory reference in Requirements Applicable to Nonattainment Areas, Part D, Section V.A.6., to reference Section XIII.A. Section V.A.6. currently refers Federal Land Manager involvement to Section XII.A., Innovative Control Technology, instead of XIII.A., Federal Class I Areas.

I.XX. Adopted February 20, 2014

Regulation Number 3, Parts A, B, C, D, and Appendices A and B of Part A – removing requirements for a source subject to a NSPS or NESHAP/MACT incorporated into Regulation Number 6, Part A or Number 8, Parts A, C, D, and E to file an APEN and obtain a minor source permit regardless of whether the source's emissions exceed the reporting of permitting thresholds ("catch-all provisions"); simplifying the Part A, Appendix A de minimis determination for non-criteria reportable pollutants; removing the crude oil storage tank exemptions; and correcting other typographical, grammatical, and formatting errors.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, C.R.S. § 24-4-103, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5, and the Air Quality Control Commission's ("Commission") Procedural Rules.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act § 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. C.R.S. § 25-7-105(1)(a)(I) authorizes the Commission to revise Colorado's State Implementation Plan whenever necessary and appropriate. C.R.S. § 25-7-105(1) authorizes the Commission to promulgate regulations necessary to implement the provisions of the Colorado emission notice, minor source permit, and Title V programs. C.R.S. § 109(3) authorizes the Commission to promulgate emissions control regulations pertaining to the storage and transfer of petroleum products and other VOCs. C.R.S. § 25-7-109.3(3)(c) directs the Commission to exempt classes of minor or insignificant sources of emissions of hazardous air pollutants from the Colorado hazardous air pollutant control and reduction program requirements. Section 25-7-109.3(5)(c) directs the Commission to establish de minimis emission levels for each hazardous air pollutant beneath which emissions are considered to be of minor significance.

Basis and Purpose

As part of a larger rule revision package, the Commission incorporated the federal Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution found in 40 C.F.R. Part 60, Subpart OOOO ("NSPS OOOO") in full, as amended, into Regulation Number 6, Part A and made the corresponding revisions to Regulation Number 3 described below. The Commission also revised Regulation Number 7 for consistency with and to complement NSPS OOOO and to include additional emission control measures for oil and gas production operations and equipment. Finally, the Commission revised Regulation Number 7 storage tank control requirements with the intent that industry could utilize such controls when determining whether a storage tank was subject to NSPS OOOO.

These Regulation Number 3 revisions were important to the comprehensive proposal because they reduced reporting and permitting burdens that would otherwise occur when NSPS OOOO was adopted in full. These Regulation Number 3 revisions apply broadly to all emission sources and are not solely applicable to oil and gas operations.

Catch-all Provisions

The Commission removed the catch-all provisions in Part A, Sections II.D.1. and Part B, Sections II.A.5. and II.D. so that sources subject to a New Source Performance Standard ("NSPS"), National Emission Standard for Hazardous Air Pollutants ("NESHAP"), or Maximum Achievable Control Technology ("MACT") incorporated into Regulation Numbers 6 or 8 are not automatically required to file an APEN and obtain a minor source permit, regardless of whether the source's uncontrolled actual emissions exceeded reporting or permitting thresholds.

These rule changes reduced the administrative reporting and permitting burden for the Division and the regulated community, both for sources subject to NSPS OOOO and other future NSPS and NESHAP/MACT. For example, NSPS OOOO affected facilities with uncontrolled actual emissions less than the reporting and permitting thresholds no longer automatically have to file APENs and obtain minor source permits. This reduced permitting burden will allow the Division to reallocate permitting resources to more complicated sources with the greater impact to Colorado's air quality, as well as to develop and maintain other guidance and compliance assistance tools. The environmental impacts of this revision were minimal and no emissions increases were anticipated because the revisions did not exempt any source from complying with the requirements of an applicable NSPS, NESHAP, or MACT.

Part A, Appendix A

The Commission revised the Part A, Appendix A method for determining non-criteria reportable pollutant de minimis levels in order to standardize the de minimis reporting threshold and set a 250 pounds per year threshold for all non-criteria reportable pollutants. This revised threshold applies statewide. This revision simplified non-criteria reportable pollutant reporting by eliminating the determination of reporting level based on release point, property boundary, and pollutant bin. Prior to revision, these reporting determinations were complicated and confusing, and sources often utilized the most stringent reporting threshold with the applicable Bin category, rather than attempt to follow the methodology. This revision increased regulatory clarity and reduced the administrative reporting burdens for both the Division and the regulated community by simplifying the process. No emissions increases were anticipated as a result of this revision because this revision was administrative in nature and did not change the applicability of controls or regulations to sources.

Crude Oil Storage Tanks

The Commission removed the crude oil storage tank permitting exemptions in Part B, Section II.D.1.n. and Part C, Section II.E.3.ddd. The emissions from crude oil storage tanks can be significant and permitting exemptions are meant to be limited to emission points with negligible impacts on air quality.

Crude Oil and Condensate Truck Loading Equipment

The Commission corrected an error in Part B, Section II.D.1.l. by removing the last sentence of the crude oil truck loading equipment minor source permitting exemption. In 2006, the Regulation Number 3 APEN exemption inadvertently merged the original exemption language with the 2002 exemption revision so that in 2008, when the Commission removed the APEN exemption to build the emissions inventory and moved the exemption in Part B to maintain the associated permitting exemption, the erroneous language persisted. This revision corrected that error.

I.YY. Adopted August 21, 2014

Regulation Number 3, Parts A, B, C, and D – revising language for conformity with the federal definitions of Carbon Dioxide Equivalent ("CO2e") and Regulated New Source Review ("NSR") Pollutant, addressing permitting and fee impacts of EPA's regulation of GHGs under the Clean Air Act Section 111, removal of the PM2.5 Significant Impact Level ("SILs") and Significant Monitoring Concentration ("SMC"), and revisions to the plantwide applicability limitations ("PALs") for greenhouse gas sources ("GHG");

streamlining and clarifying the air pollutant emission notices ("APEN") revision process; clarifying the public notice publication requirements; and correcting other typographical, grammatical, and formatting errors.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S., the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S., and the Air Quality Control Commission's ("Commission") Procedural Rules.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, Sections 25-7-105(1)(a), 25-7-201 though 25-7-206, 25-7-210, 25-7-301, and 25-7-302, C.R.S. authorize the Commission to promulgate a comprehensive State Implementation Plan ("SIP") which will assure attainment and maintenance of national ambient air quality standards ("NAAQS") and prevent significant deterioration ("PSD") of air quality in conformance with the Federal and Colorado Acts. Section 25-7-105(1)(c) further requires the Commission to promulgate a PSD program in conformity with federal requirements, including definitions that do not differ from the federal definitions. Section 25-7-105(12) authorizes the Commission to promulgate regulations necessary to implement the provisions of the emission notice, construction permit, and Title V programs. Section 25-7-114.7(b)(I) authorizes the Commission to designate classes of sources of air pollution that are exempt from the requirement to pay an annual emission fee. Section 25-7-114.1(2) requires sources to file updated APEN whenever a significant change in emissions or processes occurs. And, Sections 25-7-114.5(5) and 25-7-114.5(6)(a)(II) requires the Division to provide public notice of certain proposed permit applications.

Basis and Purpose

The Commission revised the CO2e definition in Part A, Sections I.B.10. and I.B.44.b.(i) to update the incorporation date and reflect the United States Environmental Protection Agency's ("EPA") revisions to the global warming potentials for methane, nitrous oxide, sulfur hexafluoride, certain hydrofluorocarbons, certain perfluorocarbons, and certain other fluorinated greenhouse gases in Part 98, Subpart A, Table A-1 on November 29, 2013 (*78 Fed. Reg. 71904*).

The Commission revised the Regulated NSR Pollutant definition in Part D, Section II.A.40.g. to reflect EPA's removal of condensable particulate matter on October 25, 2012 (*77 Fed. Reg. 65107*), which was unintentionally included in the definition of Regulated NSR Pollutant by EPA in 2008.

The Commission also revised the Regulated NSR Pollutant definition to ensure the regulation of CO2 under a Section 111 New Source Performance Standard did not trigger PSD permitting. While the revised definition differs slightly from the federal definition of Regulated NSR Pollutant, the revised definition is consistent with EPA's intent not to permit GHGs at the PSD permitting thresholds of 100 and 250 tons per year. The United States Supreme Court also stated in its June 23, 2014, opinion concerning EPA's Tailoring Rule thresholds that requiring permits for sources solely on their emission of GHG at the PSD thresholds would be incompatible with the regulatory scheme.

Similarly, the Commission revised Part A, Section VI.C.1.c. to avoid the collection of excessive fees related to GHGs emissions due to EPA's regulation of GHGs under the Clean Air Act Section 111. (*79 Fed. Reg. 1495)*

The Commission revised the PSD SIL and SMC for PM2.5 in Part D, Sections VI.A.2.c. and VI.B.3.a.(iii) to correspond to EPA's removal of the SIL and SMC provisions on December 9, 2013 (*78 Fed. Reg. 73698*), which were vacated to allow EPA to reconsider the provisions and because of a lack of legal authority, respectively. In particular, EPA set the PM2.5 SMC concentration at zero micrograms per cubic meter instead of removing PM2.5 entirely from the SMC provisions because a 0 $\mu g/m^3$ threshold means

there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the PM2.5 monitoring requirements but that monitoring is still required.

The Commission revised Part A, Section I.B.44.a. and provisions in Part D, Sections II. and XV. to correspond to EPA's revisions establishing GHG PALs on July 12, 2012 (*77 Fed. Reg. 41051*).

The Commission revised a regulatory reference in Part D, Section II.A.27.c.(ii) to specifically reference Part D and correspond to EPA's requirements in 40 C.F.R. Sections 51.166 and 52.21 concerning creditable emissions increases or decreases and the prevention of significant deterioration.

The Commission revised Part A, Sections II.C.2.b.(i) through II.C.2.b.(iii) to clarify that, for the purpose of filing a revised APEN, the thresholds for determining significant changes are based on the emission unit's (or grouped units on a single APEN), not total facility-wide, actual emissions on a pollutant-by-pollutant basis.

The Commission revised Part A, Section II.C.4. to clarify that APENs filed solely to update an expired APEN, change the name of the owner or operator, or report a significant change in emissions need only report actual annual emissions (which is the equivalent of controlled if the source utilizes emission control equipment or procedures). This revision is limited to the filing of revised APENs that are designed to update Colorado's emissions inventory or used to calculate emission fees. APENs filed to update control equipment or modify a permit limitation, as required under Sections II.C.1.c. and II.C.1.d., continue to require the reporting of both uncontrolled actual emissions and controlled actual emissions. For example, if a source emits five criteria pollutants which are above APEN reporting thresholds (one and two tons per year, as applicable), as controlled and emits three non-criteria reportable pollutants that are below the 250 pounds per year reporting threshold, as controlled, only the five criteria pollutants would need to be reported on a revised APEN required under Regulation 3, Part A, Sections II.C.1.a., II.C.1.b. or II.C.1.e. This revision is limited to the filing of revised APENs that are designed to update Colorado's emissions inventory or used to calculate emission fees. However, the Commission reaffirms the ability of sources with variable emissions to report allowable emissions that are reasonably representative of the source's operations over the APEN period. APENs filed to update control equipment or modify a permit limitation under Regulation 3, Part A, Sections II.C.1.c. and II.C.1.d. continue to require the reporting of both uncontrolled actual annual emissions and controlled actual emissions.

The Commission revised the public notice publication requirement in Part B, Section III.C.4. and Part C, Section VI.B. to correspond to state and federal requirements that allow the publication of certain proposed permit applications in a newspaper of general distribution in the area of the proposed project or by other means that ensure effective notice to the general public. This revision allows the Division to provide broader and more effective public notice. The Commission did not make similar revisions to the public notice publication requirements in Part D because the corresponding federal requirements in 40 CFR Part 51 specify that the reviewing authority must notify the public by newspaper advertisement.

The Supreme Court's decision in UARG v. EPA

On June 23, 2014, subsequent to the Division's request for hearing in this matter, the U.S. Supreme Court partially upheld and partially overturned federal rules adopted by the EPA regulating GHG emissions from new and modified major stationary sources under the Clean Air Act. The Court held that PSD and Title V requirements cannot be triggered by the emission of GHG. The Court concluded that EPA could, nonetheless, establish Best Available Control Technology ("BACT") emission limitations for GHG emitted by sources that are already subject to PSD and Title V permitting requirements on account of their emissions of threshold quantities of other pollutants (sources often referred to as "anyway sources").

Colorado's regulations on GHG emissions, contained in Regulation Number 3 and adopted as part the SIP, mirror those of the federal regulations partially overturned in the UARG v. EPA decision. Colorado's GHG regulations, however, contain a rescission clause in the event the federal law is changed or overturned. At present, the Division is committed to working with EPA to fully understand the implications

of the Supreme Court's decision. EPA approval of Colorado's GHG regulations, including the rescission clause, into the Colorado SIP was contingent upon first conferring with EPA on interpretation of any court action impacting the rules and providing public notice of any rescission. According to EPA, the Supreme Court will be sending the case back to the DC Circuit, which will prepare an order, submit it to the parties and give them the opportunity to contest and brief the issues. The DC Circuit will then order a remedy. EPA expects this process to take between two to five months. The Commission directs the Division to initiate a rulemaking to fully incorporate any necessary changes to Colorado's GHG regulations as soon as this federal judicial process is completed and the implications for Colorado's program are fully understood.

The proposed revisions in this rulemaking include new provisions allowing sources to utilize the option of PAL for determining GHG emissions. The proposed GHG PAL do not create any new requirements upon regulated sources, but instead provide sources a way, if they choose to do so, of determining their GHG emissions. The proposed GHG PAL were requested by sources seeking to use this option. As proposed, the revisions include GHG PAL provisions for both GHG only sources (those sources triggering regulation only because of their emissions of GHG) and for anyway sources (those sources already subject to regulation because of their emissions of other pollutants). The Division has determined rather than revise its proposal by taking out the GHG PAL provisions for GHG only sources in an effort to reflect the intent of the Supreme Court's decision, it is more appropriate to continue with these proposed revisions in order to allow sources that may want to utilize the GHG PAL provisions to do so while the effect of the Supreme Court's decision is in flux. The Commission will then amend any provisions appropriate as part of a comprehensive rule change once the effect of the Supreme Court's decision is understood.

Additional Considerations

The revisions to Parts A and D that correspond to federal rules, to APEN updates, and to the public notice publication requirements in Parts B and C do not exceed or differ from the requirements of the federal act or rules. Therefore, neither C.R.S. §§ 25-7-110.5(5)(a) or 25-7-110.8 apply. To the extent that the revision to the definition of Regulated NSR Pollutant differs from the federal definition, the Commission makes the following findings under C.R.S. § 25-7-110.5(5)(b):

(I) EPA defines Regulated NSR Pollutant to include any pollutant subject to any standard promulgated under the Clean Air Act Section 111 and any pollutant otherwise subject to regulation. EPA has interpreted EPA's regulation of GHGs under EPA's Light-Duty Vehicle Rule to subject GHGs to PSD permitting. On June 23, 2014, the United States Supreme Court determined that EPA was not compelled to include GHGs under PSD permitting. However, EPA has not yet had time to respond to the Supreme Court's determination that EPA could interpret "any air pollutant" in the PSD trigger to exclude GHGs. Because the definition of Regulated NSR Pollutant could be read to require PSD permitting of any air pollutant subject to a standard promulgated under Section 111 (e.g. utility NSPS), the revision to the definition of Regulation NSR Pollutant in Regulation 3 excluding GHGs from the Section 111 trigger will maintain EPA's and the Supreme Court's interpretation of the Clean Air Act and Congressional intent that the regulation of GHG's under PSD permitting is incompatible with the regulatory scheme.

(II) The federal definition of Regulated NSR Pollutant is neither performance-based nor technology-based.

(III) The current federal definition of Regulated NSR Pollutant does not address Colorado's concern that regulation of GHGs under the Clean Air Act Section 111 (i.e. the electric generating unit NSPS) could trigger permitting for GHGs at the PSD thresholds of 100 or 250 tons per year, as noted in Colorado's April 2012, comments on EPA's proposed Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limits rule.

(IV) The revision to Colorado's definition of Regulated NSR Pollutant will improve the ability of the regulated community to comply with the PSD permitting program by clarifying that Colorado intends to exclude GHGs from the PSD permitting trigger as the Supreme Court determined. The revision will avoid currently unnecessary permitting actions.

(V) Postponement of adoption could potentially subject sources with GHG emissions to the PSD permitting thresholds of 100 or 250 tons per year due to EPA's pending promulgation of a NSPS regulating GHGs. The revision does not change the time frame for implementation of the federal definition of Regulated NSR Pollutant but clarifies that Colorado will continue to exclude GHGs from the PSD permitting triggers.

(VI) The revision to the definition of Regulated NSR Pollutant does not limit future growth. Instead, the revision excludes GHGs from the PSD permitting trigger, as the Supreme Court determined is allowed and is compatible with the regulatory scheme.

(VII) The revisions to the definition of Regulated NSR Pollutant establish reasonable equity for all sources with GHG emissions by maintaining consistency with the Supreme Court's decision.

(VIII) EPA and the Supreme Court have stated that requiring permits for sources based solely on their emissions of GHGs above the PSD thresholds would be incompatible with the substance of Congress' regulatory scheme. Because EPA has yet not had the opportunity to act on the Supreme Court's decision, it is still possible to read the promulgation of a standard under Section 111 regulating GHGs to potentially trigger PSD due to EPA's interpretation that "air pollutant" in PSD is limited to regulated air pollutants. If so read, sources with GHG emissions above the PSD thresholds could potentially become subject to PSD permitting due to EPA's proposed utility NSPS, a result with which both EPA and the Supreme Court disagree.

(IX) The revision to the definition of Regulated NSR Pollutant does not include procedural, reporting, or monitoring requirements different from federal requirements.

(X) The revision to the definition of Regulated NSR Pollutant does not require technology to comply.

(XI) This revision to the definition of Regulated NSR Pollutant maintains consistency with EPA's and the Supreme Court's interpretation of the Clean Air Act and Congressional intent concerning GHGs and PSD permitting.

(XII) An alternative rule could address the potential GHG PSD permitting implications due to EPA's promulgation of a NSPS regulating GHGs; however, the revision to the definition of Regulated NSR Pollutant very simply clarifies that GHGs do not trigger the PSD permitting thresholds. In addition, a no action alternative could potentially subject sources with GHG emissions to the PSD permitting thresholds of 100 or 250 tons per year due to EPA's pending promulgation of a NSPS regulating GHGs, in contrast to the Supreme Court's interpretations and decision.

To the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, the Commission determines 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) The rule is administrative in nature.

(III) Evidence in the record supports the finding that the rules shall relieve overwhelming permitting burdens that would fall on Colorado and regulated sources absent the continued application of the Tailoring Rule GHG permitting thresholds.

(IV) The rules are cost-effective, 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.

I.YY. Adopted November 20, 2014

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, C.R.S. § 24-4-103, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5, and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

Regulation Number 3, Part F – revising the NOx emission limit, compliance date and BART determination for Tri-State Generation and Transmission Association ("Tri-State"), Craig Station Unit 1.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-105(1) directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in Section 25-7-102 and are necessary for the proper implementation and administration of Article 7, including a comprehensive state implementation plan which will prevent significant deterioration of air quality. Section 25-7-109(1)(a) authorizes the Commission to require the use of air pollution controls. Section 109(2) authorizes the Commission to adopt emission control regulations pertaining to visible pollutants and nitrogen oxides.

Purpose

The Colorado Air Quality Control Commission ("Commission") revises Regulation Number 3, Part F, Section VI., containing the Regional Haze Best Available Retrofit Technology ("BART") determinations that the Commission adopted and the EPA approved as part of Colorado's Regional Haze State Implementation Plan ("SIP").

After EPA approved Colorado's Regional Haze SIP, WildEarth Guardians and the National Parks Conservation Association challenged portions of this approval by filing suit against EPA in the Tenth Circuit. As part of this lawsuit, the plaintiffs contested the nitrogen oxides ("NOx") provisions for Craig Station Unit 1. In furtherance of settlement of this litigation, the Commission has revised Regulation Number 3, Part F, Section VI. to strengthen the NOx emission limit and set the compliance deadline for Craig Station Unit 1. The Commission revised Craig Station Unit 1's BART determination for NOx by revising the NOx emission limit from 0.28 lb/MMBtu to 0.07 lb/MMBtu, and revising the associated compliance deadline from January 30, 2018, to August 31, 2021. The Commission also clarified that compliance with the specified emission limits and compliance dates for both Units 1 and 2 constitute BART for this facility.

In addition to the regulatory changes described above, the Division proposes to make corresponding changes to Colorado's Regional Haze SIP: Chapter 6 - Best Available Retrofit Technology; Chapter 9 – Long Term Strategy; and Appendix C – Technical Support for the BART Determinations. The revisions to the Regional Haze SIP do not impact the emission limits or compliance deadline for Craig Station Unit 2. The revised chapters fully replace previously adopted SIP chapters.

Findings of Fact

Colorado's Regional Haze SIP revisions are consistent with EPA's federal requirements under the Regional Haze rule. Accordingly, the revisions do not exceed the requirements of the federal act or differ from the federal act or rules. However, to the extent that these revisions could be viewed as exceeding or differing from the federal act, the Commission determines in accordance with C.R.S. § 25-7-110.5(5)(b):

(I) Colorado's Regional Haze SIP was drafted in accordance with EPA's Regional Haze Rule. The Regional Haze Rule provides states flexibility in how states may consider the federal statutory and regulatory factors when determining BART and reasonable progress goals.

(II) EPA's regional haze requirements are performance based. The Regional Haze Rule sets forth factors the states must consider when determining BART for sources reasonably anticipated to cause or contribute to the impairment of visibility in federal Class I areas. States have the discretion to select the appropriate controls for such sources.

(III) EPA's Regional Haze Rule guides how states must determine BART for their BART-eligible sources. However, state discretion is a cornerstone of the Regional Haze Rule (*70 FR 39137*). Colorado considered Colorado's issues of concern when developing these revisions.

(IV) The adopted revisions will improve Tri-State's ability to comply with the goals of the Regional Haze Rule while preventing or reducing the need for costly retrofits potentially required in Colorado's next reasonable progress planning period.

(V) The Regional Haze Rule requires source to comply with the BART determinations as expeditiously as possible but no later than five years after EPA approves the SIP. Concerning this revision, the Division must submit a proposed SIP revision to EPA no later than July 31, 2015, and EPA must take final action on the proposed SIP revision by December 31, 2016. The revised compliance deadline for Craig Station Unit 1 of August 31, 2021, is slightly less than five years after EPA's approval, which is within the time frame for implementation set by the Regional Haze Rule.

(VI) The adopted rule will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth.

(VII) The adopted rule establishes reasonable equity for sources because the Regional Haze Rule applies the same standards for determining BART to all BART-eligible sources. BART determinations are source specific and different controls and emission limits are to be expected.

(VIII) If the revisions were not adopted, litigation would continue concerning the regional haze requirements for Craig Station that would entail associated costs and uncertainties as to the outcome.

(IX) These revisions do not modify the currently approved procedural, reporting, or monitoring requirements in Colorado's Regional Haze SIP.

(X) Demonstrated technology is available to comply with the revised NOx emission rate for Craig Station Unit 1.

(XI) The revisions will contribute to further reductions of NOx emissions and therefore contribute to the prevention of pollution.

(XII) Neither an alternative rule nor a no action alternative would address or achieve the emission reductions to be achieved through these revisions. Further, failure to adopt the revisions could result in further expensive and time consuming litigation concerning Colorado's regional haze provisions for Craig Station Unit 1.

As part of adopting the revisions to Regulation Number 3, Part F, Section VI., the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

To the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of NOx emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary reduction in air pollution and provide the regulated entity flexibility.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

The revisions also correct typographical, grammatical, and formatting errors.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00893

Opinion of the Attorney General rendered in connection with the rules adopted by the
Air Quality Control Commission

on 11/20/2014

5 CCR 1001-5

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

The above-referenced rules were submitted to this office on 11/21/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:44:06

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2 Part 1

Rule title

6 CCR 1007-2 Part 1 SOLID WASTE DISPOSAL SITES AND FACILITIES 1 - eff 01/14/2015

Effective date

01/14/2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-2

PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

Deletion and Replacement of Existing Section 10 Regulation (Waste Tire Facilities and Waste Tire Haulers) with New Section 10 Regulations (Waste Tires); the Amendment of Section 16 (Materials Prohibited From Disposal) and the Associated Additions and Revision to Section 1.2 Definitions

(Adopted by the Solid and Hazardous Waste Commission on November 18, 2014)

1) Amend Section 1.2 by adding the following definitions in alphabetical order to read as follows:

1.2 Definitions

*****

"Applicant" for the purposes of Section 10.12 means any person or business seeking a rebate from the Waste Tire End Users Fund.

*****

"Authorized signature" means the signature of an individual who has authority to sign on behalf of and bind an individual or corporation.

*****

"Beneficial user" means a person who uses solid waste as an ingredient in a manufacturing process or as an effective substitute for natural or commercial products, in a manner that does not pose a threat to human health or the environment. Avoidance of processing or disposal cost alone does not constitute beneficial use.

*****

"Buffings" means the residual rubber material removed from the supporting structure of a waste tire or a retreaded or recapped tire.

*****

"Commission" means the solid and hazardous waste commission created in section 25-15-302, C.R.S.

*****

“Daily cover” means using tire-derived product as an alternate cover placed upon exposed solid waste in a permitted solid waste facility to control disease vectors, fires, odors, blowing litter and scavenging, without presenting a threat to human health or the environment.

*****

“Mobile Processor” means a person who processes waste tires at a location other than the location of the person’s certificate of registration.

*****

“Motor vehicle” means a self-propelled vehicle that is designed for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways or a low speed electric vehicle. “Motor vehicle” includes automobiles, minivans, all trucks, motor homes, and motorcycles.

*****

“Public project” means:

(a) A publicly funded contract entered into by a governmental body of the executive branch of this state that is subject to the “Procurement Code”, articles 101 to 112 of title 24, C.R.S.; and

(b) A publicly funded contract entered into by a county, municipal government, or special district, including a school district or recreation district.

*****

"Pyrolysis" means the thermochemical decomposition of material at elevated temperatures without the participation of oxygen.

*****

“Recapped or retreaded tire” means a previously worn tire which has gone through a remanufacturing process designed to extend its useful service life.

*****

“Retailer” as used in Section 10 of these Regulations means a person who sells a small quantity of product to a consumer, as opposed to a wholesaler or supplier who typically sells large quantities of products to other businesses. Retailers of tire-derived product are persons who sell small quantities of tire-derived product to consumers.

*****

“Trailer” means a wheeled vehicle, without motive power, that is designed to be drawn by a motor vehicle.

*****

“Used tire” means a tire that was previously used as a tire and is graded and classified for reuse as a tire based on specifications and criteria maintained pursuant to section 30-20-1410(1)(a), C.R.S.

*****

“Waste Tire Bale” means waste tires that are mechanically compressed and bound into block form and are secured using stainless steel or heavy gauge baling wire.

“Waste Tire Cleanup Program” means the program created by part 14 of article 20 of title 30, C.R.S.

*****

"Waste Tire Generator" means a person who generates motor vehicle or trailer waste tires. The term includes new tire retailers, used tire retailers, automobile dealers, automobile dismantlers, public and private vehicle maintenance shops, garages, service stations, car care centers, automotive fleet centers, local government fleet operators, and rental fleet operators.

*****

"Waste Tire Processor" means a person who processes a waste tire into a tire-derived product.

*****

2) Amend Section 1.2 by revising the following definitions to read as follows:

1.2 Definitions

*****

"Collection facility" as used in Section 16 of these Regulations means any facility that accepts, aggregates and stores used oil, used lead-acid batteries, or waste electronic devices generated elsewhere for transport to a location described in Sections 16.2, 16.3, 16.4, and 16.5 of these Regulations.

*****

"End User" means a person who:

a) Uses a tire-derived product for a commercial or industrial purpose;
(b) Uses a whole waste tire to generate energy or fuel; or
(c) Consumes tire-derived product or uses tire-derived product in its final application or in making new materials with a demonstrated sale to a third party customer.

"Residentially generated" as used in Section 16 of these Regulations means used lead-acid batteries, or used oil generated by a person or by removal of said items from a personal vehicle not used primarily for a commercial or business purpose.

*****

"Retailer" as used in Section 16 of these Regulations means any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity that engages in the sale of new lead-acid batteries, electronic devices, or lubricating oil directly to the consumer.

*****

"Tire" means a rubber cushion that fits around a wheel.

*****

"Tire-Derived Product" means matter that:

(a) Is derived from a process that uses whole tires as a feedstock, including shredding, crumbing, and chipping;
(b) Adheres to established engineering or other appropriate specifications or to established product end user specifications or customer conditions of acceptance.

(c) Has a demonstrated benefit associated with the end use;
(d) Can be used as a substitute for, or in conjunction with, a commercial product or raw material; and
(e) Has either been sold and removed from the facility of a processor or has been used on site by the processor.

*****

"Waste Tire" means a tire that is modified from its original specifications but not processed into a tire-derived product, is no longer being used for its initial intended purpose as a tire, and is not a used tire.

*****

"Waste Tire Collection Facility" means a facility at which waste tires are stored awaiting pickup by a registered waste tire hauler for transportation to a registered waste tire processor or registered waste tire monofill.

*****

"Waste Tire Hauler" means a person who transports ten or more waste tires in any one load.

*****

"Waste Tire Monofill" means part or all of a solid waste disposal site and facility that has been issued a certificate of designation and at which only waste tires are accepted.

*****
"Wholesaler" as used in Section 16 of these Regulations means any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity that sells new lead-acid batteries, electronic devices, or lubricating oil for resale.

*****

3) Amend Section 1.2 by deleting the definitions of "Fleet Service Facility", "Passenger tire equivalents", "Processor", "Tire", and "Waste Tire Facility" as follows:

1.2 Definitions

****

~~**"Fleet Service Facility"** as used in Section 10 of these Regulations means any facility that generates waste tires as a result of replacing old tires on fleet vehicles with new tires. This category of facilities could include, but would not be limited to, automobile dealerships, school districts, governmental fleet maintenance facilities, and package delivery fleet maintenance facilities.~~

****

~~**"Passenger tire equivalents"** means a conversion measurement that is used to estimate waste tire weights and volume amounts defined as an average sized whole passenger/light truck tire weighing twenty-two and one-half (22.5) pounds and occupying a volume of four (4) cubic feet.~~

****

~~**"Processor"** means a person who processes waste tires in Colorado for recycling or beneficial use.~~

****

~~**"Tire"** as used in Section 16 of these Regulations means a pneumatic rubber covering designed to encircle the wheel of a vehicle in which a person or property is or may be transported or drawn upon a highway.~~

****

~~**"Waste Tire Facility"** means:~~

~~(I) (a) A waste tire monofill;~~

~~(b) A facility of an end user or processor;~~

~~(c) A facility of a tire retailer or tire wholesaler that is a source of waste tires pursuant to section 30-20-1007 or 30-20-1008, C.R.S.;~~

~~(d) A waste tire collection facility; or~~

~~(e) A fleet service facility.~~

~~(II) "Waste Tire Facility" does not include the facility of a waste tire hauler unless that hauler stores any quantity of waste tires at the facility in excess of ninety (90) days.~~

4) Delete the existing Section 10 Regulations (Waste Tire Facilities and Waste Tire Haulers) in their entirety and replace with a new Section 10 Regulations (Waste Tires) to read as follows:

SECTION 10

WASTE TIRES

10.1 Scope and Applicability

10.2 General Provisions

10.3 Standards for Waste Tire Haulers

10.4 Standards for Generators of Motor Vehicle and Trailer Waste Tires

10.5 Standards for Waste Tire Monofills

10.6 Standards for Waste Tire Processors

10.7 Standards for Mobile Waste Tire Processors

10.8 Standards for Waste Tire Collection Facilities

10.9 Standards for End Users

10.10 Standards for Management of Used Tires

10.11 Waste Tire Fee Administration

10.12 Waste Tire End Users Fund

SECTION 10.1- SCOPE and APPLICABILITY

10.1.1 PURPOSE

The purpose of this Section10 is to implement the provisions of sections 30-20-1401 through 30-20-1417, C.R.S.

10.1.2 APPLICABILITY

This section 10 applies to all persons, unless otherwise exempted, who generate, accumulate, store, transport, dispense, or process waste tires, used tires or tire-derived product. Section 10.11 applies to all persons who sell new motor vehicle or trailer tires. Persons managing waste tires pursuant to this section 10 are exempt from section 8 of these Regulations for their waste tire management activities, except for the beneficial use of waste tires. Persons managing waste tires pursuant to this section 10 who engage in other recycling activities are subject to section 8 of these Regulations for those activities.

10.1.3 EXEMPTIONS

(A) This section 10 does not apply to:

(1) Operation, including by a local, state or federal government agency, of a vehicle that is primarily engaged in the collection and transportation of solid wastes other than waste tires;

(2) A person who only travels through the state with waste tires as part of interstate commerce and does not collect, deposit, transfer, store or dispose of any waste tires within this state;

(3) Transportation of products made from waste tires for sale or other distribution;

(4) Household Hazardous Waste roundup events, community cleanup events, and other one-time or occasional collection events where waste tires are accepted for drop-off by persons not engaged in commercial activity and where the waste tires are picked up by a registered Waste Tire Hauler and transported to the facility of a registered Waste Tire Hauler or Waste Tire Generator, Waste Tire Collection Facility, Waste Tire Processor, Waste Tire Monofill, approved beneficial user of whole waste tires, municipal or county-owned waste tire collection area, or municipal or privately owned solid waste landfill; at the conclusion of the event;

(5) The beneficial use of less than ten (10) waste tires. A person who beneficially uses ten (10) or more waste tires must:

(a) Comply with section 8.6 of these Regulations;

(b) Comply with section 10.3 if they transport their own waste tires,

(c) Comply with section 10.6 if they process waste tires at the facility, and

(d) Comply with section 10.8, if they store more than five hundred (500) waste tires at any one site at any one time.

(B) Owners/operators of Solid Waste Landfills, Transfer Stations, and Recycling Facilities that accumulate waste tires by separating them out of the solid waste streams are exempt from section 10.8 of these Regulations if they:

(1) Store less than five hundred (500) waste tires outdoors at their facility, and

(2) Store less than a total of one thousand five hundred (1,500) waste tires at their facility.

(C) Government entities that store waste tires as part of road-side cleanup activities are exempt from section 10.8 if they:

(1) Store less than five hundred (500) waste tires outdoors at their facility, and

(2) Store less than a total of one thousand five hundred (1,500) waste tires at their facility.

(D) A government entity that removes illegally disposed waste tires from the road-side is exempt from section 10.3 if the waste tires are disposed of or recycled in accordance with this section 10.

(E) Registered waste tire haulers, generators, monofills, processors and waste tire collection facilities who accept ten (10) or more unmanifested waste tires or ten (10) or more waste tires from unregistered waste tire haulers must submit to the Department within twenty (20) days from the end of the preceding month a Uniform Waste Tire Manifest(s) Form WT-2 for the receipt of unmanifested waste tires. The Uniform Waste Tire Manifest Form must contain the following information:

(1) Date(s) waste tires were accepted;

(2) The total amount of waste tires accepted;

(3) License plate number of unregistered waste tire hauler vehicle used to deliver waste tires;

(4) If available the name, address and telephone number of the person who delivered the waste tires.

(5) If possible, the source of the tires.

SECTION 10.2 - GENERAL PROVISIONS

10.2.1 COMPLIANCE WITH OTHER LAWS

Waste Tire Haulers, Waste Tire Generators, Waste Tire Processors, Mobile Waste Tire Processors, Waste Tire Collection Facilities, Waste Tire Monofills, End Users, and Beneficial Users must comply with all local, state, and federal laws, regulations, ordinances, and other requirements.

10.2.2 OPERATIONS COVERED BY MULTIPLE PARTS OF THIS SECTION 10

Waste Tire Generators, Waste Tire Haulers, Waste Tire Collection Facilities, Waste Tire Processors,

Mobile Waste Tire Processors, Waste Tire Monofills, and End Users may perform activities that are regulated by multiple parts of this section 10. If so, these entities must register accordingly and comply with the requirements of all applicable parts of these regulations, which are not duplicative or overlapping.

10.2.3 LIMITATIONS ON THE DISPOSAL OF WASTE TIRES

(A) Except as specified in section 10.2.3(B) below, a person must dispose of waste tires only by delivery to a generator engaging in waste tire collection, to a waste tire processor, to a waste tire monofill, or to a waste tire collection facility. This prohibition on disposal also applies to waste tires that have been cut in half or otherwise modified but not processed into tire-derived product.

(B) If an individual not engaged in commercial waste tire activities is able to establish that due diligence has been conducted and no option for disposing of a waste tire as specified by section 10.2.3(A) is available, then the individual may dispose of the waste tire in a solid waste disposal site and facility or transfer station. To establish due diligence, an individual must (1) contact the local governing authority to determine whether local recycling options are available, (2) contact the Department to determine whether local recycling options are available, and (3) contact all waste tire generators, waste tire haulers, waste tire monofils, waste tire processors and waste tire collection facilities within fifty (50) miles to determine whether alternatives to final disposal exist. The Department has discretion to determine whether this due diligence requirement has been satisfied.

10.2.4 EXEMPTION FROM ANNUAL FEES IN SECTION 1.7.3

The annual fee requirement of section 1.7.3 of these Regulations does not apply to persons registered pursuant to sections 10.3, 10.4, 10.6, 10.7, 10.8, or 10.9 for their activities governed by these sections.

10.2.5 ENFORCEMENT

The Department may enforce this section 10 through its enforcement authorities, including those specified in sections 30-20-113 and 30-20-114, C.R.S.

SECTION 10.3 - STANDARDS FOR WASTE TIRE HAULERS

10.3.1 GENERAL

(A) Unless transported out of state, a person may only transport waste tires to the following types of facilities, sites and users in Colorado:

(1) A registered waste tire generator;

(2) A registered waste tire hauler;

(3) A registered waste tire collection facility;

(4) A registered waste tire monofill;

(5) An end user of whole waste tires in compliance with section 10.9 of these Regulations

(6) A registered waste tire processor;

(7) A municipal or county-owned waste tire collection area;

(8) A municipal or privately owned solid waste landfill in compliance with this section 10.2.3 (B); or

(9) A beneficial user of whole waste tires that has been approved by the Department.

(B) A person registered as a Waste Tire Hauler pursuant to section 10.3.3 of these Regulations may pick up waste tires from a person exempted from this section 10, who is not registered as a Waste Tire Generator, Waste Tire Hauler, Waste Tire Collection Facility, Waste Tire Processor, Mobile Waste Tire Processor, or Waste Tire Monofill, an illegal waste tire site or from a private property as long as the Waste Tire Hauler creates a manifest for the load of waste tires pursuant to Section 10.3.5 of these Regulations, and ensures delivery of the waste tires only to a facility listed in section 10.3.1(A) above.

(C) Waste Tire Haulers must within twenty-four (24) hours of identification notify the Solid Waste Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two (2) weeks of this notification, the facility must submit a written report describing the emergency to the Solid Waste Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the issues generated by the emergency.

(D) A Waste Tire Hauler that is not also registered as a Waste Tire Generator, Waste Tire Collection Facility, Waste Tire Processor, or Waste Tire Monofill must not have on site:

(1) More than one thousand five hundred (1,500) waste tires at any one time; or

(2) A waste tire for more than three (3) days; or

(3) Waste tires outside the waste hauler's vehicle or trailer.

10.3.2 REGISTRATION FOR WASTE TIRE HAULERS

(A) No person shall transport a load of ten (10) or more waste tires at one time unless he/she has registered with the Department by submitting an application for Certificate of Registration (Form WT-1 or WT-1H) to the Hazardous Materials and Waste Management Division of the Department and received a Certificate of Registration from the Department.

(B) An application for a Certificate of Registration as a Waste Tire Hauler must be submitted on Form WT-1 or WT-1H. The application must be delivered to the Department, electronically or by hard copy, and must include, at a minimum, the following information:

(1) The business name of the Waste Tire Hauler and any other names under which the Waste Tire Hauler may do business;

(2) The principal business address of the Waste Tire Hauler;

(3) A business telephone number(s);

(4) The name and address of the responsible officer of a corporate Waste Tire Hauler or the owner(s) of a Waste Tire Hauler operating a proprietorship or partnership;

(5) The signature and date of signature of the Waste Tire Hauler applicant;

(6) The number of vehicles the Waste Tire Hauler uses to transport waste tires in Colorado; and

(7) A current vehicle registration for each vehicle the Waste Tire Hauler will use to haul waste tires which includes the following information for each vehicle: the license plate number, the state in which the vehicle is registered, the Vehicle Identification Number ("VIN"), the make/model and year, and the registered owner.

(C) The Department will issue a Certificate of Registration and corresponding decal(s) to an applicant if the applicant has submitted an application to the Department containing all information required in section 10.3.2(B) and has submitted the annual report required by section 10.3.6.

(D) The Certificate of Registration for a Waste Tire Hauler is valid from the date of issuance to March 15 of the year indicated on the Certificate of Registration.

(E) A Waste Tire Hauler must submit an updated application for a Certificate of Registration within fifteen (15) days after the Waste Tire Hauler purchases a new vehicle, rents or leases a vehicle, or operates a facility at a new location.

(F) A Waste Tire Hauler is not authorized to haul waste tires after the March 15 expiration date unless the Waste Tire Hauler has applied to renew the Waste Tire Hauler Certificate of Registration prior to expiration and has received a new Certificate of Registration as a Waste Tire Hauler from the Department and Waste Tire Hauler decals, pursuant to section 10.3.3 below.

(G) All Waste Tire Haulers who wish to continue hauling waste tires must submit application for renewal no later than February 1.

(H) A legible copy of the Certificate of Registration must be maintained and made available for inspection at the Waste Tire Hauler's principal place of business.

(I) A Waste Tire Hauler Certificate of Registration is not transferable by the Waste Tire Hauler to whom it was issued to any other person or entity.

(J) A Waste Tire Hauler who has previously filed an application for a Certificate of Registration as a Waste Tire Hauler (Form WT-1 or WT-1H) is required to notify the Department in writing whenever changes occur to the following:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number; or

(7) The Waste Tire Hauler is no longer hauling waste tires.

(K) The Department may cancel a Certificate of Registration of a person who no longer hauls waste tires.

10.3.3 WASTE TIRE HAULER DECALS

(A) No person shall transport a load of ten (10) or more waste tires in Colorado without having received a Waste Tire Hauler decal(s). An application for a Certificate of Registration submitted pursuant to section 10.3.2 above shall also serve as the application for a Waste Tire Hauler decal(s). A Waste Tire Hauler must submit an updated application for a Certificate of Registration within 15 days after the Waste Tire Hauler purchases a new vehicle, or rents or leases a vehicle.

(B) Waste Tire Haulers will receive Waste Tire Hauler decal(s) and temporary decals (if needed) for each vehicle from the Department with their Certificate of Registration. Each decal will have a unique number.

(C) Each Waste Tire Hauler vehicle decal will be valid until March 15 of the year indicated on the vehicle decal and will have a unique number. Prior to the expiration date, a Waste Tire Hauler must submit a new application for a Certificate of Registration pursuant to section 10.3.2 above.

(D) A Waste Tire Hauler decal must be affixed to the lower left hand corner of the windshield of each vehicle the Waste Tire Hauler owns, rents, leases and/or uses to transport waste tires or in some other manner so the decal is visible on vehicles that do not have a windshield

(E) A Waste Tire Hauler decal is not transferable by the Waste Tire Hauler to whom it was issued to any other person or entity and must not be used for any vehicle not listed by the Registered Waste Tire Hauler on its application for a Certificate of Registration as a Waste Tire Hauler.

(F) Commercial freight carriers must obtain a temporary decal from the registered Waste Tire Hauler who contracts with them. The temporary decals must be displayed on the lower left hand side of the windshield or in some other manner so the decal is visible on vehicles that do not have a windshield at all times when the vehicle is under contract for waste tire transportation. Upon termination of contract, the temporary decal must be returned within twenty-four (24) hours to the registered Waste Tire Hauler. Commercial freight carriers must comply with sections 10.3.1 and 10.3.4.

10.3.4 MANIFEST REQUIREMENTS FOR WASTE TIRE HAULERS

(A) No Waste Tire Hauler may accept waste tires for transportation without properly completing a paper or electronic manifest pursuant to section 10.3.4 of these Regulations unless they comply with 10.1.3 (E).

(B) Paper or electronic copies of manifests for all transport of waste tires accepted by a Waste Tire Hauler must be maintained on-site at the Waste Tire Hauler's principal business address as identified on the Certificate of Registration and available for inspection for three (3) years from the date of delivery.

(C) A Waste Tire Hauler must create a paper or electronic manifest for each load of waste tires. Such persons must use the Uniform Waste Tire Manifest Form WT-2, available at the Department's website. Each manifest will have a unique number. The completed Uniform Waste Tire Manifest must contain the following information:

(1) The name, address, telephone number, and Certificate of Registration number, if applicable, of the generator(s) or source(s) of the waste tires in the load;

(2) The quantity of waste tires picked up at each generator or source as measured by:

(a) The actual number of waste tires; or

(b) The weight of waste tires measured in tons;

(3) The name, address, telephone number and Certificate of Registration number of the Waste Tire Hauler and the Waste Tire Hauler decal number of the vehicle used to transport the waste tires and, if applicable, the name and United States Department of Transportation (USDOT) number of the contracted commercial freight carrier;

(4) The date(s) of transport;

(5) The name, address, telephone number and Certificate of Registration number and decal number of the destination facility to which the waste tires will be delivered;

(6) The signatures, under penalty of perjury, of each generator/source of the waste tires, the Waste

Tire Hauler, the secondary Waste Tire Hauler (if any), and the facility that is the destination of the waste tires; and

(7) Whether the waste tires originated from an illegal waste tire site or from a private property.

(8) Whether the waste tires originated from an unregistered waste tire hauler and license plate number of unregistered waste tire hauler.

(D) Waste Tire Haulers must:

(1) Carry the paper or electronic Uniform Waste Tire Manifest of each load in the vehicle while hauling the waste tires described on the Manifest (the Manifest need not be displayed in the vehicle);

(2) Provide a copy of the paper or electronic Uniform Waste Tire Manifest for each load to the applicable waste tire generator/source of the waste tires within thirty (30) days of delivery to the destination facility;

(3) Provide a paper or electronic completed copy of the Uniform Waste Tire Manifest for each load to the destination facility when the hauler delivers the waste tires; and

(4) Make a copy of any paper or electronic Uniform Waste Tire Manifest available to the Department upon request.

10.3.5 ANNUAL REPORT

A Waste Tire Hauler must submit an annual report to the Department on the Commercial Waste Tire Hauler Annual Report Form (Form WT-4). This form may be obtained by contacting the Department or available at the Department's website.

(A) The report must account for the number of waste tires transported by the person during the previous calendar year (beginning January 1 and ending December 31). Waste tire quantities must be reported by actual count or by actual weight in tons.

(B) The annual report must be delivered to the Department, via certified mail, regular mail, facsimile, hand delivery, or electronically by April 1 of each year and must include the following:

(1) Quantity of waste tires collected by the Waste Tire Hauler from within Colorado for the applicable reporting period;

(2) Quantity of waste tires that are brought to Colorado locations by the Waste Tire Hauler from out-of-state sources during the applicable reporting period;

(3) Quantity of waste tires that are taken from Colorado locations by the Waste Tire Hauler to out-of-state destinations during the applicable reporting period;

(4) Quantity of waste tires identified as used tires;

(5) Final disposition of all the waste tires collected during the applicable reporting period by listing each waste tire collection facility, waste tire monofill, municipal or privately owned solid waste landfill, or end user or processor facility, beneficial users of waste tires and the total quantities of waste tires that the Waste Tire Hauler has delivered to each; and

(6) The total amount of waste tires accepted from a person exempted from section 10.

10.3.6 WASTE TIRE HAULER SELF-CERTIFICATION

(A) The Department may require Waste Tire Haulers to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) Any Waste Tire Hauler who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide Waste Tire Haulers a reasonable amount of time to complete and return the checklist. At a minimum, the Waste Tire Hauler will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist will contain a certification in substantially the following form, which must be signed by an authorized representative of the Waste Tire Hauler:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.4 - STANDARDS FOR GENERATORS OF MOTOR VEHICLE AND TRAILER WASTE TIRES

10.4.1 GENERAL

This section 10.4 applies to all generators of motor vehicle or trailer waste tires, including but not limited to, new tire retailers, used tire retailers, motor vehicle dealers, motor vehicle dismantlers, public and private vehicle maintenance shops, garages, service stations, car care centers, automotive fleet centers, local government fleet operators, salvage and scrap yards and rental fleet operators.

10.4.2 GENERAL STANDARDS FOR GENERATORS OF MOTOR VEHICLE AND TRAILER WASTE TIRES

(A) All Waste Tire Generators must maintain all weather access roads to those areas of their facilities where waste tires are stored.

(B) All Waste Tire Generators must collect litter in and around any area used to store waste tires in order to avoid a fire hazard or a nuisance condition and control the growth of vegetation to minimize potential fuel sources.

(C) Waste Tire Generators must maintain a working telephone at their facilities.

(D) Waste Tire Generators must comply with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire, Prevention and Control in the Department of Public Safety.

(E) Waste Tire Generators that are not also registered as a Waste Tire Collection Facility, Waste Tire Processor, or Waste Tire Monofill must not:

(1) Have on site more than one thousand five hundred (1,500) waste tires at any one time; or

(2) Store more than five hundred (500) waste tires outdoors at their facility.

(F) Waste Tire Generators must immediately notify the Solid Waste and Materials Management Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two (2) weeks of this notification, the Waste Tire Generator must submit a written report describing the emergency to the Solid Waste and Materials Management Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the issues generated by the emergency.

(G) Waste Tire Generators must arrange for the commercial hauling or mobile processing of waste tires only with a waste tire hauler or mobile waste tire processor who is currently registered pursuant to these Regulations.

(H) Waste Tire Generators may accept waste tires.

(I) Waste Tire Generators that sell replacement tires in Colorado must not refuse to accept from a customer, at the point of transfer, motor vehicle or trailer waste tires of the same general type and in a quantity at least equal to the number of new tires purchased.

(J) Waste Tire Generators must maintain records for three (3) years showing how many waste tires they generated.

(K) Waste Tire Generators who accumulate at any one time more than hundred (100) waste tires must maintain security measures to prevent unlawful access to waste tires.

(L) Waste tires must not create nuisance conditions that could attract vectors of disease.

10.4.3 WASTE TIRE GENERATOR REGISTRATION REQUIREMENTS

(A) No person shall commercially generate motor vehicle or trailer waste tires, including but not limited to, as a new tire retailer, used tire retailer, motor vehicle dealer, motor vehicle dismantler, public or private vehicle maintenance shop, garage, service station, car care center, automotive fleet center, local government fleet operator, salvage and scrap yards or rental fleet operator in Colorado without having received a Certificate of Registration from the Department.

(B) An application for a Certificate of Registration must be submitted on Form WT-1 to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for the generation of waste tires must include, at a minimum:

(1) The business name of Waste Tire Generator and any other names under which the Waste Tire Generator may do business;

(2) The principal business address of the Waste Tire Generator;

(3) A business telephone number(s);

(4) The name and address of the responsible officer of a corporate Waste Tire Generator, or the owner(s) of a Waste Tire Generator operating a proprietorship or a partnership;

(5) Whether the Waste Tire Generator sells new motor vehicle tires or new trailer tires; and

(6) The signature and date of signature of the Waste Tire Generator applicant.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the facility and made available for inspection.

(E) A Certificate of Registration is not transferable by the Waste Tire Generator to whom it was issued to any other person or entity.

(F) A Waste Tire Generator who has previously filed an application for a Certificate of Registration as a Waste Tire Generator (Form WT-1) is required to notify the Department in writing whenever changes occur to the following:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number;

(7) Waste tires are generated at a new location not registered with the Department; or

(8) The Waste Tire Generator is no longer generating waste tires at the location registered with the Department.

(G) The Department may cancel a Certificate of Registration of a person who no longer generates waste tires at their registered location.

10.4.4 WASTE TIRE GENERATOR FACILITY DECAL

(A) An application for a Certificate of Registration pursuant to section 10.4.3 above shall also serve as an application for a Waste Tire Facility decal.

(B) Waste Tire Generators will receive a Waste Tire Facility decal from the Department with their Certificate of Registration.

(C) Waste Tire Facility decals will have a unique number.

(D) Waste Tire Generators must post their Waste Tire Facility decal in a prominent location at the address where the waste tires are generated and where the decal is visible to the Waste Tire Hauler.

10.4.5 WASTE TIRE GENERATOR MANIFEST REQUIREMENTS

(A) No Waste Tire Generator may accept a shipment of more than ten (10) motor vehicle or trailer waste tires without an accompanying manifest properly completed pursuant to section 10.3.4 of these Regulations unless they comply with 10.1.3 (E).

(B) No Waste Tire Generator may offer a shipment of motor vehicle or trailer waste tires without receiving a manifest properly completed by the Waste Tire Hauler pursuant to section 10.3.4 of these Regulations.

(C) No Waste Tire Generator may offer motor vehicle or trailer waste tires for mobile processing without receiving a manifest properly completed by the Mobile Waste Tire Processor pursuant to section 10.7.5 of these Regulations.

(D) Manifests for all shipments of motor vehicle or trailer waste tires must be maintained on-site at the Waste Tire Generator's facility and available for inspection for three (3) years from the date of pick-up.

10.4.6 WASTE TIRE GENERATOR SELF-CERTIFICATION

(A) The Department may require Waste Tire Generators to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) Any Waste Tire Generator who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide Waste Tire Generators a reasonable amount of time to complete and return a checklist. At a minimum, the Waste Tire Generator will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the Waste Tire Generator:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.5 - STANDARDS FOR WASTE TIRE MONOFILLS

10.5.1 GENERAL WASTE TIRE MONOFILL STANDARDS

(A) Any person who owns or operates a Waste Tire Monofill must have and comply with a valid Certificate of Designation issued pursuant to section 1.3 of these Regulations.

(B) A Certificate of Designation for a Waste Tire Monofill must include an Engineering Design and Operations Plan (EDOP) which includes the requirements listed in section 10.5.8, a Waste Tire Inventory Reduction Plan as required by 10.5.1 (J), the Financial Assurance requirements in section 10.5.6, and a Closure and Post-Closure Plan as required by section 10.5.9.

(C) Any person who owns or operates a Waste Tire Monofill must maintain all weather access roads to those areas of active operation and as necessary to meet the Fire Prevention, Training and Firefighting Plan required by subsection 10.5.8(A)(3) of these Regulations.

(D) Any person who owns or operates a Waste Tire Monofill must collect litter in order to avoid a fire hazard or a nuisance condition and control the growth of vegetation to minimize potential fuel sources.

(E) Any person who owns or operates a Waste Tire Monofill must implement security measures to preclude unauthorized entry.

(F) Any person who owns or operates a Waste Tire Monofill must post signs in public view at the entrance to the Waste Tire Monofill with the name of the facility, the hours which the facility is open for

public use, a listing of the wastes accepted at the facility, and a phone number for a 24 hour emergency contact. The signs must be posted in English and any other language predominant in the area surrounding the facility.

(G) Any person who owns or operates a Waste Tire Monofill must maintain a working telephone at each Waste Tire Monofill facility.

(H) During all stages of operation of a Waste Tire Monofill, the owner or operator must have an attendant who is responsible for site activities.

(I) A Waste Tire Monofill owner or operator must immediately notify the Solid Waste Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two (2) weeks of this notification, the owner or operator must submit a written report describing the emergency to the Solid Waste Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the issues generated by the emergency.

(J) Waste Tire Inventory Reduction Plan: Owners/operators of a Waste Tire Monofill must on an annual basis, for every one (1) waste tire received, end use at least two (2) waste tires or process at least two (2) waste tires into tire-derived product. All owners or operators must submit for Department approval a Waste Tire Inventory Reduction Plan that shows how they will comply with this section. All owners or operators must comply with their Waste Tire Inventory Reduction Plan. An owner or operator of a Waste Tire Monofill may claim that information or data submitted in the Waste Tire Inventory Reduction Plan, should be withheld as Confidential Business Information ("CBI") or Trade Secret. The Department will hold information contained in the Waste Tire Inventory Reduction Plan as CBI/Trade Secret pursuant to section 7-74-102, C.R.S. and section 18-4-408(2), C.R.S. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

(K) Any person who owns or operates a Waste Tire Monofill must arrange for the commercial hauling or mobile processing of waste tires only with a waste tire hauler or mobile waste tire processor who is currently registered pursuant to these Regulations.

(L) Any person who owns or operates a Waste Tire Monofill must ensure that all waste tires collected at its facility are delivered to a waste tire monofill, a waste tire processor or to a waste tire collection facility operating in compliance with the Act and the Regulations or mobile processed. An owner/operator of a Waste Tire Monofill may ship whole waste tires to an End User who end uses whole waste tires for fuel or energy recovery.

(M) Any person who owns or operates a Waste Tire Monofill must not place any waste tires into monofill storage after January 1, 2018. All Waste Tire Monofills must close by July 1, 2024.

(N) Any person who owns or operates a Waste Tire Monofill must comply with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(O) Any person who owns or operates a Waste Tire Monofill must comply with their facility's EDOP.

10.5.2 WASTE TIRE MONOFILL REGISTRATION REQUIREMENTS

(A) No person shall operate a Waste Tire Monofill without having received a Certificate of Registration from the Department.

(B) Applications for Certificates of Registration must be submitted on Form WT-1 to the Solid Waste and

Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for operation of a Waste Tire Monofill must include:

(1) The business name of the Waste Tire Monofill and any other names under which the Waste Tire Monofill may do business;

(2) The principal business address of the Waste Tire Monofill;

(3) A business telephone number(s);

(4) The name and address of the responsible officer of a corporate Waste Tire Monofill, or the owner(s) of a Waste Tire Monofill operating a proprietorship or a partnership; and

(5) The signature and date of signature of the Waste Tire Monofill applicant.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the facility and made available for inspection.

(E) A Certificate of Registration is not transferable by the owner or operator of a Waste Tire Monofill to whom it was issued to any other person or entity, without the Department's prior approval based on information described in section 10.5.2(F) below.

(F) An owner or operator of a Waste Tire Monofill who has previously filed an application for a Certificate of Registration as a Waste Tire Monofill (Form WT-1) is required to notify the Department in writing whenever changes occur to the following:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number; or

(7) The owner or operator is no longer operating a Waste Tire Monofill at the location registered with the Department.

(G) The Department may cancel a Certificate of Registration of an owner or operator who no longer operates a Waste Tire Monofill at their registered location.

10.5.3 WASTE TIRE MONOFILL FACILITY DECAL

(A) An application for a Certificate of Registration pursuant to section 10.5.2 above, shall also serve as an application for a Waste Tire Facility decal.

(B) An owner or operator of a Waste Tire Monofill will receive a Waste Tire Facility decal from the Department with its Certificate of Registration. Waste Tire decals will have a unique number.

(C) An owner or operator of a Waste Tire Monofill must post their Waste Tire Facility decal in a prominent

location at the address used to store/accumulate waste tires and where the decal is visible to the Waste Tire Hauler.

10.5.4 WASTE TIRE MONOFILL MANIFEST REQUIREMENTS

(A) No owner or operator of a Waste Tire Monofill may accept a shipment of more than ten (10) waste tires from a Waste Tire Hauler or Mobile Waste Tire Processor without an accompanying manifest properly completed pursuant to sections 10.3.4 or 10.7.5 of these Regulations unless they comply with section 10.1.3 (E).

(B) Manifests for all shipments of waste tires accepted by an owner or operator of a Waste Tire Monofill must be maintained on-site at that facility and available for inspection for three (3) years from the date of delivery.

(C) No owner or operator of a Waste Tire Monofill may offer a shipment of more than ten (10) waste tires without an accompanying manifest properly completed by the Waste Tire Hauler pursuant to section 10.3.4 of these Regulations.

(D) No owner or operator of a Waste Tire Monofill may offer waste tires for processing without receiving a manifest properly completed by the Mobile Waste Tire Processor pursuant to section 10.7.5 of these Regulations.

(E) Manifests for all shipments of waste tires offered by the owner or operator of a Waste Tire Monofill must be maintained on-site at that facility and available for inspection for three (3) years from the date of pick-up.

10.5.5 WASTE TIRE MONOFILL FINANCIAL ASSURANCE

Any person who owns or operates a Waste Tire Monofill must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section 1.8 of these Regulations.

10.5.6 ANNUAL REPORT

(A) Any person who owns or operates a Waste Tire Monofill must submit an annual report to the Department and local governing body having jurisdiction by April 1 of each year on the Waste Tire Facility Annual Reporting Form (Form WT-5). The annual report must include the amount, by actual count or by actual weight in tons, of waste tires received at the facility, how many waste tires were processed or end used at the facility, how many waste tires were shipped off-site from the facility for the preceding calendar year, and the total amount of waste tires accepted from unregistered waste tire haulers.

(B) The annual report must include, in addition to the information in section 10.5.6(A) above, information concerning compliance with the Waste Tire Inventory Reduction Plan in section 10.5.1 (J). An owner or operator of a Waste Tire Monofill may claim that information or data submitted in the annual report, including the report on the Waste Tire Inventory Reduction Plan, should be withheld as Confidential Business Information (“CBI”) or Trade Secret. The Department will hold information contained in the Waste Tire Inventory Reduction Plan as CBI/Trade Secret pursuant to section 7-74-102, C.R.S. and section 18-4-408(2), C.R.S. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

10.5.7 WASTE TIRE MONOFILL SELF-CERTIFICATION

(A) The Department may require an owner or operator of a Waste Tire Monofill to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) An owner or operator of a Waste Tire Monofill who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide the owner or operator of a Waste Tire Monofill a reasonable amount of time to complete and return a checklist. At a minimum, the owner or operator of a Waste Tire Monofill will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist will contain a certification in substantially the following form, which must be signed by an authorized representative of the Waste Tire Monofill:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.5.8 WASTE TIRE MONOFILL FACILITY ENGINEERING DESIGN AND OPERATIONS PLAN

(A) Any person who owns or operates a Waste Tire Monofill must have an EDOP, approved by the Department, which must, at a minimum, include all of the following:

(1) General:

(a) Nature of the activity conducted at the facility;
(b) The capacity and type of equipment to be used at the facility;
(c) All methods of waste tire processing and storage;
(d) Means used to track inventory on a volume or weight basis;
(e) Security measures;
(f) How the facility intends to implement the requirements listed in section 10.5.1 above; and
(g) Annual training requirements for all employees on all approved facility plans described in this section 10.5.8, and how that training will be documented and verified.

(2) Emergency Response Plan which includes:

(a) General facility information including:
(i) The facility name, mailing address and telephone number;
(ii) The facility operator's name, mailing address and telephone number; and
(iii) The property owner's name, mailing address and telephone number;

(b) An emergency contact list including the names and telephone numbers of the persons and appropriate agencies to be contacted in case of emergency, including:

(i) The Emergency Coordinator;
(ii) The Facility Owner;
(iii) The Facility Operator;
(iv) The Local Fire Authority; and
(v) Any additional numbers that may be needed.

(c) Emergency Equipment available on site, including specific capabilities and uses;

(d) A map showing the location of fire lanes, tire pile configurations, fire hydrants, power supply, and emergency response equipment; and

(e) A description of emergency response procedures to be followed in the event of a fire or other emergency.

(3) Fire Prevention, Training and Firefighting Plan which:

(a) Includes specification of the Facility's fire lane locations and widths;

(b) Includes resources to extinguish fires;

(c) Designates a Facility Emergency Coordinator;

(d) Is written by a qualified professional in accordance with local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(e) Ensures the owner or operator complies with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(f) Includes specification for adequate water supply available for use by the local fire authority for firefighting. Owners and operators may demonstrate compliance with this requirement through alternative methods approved by the local fire authority;

(4) Vector Control Plan which includes:

(a) Provisions for storage of tires in a manner which prevents the breeding and harborage of mosquitoes, rodents, and other vectors by any of the following means: (i) cover with impermeable barriers, other than soil, to prevent entry or accumulation of precipitation, or (ii) use of treatments or methods, such as pesticides, to prevent or eliminate vector breeding as necessary.

(b) If pesticides are used in vector control efforts, they must be used in accordance with the Pesticide Applicators Act, section 35-10-101, C.R.S.

10.5.9 CLOSURE AND POST-CLOSURE CARE OF WASTE TIRE MONOFILLS

(A) Any person who owns or operates a Waste Tire Monofill must close and maintain the Waste Tire Monofill in accordance with sections 2.5, 2.6, and 10.5 of these Regulations.

(B) Any person who owns or operates a Waste Tire Monofill must prepare a Closure Plan as part of the Engineering Design and Operations Plan. The Closure Plan must describe the steps necessary to close the Waste Tire Monofill at any point during its active life and at the end of the facility's active life. The facility may either: 1) close the waste in place as a solid waste landfill in accordance with these

Solid Waste Regulations, or 2) remove all solid waste and residual contamination to meet unrestricted use concentrations. Option 2, also known as “clean closure,” eliminates the need for post closure care. Both Option 1 and Option 2 require the owner or operator of a Waste Tire Monofill to develop a closure plan.

(1) The closure plan, at a minimum, must include the following information:
    (a) Provisions for removal of all solid waste at those facilities choosing partial or facility-wide clean closure;
        i. Proposed plans and procedures for sampling and testing soil based on visual identification of staining or other indications of residual contamination;
        ii. Provisions for sampling and analyses of soil for potential hazardous characteristics and provisions for final disposal. Soils will need to meet unrestricted use concentrations or background levels whichever is greater.
    (b) Provision for the consolidation and placement of residual wastes remaining on site;
    (c) Procedures for placement of final cover materials and final cover configurations.

(2) General description of the site post-closure, including:
    (a) The final property contours, material and procedures to be used to cover the waste tires;
    (b) A description of final soil placement and establishment of plant life;
    (c) A description of anticipated post disposal land use;
    (d) A schedule for completing all activities necessary to satisfy the closure criteria of this section; and
    (e) An analysis of whether section 25-15-320, C.R.S. will require an environmental covenant following closure.

(3) Owners or operators of all Waste Tire Monofills must submit a Closure Report to the Department at the time of final closure. The report must summarize the number or volume of tires disposed of in each pit, and phone number of person(s) responsible for post closure control of the facility.

(4) At least sixty (60) days in advance of the proposed closure date, the owner or operator must notify the Department and the local governing authority of the proposed closure date.

(5) The owner or operator must notify the general public at least sixty (60) days in advance of the proposed closure by placing signs of suitable size at the entrance to the site and facility.

(6) The owner or operator of the facility must complete closure activities of the facility in accordance with the closure plan and within one hundred eighty (180) calendar days following the final receipt of waste. Extensions of the closure period may be granted by the Department if the owner or operator demonstrates that closure will take longer than one hundred eighty (180) calendar days and the owner/operator has taken and will continue to take all steps to prevent threats to human health and the environment.

(7) Following closure of an Waste Tire Monofill, the owner or operator shall comply with section 25-15-320, C.R.S. unless the site is remediated to a condition that is suitable for unrestricted use. If waste is left in place as part of the closure, record a notation in the chain of title specifying that the land has been used as a Waste Tire Monofill; a copy of which must be provided to the Department prior to recording for review and approval.

(8) Closure Certification: A closure certification report is required to be submitted within sixty (60) calendar days of completion of closure activities which documents all the requirements and conditions of the closure plan have been achieved. The Report must be signed and sealed by a Colorado registered professional engineer and is subject to review and approval by the Department.

(C) POST-CLOSURE CARE AND MAINTENANCE REQUIREMENTS FOR WASTE TIRE MONOFILLS

Post-Closure Activities: Following closure of the Waste Tire Monofill the owner or operator shall submit a Post-Closure Care Plan within sixty (60) calendar days of determining that the waste tire facility was closed as a landfill that will include at least the following:

(1) Provisions to prevent nuisance conditions;

(2) Maintaining the integrity and effectiveness of the final cover, should waste remain in place, including making repairs to the cover and replanting vegetation as necessary; and

(3) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

10.6 - STANDARDS FOR WASTE TIRE PROCESSORS

10.6.1 GENERAL

Waste tire processing is not subject to the Recycling requirements of section 8 of these Regulations or the annual fee requirements of section 1.7.3 of these Regulations.

10.6.2 GENERAL STANDARDS FOR WASTE TIRE PROCESSORS

(A) All Waste Tire Processors must maintain all weather access roads to those areas of active operation and as necessary to meet the Fire Prevention, Training and Firefighting Plan required by subsection 10.6.9(A)(3) of these Regulations.

(B) All Waste Tire Processors must collect litter in order to avoid a fire hazard or a nuisance condition and control the growth of vegetation to minimize potential fuel sources.

(C) All Waste Tire Processors must implement security measures to preclude unauthorized entry.

(D) Prominent signs in English and any other language predominant in the area surrounding the facility must be posted in public view at the entrance to each Waste Tire Processing facility with the name of the facility, the hours which the facility is open for public use, a listing of the wastes accepted at the facility, and a phone number for a 24 hour emergency contact.

(E) The Waste Tire Processor must maintain a working telephone at each Waste Tire Processor facility.

(F) During all stages of operation of a Waste Tire Processor, the facility must have an attendant who is responsible for site activities.

(G) A Waste Tire Processor operator must immediately notify the Solid Waste Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two (2) weeks of this notification, the facility must submit a written report describing the emergency to the Solid Waste Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the issues

generated by the emergency.

(H) Following a one-year accumulation period, the weight or volume of waste tires that are processed must be at least 75% of the total weight or volume of waste tires received and currently in storage over a three year rolling average. A Waste Tire Processor that is also registered as a Waste Tire Monofill is exempt from this requirement and must comply with the requirement in section 10.5.1(J).

(I) A Waste Tire Processor that is not also registered as a Waste Tire Monofill must not have at the processing facility at any one time more than the lesser of:

(1) One hundred thousand (100,000) waste tires;

(2) The amount of waste tires allowed under local requirements; or

(3) The amount of waste tires anticipated in the Waste Tire Processor's financial assurance instrument.

(J) Waste Tire Processors must arrange for the commercial hauling of waste tires only with a waste tire hauler who is currently registered pursuant to section 10.3.2 of these Regulations.

(K) Waste Tire Processors must ensure that any waste tires shipped off-site from their facilities are delivered either out of state or to a registered Waste Tire Generator, Waste Tire Hauler, Waste Tire Collection Facility, Waste Tire Monofill, or another Waste Tire Processor operating in compliance with the Act and the Regulations. Waste Tire Processors may ship whole waste tires to an End User who end uses whole waste tires for fuel or energy recovery.

(L) Waste Tire Processors must comply with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(M) Waste Tire Processors must comply with the facility's Engineering Design and Operations Plan (EDOP).

10.6.3 WASTE TIRE PROCESSORS REGISTRATION REQUIREMENTS

(A) No person shall process waste tires without having received a Certificate of Registration from the Department.

(B) Applications for Certificates of Registration must be submitted on Form WT-to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for operation of a Waste Tire Processor must include:

(1) The business name of the Waste Tire Processor and any other names under which the Waste Tire Processor may do business;

(2) The principal business address of the Waste Tire Processor;

(3) A business telephone number(s);

(4) The name and address of the responsible officer of a corporate Waste Tire Processor, or the owner(s) of a Waste Tire Processor operating a proprietorship or a partnership; and

(5) The signature and date of signature of the Waste Tire Processor applicant.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the facility and made available for inspection

(E) A Certificate of Registration is not transferable by the Waste Tire Processor to whom it was issued to any other person or entity.

(F) A Waste Tire Processor who has previously filed an application for a Certificate of Registration as a Waste Tire Processor (Form WT-1) is required to notify the Department in writing whenever changes to the following occur:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number;

(7) Waste tires are processed at a new location not registered with the Department; or

(8) The owner/operator is no longer operating as a Waste Tire Processor at the location registered with the Department.

(G) The Department may cancel a Certificate of Registration of a person who no longer processes waste tires.

10.6.4 WASTE TIRE PROCESSOR FACILITY DECAL

(A) An application for a Certificate of Registration pursuant to section 10.6.3 above, will also serve as an application for a Waste Tire Facility decal.

(B) Waste Tire Processors will receive a Waste Tire Facility decal from the Department with their Certificate of Registration. Waste tire decals will have a unique number.

(C) Waste Tire Processors must post their Waste Tire Facility decal in a prominent location at the address used to process tires and where the decal is visible to the Waste Tire Hauler.

10.6.5 WASTE TIRE PROCESSOR MANIFEST REQUIREMENTS

(A) No Waste Tire Processor may accept a shipment of ten (10) or more waste tires from a Waste Tire Hauler without an accompanying manifest properly completed pursuant to section 10.3.4 of these Regulations unless they comply with section 10.1.3 (E).

(B) Waste Tire Processors must maintain on-site at their facility manifests for all shipments of waste tires accepted and make the manifests available for inspection for three (3) years from the date of delivery.

(C) No Tire Waste Tire Processor may offer a shipment of ten (10) or more waste tires without an accompanying manifest properly completed by the Waste Tire Hauler pursuant to section 10.3.4 of these Regulations.

(D) Waste Tire Processors must maintain on-site at their facility manifests for all shipments of waste tires

offered and make the manifests available for inspection for three (3) years from the date of pick-up.

10.6.6 WASTE TIRE PROCESSOR FINANCIAL ASSURANCE

All Waste Tire Processors must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section 1.8 of these Regulations.

10.6.7 ANNUAL REPORT

(A) All Waste Tire Processors must submit an annual report to the Department and local governing body having jurisdiction by April 1 of each year on the Waste Tire Facility Annual Reporting Form (Form WT-5). The annual report must include the amount, by actual count or by actual weight in tons, of waste tires received at the facility, how many waste tires were processed at the facility, how many waste tires were shipped off-site from the facility for the preceding year, and the total amount of waste tires accepted from unregistered waste tire haulers.

(B) The annual report must include, in addition to the information in section 10.6.7(A) above, information concerning compliance with Section 10.6.2(H) that the Waste Tire Processor processed into tire-derived product at least 75% of the three year rolling average annual amount, by weight or number, of waste tires that the Waste Tire Processor accepted during the previous three (3) calendar years.

(C) A Waste Tire Processor may claim that information or data submitted in the Waste Tire Annual Report should be withheld as Confidential Business Information ("CBI") or Trade Secret. The Department will hold information contained in the Waste Tire Inventory Reduction Plan as CBI/Trade Secret pursuant to section 7-74-102, C.R.S. and section 18-4-408(2), C.R.S. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

10.6.8 WASTE TIRE PROCESSOR SELF-CERTIFICATION

(A) The Department may require Waste Tire Processors to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) Any Waste Tire Processor who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide Waste Tire Processors a reasonable amount of time to complete and return a checklist. At a minimum, the Waste Tire Processor will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the Waste Tire Processor:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and

iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.6.9 WASTE TIRE PROCESSOR ENGINEERING DESIGN AND OPERATIONS PLAN

(A) Each Waste Tire Processor must have an Engineering Design and Operations Plan, approved by the Department, which must, at a minimum, include all of the following:

(1) General:

(a) Nature of the activity conducted at the facility;
(b) The capacity and type of equipment to be used at the facility;
(c) All methods of processing and storage;
(d) Means used to track inventory on a volume or weight basis;
(e) Security measures;
(f) How the facility intends to implement the requirements listed in section 10.6.2 above; and
(g) Annual training requirements for all employees on all approved facility plans described in section 10.6.9, and how that training will be documented and verified.

(2) Emergency Response Plan which includes:

(a) General facility information including:

(i) The facility name, mailing address and telephone number;
(ii) The facility operator's name, mailing address and telephone number; and
(iii) The property owner's name, mailing address and telephone number.

(b) An emergency contact list including the names and telephone numbers of the persons and appropriate agencies to be contacted in case of emergency, including:

(i) The Emergency Coordinator;
(ii) The Facility Owner;
(iii) The Facility Operator;
(iv) The Local Fire Authority; and
(v) Any additional numbers that may be needed.

(c) Emergency Equipment available on site, including specific capabilities and uses.

(d) A map showing the location of fire lanes, tire pile configurations, fire hydrants, power supply, and emergency response equipment.

(e) A description of emergency response procedures to be followed in the event of a fire or other emergency.

(3) Fire Prevention, Training and Firefighting Plan which:

(a) Includes specification of the Facility's fire lane locations and widths;

(b) Includes resources to extinguish fires;

(c) Designates a Facility Emergency Coordinator;

(d) Is written by a qualified professional in accordance with local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the

Department of Public Safety; and

(e) Ensures the Waste Tire Processor complies with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(4) Vector Control Plan which includes:

(a) Provisions for storage of tires in a manner which prevents the breeding and harborage of mosquitoes, rodents, and other vectors by any of the following means: (i) cover with impermeable barriers, other than soil, to prevent entry or accumulation of precipitation, or (ii) use of treatments or methods, such as pesticides, to prevent or eliminate vector breeding as necessary; and

(b) Provisions ensuring that if pesticides are used in vector control efforts, they must be used in accordance with the Pesticide Applicators Act, section 35-10-101, C.R.S.

10.6.10 CLOSURE AND POST-CLOSURE CARE OF WASTE TIRE PROCESSOR FACILITIES

(A) Waste Tire Processors must close and maintain their facilities in accordance with sections 2.5, 2.6, and 10.6 of these Regulations.

(B) Closure Plan Requirements for Waste Tire Processors: The closure plan must be prepared as part of an Engineering Design and Operations Plan and must describe the steps necessary to close the Waste Tire Processor's facility at any point during its active life and at the end of the facility's active life. The Waste Tire Processor must remove all solid waste and residual contamination to meet unrestricted use concentrations. The closure plan, at a minimum, must include the following information:

(1) Provisions for removal of all solid waste at the site, including:

(a) Proposed plans and procedures for sampling and testing soil based on visual identification of staining or other indications of residual contamination;

(b) Provisions for sampling and analyses of soil for potential hazardous characteristics and provisions for final disposal. Soils will need to meet unrestricted use concentrations or background levels whichever is greater; and

(c) A schedule for completing all activities necessary to satisfy the closure criteria of this section.

(2) Waste Tire Processors must submit a Closure Certification Report to the Department at the time of final closure. The report must summarize and document the closure activities, including any analytical results, needed to support the unrestricted use condition of the facility.

(3) At least sixty (60) days in advance of the proposed closure date, the Waste Tire Processor must notify the Department and the local governing authority of the proposed closure date.

(4) The owner or operator must notify the general public at least sixty (60) days in advance of the proposed closure by placing signs of suitable size at the entrance to the site and facility.

(5) Waste Tire Processors must complete closure activities of their facility in accordance with the closure plan and within one hundred eighty (180) calendar days following the final receipt of waste tires. Extensions of the closure period may be granted by the Department if the Waste Tire Processor demonstrates that closure will take longer than one hundred eighty (180) calendar days and the owner/operator has taken and will continue to take all steps to prevent threats to

human health and the environment.

(6) Closure Certification: Waste Tire Processors must submit a closure certification report within sixty (60) calendar days of completion of closure activities which documents all the requirements and conditions of the closure plan have been achieved. The Report must be signed and sealed by a Colorado registered professional engineer and is subject to review and approval by the Department.

10.7 - STANDARDS FOR MOBILE WASTE TIRE PROCESSORS

10.7.1 GENERAL

Mobile waste tire processing is not subject to the Recycling requirements of section 8 of these Regulations or the annual fee requirements of section 1.7.3 of these Regulations.

10.7.2 GENERAL STANDARDS FOR MOBILE WASTE TIRE PROCESSORS

(A) All Mobile Waste Tire Processors must collect litter around their mobile processing operation in order to avoid a fire hazard or a nuisance and control the growth of vegetation to minimize potential fuel sources.

(B) The operator must ensure access to a working telephone at each Mobile Waste Tire Processor site.

(C) During all stages of operation at a mobile processing site, a Mobile Waste Tire Processor must ensure that an attendant who is responsible for mobile processing site activities is present.

(D) A Mobile Waste Tire Processor operator must immediately notify the Solid Waste and Materials Management Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two weeks of this notification, the facility must submit a written report describing the emergency to the Solid Waste and Materials Management Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the problems generated by the emergency.

(E) A Mobile Waste Tire Processor must not lease or own the property on which the processing occurs. Persons who own or lease the property on which they process waste tires are Waste Tire Processors and are not Mobile Waste Tire Processors.

(F) A Mobile Waste Tire Processor must not accept or accumulate waste tires unless also registered as a Waste Tire Processor at the property on which the processing occurs.

(G) A Mobile Waste Tire Processor must receive permission from the local governing authority prior to beginning to process waste tires at the location for any period of time.

(H) A Mobile Waste Tire Processor must notify the Department fourteen (14) days prior to beginning processing, the location where mobile processing will occur, the dates of processing, and the number of days processing at the site.

(I) A Mobile Waste Tire Processor must not process waste tires at a location for more than thirty (30) consecutive days unless the Mobile Waste Tire Processor:

(1) Is registered as a Waste Tire Processor at that location; or
(2) Receives Departmental approval to process for more than thirty (30) consecutive days at the location and remains in compliance with all state and local environmental requirements at the location of mobile processing.

(J) Mobile Waste Tire Processors must comply with their Engineering Design and Operations Plan (EDOP).

10.7.3 MOBILE WASTE TIRE PROCESSORS REGISTRATION REQUIREMENTS

(A) No person shall operate as a Mobile Waste Tire Processor without having received a Certificate of Registration from the Department.

(B) Applications for Certificates of Registration must be submitted on Form WT-1 or WT-1M to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for operating as a Mobile Waste Tire Processor must include:

(1) The business name of the Mobile Waste Tire Processor and any other names under which the Mobile Waste Tire Processor may do business;

(2) The permanent business address of the Mobile Waste Tire Processor;

(3) A business telephone number(s);

(4) The name and address of the responsible officer of a corporate Mobile Waste Tire Processor, or the owner(s) of a Mobile Waste Tire Processor operating a proprietorship or a partnership;

(5) The signature and date of signature of the Mobile Waste Tire Processor applicant; and

(6) The types of mobile processing equipment the Mobile Waste Tire Processor uses to process waste tires in Colorado.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the permanent address of the Mobile Waste Tire Processor and made available for inspection.

(E) A Certificate of Registration is not transferable by the Mobile Waste Tire Processor to whom it was issued to any other person or entity.

(F) The Certificate of Registration for a Mobile Waste Tire Processor is valid from the date of issuance to March 15 of the year indicated on the Certificate of Registration.

(G) A Mobile Waste Tire Processor is not authorized to mobile process waste tires after the March 15 expiration date unless the Mobile Waste Tire Processor has applied to renew the Certificate of Registration prior to expiration and has received a new Certificate of Registration as a Mobile Waste Tire Processor from the Department and Mobile Waste Tire Processor decals, pursuant to section 10.7.4 below.

(H) All Mobile Waste Tire Processors who wish to continue mobile processing waste tires must submit application for renewal no later than February 1.

(I) A Waste Tire Mobile Processor who has previously filed an application for a Certificate of Registration as a Waste Tire Mobile Processor (Form WT-1 or WT-1M) is required to notify the Department in writing whenever changes occur to the following:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number; or

(7) The Waste Tire Mobile Processor is no longer mobile processing waste tires.

(J) The Department may cancel a Certificate of Registration of a person who no longer mobile processes waste tires.

10.7.4 MOBILE WASTE TIRE PROCESSOR DECAL

(A) No person shall mobile process waste tires in Colorado without having received a Mobile Waste Tire Processor decal. An application for a Certificate of Registration pursuant to section 10.7.3 above, shall also serve as an application for a Mobile Waste Tire Processor decal(s). A Mobile Waste Tire Processor must submit an updated application for a Certificate of Registration within fifteen (15) days after the Mobile Waste Tire Processor purchases new mobile processing equipment or rents or leases mobile processing equipment.

(B) Mobile Waste Tire Processors will receive from the Department Mobile Waste Tire Processor decal(s) for each type of mobile processing equipment with their Certificate of Registration. Each decal will have a unique number.

(C) Each Mobile Waste Tire Processor decal will be valid until March 15 of the year indicated on the vehicle decal and will have a unique number. Prior to the expiration date, a Mobile Waste Tire Processor must submit a new application for a Certificate of Registration pursuant to section 10.7.3 above.

(D) A Mobile Waste Tire Processor decal must be affixed to the mobile processing equipment. If the decal cannot be affixed to the mobile processing the equipment, the operator must have the decal available at all times for inspection.

(F) A Mobile Waste Tire Processor decal is not transferable by the Mobile Waste Tire Processor to whom it was issued to any other person or entity and must not be used for any vehicle not listed by the Registered Mobile Waste Tire Processor on its application for a Certificate of Registration as a Mobile Waste Tire Processor.

10.7.5 MOBILE WASTE TIRE PROCESSOR MANIFEST REQUIREMENTS

(A) No person may accept waste tires for mobile processing without completing a paper or electronic manifest to section 10.7.5 of these Regulations.

(B) Paper or electronic manifests for all waste tires shipped, accepted and/or processed by a Mobile Waste Tire Processor must be maintained on-site at the principal business address as identified on the Certificate of Registration and available for inspection for three (3) years from the date of delivery.

(C) At the conclusion of the mobile processing at the location, the Mobile Waste Tire Processor must create a paper or electronic manifest for waste tires that are processed. Such persons must use the Uniform Mobile Waste Tire Processor Manifest Form (Form WT-7), available at the Department's website. Each manifest will have a unique number. The completed Uniform Mobile Waste Tire Processor Manifest must contain the following information:

(1) The name, address, telephone number, and Certificate of Registration number and decal number, if applicable, of the location where waste tires were processed;

(2) The quantity of waste tires processed at each location as measured by:

(a) The actual number of waste tires by category (e.g. passenger car/light duty truck tires, semi-truck tires, etc); or

(b) The weight of waste tires measured in tons;

(3) The name, address, telephone number and Certificate of Registration number of the Mobile Waste Tire Processor and the Mobile Waste Tire Processor decal number of the equipment used to process the waste tires;

(4) The date(s) of processing;

(5) The signatures, under penalty of perjury, of the responsible party at the location where waste tires were processed and the mobile processor; and

(6) If the waste tires originated from an illegal waste tire site or from a private property.

D) Mobile Waste Tire Processors must:

(1) Make a copy of any paper or electronic Uniform Waste Tire Manifest available to the Department upon request.

(2) Maintain all manifests at the permanent business address of the Mobile Waste Tire Processor and available for inspection for three (3) years from the date of processing.

(3) Provide a copy of the paper or electronic Uniform Mobile Waste Tire Processor Manifest Form to the Waste Tire Generator/source of waste tires processed within thirty (30) days of completion of mobile processing.

10.7.6 MOBILE WASTE TIRE PROCESSOR FINANCIAL ASSURANCE

All Mobile Waste Tire Processors must establish and maintain financial assurance in the amount of ten thousand dollars ($10,000.00), unless they maintain financial assurance as a Waste Tire Processor, Waste Tire Collection Facility or a Waste Tire Monofill.

10.7.7 ANNUAL REPORT

(A) All Mobile Waste Tire Processors must submit an annual report to the Department and local governing body having jurisdiction by April 1st of each year on the Mobile Waste Tire Processor Annual Reporting Form (Form WT-8). The annual report must include the amount, by actual count or by actual weight in tons, of waste tires processed at each mobile processing location during the previous year.

(B) A Mobile Waste Tire Processor may claim that information or data submitted in the Waste Tire Annual Report should be withheld as Confidential Business Information (“CBI”) or Trade Secret. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

10.7.8 MOBILE WASTE TIRE PROCESSOR SELF-CERTIFICATION

(A) The Department may require Mobile Waste Tire Processors to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) Any Mobile Waste Tire Processor who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide Mobile Waste Tire Processors a reasonable amount of time to complete and return a checklist. At a minimum, the Mobile Waste Tire Processor will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the Mobile Waste Tire Processor:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.7.9 MOBILE WASTE TIRE PROCESSOR ENGINEERING DESIGN AND OPERATIONS PLAN

(A) Each Mobile Waste Tire Processor must have an Engineering Design and Operations Plan, approved by the Department, which must, at a minimum, include all of the following:

(1) General:
(a) Nature of the activity conducted at each mobile processor site;

(b) The capacity and type of equipment to be used at each site;

(c) All methods of processing and storage;

(d) Means used to track inventory on a volume or weight basis;

(e) Security measures;

(f) How the Mobile Waste Tire Processor intends to implement the requirements listed in section 10.7.2 above; and

(g) Annual training requirements for all employees on all approved facility plans described in section 10.7.9, and how that training will be documented and verified.

(2) Emergency Response Plan which includes:

(a) General information including:

(i)The Mobile Processor's name, mailing address and telephone number; and
(ii) Potential emergencies and how the Mobile Processor will respond to these.

(b) An emergency contact list including the names and telephone numbers of the persons and appropriate agencies to be contacted in case of emergency, including:

(i) The Emergency Coordinator; and
(ii) Any additional numbers that may be needed.

(c) A description of emergency response procedures to be followed in the event of a fire or other emergency.

(3) Fire Prevention, Training and Firefighting Plan which:

(a) Includes resources to extinguish fires;

(b) Designates an onsite Emergency Coordinator;

(c) States how the Mobile Waste Tire Processor will comply with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

10.8 - STANDARDS FOR WASTE TIRE COLLECTION FACILITIES

10.8.1 GENERAL

The requirements of this section 10.8 apply to facilities where ten (10) or more waste tires are stored awaiting pickup by a Registered Waste Tire Hauler or processed by a Mobile Waste Tire Processor.

10.8.2 GENERAL STANDARDS FOR WASTE TIRE COLLECTION FACILITIES

(A) Any person who owns or operates a Waste Tire Collection Facility must maintain all weather access roads to those areas of active operation and as necessary to meet the Fire Protection, Training and Firefighting Plan required by subsection 10.8.9(A)(3) of these Regulations.

(B) Any person who owns or operates a Waste Tire Collection Facility must collect litter in order to avoid a fire hazard or a nuisance condition and control the growth of vegetation to minimize potential fuel sources.

(C) Any person who owns or operates a Waste Tire Collection Facility must implement security measures to preclude unauthorized entry.

(D) Any person who owns or operates a Waste Tire Facility Collection Facility must place prominent signs in English and any other language predominant in the area surrounding the facility must be posted in public view at the entrance to each Waste Tire Collection Facility with the name of the facility, the hours which the facility is open for public use, a listing of the wastes accepted at the facility, and a phone number for a 24 hour emergency contact.

(E) Any person who owns or operates a Waste Tire Facility Collection Facility must maintain a working telephone at each Waste Tire Collection Facility.

(F) During all stages of operation of a Waste Tire Collection Facility, the facility must have an attendant who is responsible for site activities.

(G) A Waste Tire Collection Facility owner or operator must immediately notify the Solid Waste and Materials Management Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two (2) weeks of this notification, the owner or operator must submit a written report describing the emergency to the Solid Waste and Materials Management Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the issues generated by the emergency.

(H) Any person who owns or operates a Waste Tire Collection Facility must arrange for the commercial hauling or mobile processing of waste tires only with a waste tire hauler or mobile processor who is currently registered pursuant to these Regulations.

(I) Any person who owns or operates a Waste Tire Collection Facility must ensure that all waste tires collected at its facility are delivered to a registered waste tire generator, waste tire hauler, another waste tire collection facility, waste tire monofill, waste tire processor, an approved beneficial user of whole waste tires, a municipal or county owned waste tire collection area, or to a municipal or privately owned solid waste landfill operating in compliance with the Act and the Regulations or processed by a mobile processing. An owner/operator of a Waste Tire Monofill may ship whole waste tires to an End User who end uses whole waste tires for fuel or energy recovery.

(J) Any person who owns or operates a Waste Tire Collection Facility that is not also registered as a Waste Tire Processor or Waste Tire Monofill must not have onsite at any one time more than seven thousand five hundred (7,500) waste tires.

(K) Any person who owns or operates a Waste Tire Collection Facility must comply with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(L) Any person who owns or operates a Waste Tire Collection Facility must comply with the facility's Engineering Design and Operations Plan (EDOP).

10.8.3 WASTE TIRE COLLECTION FACILITY REGISTRATION REQUIREMENTS

(A) No person shall operate a Waste Tire Collection Facility without having received a Certificate of Registration from the Department.

(B) Applications for Certificates of Registration must be submitted on Form WT-1 to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for operation of a Waste Tire Collection Facility must include:

1) The business name of the Waste Tire Collection Facility and any other names under which the Waste Tire Collection Facility may do business;

2) The principal business address of the Waste Tire Collection Facility;

3) A business telephone number(s);

4) The name and address of the responsible officer of a corporate Waste Tire Collection Facility, or

the owner(s) of a Waste Tire Collection Facility operating a proprietorship or a partnership; and

5) The signature and date of signature of the Waste Tire Collection Facility applicant.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the facility and made available for inspection.

(E) A Certificate of Registration is not transferable by the owner or operator of a Waste Tire Collection Facility to whom it was issued to any other person or entity.

(F) An owner or operator of a Waste Tire Collection Facility who has previously filed an application for a Certificate of Registration as a Waste Tire Collection Facility (Form WT-1) is required to notify the Department in writing whenever changes occur to the following:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number;

(7) The owner or operator of a Waste Tire Collection Facility will be operating at a new location not registered with the Department; or

(8) The owner or operator is no longer operating a Waste Tire Collection Facility at the location registered with the Department.

(G)The Department may cancel a Certificate of Registration of an owner or operator who no longer operates a Waste Tire Collection Facility at their registered location.

10.8.4 WASTE TIRE COLLECTION FACILITY DECAL

(A) An application for a Certificate of Registration pursuant to section 10.8.3 above, shall also serve as an application for a Waste Tire Collection Facility decal.

(B) An owner or operator of a Waste Tire Collection Facility will receive a Waste Tire Collection Facility decal from the Department with its Certificate of Registration.

(C) Waste Tire decals will have a unique number.

(D) An owner or operator of a Waste Tire Collection Facility must post their Waste Tire Facility decal in a prominent location at the address used to store/accumulate tires and where the decal is visible to the Waste Tire Hauler or Mobile Waste Tire Processor.

10.8.5 WASTE TIRE COLLECTION FACILITY MANIFEST REQUIREMENTS

(A) No owner or operator of a Waste Tire Collection Facility may accept a shipment of ten (10) or more waste tires from a Waste Tire Hauler without an accompanying manifest properly completed pursuant to section 10.3.4 of these Regulations unless they comply with section 10.1.3 (E).

(B) Manifests for all shipments of waste tires accepted by an owner or operator of a Waste Tire Collection Facility must be maintained on-site at that facility and available for inspection for three (3) years from the date of delivery.

(C) No owner or operator of a Waste Tire Collection Facility may offer a shipment of ten (10) or more waste tires without an accompanying manifest properly completed by the Waste Tire Hauler pursuant to section 10.3.4 of these Regulations.

(D) No owner or operator of a Waste Tire Collection Facility may offer waste tires for mobile processing without receiving a manifest properly completed by the Mobile Waste Tire Processor pursuant to section 10.7.5 of these Regulations.

(E) Manifests for all shipments of waste tires shipped off-site and accepted on-site by the owner or operator of a Waste Tire Collection Facility must be maintained on-site at that facility and available for inspection for three (3) years from the date of delivery.

10.8.6 WASTE TIRE COLLECTION FACILITY FINANCIAL ASSURANCE

All owners or operators of Waste Tire Collection Facilities must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section 1.8 of these Regulations.

10.8.7 ANNUAL REPORT

Any person who owns or operates a Waste Tire Collection Facility must submit an annual report to the Department and local governing body having jurisdiction by April 1 of each year on the Waste Tire Facility Annual Reporting Form (Form WT-5). The annual report must include, by actual count or by actual weight in tons, the amount of waste tires received at the facility, how many waste tires were shipped off-site from the facility for the preceding calendar year, and the total amount of waste tires accepted from unregistered waste tire haulers.

10.8.8 WASTE TIRE COLLECTION FACILITY SELF-CERTIFICATION

(A) The Department may require an owner or operator of a Waste Tire Collection Facility to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) An owner or operator of a Waste Tire Collection Facility who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide the owner or operator of a Waste Tire Collection Facility a reasonable amount of time to complete and return a checklist. At a minimum, the owner or operator of a Waste Tire Collection Facility will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the Waste Tire Collection Facility:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.8.9 WASTE TIRE COLLECTION FACILITY ENGINEERING DESIGN AND OPERATIONS PLAN

(A) Any person who owns or operates a Waste Tire Collection Facility must have and comply with an Engineering Design and Operations Plan approved by the Department, which must, at a minimum, include all of the following:

(1) General:

(a) Nature of the activity conducted at the facility;

(b) The capacity and type of equipment to be used at the facility;

(c) All methods of storage;

(d) Means used to track inventory on a volume or weight basis;

(e) Security measures;

(f) How the facility intends to implement the requirements listed in section 10.8.2 above; and

(g) Annual training requirements for all employees on all approved facility plans described in this section 10.8.9, and how that training will be documented and verified.

(2) Emergency Response Plan which includes:

(a) General facility information including:

(i)The facility name, mailing address and telephone number;

(ii)The facility operator's name, mailing address and telephone number; and

(iii)The property owner's name, mailing address and telephone number.

(b) An emergency contact list including the names and telephone numbers of the persons and appropriate agencies to be contacted in case of emergency, including:

(i) The Emergency Coordinator;

(ii) The Facility Owner;

(iii) The Facility Operator;

(iv) The Local Fire Authority; and

(v) Any additional numbers that may be needed.

(c) Emergency Equipment available on site, including specific capabilities and uses.

(d) A map showing the location of fire lanes, tire pile configurations, fire hydrants, power supply, and emergency response equipment.

(e) A description of emergency response procedures to be followed in the event of a fire or other

emergency.

(3) Fire Prevention, Training and Firefighting Plan which:

(a) Includes specification of the Facility's fire lane locations and widths;

(b) Includes resources to extinguish fires;

(c) Designates a Facility Emergency Coordinator;

(d) Is written by a qualified professional in accordance with local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(e) Ensures the owner or operator of a Waste Tire Collection Facility complies with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(4) Vector Control Plan which includes:

(a) Provisions for storage of tires in a manner which prevents the breeding and harborage of mosquitoes, rodents, and other vectors by any of the following means: (i) cover with impermeable barriers, other than soil, to prevent entry or accumulation of precipitation, or (ii) use of treatments or methods, such as pesticides, to prevent or eliminate vector breeding as necessary.

(b) Provisions ensuring that if pesticides are used in vector control efforts, they are used in accordance with the Pesticide Applicators Act, section 35-10-101, C.R.S.

10.8.10 CLOSURE AND POST-CLOSURE CARE OF WASTE TIRE COLLECTION FACILITIES

(A) Any person who owns or operates a Waste Tire Collection Facility must close and maintain the closed facility in accordance with sections 2.5, 2.6, and 10.8 of these Regulations.

(B) Any person who owns or operates a Waste Tire Collection Facility must prepare a closure plan as part of an Engineering Design and Operations Plan and must describe the steps necessary to close the Waste Tire Collection Facility at any point during its active life and at the end of the facility's active life. The owner or operator of a Waste Tire Collections Facility must remove all solid waste and residual contamination to meet unrestricted use concentrations. The closure plan, at a minimum, must include the following information:

(1) Provisions for removal of all solid waste at the site, including:

(a) Proposed plans and procedures for sampling and testing soil based on visual identification of staining or other indications of residual contamination;

(b) Provisions for sampling and analyses of soil for potential hazardous characteristics and provisions for final disposal. Soils will need to meet unrestricted use concentrations or background levels whichever is greater; and

(c) A schedule for completing all activities necessary to satisfy the closure criteria of this section.

(2) The owner or operator of all Waste Tire Collection Facilities must submit a Closure Certification Report to the Department at the time of final closure. The report must summarize the document

the closure activities, including any analytical results, needed to support the unrestricted use condition of the facility.

(3) At least sixty (60) days in advance of the proposed closure date, the owner or operator must notify the Department and the local governing authority of the proposed closure date.

(4) The owner or operator must notify the general public at least sixty (60) days in advance of the proposed closure by placing signs of suitable size at the entrance to the site and facility.

(5) The owner or operator of the facility must complete closure activities of the facility in accordance with the closure plan and within one hundred eighty (180) calendar days following the final receipt of waste tires. Extensions of the closure period may be granted by the Department if the owner or operator demonstrates that closure will take longer than one hundred eighty (180) calendar days and the owner/operator has taken and will continue to take all steps to prevent threats to human health and the environment.

(6) Closure Certification: Any person who owns or operates a Waste Tire Collection Facility must submit a closure certification report within sixty (60) calendar days of completion of closure activities which documents all the requirements and conditions of the closure plan have been achieved. The Report must be signed and sealed by a Colorado registered professional engineer and is subject to review and approval by the Department.

10.9 - STANDARDS FOR END USERS

10.9.1 GENERAL

The requirements of this section 10.9 apply to End Users who end use more than ten (10) tons of tire-derived product or who end use more than ten (10) tons of whole waste tires for energy or fuel in any one calendar year.

10.9.2 GENERAL STANDARDS FOR END USERS

(A) End Users must arrange for the commercial hauling or mobile processing of waste tires only with a Waste Tire Hauler or Mobile Waste Tire Processor who is currently registered pursuant to these Regulations.

(B) An End User that is not also registered as a Waste Tire Processor, Waste Tire Collection Facility or Waste Tire Monofill must not have onsite at any one time ten (10) or more whole waste tires.

10.9.3 END USER REGISTRATION REQUIREMENTS

(A) End Users described in section 10.9.1 must register with and receive a Certificate of Registration from the Department.

(B) Applications for Certificates of Registration must be submitted on Form WT-1 to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for operation as an End User must include:

1) The business name of the End User and any other names under which the End User may do business;

2) The principal business address of the End User;

3) A business telephone number(s);

4) The name and address of the responsible officer of a corporate End User, or the End User operating a proprietorship or a partnership; and

5) The signature and date of signature of the End User applicant.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the facility and made available for inspection

(E) A Certificate of Registration is not transferable by the End User to whom it was issued to any other person or entity.

(F) An End User who has previously filed an application for a Certificate of Registration as an End User (Form WT-1) is required to notify the Department in writing whenever changes to the following occur:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number;

(7) End use is occurring at a new location not registered with the Department; or

(8) End use is no longer occurring at the location registered with the Department.

(G) The Department may cancel a Certificate of Registration of a person who is no longer an end user.

10.9.4 WASTE TIRE MANIFESTS

(A) No End User may accept a shipment of waste tires from a Waste Tire Hauler without an accompanying manifest properly completed pursuant to section 10.3.4 of these Regulations.

(B) Manifests for all shipments of waste tires accepted by an End User must be maintained on-site at that facility and available for inspection for three (3) years from the date of delivery.

(C) No End User may offer a shipment of waste tires without an accompanying manifest properly completed by the Waste Tire Hauler pursuant to section 10.3.4 of these Regulations.

(D) No End User may offer more waste tires for processing without receiving a manifest properly completed by the Mobile Waste Tire Processor pursuant to section 10.7.5 of these Regulations.

(E) Manifests for all shipments of waste tires shipped off-site and accepted on-site by an End User must be maintained on-site at that facility and available for inspection for three (3) years from the date of delivery.

10.9.5 ANNUAL REPORT

(A) End Users described in section 10.9.1 must submit an annual report to the Department and local

governing body having jurisdiction by April 1st of each year on the Waste Tire Facility Annual Reporting Form (Form WT-5). The annual report must include the amount, by actual count or by actual weight in tons, of waste tires and tire derived product received at the End User's facility during the previous year, and how many waste tires were used to generate energy or fuel during the previous year.

(B) An End User may claim that information or data submitted in the Waste Tire Annual Report should be withheld as Confidential Business Information ("CBI") or Trade Secret. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

10.10 - STANDARDS FOR THE MANAGEMENT OF USED TIRES

10.10.1 GENERAL

The requirements of this section 10.10 apply to any person who commercially accumulates, stores, transports, or dispenses used tires.

(A) All persons who accumulate, store, transport, or dispense used tires must develop and maintain on site and in the vehicle used for transport written criteria for distinguishing waste tires from used tires. Such criteria must be made available for inspection.

(B) All persons who accumulate, store, transport, or dispense used tires must clearly identify waste tires and used tires using the criteria developed pursuant paragraph (A) above.

(C) All persons who accumulate, store, transport, or dispense used tires must develop and maintain on site and in the vehicle used for transport written criteria for distinguishing used tires being held for sale in Colorado from used tires being held for sale outside Colorado. Such criteria must be made available for inspection.

(D) All persons who accumulate, store, transport, or dispense used tires must clearly identify used tires being held for sale in Colorado and used tires being held for sale outside Colorado according to the criteria developed pursuant to paragraph (C) above.

(E) All persons who accumulate, store, transport, or dispense used tires must organize used tires for sale in a manner that allows the inspection of each individual tire.

(F) Any person may claim that information or data contained in their written criteria described in this section 10.10.1 should be withheld as Confidential Business Information ("CBI") or Trade Secret. The Department will hold such information contained as CBI/Trade Secret pursuant to section 7-74-102, C.R.S. and section 18-4-408(2), C.R.S. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

10.11 WASTE TIRE FEE ADMINISTRATION

10.11.1 Any person who sells new motor vehicle or new trailer tires must collect and remit to the Department monthly the Waste Tire Fee pursuant to section 1.7.6 of these Regulations. This Waste Tire Fee applies to all new automobile, trailer, truck, motor home and motorcycle tires sold in Colorado.

10.11.2 Any person who has sold a new motor vehicle or new trailer tire in the previous twelve (12) months must submit to the Department monthly the applicable New Tire Fee Return Form available on the Department's website. The New Tire Fee Return Form must include, at a minimum, the following information:

(1) The account number;

(2) The time period (month/year) new tires were sold;

(3) The business name;

(4) The business mailing address;

(5) The business telephone number;

(6) The name of the business contact;

(7) The number of stores included in the New Tire Fee Return Form;

(8) If the New Tire Fee Return Form was amended;

(9) The number of tires sold (if applicable);

(10) The amount owed; and

(11) An authorized signature, title and date.

10.11.3 The payment of the Waste Tire Fee (if applicable) and the New Tire Fee Return Form must be delivered to the Department electronically or by hard copy and must be postmarked or submitted electronically by the 20th of each month for tires sold the previous month. Payments and forms received after the 20th of the month may be assessed a late fee of ten (10) percent in addition to the Waste Tire Fee.

10.11.4 Online payment of the Waste Tire Fee must be made by electronic check or credit card. Payments by mail must be by money order, cashier check or personal check. All other payment types, including cash payments or in-person payments will not be accepted.

10.11.5 The Department may deny a submittal made pursuant to this Section 10.11 if the Department determines a person has submitted an incorrect payment amount. In such cases, the Department will reimburse the incorrect payment and the person must resubmit the New Tire Fee Return Form with the correct payment within thirty (30) days.

10.11.6 Any person who aggregates monthly fees during a twelve (12) month period from multiple stores must annually submit to the Department the Annual New Tire Self Certification Form (Form WT-9) available on the Department's website. At a minimum, the person who sells new motor vehicle or new trailer tires will have fourteen (14) days from the date of receipt to return the checklist.

10.11.7 Any person who sells new motor vehicle or new trailer tires must retain and make available any documentation, including the receipt provided to customers, to ensure compliance with section 30-20-1403 (1)(a) C.R.S., of the sale of these tires for the Department to review. Documentation must be retained for three (3) years from the date of sale.

10.12 WASTE TIRE END USERS FUND

10.12.1 GENERAL RULES

A. General Rules of Eligibility:

1. The following are eligible to apply for the rebate from the End Users Fund (the "Fund"):

(a) Colorado End Users of Colorado-generated tire-derived products or Colorado waste tires who end use in Colorado;

(b) Colorado Retailers who sell certain Colorado-generated tire-derived products made in Colorado from Colorado waste tires; and

(c) Colorado Waste Tire Processors of Colorado waste tires who generate tire-derived products in Colorado and sell their tire-derived products to out-of-state End Users.

2. By February 1 of each year, all applicants who applied for a rebate in the previous calendar year must provide an estimated monthly forecast of the amount of waste tires they will process, tire-derived product they will sell and/or end use in the following calendar year. Such applicants who do not provide estimates will not be eligible to participate in the Fund in the following calendar year. All estimates shall be considered confidential business information.

3. A business or person who is required to be registered with the Secretary of State's office to conduct business in the State of Colorado must be in "Good Standing" to be eligible for the rebate.

4. Once the Department has paid a rebate or denied a rebate on a particular quantity of tire-derived product or whole waste tires used for energy or fuel, every part of that particular quantity of tire-derived product or whole waste tires is no longer eligible for payment of the rebate. This includes payments made before the adoption of these Rules.

5. When waste tires are processed at the location of an illegal disposal with funds from the Waste Tire Administration, Enforcement, and Cleanup Fund, neither the processing of those waste tires, the retail sale of the tire-derived product generated, or the end use of the tire-derived product created is eligible for a rebate from the End Users Fund. When waste tires are removed from the location of an illegal disposal with funds from the Waste Tire Administration, Enforcement, and Cleanup Fund and processed at a separate location not using funds from the Waste Tire Administration, Enforcement, and Cleanup Fund, the processing of those waste tires, the retail sale of the generated tire-derived product, and the end use of the tire-derived product created is eligible to receive a rebate from the End Users Fund so long as all the other eligibility requirements are met.

B. General Rules for End Users

1. To be eligible to receive a rebate for end using tire-derived product or whole waste tires to generate energy or fuel, a person must be currently registered with the Department as an End User.

2. The Department will pay the rebate to an End User only if the end use complies with all local requirements in the jurisdiction end use occurs.

3. Eligible and Ineligible End Uses. Table 10-12.01 states which end uses are eligible for which category of rebate and some potential uses that are ineligible.

4. To receive the End User rebate for the end use of tire bales, the applicant must submit the End Users Tire Bale Approval Form, available on the Department's website.

C. General Rules for Retailers

1. To be eligible to apply for a rebate, a Retailer must have a current Colorado retail sales tax license pursuant to section 39-26-103, C.R.S.

2. To be eligible for a retailer rebate, the retail sale must be to the ultimate consumer and the retailer

must collect sales tax unless the customer is otherwise exempt from paying sales tax.

3. Eligible and Ineligible Retailers. Table 10-12.01 states which sales are eligible to receive the retailer rebate and some potential sales that are ineligible.

D. General Rules for Processors

1. Processors are eligible for a rebate for processing waste tires into tire-derived product only when they sell to an out of state End User and move the tire-derived product out of state.

2. To be eligible to receive a rebate for processing waste tires, a person must be currently registered with the Department as a Waste Tire Processor at the address at which that person claims processing of waste tires or as a Mobile Processor of waste tires pursuant to this Section 10.

3. Processors who process waste tires into tire-derived product in one (1) month and sell the tire-derived product in a subsequent month to an out-of-state End User are eligible for the processor rebate only after the tire-derived product is sold out of state and moved out of state. Such applicants must provide documentation to the Department that demonstrates the tire-derived product was sold out of state and moved out of state.

4. The Department will pay a Processor only if the end use complies with all local requirements in the jurisdiction in which it will be used.

5. Eligible Processes. Table 10-12.01 states when a Processor is eligible for a rebate and some instances when a Processor is not eligible for a rebate.

Insert Table 10-12.01 Eligible End Uses, Processing and Retailing for the End Users Fund

Insert Table 10-12.01 Eligible End Uses, Processing and Retailing for the End Users Fund - continued

Insert Table 10-12.01 Eligible End Uses, Processing and Retailing for the End Users Fund - continued

10.12.2 APPLICATION PROCEDURES

A. A person applying for a rebate must comply with all the provisions of this Section 10.12.2.

B. An applicant for a rebate must file a complete application on Department Form WT-07, providing at a minimum:

1. Applicant's name and address.

2. Name and location where end use, retail sale or processing occurred.

3. A description of the end use, retail sale or processing.

4. Certification the waste tires were Colorado-generated.

5. For End Users:
   (a) the source of waste tires or tire-derived product; and
   (b) the End User's Waste Tire Certificate of Registration number.

6. For Retailers:
   (a) a list of consumers the Retailer sold the tire-derived product to; and
   (b) proof the Retailer collected sales tax on the retail sale or that the retail sale was exempt from sales tax.

7. For Processors and Mobile Processors selling tire-derived product to out of state End Users:
   (a) a list of out of state End Users that purchased the tire-derived product; and
   (b) the Processor or Mobile Processor's Waste Tire Certificate of Registration number.

8. The amount of waste tires or tire-derived product processed, sold by a retailer, or end used, by weight in tons.

9. The time period in which the waste tires or tire-derived product were processed, sold by a retailer or end used.

10. Other supporting documentation required by the Department.

11. An authorized signature.

C. Timing of Rebate Applications:

1. Applications for rebates will be accepted no later than the stated due date on the application and/or Department's website.

2. Unless applying pursuant to 10.12.2 (D), applications will only be accepted for activities that occurred in the previous calendar month.

3. Applications received after the due date will be denied.

4. The Department will not accept adjustments for processed applications from prior calendar months.

5. An applicant can only receive a rebate for activities occurring in the current fiscal year.

6. The Department will make best efforts to process rebates within thirty (30) days from the due date.

D. An applicant's initial application in any state fiscal year (July 1 through June 30) must be for a minimum of ten (10) tons. Notwithstanding section 10.12.2(C)(2) of these Rules, to achieve this ten (10) ton minimum, an applicant can consolidate several calendar months of tonnage to meet this minimum amount. After submitting an initial application for a minimum of ten (10) tons, an applicant is eligible to apply for any ton amount in subsequent months in that fiscal year.

E. The Department may deny a rebate to an applicant who has received funding from the Market Development Fund if paying from both funds will result in double paying for the same activity.

F. Applicants must provide weight tickets from a scale that meets the requirements of the Colorado Measurement Standards Act, sections 35-14-101 through 35-14-134, C.R.S. to document weights of waste tires or tire-derived product end used, tire-derived product processed and sold out of state, or tire-derived product sold in a retail sale. Other verifiable forms of documentation may be acceptable on a case by case basis.

10.12.3 PROCESSING OF APPLICATIONS

The Department will review applications according to a four-step process: (1) review for completeness, (2) review for compliance with applicable laws and regulations, (3) review for eligible processes, retail sales and end uses, and (4) determination of a rebate amount.

A. **Completeness**: If an application is not complete or if supporting documentation is insufficient, then the Department will notify the applicant and grant the applicant a five (5) business day grace period to submit the missing information. The Department may defer paying rebates to all applicants until adequate information is received. If the applicant does not submit adequate information in the prescribed time period, then the Department may deny a rebate for that month.

B. **Compliance**: After the Department has determined all applications submitted in a given month are complete, it will conduct a compliance verification to ensure each applicant is in compliance with all applicable laws and regulations and was in compliance with all applicable laws and regulations during the time period for which they are seeking a rebate.

C. **Eligibility**: After compliance verification, the Department determines which applicants are eligible for rebates.

D. **Rebate amount**: The Department will calculate the amount of rebate per section 10.12.5 of these Regulations and notify each applicant of its determination.

10.12.4 APPEALS PROCESS

A. For approved applications, if an applicant believes the Department has made a calculation error in the response to an approved application, the applicant must notify the Department in writing within five (5) business days of receiving the Department's response. The notice must contain a copy of the application and the Department's response, a brief statement describing the believed error, and copies of any documents supporting the statement. The Department will review the notice and attached documents and may further investigate the matter.

1. If the Department concludes an error has been made and the Department has not yet paid the rebate that month, then the Department will reinstate the application and recalculate the payment before paying any rebates that month.

2. If the Department concludes an error has been made and the Department has already paid the rebate that month, then the Department will notify the applicant and reimburse the applicant from the next month's rebate money, as available, according to the following method: (1) The Department will determine what the applicant should have been paid had the Department not

erred; (2) The Department will pay the applicant that amount from the next month's money; and (3) The next month's money will be reduced accordingly.

3. If the Department concludes no calculation error was made, then it will notify the applicant that its previous determination was not in error and is final. This determination is subject to appeal pursuant to section 24-4-106, C.R.S.

B. For denied applications: If an applicant believes his or her application was wrongly denied, then the applicant must, within five (5) business days of denial, submit the following to the Department: (1) a copy of the denied application and supporting documents, (2) the denial letter, (3) a statement explaining why the applicant believes the Department erred, and (4) all other information the applicant believes relevant.

1. If the Department concludes it erred in denying the application, and the Department has not yet paid the rebate that month, then the Department will reinstate the application and recalculate the payment before paying the rebate that month.

2. If the Department concludes it erred in denying the application and the Department has already paid the rebate that month, then the Department will notify the applicant and reimburse the applicant from the next month's money, as available, according to the following method: (1) The Department will determine what the applicant should have been paid had the Department not erred; (2) The Department will pay the applicant that amount from the next month's money; and (3) The next month's money will be reduced accordingly.

3. If the Department concludes no error was made, then it will notify the applicant that its previous determination was not in error and is final. This determination is subject to appeal pursuant to section 24-4-106, C.R.S.

10.12.5 REBATE AMOUNT

A. The Department will pay the rebate amount on a per-ton basis.

B. Beginning January 1, 2015, the amount of the rebate is forty dollars ($40) per ton.

C. If the tons approved for the rebate in any one month multiplied by the amount of the rebate in section 10.12.5(B) exceeds the balance of the Fund, then the Department shall reduce the per ton amount of the rebate that month to a rate that will not cause a deficit in the Fund.

10.12.6 ENFORCEMENT

A. A person who applies for a rebate is subject to a review by the Department at any time. Applicants must allow access to all records related to waste tire management activities during normal business hours for the purpose of determining compliance with these rules for five (5) years from the date of receiving a rebate.

B. If an applicant provides information that constitutes a trade secret, confidential personnel information, or proprietary commercial or financial information, in accord with section 24-72-204(3), C.R.S., then the applicant may request the Department withhold such documents from disclosure in the event the Department receives a request for records in accord with the Colorado Open Records Act, section 24-72-101 et seq. All such documents must be clearly marked with the term "Proprietary Information" on each appropriate page. Records marked as containing trade secret, confidential, personnel, or proprietary information that do not actually contain such information may be released pursuant to an Open Records Act request.

C. In addition to any other penalty imposed by law, any applicant who knowingly or intentionally provides false information to the Department when applying for a rebate shall be ineligible to receive any future

rebates under these rules.

D. The Department may deny the rebate to any person who is out of compliance with any State or Federal environmental laws, rules or regulations. The Department will work with stakeholders to develop guidance for determining what compliance violations merit denial of the rebate.

5) Amend Section 16.1.1 to read as follows:

SECTION 16

MATERIALS PROHIBITED FROM DISPOSAL

16.1 SCOPE AND APPLICABILITY

16.1.1 Purpose. These regulations apply to the management and disposal of materials prohibited from land disposal in a solid waste site and facility under authority of CRS Title 30, Article 20, Part 1 and Part 10 and CRS Title 25, Article 17, Part 3. These Section 16 regulations are classified into the following sub-categories:

16.2 Management of Residentially Generated Used Lead-acid Batteries

16.3 Management of Residentially Generated Used Oil

16.4 [Reserved]

16.5 Management of Residentially Generated Waste Electronic Devices.

6) Amend paragraph (A) of Section 16.1.2 to read as follows:

16.1.2 General Provisions

(A) Land disposal of residentially generated waste electronic devices, used lead-acid batteries and used oil is prohibited. Land disposal includes, but is not limited to, placing, discarding, or otherwise disposing of these wastes:

****

7) Amend paragraph (A) of Section 16.1.3 to read as follows:

16.1.3 Due Diligence Exemption

(A) **Individuals**

Individuals residing in areas without recycling facilities or collection facilities are given the opportunity to demonstrate a lack of reasonable recycling options. In order to exercise this option, the individual must conduct due diligence to establish that reasonable options are not available. A finding of due diligence shall be based, at a minimum, on an individual's inquiry into local recycling options accomplished by querying the local telephone directory and contacting the county or municipality of residence regarding the availability of local recycling facilities, collection centers, or collection events. In the event that due diligence is exercised and no reasonable recycling option is identified, an individual may dispose of used lead-acid batteries and/or used oil in a solid waste disposal site and facility or transfer station. The individual must contact the intended

recipient solid waste disposal site and facility or transfer station to make sure that the facility will accept the used lead-acid batteries and/or used oil. Nothing in this Section precludes any solid waste disposal site and facility or transfer station from refusing to accept these items on a site-specific basis.

****

8) Delete and reserve Section 16.4 to read as follows:

16.4 [RESERVED]

9) Amend Section 16.6 to read as follows:

16.6 Waste Characterization Plans

Each solid waste site and disposal facility shall amend its waste characterization plan to include waste acceptance procedures designed to minimize the disposal of residentially generated waste electronic devices, used lead-acid batteries and used oil. Such procedures shall be implemented no later than July 1, 2013. Solid waste sites and disposal facilities shall include these waste screening procedures in the waste characterization and disposal plan required by Section 2.1.2(C). The prohibition on disposal of these waste types shall be incorporated into employee training required by Section 2.1.2(B)(3). Any solid waste disposal site and facility in substantial compliance with its waste characterization plan developed pursuant to section 30-20-110 (1) (g), and Section 2.1.2 of the Regulations, shall be deemed to be in compliance with this Section, so long as such waste characterization plan contains waste acceptance procedures to minimize the disposal of waste electronic devices, lead-acid batteries and used oil consistent with the requirements of this Section.

Table 10-12.01 Eligible End Uses, Processing and Retailing for the End Users Fund*

This table describes potential scenarios for waste tire processing, retailing and end use. This Table does not create new rights or eligibilities, but explains the rights and eligibilities established in statute.

Column breakdown explanation:
End User only (4A)- An End User who "uses a tire-derived product for a commercial or industrial purpose"
End User only (4B)- An End User who "uses a whole waste tire to generate energy or fuel"
End User only (4C)- An End User who "consumes tire-derived product or uses tire-derived product in its final application or in making new materials with a demonstrated sale to a third-party customer."
Retailer Only- Sells a tire-derived product for its intended final use.
Processer Only- Processes waste tires into a tire-derived product.
Not eligible for a rebate- Scenario does not qualify for a rebate under the current statute or regulations

	…then you may apply as a/an:					
Scenario; If you…	End User only (4A)	End User only (4B)	End User only (4C)	Retailer only	Processor Only	Not eligible for a rebate
Use tire-derived product (alternative daily cover) at a landfill permitted by the state and approved for use of tire shreds for alternative cover for municipal solid waste.	X					
Install tire-derived product for use as a cover material, as approved by the department prior to use.	X					
Construct walls, fences and/or barriers made from tire-derived product as aggregate on residential , commercial or public property. This does not apply to walls, fences or barriers made from tire bales.	X					
Install tire-derived products (tire chips or crumb rubber) for sport fields, such as football, baseball or soccer fields on residential, commercial or public property.	X					
Install tire-derived product (tire chips, rubber mulch, crumb rubber) for playground surfacing or base material for a playground surface on residential, commercial or public property.	X					
Use tire-derived product for energy recovery or a fuel substitute in cement kilns, biofuel plants, electric arc furnaces, or power plants.	X					
Install tire-derived product as landscape mulch or other type of landscape material on a residential, commercial or public property.	X					
Install tire-derived products (tire chips) on the installation of septic systems on residential, commercial or public property.	X					
Install tire-derived products (ground rubber) incorporated/blended into asphalt or concrete for highway or paving applications.	X					
Install tire-derived product in civil engineering projects (highway embankments, leachate cells at landfills, base material for roads, etc.).	X					
Install tire bales for a permanent engineered structure, stamped and sealed by a Colorado Certified Professional Engineer, that is allowed by state laws and regulations and local ordinances. This does not include fencing, windbreaks, or corrals.	X					
Install tire bales for end use on agricultural land using galvanized steel baling wire and installed to facilitate tire bale stability and longevity, as allowed by state laws and regulations and local ordinances (including fencing, windbreaks, and corrals).	X					
Install tire-derived product for highway safety products (crash barrels, guard rails, crash walls).	X					
Install tire-derived product as silage covers for a commercial or industrial purpose.	X					
End use steel derived from a processed waste tire. This does not include steel produced through pyrolysis.	X					
Use whole waste tires for energy recovery or a fuel substitute in cement kilns, biofuel plants, electric arc furnaces, or power plants.		X				
Use whole waste tires through the process of pyrolysis to create fuel to be used by a third party customer.		X				

Column breakdown explanation:
End User only (4A)- An End User who "uses a tire-derived product for a commercial or industrial purpose"
End User only (4B)- An End User who "uses a whole waste tire to generate energy or fuel"
End User only (4C)- An End User who "consumes tire-derived product or uses tire-derived product in its final application or in making new materials with a demonstrated sale to a third-party customer."
Retailer Only- Sells a tire-derived product for its intended final use.
Processer Only- Processes waste tires into a tire-derived product.
Not eligible for a rebate- Scenario does not qualify for a rebate under the current statute or regulations

	…then you may apply as a/an:					
Scenario; If you…	End User only (4A)	End User only (4B)	End User only (4C)	Retailer only	Processor Only	Not eligible for a rebate
Use whole waste tires through the process of pyrolysis to create syngas to be used in the industrial process of the pyrolysis facility. The percent of the weight of the waste tire used to produce syngas, not the total weight of the whole waste tires consumed, determines the rebate amount.		X				
Use whole waste tires through the process of pyrolysis to create syngas which is condensed into the liquid petroleum products derived from that same pyrolysis process. This final end liquid petroleum product is to be used by a third party customer.		X				
Use tire-derived product through the process of pyrolysis to create syngas to be used in the industrial process of the pyrolysis facility. The percent of the weight of the tire-derived product used to produce syngas, not the total weight of the tire-derived product consumed, determines the rebate amount.			X			
Use tire-derived product through the process of pyrolysis to create syngas which is condensed into the liquid petroleum products derived from that same pyrolysis process with a demonstrated sale to a third party customer.			X			
Perform pyrolysis on whole waste tires to make tire-derived products (recovered carbon steel) with a demonstrated sale to a third-party customer.			X			
Perform pyrolysis on tires shreds to make tire-derived products (recovered carbon steel) with a demonstrated sale to a third-party customer.			X			
Use tire-derived product (tire chips) that makes molded products (lawn furniture, deck boards, erosion control products, etc.) with a demonstrated sale to an in-state or out-of-state customer.			X			
Sell tire-derived products to a final in-state customer who will use the tire-derived product for its final intended use. Applicant charges sales tax for this transaction, or does not charge sales tax for this transaction because the consumer is an exempt organization (charity, government agency, or another tax-exempt entity).				X		
Sell tire-derived products to an out-of-state customer. Sales tax is charged for this transaction or sales tax is not charged for this transaction because the customer is an exempt organization (charity, government agency, or another tax-exempt entity).				X		
Sell tire-derived products to a commercial business, where sales tax is charged, or sales tax is not charged for this transaction because the customer is an exempt organization (charity, government agency, or another tax-exempt entity), and the commercial business will use the tire-derived product for its intended final use (e.g. landscape mulch installed on commercial property) and the tire-derived material will not be resold.				X		
Process whole waste tires into tire-derived products that are sold to an out-of-state End User.					X	
Process a whole waste tire, removing the steel, and then sell the steel to an out of state End User.					X	

Column breakdown explanation:
End User only (4A)- An End User who "uses a tire-derived product for a commercial or industrial purpose"
End User only (4B)- An End User who "uses a whole waste tire to generate energy or fuel"
End User only (4C)- An End User who "consumes tire-derived product or uses tire-derived product in its final application or in making new materials with a demonstrated sale to a third-party customer."
Retailer Only- Sells a tire-derived product for its intended final use.
Processer Only- Processes waste tires into a tire-derived product.
Not eligible for a rebate- Scenario does not qualify for a rebate under the current statute or regulations

	…then you may apply as a/an:					
Scenario; If you…	End User only (4A)	End User only (4B)	End User only (4C)	Retailer only	Processor Only	Not eligible for a rebate
Process a whole waste tire, removing the steel, and then sell the steel to an in state End User.						X
Sell tire-derived products to either an in state or out-of-state wholesaler or retailer who will then sell the tire-derived products directly to a final customer.						X
Use pyrolysis-created tire-derived products (recovered carbon, biofuel, steel) in state for a commercial or industrial purpose.						X
Process whole waste tires into a tire-derived product that is sold to a national distributer.						X
Sell whole waste tires.						X
Sell tire bales.						X
Bale waste tires.						X
Reuse any used or whole waste tire as a vehicle tire or trailer tire.						X
Burn a whole waste tire or tire-derived product without recovering the energy.						X
Use buffings generated from the recapping or retreading process.						X
Dispose of waste tires or tire-derived product.						X
Recap or retread a tire for use on a vehicle or trailer.						X
Create buffings from the recapping or retreading of a tire.						X
Use whole waste tires, upon CDPHE beneficial use approval, for erosion control, stormwater management, sound damping, grade fill, corals, fencing, home construction, and other approved uses.						X
Use any whole waste tire or tire-derived product out-of-state.						X

*An activity not covered by this Table may still be eligible for a rebate at the Department's discretion pursuant to these regulations and section 30-20-1401, C.R.S., *et seq* .

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission

Hazardous Materials and Waste Management Division

6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Revisions to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) – Deletion and Replacement of Existing Section 10 (Waste Tire Facilities and Waste Tire Haulers) with New Section 10 Regulations (Waste Tires), Revision of Section 16 Regulations (Materials Prohibited from Disposal) and the Associated Additions, Deletions and Revisions to Section 1.2 Definitions

Repeal of the Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4), Section 1 Rules for Reimbursements from the Processors and End Users Fund

(Adopted by the Solid and Hazardous Waste Commission on November 18, 2014)

Basis and Purpose

I. Statutory Authority

The amendments to 6 CCR 1007-2, Section 10: Waste Tires, Section 16: Materials Prohibited from Disposal and Section 1.2: Definitions, and the deletion of 6 CCR 1007-2, Part 4, the Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in sections 30-20-109, C.R.S. and 30-20-1401(2), C.R.S., and section 30-20-1405(3)(c), C.R.S. These regulations are a direct result of, and implementation of, House Bill (HB) 14-1352, passed by the legislature in 2014.

II. House Bill 14-1352

House Bill 14-1352 repealed and reenacted the State's waste tires laws, moving them into the Solid Waste Act ("the Act"). The HB 14-1352 also transferred all waste tire program regulatory authority to the Department of Public Health and Environment (the Department). The Department's existing solid waste enforcement authority applies to waste tires.

III. Purpose of revised regulations:

The purpose of revising Sections 1.2, 10 and 16 is to implement the requirements of HB 14-1352 by establishing waste tire rules going forward to replace those in effect as of July 1, 2014. Prior to the proposed revisions, Section 10 of the Solid Waste Regulations applied specifically to Waste Tire Facilities and Waste Tire Haulers. The proposed regulations were drafted using the existing framework and construct of the original regulations and include new standards for mobile waste tire processors, the management of used tires, and the administration of the waste tire fee. Section 10 will also include regulations pertaining to administration of the Waste Tire End Users Fund, which were previously located in the Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4).

Discussion of Regulatory Proposal

I. The Section 10 regulations require the addition, revision and deletion of some existing definitions. These changes, summarized below, will be incorporated into Section 1.2 of the Solid Waste Regulations (6 CCR 1007-2, Part 1).

The following new definitions are being added to Section 1.2:

1. Applicant
2. Authorized signature
3. Beneficial user
4. Buffings
5. Commission
6. Daily cover
7. Mobile Processor
8. Motor vehicle
9. Public project
10. Pyrolysis
11. Recapped or retreaded tire
12. Retailer (as used in section 10 of the Regulations)

13. Trailer
14. Used Tire
15. Waste Tire Bale
16. Waste Tire Cleanup Program
17. Waste Tire Generator
18. Waste Tire Processor

The following existing definitions are being modified in Section 1.2:

1. Collection facility
2. End User
3. Residentially generated
4. Retailer (as used in Section 16 of the Regulations)
5. Tire
6. Tire-Derived Product
7. Waste Tire
8. Waste Tire Collection Facility
9. Waste Tire Hauler
10. Waste Tire Monofill
11. Wholesaler

The following existing definitions are being deleted from Section 1.2, as these terms no longer appear or are irrelevant in the new Regulations:

1. Fleet Service Facility
2. Passenger tire equivalents
3. Processor
4. Tire (as used in Section 16 of the Regulations)
5. Waste Tire Facility

II. Section and Subsection Titles

The title of Section 10 was updated to incorporate all waste tire provisions within one section of the Regulations. A new title for Section 10.4 (Standards for Generators of Motor Vehicle and Trailer Waste Tires) was added to conform to HB 14-1352. New Sections 10.7 (Standards for Mobile Waste Tire Processors), 10.10 (Standards for Management of Used Tires), 10.11 (Waste Tire Fee Administration) and 10.12 (Waste Tire End Users Fund) were added to conform to HB 14-1352.

All references to waste tires were removed from Section 16 and Section 16 waste tire subsections that conform to HB 14-1352 were incorporated into Section 10.

III. Scope and Applicability (Section 10.1)

The updated Section 10.1 describes the applicability of Section 10, and now includes all persons who sell new motor vehicle or trailer tires.

Updated language was added to the existing subsection 10.1.3 exemptions. Previous exemptions in this subsection that were removed or updated and new exemptions that were added include:

1. Removed the exemption for the transport of used tires due to the addition of subsection 10.10 (Standards for Management of Used Tires).
2. Removed the exemption for transportation of waste tires by a private citizen.
3. Updated household hazardous waste roundup, community cleanup, other one-time waste tire collection event language was added to reflect new waste tire terminology.
4. Clarified the requirements for the beneficial use of waste tires.
5. Standardized the waste tire storage limits for owners/operators of solid waste landfills, transfer stations, and recycling facilities who separate waste tires out from the solid waste stream.
6. Standardized the waste tire storage limits for government entities that store waste tires as part of their road-side cleanup activities.
7. Added a provision and requirements for the acceptance of unmanifested waste tires from unregistered haulers.

IV. General Provisions (Section 10.2)

This section states operations that are covered by the multiple parts of Section 10 must comply with all applicable sections. As provided in Section 10.2.2, the Department's intent is to avoid imposing duplicate or overlapping obligations on entities that are covered by multiple parts of Section 10.This section also specifies the limitations on the disposal of waste tires and incorporates waste tire due diligence language that was previously in Section 16.

Persons registered pursuant to Section 10 historically have not paid annual fees (Annual Fee) as required in Section 1.7.3 because the Waste Tire Program and Waste Tire Administration, Enforcement, and Cleanup Fund, the End Users Fund and the Waste Tire Market Development Fund are funded by the $1.50 Waste Tire Fee. An exemption from the Annual Fees for persons registered pursuant to sections 10.3, 10.4, 10.6, 10.7, 10.8 or 10.9 was added for clarification. Waste Tire Monofills and solid wastes sites and facilities with a Certificate of Designation are not exempt from the Annual Fee requirement.

Language regarding the enforcement of Section 10 through the Department's enforcement authorities was added.

V. Standards for Waste Tire Haulers (Section 10.3)

This section was updated to include a provision allowing Waste Tire Haulers to pick up waste tires from an unregistered person or site exempted from Section 10 if a manifest is generated and the waste tires are delivered to an approved waste tire destination facility. Additionally, the time frame to notify the Solid Waste Program in the event of a fire or other emergency involving waste tires was updated and the waste tire storage limits were updated to reflect new storage limit requirements.

Waste Tire Hauler registration, decal, and manifest changes include:

1. Updated Certificate of Registration Form names.
2. Removed the $10,000 surety bond requirement.
3. Language was added regarding when a Waste Tire Hauler is required to notify the Department.
4. Removed revocation of the Certificate of Registration language.
5. Added language regarding cancellation of a Certificate of Registration if a person is no longer hauling waste tires.
6. Revised decal placement requirements.
7. Added decal requirement for contracted commercial freight carriers.
8. Updated manifest requirements by removing the requirement for the actual number of waste tires by category, allowing electronic manifests, requiring information about contracted commercial freight carriers, and accounting for waste tires that originated from an illegal waste tire site, private property, or a unregistered waste tire hauler, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers.
9. Added a thirty (30) day requirement for Waste Tire Haulers to provide a manifest copy to the generator/source of waste tires from date of delivery of waste tires to the destination facility.

Waste Tire Hauler annual report requirements were updated by removing the surety bond verification, removing the passenger tire equivalent language and requiring the reporting of the total amount of waste tires accepted from persons exempted from Section 10.

Self-certification language was added that allows the Department to require Waste Tire Haulers to furnish additional information concerning compliance with the regulatory requirements.

Notwithstanding this or any other self-certification requirement under these rules, persons desiring to make self-disclosures under the Policy Regarding Implementation of Colorado Environmental Audit Privilege and Immunity Law shall still qualify for protection under the Policy provided any such self-disclosures are made prior to receipt of the annual self-certification form from the Department.

VI. Standards for Generators of Motor Vehicle and Trailer Waste Tires (Section 10.4)

The section's title was updated to incorporate the new term for Waste Tire Generators. Persons subject to this section will continue to include tire retailers, wholesaler and fleet service facilities that generate waste motor vehicle or trailer tires. Additionally, the updated applicability provides examples of the types of business that are sources of waste tires.

This section was updated to include: the updated storage limit of no more than fifteen hundred (1,500) waste tires on site at any one time; the ability for Waste Tire Generators to accept waste tires; and the requirement that a Waste Tire Generator who sells replacement tires must not refuse from a customer waste tires of the same general type and quantity.

Waste Tire Generator registration, decal, and manifest changes include:

1. Certificate of Registration application requirements were updated to include the requirement that any person who commercially generates motor vehicle or trailer waste tires must register as a Waste Tire Generator.
2. Language was added requiring a Waste Tire Generator to notify the Department if they are selling new tires.
3. Removed revocation of the Certificate of Registration language.
4. Added language regarding cancellation of a Certificate of Registration if a person no longer generates waste tires at their registered location.
5. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
6. Updated manifest requirements to allow Waste Tire Generators to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers, and to allow Waste Tire Generators to offer their waste tires for mobile processing. The change to the Waste Tire Hauler manifest requirements may result in a Waste Tire Generator not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the Waste Tire Generator's waste tires to the destination facility to provide a manifest copy to the Waste Tire Generator.

This section also replaced the requirement for fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry.

Self-certification language was added that allows the Department to require Waste Tire

Generators to furnish additional information concerning compliance with the regulatory requirements.

Notwithstanding this or any other self-certification requirement under these rules, persons desiring to make self-disclosures under the Policy Regarding Implementation of Colorado Environmental Audit Privilege and Immunity Law shall still qualify for protection under the Policy provided any such self-disclosures are made prior to receipt of the annual self-certification form from the Department.

With the removal of the Waste Tire Generator Certificate of Registration date and corresponding registration renewal requirements, the self-certification will be used to update Waste Tire Generator information and gather additional information concerning compliance with the regulatory requirements. Because the majority of Waste Tire Generators also sell new motor vehicle or new trailer tires, the Waste Tire Generator self-certification will also be used to determine compliance with the Waste Tire Fee requirements of section 1.7.6 (Waste Tire Fee) and 10.11(Waste Tire Fee Administration).

VII. Standards for Waste Tire Monofills (Section 10.5)

This section was updated to include Certificate of Designation requirements for a Waste Tire Monofill which include both an Engineering and Design and Operations Plan (EDOP) and a Waste Tire Inventory Reduction Plan. This section also replaced the requirement for fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry.

The 75%/three year rolling average requirement was replaced with the Waste Tire Inventory Reduction Plan requirement. The Waste Tire Inventory Reduction Plan requires that Waste Tire Monofill owners/operators must on an annual basis, for every one (1) tire received, end use at least two (2) waste tires, or process at least two (2) waste tires into tire-derived product. The owner/operator of a Waste Tire Monofill may claim Confidential Business Information (CBI) or trade secret for any information submitted in the Waste Tire Inventory Reduction Plan. The procedures for asserting CBI claims are established under Colorado law, and the Department does not intend to create any further burden on the owner/operator to show CBI status than that existing under current law.

The Regulation adopts the change to the statute concerning the dates after which an owner/operator of a Waste Tire Monofill must not place any waste tires into monofill storage (after January 1, 2018) and when Waste Tire Monofills must close (by July 1, 2024). Clarification regarding when a Waste Tire Monofill can ship whole waste tires to an end user was added.

Waste Tire Monofill registration, decal, and manifest changes include:

1. Updated Certificate of Registration application requirements.
2. Language was added regarding when an owner/operator of a Waste Tire Monofill is required to notify the Department.
3. Removed revocation of the Certificate of Registration language.
4. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
5. Added language regarding cancellation of a Certificate of Registration if a person no longer operates a Waste Tire Monofill at their registered location.
6. Updated manifest requirements to allow owners/operators of Waste Tire Monofills to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers, and to allow Waste Tire Monofills to offer their waste tires for mobile processing. The change to the Waste Tire Hauler manifest requirements may result in an owner/operator of a Waste Tire Monofill not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the waste tires to the destination facility to provide a manifest copy to the source of the waste tires.

Waste Tire Monofill annual reporting requirements were updated to allow the reporting of waste tires by actual count or by weight in tons. The owner/operator of the Waste Tire Monofill must report the total amount of waste tires accepted from unregistered waste tire haulers in the required annual report, and the owner/operator of a Waste Tire Monofill must report compliance with his/her Waste Tire Inventory Reduction Plan.

Self-certification language was added that allows the Department to require Waste Tire Monofills to furnish additional information concerning compliance with the regulatory requirements.

Notwithstanding this or any other self-certification requirement under these rules, persons desiring to make self-disclosures under the Policy Regarding Implementation of Colorado Environmental Audit Privilege and Immunity Law shall still qualify for protection under the Policy provided any such self-disclosures are made prior to receipt of the annual self-certification form from the Department.

VIII. Standards for Waste Tire Processors (Section 10.6)

Unlike in the previous Regulation, this section applies only to Waste Tire Processors; End Users have their own separate requirements in Section 10.9. Waste tire processing is not subject to the Section 8 recycling requirements or annual fee requirements of Section 1.7.3. A Waste Tire Processor that recycles materials other than waste tires is subject to

the requirements of Section 8 and the Section 1.7.3 Annual Fee for a recycling facility. This section also replaced the requirement for the fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry.

The 75%/three-year rolling average recycling rate still applies to waste tire processing. Every year, starting after an initial one-year accumulation period, Waste Tire Processors must have, over the past three (3) years, processed 75% of the average of what the Waste Tire Processor had in inventory at the end of years one through two plus the amount of waste tires received in year three. A Waste Tire Processor that is also registered as a Waste Tire Monofill is exempted from this requirement, but the Waste Tire Monofill must comply with its Waste Tire Inventory Reduction Plan. The Waste Tire Inventory Reduction Plan requires that Waste Tire Monofill owners/operators must, on an annual basis, for every one (1) tire received, end use at least two (2) waste tires, or process at least two (2) waste tires into tire-derived product.

This section was updated to add a waste tire storage limit for a Waste Tire Processor's facility that is not also registered as a Waste Tire Monofill. The waste tire processing facility must not have at any one time more than the lesser of: a maximum of one hundred thousand (100,000) waste tires; the amount allowed by the local government; or the amount of waste tires anticipated in the Waste Tire Processors financial assurance instrument. Clarification regarding when a Waste Tire Processor can ship whole waste tires to an end user was added.

Waste Tire Processor registration, decal, and manifest changes include:

1. Updated Certificate of Registration application requirements.
2. Language was added regarding when a Waste Tire Processor is required to notify the Department
3. Removed revocation of the Certificate of Registration language.
4. Added language regarding cancelling a Certificate of Registration if a person no longer operates as a Waste Tire Processor at their registered location.
5. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
6. Updated manifest requirements to allow Waste Tire Processors to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers. The change to the Waste Tire Hauler manifest requirements may result in a Waste Tire Processor not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the waste tire waste tires to the destination facility to provide a manifest copy to the source of the waste tires.

Waste Tire Processor annual reporting requirements were updated to allow the reporting of waste tires by actual count or by weight in tons. A Waste Tire Processor must report the total amount of waste tires accepted from unregistered waste tire haulers and document compliance with the 75%/three-year rolling average recycling rate in the annual report.

Self-certification language was added that allows the Department to require Waste Tire Processors to furnish additional information concerning compliance with the regulatory requirements.

Notwithstanding this or any other self-certification requirement under these rules, persons desiring to make self-disclosures under the Policy Regarding Implementation of Colorado Environmental Audit Privilege and Immunity Law shall still qualify for protection under the Policy provided any such self-disclosures are made prior to receipt of the annual self-certification form from the Department.

IX. Standards for Mobile Waste Tire Processors (Section 10.7)

This section sets new standards for Mobile Waste Tire Processors. The general provisions of this section state that mobile waste tire processing is not subject to the Section 8 recycling requirements or the Annual Fee requirements of Section 1.7.3. Mobile Waste Tire Processors must meet general standards, including: processing waste tires only on property not leased or owned by the Mobile Waste Tire Processor, only processing waste tires that already exist on the property where waste tire mobile processing is to occur, obtaining permission from the local government prior to beginning waste tire processing, notifying the Department at least fourteen (14) days prior to beginning processing, and not processing waste tires at a location for more than thirty (30) consecutive days unless the location is registered as a Waste Tire Processor or Department approval is granted. The Mobile Waste Tire Processor must also develop and comply with an Engineering and Design and Operations Plan (EDOP).

Mobile Waste Tire Processor registration, decal, manifest, and annual reporting sections were added and include:

1. A registration system for Mobile Waste Tire Processors, including obtaining a Certificate of Registration which is valid until March 15th of the following year. The Certificate of Registration may be canceled if mobile waste tire processing no longer occurs.
2. A requirement to display a Department issued Mobile Waste Tire Processor decals.
3. A manifest system to ensure that waste tires processed by Mobile Waste Tire Processors are accounted for and that manifests (Form WT-7) are created and

provided to the Waste Tire Generator/source within thirty (30) days of completion of mobile processing.

4. A requirement that all Mobile Waste Tire Processors establish and maintain financial assurance in the amount of $10,000, unless they maintain financial assurance as a Waste Tire Processor, Waste Tire Collection Facility or a Waste Tire Monofill.
5. A requirement to submit the Mobile Waste Tire Processor Annual Reporting Form (Form WT-7) by April 1st of each year.

Self-certification language was added that allows the Department to require a Mobile Waste Tire Processor to furnish additional information concerning compliance with the regulatory requirements.

Notwithstanding this or any other self-certification requirement under these rules, persons desiring to make self-disclosures under the Policy Regarding Implementation of Colorado Environmental Audit Privilege and Immunity Law shall still qualify for protection under the Policy provided any such self-disclosures are made prior to receipt of the annual self-certification form from the Department.

X. Standards for Waste Tire Collection Facilities (Section 10.8)

This section was updated to replace the requirement for fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry. Clarification regarding when a Waste Tire Collection Facility is allowed to ship whole waste tires to an end user was added.

Waste Tire Collection Facility registration, decal, and manifest changes include:

1. Updated registration application requirements.
2. Language was added regarding when an owner/operator of a Waste Tire Collection Facility is required to notify the Department.
3. Removed revocation of the Certificate of Registration language.
4. Language was added regarding cancellation of a Certificate of Registration if a person no longer operates as a Waste Tire Collection Facility at their registered location.
5. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
6. Updated manifest requirements to allow the owners/operators of Waste Tire Collection Facilities to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers, and the allowance of Waste Tire Collection Facilities to offer their waste tires for mobile processing. The change to the Waste Tire Hauler manifest requirements may result in a Waste Tire Collection Facility

not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the waste tires to the destination facility to provide a manifest copy to the source of the waste tires.

Waste Tire Collection Facility annual reporting requirements were updated to allow the reporting of waste tires by actual count or by weight in tons. The owner or operator of a Waste Tire Collection Facility must report the total amount of waste tires accepted from unregistered waste tire haulers in the required annual report.

Self-certification language was added that allows the Department to require Waste Tire Collection Facilities to furnish additional information concerning compliance with the regulatory requirements.

Notwithstanding this or any other self-certification requirement under these rules, persons desiring to make self-disclosures under the Policy Regarding Implementation of Colorado Environmental Audit Privilege and Immunity Law shall still qualify for protection under the Policy provided any such self-disclosures are made prior to receipt of the annual self-certification form from the Department.

XI. Standards for End Users (Section 10.9)

The general provisions of this section apply to End Users who end use more than ten (10) tons of tire-derived product or who end use whole waste tires for energy or fuel in any one State fiscal year. The general provisions require that End Users use a registered Waste Tire Hauler or Mobile Waste Tire Processor for shipment or mobile processing of waste tires. This general provision does not apply to End Users who ship tire-derived product off site.

End User registration, manifest, and annual reporting sections were added and include:

1. A system for registering as an End User, including obtaining a Certificate of Registration. The Certificate of Registration may be canceled if end use no longer occurs at their registered location.
2. Requiring retention of manifests provided by a Waste Tire Hauler for shipment of waste tires. Manifests are not required for tire-derived product.
3. A requirement to submit the Waste Tire Facility Annual Reporting Form (Form WT-5) by April 1st of each year.

XII. Standards for the Management of Used Tires (Section 10.10)

New requirements were added which apply to any person who commercially

accumulates, stores, transports, or dispenses used tires. These requirements also apply to Waste Tire Generators who sell used tires and used tire shops that sell new tires but do not generate waste tires. Written criteria that distinguish waste tires from used tires must be developed and maintained at the site where used tires are accumulated, stored, and/or dispensed and in any vehicle used to transport used tires. The written criteria must be provided to the Department upon request. Waste tires and used tires must be clearly identified, per the written criteria, and used tires must be organized in a manner that allows inspection of each individual used tire. The written criteria may be designated as Confidential Business Information (CBI) or trade secret.

XIII. Waste Tire Fee Administration (Section 10.11)

A new section was added for the administration of the Waste Tire Fee. Effective July 1, 2014, HB 14-1352 transferred all regulatory authority for the Waste Tire Fee from the Department of Revenue (DOR) to the Department. The $1.50 fee is not a new fee. The fee is used for waste tire administrative functions, end user rebates, and grant funding.

The $1.50 fee must be collected on the sale of each new tire and applies to the sale of new motor vehicle tires and new trailer tires. New motor vehicle and new trailer tires include the following, but not limited to: all tires used on passenger cars, trucks and vehicles, low speed electric vehicles (per Section 30-20-1402, C.R.S.), motorcycles and motor scooters licensed to travel on roads, semi trucks and semi trailers, any trailer towed behind a vehicle, motor homes, mini vans, campers, buses, medium-duty trucks, fleet vehicles, new and used cars sold by a car retailer if existing tires are changed out for new tires, and online sales of new tires. The fee does not apply to retreaded tires, used tires, tires used for agricultural equipment (e.g., tractors, bailers, and harvesters), off-the-road (OTR) vehicles, (e.g., golf carts, All Terrain Vehicle (ATV), dirt bikes), Segways, wheelchairs, garden equipment, mining equipment, construction equipment, bicycles, airplanes, or toy vehicles.

XIV. Waste Tire End Users Fund (Section 10.12)

A new subsection was added to manage the End Users Fund rebate program and incorporate applicable rules for this program that currently exist in the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4), Section 1 Rules for Reimbursements from the Processors and End Users Fund. Section 1 of 6 CCR 1007-2, Part 4 will be repealed as part of this rulemaking because of incorporation of this new subsection into Section 10 of the Regulations.

Minor changes regarding application procedures, the appeals process, deadlines for applications, and processing of applications were made.

Major changes and additions to this program, as it existed in 6 CCR 1007 Part 4, include:

1. Retailers of tire-derived products are now eligible for a rebate from the End Users Fund.
2. Processors are only eligible for a rebate from the End Users Fund when they process waste tires into tire-derived products that they sell and move offsite to an out-of-state End User.
3. The rebate will only be paid one time for the end use, retail sale or processing of the tire-derived product.
4. An annual per ton rate will be used to determine the rebate for approved tons from the End Users Fund.
5. Processors, Retailers, and/or End Users are not eligible for a rebate if funding was provided by the Waste Tire Administration, Enforcement, and Cleanup Fund to clean up an illegal waste tire site.
6. An eligibility table (Table 10-12.01) was added to clarify eligibility for End Users, Retailers and Processors to participate in the End Users Fund.
7. End using tire bales (a) in an engineered, permanent structure stamped and sealed by a Colorado Registered Professional Engineer, is eligible for a rebate, and (b) installed for end use on agricultural land using galvanized steel baling wire and installed to facilitate tire bale stability and longevity, using applicable design standards, as allowed by state laws and regulations and local ordinances (including fencing, windbreaks, and corrals) is also eligible for a rebate.
8. The minimum amount of tons of waste tires end used to be eligible to participate in the End Users Fund was reduced from fifty (50) tons per fiscal year to ten (10) tons per fiscal year.
9. Language was adjusted regarding ineligibility to participate in the End Users Fund for those who knowingly or intentionally submit false information to the Department.
10. Language was added that states the Department may deny a rebate if an applicant is out of compliance with any State or Federal environmental law, rule or regulation.

Tire-derived products or whole waste tires that are being end used should have economic value. The Commission feels that End Users should provide, when requested by the Department, documentation which establishes that tire-derived products or whole waste tires were purchased or provide other proof that demonstrates that the tire-derived products or whole waste tires have economic value.

Description of Local Government Involvement in the Stakeholder Process

Executive Order D 2011-005 (EO5), “Establishing a Policy to Enhance the Relationship

between State and Local Government" requires state rulemaking agencies to consult with and engage local governments prior to the promulgation of any rules containing mandates. The Department completed an EO5 – Internal Communication Form – Internal Conception Phase which was transmitted to local governments. The amended regulations will have little effect on local governments unless the local government generates, accumulates, stores, transports, dispenses, or processes waste tires, used tires or tire-derived product, sells new motor vehicle or trailer tires, or applies for a rebate from the End Users Fund.

Issues Encountered During Stakeholder Process:

1. Some stakeholders asked why the beneficial use requirements for waste tires are located in the Section 8 Recycling and Beneficial Use regulations instead of in the Section 10 Waste Tire regulations. Section 8 regulates recycling, a broad category that includes beneficial use. Waste tire processing is a form of recycling. However, the legislature has determined that because the waste tire stream presents unique challenges, requirements unique to waste tires are necessary. Although the legislature created unique requirements for waste tire generators, haulers, processors, end users, monofills and collection facilities, it did not create unique requirements for beneficial use of waste tires. Therefore, beneficial use of waste tires – an act distinct from the End Use of waste tires or tire-derived product – is still regulated in Section 8.

2. A question arose regarding whether warranty tires – that is, tires that a retailer returns to the wholesaler or manufacturer – are waste tires. The Commission feels that warranty tires and tires with a manufacturing defect that are returned to the wholesaler or manufacturer for credit or return do not fall under the definition of a waste tire because the manufacturer or wholesaler, rather than the retailer, ultimately makes the determination if the tire is usable or should be discarded.

3. Some stakeholders wanted to add tire retread businesses to the applicability list for Waste Tire Generators in Section 10.4. The Commission did not add tire retread businesses to the list because the Waste Tire Generator definition is not all inclusive. If a retread business makes the determination that a motor vehicle or trailer tire cannot be retreaded, then the tire is a waste tire. The retread business would therefore be a Waste Tire Generator subject to all the requirements of Section 10.4.

4. Some stakeholder asked whether it is possible for a corporation, business, or government agency that has registered under their corporation, business, or government agency with multiple Waste Tire Hauler registrations (e.g., corporation A has five (5) stores and each of these five (5) stores are registered as Waste Tire Haulers because they haul more than ten (10) waste tires at a time) to complete only one Commercial Waste Tire Hauler Annual Report Form (Form WT-4) for all of the Waste Tire Haulers registered under

their corporation/business instead of completing a separate Form WT-4 for each Waste Tire Hauler location. Rather than addressing this situation in the Regulations, the Department will modify Form WT-4 to allow the completion of one Form WT-4 for corporations, businesses, or government agencies that have multiple Waste Tire Hauler registration locations. Each Waste Tire Hauler registration location must be listed and accounted for on the form.

5. Some stakeholders were concerned that under the previous regulations, parties who tracked tire amounts in tons rather than in actual counts could apply a formula to convert tonnage to estimated tire amounts in their annual report. Some stakeholders felt the conversion could lead to errors by the person completing the form. To address this concern, the new regulation allows reporting by actual weight in tons. The Department will convert waste tire amounts reported in tons to an estimated tire count.

6. Some stakeholders expressed confusion over whether compliance with Section 10 requirements exempted parties from compliance with laws or regulations concerning certificates of designation (CDs). To address this concern Section 10.5 .1(A) makes clear that in addition to the Section 10 requirements, persons owning or operating a Waste Tire Monofill must maintain a CD pursuant to Section 1.3. Additionally Section 1.7.3, Section 1.8, Section 2 and Section 3 clearly state requirements for Solid Waste Disposal Sites and Facilities.

7. An issue arose during the stakeholder process concerning Section 30-20-1410, C.R.S. which prohibits the sale of used tires if the used tire would violate Section 42-4-228, C.R.S. tire safety standards. Section 42-4-228, C.R.S. requires tires driven on roads to be in a safe condition. Violation of Section 42-4-228, C.R.S. is a traffic offense and law enforcement officers enforce these requirements. Some stakeholders argued the Commission should adopt a robust used tire management regime, making the Hazardous Materials and Waste Management Division the regulator of tire safety in the State. Other stakeholders argued this section is overly broad because it prohibits common practices such as sales of certain used tires to jurisdictions without the Section 42-4-228, C.R.S. standards as well as the sale of certain used tires to be recycled by beneficial users, Waste Tire Processors and Waste Tire End Users. The Commission determines the purpose of Section 30-20-1410, C.R.S. is to assist the Department in distinguishing waste tires, which it regulates, from used tires, which it does not. As such, Section 10 does not adopt an elaborate used tire management regime. The Department will develop and make available guidance to help the used tire seller distinguish a waste tire from a used tire.

8. Some stakeholders expressed concern the Department would not collect the Waste Tire Fee from online retailers of new tires. The Commission believes that the Department has the authority to collect the Waste Tire Fee on online sales of new motor vehicle or new trailer tires from out of state parties that sell new motor vehicle or new trailer tires to

persons who live in Colorado.

9. Some stakeholders asked why there are two Waste Tire Fee Forms on the Department website for submitting the Waste Tire Fee payment. The Department is accepting payment of the Waste Tire Fee either electronically or by mail. The Waste Tire Fee Form must be included with the payment. Two versions of the Waste Tire Fee Form are available online: one for online payment and one for payment by mail. The forms are identical except for the addition of the mailing address on the payment by mail form and the online form has a submit button for online submittal.

10. Stakeholders discussed reducing the minimum of fifty (50) tons per fiscal year to ten (10) tons per fiscal year for applicants to be eligible to apply for a rebate from the End Users Fund. The Commission decided to reduce the minimum number of tons to be eligible to apply for a rebate from fifty (50) tons to ten (10) tons to allow more participation in the End Users Fund. The Department and stakeholders agreed that allowing more low volume processors, retailers and/or end users of tire-derived products would stimulate more market development for these products.

    An applicant may apply for a rebate once they reach the combination of processing, retail sales or end use of ten (10) tons of tire-derived products or whole waste tires for fuel or energy recovery within the current state fiscal year. For example: an applicant who end uses two (2) tons in July, four (4) tons in August, zero (0) tons in September and four (4) tons in October can apply in November for a rebate for the entire ten (10) tons end used that fiscal year. In this example, the applicant would receive the rebate amount calculated for October. Each applicant must reach this minimum every state fiscal year prior to being eligible to participate in the End Users Fund. Once the minimum amount has been applied for, and approved by the Department, the applicant cannot combine applications going forward for that fiscal year; they must apply each month for any amount that is processed, sold by a retailer, or end used.

11. Stakeholders questioned which processing, retail sales, or end uses of tire-derived products and whole waste tires would be eligible for a rebate from the End Users Fund. The Department, working with the stakeholders, developed an eligibility table (Table 10-12.01) showing which processes, retail sales, or end uses of tire-derived products and whole waste tires are eligible for rebates. This table determines which activities are eligible for which category of end use, processor or retailer rebate pursuant to the End User, Processor, and Retailer definitions. The table also lists several scenarios which are not eligible for a rebate from the End Users Fund. This table does not create any new rights; it only specifies processes, retail sales and end uses that are eligible for rebates from the End Users Fund. The Department has the discretion to determine eligibility for any activity not included in the table.

12. Some stakeholders wondered what would happen if two or more applications that are

deemed eligible for a rebate for the same tire-derived product or whole waste tires that are received at the same time by the Department. The Commission has determined that the Department should notify each applicant that more than one application was received for the same tire-derived product or whole waste tires and that the impacted applicants must notify the Department within two (2) business days of notification which application(s) would be withdrawn. If a notification is not received by the Department within two (2) business days all received applications will be denied.

13. Another issue was the change in eligibility for the end use of tire bales. The Commission has determined that tire bales shall remain eligible for rebates if used (a) in an engineered, permanent structure that has been stamped and sealed by a Colorado Registered Professional Engineer; or (b) installed for end use on agricultural land using galvanized steel baling wire and installed to facilitate tire bale stability and longevity, using applicable design standards, as allowed by state laws and regulations and local ordinances (including fencing, windbreaks, and corrals).

    To be eligible for a rebate from the End Users Fund, an applicant will need to submit an End Users Tire Bale Approval Form, available on the Department's website, along with proof the structure was stamped and sealed by a Colorado Registered Professional Engineer.

    This determination does not restrict the processing, selling or end use of tire bales, as long as the tire bales continue to be considered a beneficial use by the Department and local laws and ordinances allow for their end use in the location they are installed.

14. Stakeholders questioned why there is a requirement for applicants participating in the End Users Fund to provide estimated forecasts of future processing, retail sales or end use of tire-derived products or whole waste tires. Due to changes in HB 14-1352, the Department must set the same per ton rate for a twelve (12) month period. The same per ton rate is intended to provide more market certainty for applicants so they can better forecast their budgeting and use of tire-derived products. For the Department to be able to set a per ton rate, having forecast information from those actively participating the End Users Fund allows the Department a more accurate picture to set a rate that allows market stability. The Commission has determined that this information is needed for the Department to set a per ton rate that meets the requirements of HB 14-1352.

15. A few stakeholders expressed concern about the term "applicant" in section 10.12.6 which states that applicants who knowingly or intentionally provide false information to the Department are prohibited from receiving future rebates from the End Users Fund. Specifically, some stakeholders were concerned that their companies would be held liable for actions of "rogue employees." It is the intention of the Commission that only culpable parties be prohibited from receiving rebates under these Rules.

16. Some stakeholders questioned why pyrolysis is considered an end use and not a process.

    Senate Bill 13-252, Section 40-2-124, C.R.S. defines pyrolysis:

    > "Pyrolysis" means the thermochemical decomposition of material at elevated temperatures without the participation of oxygen.

    Section 1.2 adopts this definition. For purposes of Section 10, pyrolysis of waste tires or tire-derived product means to convert waste tires or tire-derived product into other components with economic value – typically gas, oil and carbon based products. The Commission has determined that pyrolysis is an end use, and would be eligible from the End Users Fund based on Table 10-12.01.

17. Some stakeholders questioned - how materials created by the method of pyrolysis will be treated for the purposes of eligibility for a rebate from the End Users Fund. Pyrolysis is considered an end use, as defined in Section 30-20-1401(4) (c), C.R.S.:

    > Consumes tire-derived product or uses tire-derived product in its final application or in making new materials with a demonstrated sale to a third-party customer.

    The Commission deems those companies who purchase materials from a company who used pyrolysis to create those materials to be not eligible for a rebate from the End Users Fund.

18. Another issue arose regarding how a retailer was going to be defined for the purpose of eligibly for receiving a rebate from the End Users Fund. Per Section 30-20-1405 (2)(b), C.R.S., the Department shall use moneys in the End Users Fund to provide rebates to in-state:

    > Retailers who sell tire-derived product…

    The Commission has determined that retailers of tire-derived products are retailers who sell small quantities of tire-derived products to customers who will use the tire-derived product for its ultimate use. For example, a retailer selling landscape mulch made of processed waste tires to a residential customer who will install the landscape mulch on their own property is eligible to receive a rebate. Retailers will need to provide proof of retail sales tax being collected from the ultimate customer or provide proof that the ultimate customer is exempt from paying retail sales tax. Retailers of tire-derived products must have a current retail sales tax license to be eligible to participate in the End Users Fund.

19. Another issue encountered concerned a rebate for waste tires located at an illegal waste tire site that received funds from the Administration, Enforcement and Cleanup Fund. Specifically, if those tires are processed onsite, should the processing of those same waste

tires also be eligible for a rebate from the End Users Fund? The Commission has determined such processing should not be eligible to receive a Processor rebate because the Processor is already receiving state money from another fund to process and remove the waste tires. This would be the same for Retailers who sell the tire-derived product processed from these illegal sites. Conversely, if a person receives money from the Administration, Enforcement and Cleanup Fund to remove waste tires from an illegal waste tire site and subsequently processes those waste tires offsite, they would be eligible for the Processor rebate (if sold to an out-of-state End User) because the Administration, Enforcement and Cleanup Fund would be funding only the removal of those waste tires, not the subsequent processing. End Users would be eligible for a rebate for the end use of those processed waste tires as long as they are not financially benefiting from the cleanup of the waste tires. The Commission feels that the Department should make every effort when awarding a grant to cleanup waste tires from an illegal waste tire site to ensure that the same waste tire is not eligible for both a rebate from the End Users Fund and reimbursement from the Administration, Enforcement and Cleanup Fund and the End Users Fund.

20. Factors used to determine the per ton rate of $40 for the next twelve (12) months beginning January 2015. The Commission considered several factors in determining setting the per ton rate:

    - The audit findings from the Colorado Office of the State Auditor (Department of Public Health and Environment: Waste Tire Processor and End User Program June 2014 Performance Audit) stated that the Department should not pay rebates in excess of the cost of processing or end using tire-derived products. House Bill 14-1352 prohibits the Commission from setting a tiered per ton rate.

    - The Department and stakeholders used a forecasting spreadsheet that included the following information:

    - Breakdown of approved tons over the last fiscal year by End User, Retailer and Processor. Tons approved that are not eligible under the current statute were removed.

    - Forecast of potential end use of tons from applicants who did not participate or were limited in their participation in the End Users Fund during the last fiscal year.

    - Projections of revenues based on the previous three years' historical rates.

Based on these factors, the Commission has determined that the Department will pay a

rebate of $40 per ton for the next twelve (12) months.

Regulatory Alternatives

No other regulatory alternatives were evaluated.

Cost/Benefit Analysis

A cost-benefit analysis will be performed if requested by the Colorado Department of Regulatory Services.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01084

Opinion of the Attorney General rendered in connection with the rules adopted by the
Hazardous Materials and Waste Management Division

on 11/18/2014

6 CCR 1007-2 Part 1

SOLID WASTE DISPOSAL SITES AND FACILITIES

The above-referenced rules were submitted to this office on 11/24/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:56:15

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2 Part 4

Rule title

6 CCR 1007-2 Part 4 WASTE TIRE PROCESSOR AND END USER REIMBURSEMENT PROGRAM 1 - eff 01/14/2015

Effective date

01/14/2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-2

PART 4 - REGULATIONS PERTAINING TO THE WASTE TIRE PROCESSOR AND END USER REIMBURSEMENT PROGRAM

Section 1 – Rules for Reimbursements from the Processors and End Users Fund

Repeal of the Part 4 Regulations pertaining to the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4)

(Adopted by the Solid and Hazardous Waste Commission on November 18, 2014)

1) Repeal 6 CCR 1007-2, Part 4 (Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program) in its entirety as follows:

~~**PART 4 - REGULATIONS PERTAINING TO THE WASTE TIRE PROCESSOR AND END USER REIMBURSEMENT PROGRAM**~~

~~**Section 1 – Rules for Reimbursements from the Processors and End Users Fund**~~

~~**1.1 PURPOSE**~~

~~The purpose of these rules is to implement the provisions of section 25-17-202.5, C.R.S. The purpose of such partial reimbursements shall be to assist new and existing waste tire recycling technologies to become economically feasible and to thereby encourage the use of waste tires and reduce the storage of waste tires in Colorado.~~

~~**1.2 DEFINITIONS**~~

~~"Applicant" means any person or business seeking partial reimbursement under 25-17-202.5, C.R.S.~~

~~"Authorized signature" means the signature of an individual who has authority to sign on behalf of, and bind, an applicant.~~

~~"Buffings" the residual rubber material removed from the supporting structure of a waste tire or a retreaded or recapped tire.~~

~~"Daily cover" means using processed waste tires as an alternate cover placed upon exposed solid waste in a permitted solid waste facility to control disease vectors, fires, odors, blowing litter and scavenging, without presenting a threat to human health or the environment.~~

~~"Department" means the Colorado Department of Public Health & Environment.~~

~~"Economic value" is an attribute of a product, which is producing or capable of producing a profit, or is valued through a recognized medium of exchange.~~

~~"End use" or "End used" means:~~

~~a. For energy recovery: utilizing the heat content or other forms of energy from the burning or pyrolysis of waste tires or tire-derived product;~~

~~b. For other eligible uses where the tire-derived product is virtually indistinguishable from shredded or baled tires, the end use is the installation of the tire-derived product (e.g. landscape mulch, civil engineering projects, aggregate, etc.);~~

~~c. For other eligible uses where the tire-derived product is a product that needs no installation to be recognized as that product (e.g. ground mats and furniture), the end use is the manufacturing of the final end product.~~

~~"End User" means a person who uses a tire-derived product for a commercial or industrial purpose.~~

~~"HMWMD" means the Hazardous Materials and Waste Management Division.~~

~~"Partial reimbursement" means reimbursement from the Waste Tire Processors and End Users Fund.~~

~~"Processor" means a person who processes waste tires in Colorado for recycling or beneficial use.~~

~~"Pyrolysis" means thermal treatment of waste tires or tire-derived product to separate the waste tires or tire-derived product into other components with economic value. Pyrolysis differs from burning waste tires or tire-derived product for energy because burning uses the entire waste tire or tire-derived product and results in energy and residual waste. Conversely, pyrolysis involves thermal decomposition of organic compounds in an oxygen limited environment for the purpose extracting the waste tire's individual components – typically gas, oil and char products.~~

~~"Recapped or retreaded tire" means a previously worn tire which has gone through a remanufacturing process designed to extend its useful service life.~~

~~"Tire" means a tire for any passenger vehicle, including any truck, weighing less than fifteen thousand pounds, and for any truck, including any truck tractor, trailer, or semitrailer, weighing more than fifteen thousand pounds; except that "tire" does not include:~~

~~a. Tires that are recapped or otherwise reprocessed for use.~~

~~b. Tires that are used for:~~

~~1) Farm equipment exempt from sales and use taxes pursuant to section 39-26-716, C.R.S.; or~~

~~2) A farm tractor or implement of husbandry exempt from registration pursuant to section 42-3-104, C.R.S.~~

~~"Tire-derived Product" means matter that:~~

~~a. Is derived from a process that uses whole tires as a feedstock, including shredding, crumbing and chipping; and~~

~~b. Has been sold and removed from the facility of a processor.~~

"Waste Tire" means a tire that is no longer mounted on a motor vehicle and is no longer suitable for use as a tire due to wear, damage, or deviation from the manufacturer's original specifications. Waste tires include the following types of tires that are not organized for resale by size in a rack or a stack in a manner that allows the inspection of each individual tire: a repairable tire, scrap tire, altered waste tire, and a used tire. "Waste Tire" does not include a tire-derived product or crumb rubber.

1.3 ELIGIBILITY FOR PARTIAL REIMBURSEMENT

A. General Requirements:

1. Only Colorado-generated waste tires and tire-derived product created from Colorado-generated waste tires qualify for partial reimbursement.

2. The Department will not reimburse a processor for processing waste tires unless the processor has end used the tire-derived product or unless the tire-derived product has been sold for an end use and moved off-site. In such cases, the Department will pay the processor only if the end use is allowed in the jurisdiction in which it will be used.

3. The Department will pay a processor only for Colorado waste tires the processor processes in Colorado.

4. The Department will pay a processor who processes waste tires in Colorado that are sold for an out of state end use only as a processor, not as an end user. In such cases, the Department will pay the processor only if the end use complies with all local requirements in the jurisdiction in which it will be used.

5. The Department will not reimburse an end user who end uses waste tires or tire-derived product outside the State of Colorado.

6. The Department will reimburse an end user only if the end use complies with all local requirements in the jurisdiction it was used.

7. The Department will not reimburse a processor for processing a waste tire into a feedstock that is then further processed into a tire-derived product. A processor is only eligible for processing a waste tire one time – that is, when he or she processes the waste tire into the final tire-derived product.

8. An end user cannot receive end use reimbursement for end using tire-derived product that was previously end used. This includes any tire-derived product that was previously denied reimbursement and any tire-derived product for which the end user failed to apply for funds at the time of end use.

9. Processors who process waste tires in one month and use the tire-derived product in a subsequent month are eligible for the processor reimbursement only after they use the tire-derived product. Processors who process waste tires in one month and sell the tire-derived product in a subsequent month are eligible for the processor reimbursement only after the tire-derived product is sold and moved offsite. Applicants must provide documentation to verify sale, use and moving offsite of tire-derived product.

10. Waste tires processed at the location of the illegal disposal with funds from the Waste Tire Cleanup Fund are not eligible to receive a processor reimbursement from the Processor and End User Fund. Waste tires removed from the location of the illegal disposal with funds from the Waste Tire Cleanup Fund and processed at a separate location are eligible to receive a processor reimbursement from the Processor and End User Fund.

11. The Department may deny reimbursements to any end user the Department determines has

accumulated a commercially unreasonable quantity of waste tire end products.

B. Eligible Processes. Processes that are eligible include:

1. Stamping;

2. Stripping;

3. Shredding;

4. Pyrolysis;

5. Crumbing;

6. Baling for end use. To receive the processor reimbursement for processing waste tires into tire bales, the processor must submit the Tire Bale Processor/End User Approval Form, available on the Department's website; and

7. Other technologies for the conversion of waste tires into tire-derived product.

C. Ineligible Processing. Processes that are ineligible for a partial reimbursement include:

1. Recapping or retreading of waste tires or previously recapped tires; and

2. Creating buffings.

D. Eligible End Uses. The end uses of waste tires or tire-derived product that are eligible for partial reimbursement include, but are not limited to:

1. Civil engineering applications, meeting applicable American Society for Testing and Materials (ASTM) or similar standards, which utilize tire-derived product as a substitute for soil, sand, or aggregate in a construction project's land or surface applications, road bed base, embankments, fill materials for construction projects, daily cover at a permitted solid waste facility, and/or civil engineering applications as approved by the state or local jurisdictions;

2. Pyrolysis or burning of waste tires or tire-derived product for energy recovery or supplemental fuel;

3. Manufacturing of products such as molded rubber products, rubberized asphalt, or other products utilizing tire-derived product; and

4. Tire bales. To receive the end user reimbursement for using tire bales, the applicant must submit the Tire Bale Processor/End User Approval Form, available on the Department's website.

E. Ineligible End Uses. Uses that are not eligible for partial reimbursement include:

1. Reuse as a vehicle tire;

2. Burning without energy recovery;

3. Buffings generated from the recapping or retreading process used in the manufacturing of an end product;

4. Land filling for disposal; and

5. Any use of a whole waste tire, other than pyrolysis or energy recovery or supplemental fuel.

F. Eligible applicants:

1. A business or person who is required by law to be registered with the Secretary of State's office to conduct business in the State of Colorado must be in "Good Standing" to be eligible to apply for reimbursement.

2. To be eligible to receive a partial reimbursement for processing waste tires, a person must be currently registered with the HMWMD as a waste tire processor at the address at which that person claims processing of waste tires.

3. To be eligible to receive a partial reimbursement for end using tire-derived product, a person must be currently registered with the HMWMD as a waste tire end user at the address of the end user facility or business address.

4. To be eligible to receive a partial reimbursement for end using a whole waste tire for pyrolysis, energy recovery or supplemental fuel, a person must receive a beneficial use approval from the HMWMD.

1.4 APPLICATION PROCEDURES

A. A processor or end user is eligible for partial reimbursement for the processing of waste tires or the end use of waste tires or tire-derived product only if their application for partial reimbursement is complete and complies with all of the provisions of these rules.

B. An applicant's initial application in any state fiscal year (July 1 through June 30) must be for a minimum of 50 tons of either processed and/or end used waste tires or tire-derived product. The applicant cannot receive reimbursement for waste tires or tire-dervied product processed or end used in a previous fiscal year. After submitting an initial application for a minimum of 50 tons, the applicant is eligible to apply for any ton amount in subsequent months in that fiscal year.

C. Applicants must certify the processed waste tires, whole tires or tire-derived product are not being provided to a local government securing or having secured a grant from the Recycling Incentives Program (section 25-17-202.6(2)(b)(I), C.R.S.).

D. To be eligible as a Colorado-generated waste tire, the waste tire must be documented as such in a manner acceptable to the Department. Acceptable documentation must include a certifying statement signed by the applicant stating the waste tires are Colorado-generated in accordance with the requirements of Section 1.3 of these rules.

E. Applicants must provide weight tickets from a scale that meets the requirements of the Colorado Measurement Standards Act, section 35-14-101 – 35-14-134, C.R.S. to document weights of waste tires or tire-derived product processed or end used. Other forms of documentation may be acceptable on a case by case basis.

F. An applicant for partial reimbursement must file the appropriate Department form (Processor and End User Application), providing at a minimum:

1. Applicant's name and address.

2. Name and location where end use or processing occurred.

3. A description of the end use or processing.

4. For processors: a listing of end users that purchased the tire-derived product.

5. For processors: the Waste Tire Certificate of Registration number of the facility where the processing occurred.

6. For end users: source of waste tires or tire-derived product.

7. For end users: the Waste Tire Certificate of Registration number of the end user facility.

8. The amount of waste tires or tire-derived product processed or end used, by weight (in tons).

9. The time period in which the waste tires or tire-derived product were processed or end used.

10. Other supporting documentation required by the Department.

11. An authorized signature.

G. Applications for monthly partial reimbursement will be accepted no later than the stated due date on the application and/or website. Applications received after the due date will be considered late and partial reimbursement will not be considered for that calendar month. The Department will not accept adjustments for processed applications from prior calendar months. The Department will not accept combining previous calendar months with the current months' application except as defined in Section 1.4 (B), above.

1.5 PARTIAL REIMBURSEMENT RATE

A. The amount of the partial reimbursement for waste tires processed or end used may be up to $65.00 per ton.

B. Every month the Department will reimburse processors and end users of waste tires from the fund according to the following method:

1. The Department will pay end users twice as much per ton for each ton of waste tires used as it will pay processors for each ton of waste tires processed;

2. Any one waste tire is eligible for reimbursement one time for the processing of that waste tire and one time for the end use of that waste tire;

3. If using this method the end use reimbursement rate exceeds $65 per ton, then the excess funds will be distributed to the processors;

4. If using this method both the end use reimbursement rate and the processor reimbursement rate exceed $65 per ton, then the excess funds will remain in the fund to be distributed the following month.

C. Funds will be disbursed pro-rata, based on the amount of revenue received in the preceding month made available to the Department for partial reimbursements, divided by the requests received by the date in Section 1.4 (G), above, as expressed in tons. Distribution of funds cannot exceed available balance at any time.

1.6 PROCESSING OF APPLICATIONS

The Department will review the Processor and End User Application by the first of the month following the application deadline as defined in Section 1.4 (G), above according to a four-step process: (1) review for completeness, (2) review for compliance with applicable laws and regulations, (3) review for eligible

processes and end uses, and (4) determination of reimbursement amount.

A. **Completeness**: If an application is not complete, then the Department will notify the applicant and grant the applicant a 5 business day grace period to submit the missing information. The Department will defer partial reimbursement to all applicants until adequate information is received. If adequate information is not received in the prescribed time period, then the Department shall deny reimbursement for that month.

B. **Compliance**: After the Department has determined all applications submitted in a given month are complete, it will conduct a compliance verification to ensure each applicant both is in compliance with all applicable laws and regulations and was in compliance with all applicable laws and regulations during the time period for which they are seeking reimbursement.

C. **Eligibility**: After compliance verification, the Department determines which applicants are eligible for reimbursement based on their claimed processing and end use.

D. **Reimbursement amount**: The Department will calculate the amount of reimbursement per Section 1.5 of these Regulations and notify each applicant of its determination and distribute funds.

1.7 APPEALS PROCESS

A. For approved applications, if an applicant believes the Department has made a calculation error in the response to an approved application, the applicant shall notify the Department in writing within 10 business days of receiving the Department's response. The notice shall contain a copy of the application and the Department's response, a brief statement describing the believed error, and copies of any documents supporting the statement. The Department shall review the notice and attached documents and may further investigate the matter.

1. If the Department concludes an error has been made and the Department has not yet paid the monthly reimbursements, then the Department shall reinstate the application and recalculate the pro-rata payment before paying the monthly reimbursements.

2. If the Department concludes an error has been made and the Department has already made the monthly reimbursements, then the Department will notify the applicant and reimburse the applicant from the next month's reimbursement money, as available, according to the following method: (1) The Department will determine what the applicant should have been paid had the Department not erred; (2)The Department will pay the applicant that amount from the next month's reimbursement money; (3) The next month's reimbursement money will be reduced accordingly.

3. If the Department concludes no calculation error was made, then it will notify the applicant that its previous determination was not in error and is final. This determination is subject to appeal pursuant to section 24-4-106, C.R.S.

B. For denied applications: If an applicant believes his or her application was wrongly denied, the applicant shall, within 10 business days of denial, submit the following to the Department: (1) a copy of the denied application and supporting documents, (2) the denial letter, (3) a statement explaining why the applicant believes the Department erred, and (4) all other information the applicant believes relevant.

1. If the Department concludes it erred in denying the application, and the Department has not yet paid the monthly reimbursements, then the Department shall reinstate the application and recalculate the pro-rata payment before paying the monthly reimbursements.

2. If the Department concludes it erred in denying the application and the Department has already made the monthly reimbursements, then the Department will notify the applicant and reimburse the applicant from the next month's reimbursement money, as available, according to the following

method: (1) The Department will determine what the applicant should have been paid had the Department not erred; (2) The Department will pay the applicant that amount from the next month's reimbursement money; (3) The next month's reimbursement money will be reduced accordingly.

3. If the Department concludes no error was made, then it will notify the applicant that its previous determination was not in error and is final. This determination is subject to appeal pursuant to section 24-4-106, C.R.S.

1.8 ENFORCEMENT

A. A processor or end user who applies for a partial reimbursement is subject to a review by the Department at any time. Applicants shall allow access to all records related to waste tire management activities during normal business hours for the purpose of determining compliance with these rules for five years from the date of partial reimbursement.

B. If information is provided by an applicant that constitutes a trade secret, confidential personnel information, or proprietary commercial or financial information, in accord with § 24-72-204(3), C.R.S., then the applicant may request the Department withhold such documents from disclosure in the event the Department receives a request for records in accord with the Colorado Open Records Act, § 24-72-101 et seq. All such documents must be clearly marked with the term "Proprietary Information" on each appropriate page. Records marked as containing trade secret, confidential, personnel, or proprietary information that do not actually contain such information may be released pursuant to an Open Records Act request.

C. In addition to any other penalty imposed by law, any applicant who provides false information to the Department when applying for a partial reimbursement shall be ineligible to receive any future partial reimbursement under these rules.

D. The Department may reasonably deny reimbursements to an applicant who is out of compliance with operational requirements of any state law or regulation.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01085

Opinion of the Attorney General rendered in connection with the rules adopted by the
Hazardous Materials and Waste Management Division

on 11/18/2014

6 CCR 1007-2 Part 4

WASTE TIRE PROCESSOR AND END USER REIMBURSEMENT PROGRAM

The above-referenced rules were submitted to this office on 11/24/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:54:16

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

6 CCR 1007-3 HAZARDOUS WASTE 1 - eff 03/02/2015

Effective date

03/02/2015

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-3

HAZARDOUS WASTE

Depuy Synthes F006 Delisting

(Adopted by the Solid and Hazardous Waste Commission on November 18, 2014)

1) Amend Appendix IX of Part 261 by adding Delisting #009 to read as follows:

PART 261, APPENDIX IX – WASTES EXCLUDED UNDER §§ 260.20 AND 260.22

****

DELISTING #: 009

FACILITY: Depuy Synthes

ADDRESS: 1051 Synthes Avenue, Monument, Colorado 80132

WASTE: Wastewater treatment sludge and micron filters from the on-site treatment of wastewater generated from electroplating operations (anodizing and chemical etching). EPA hazardous waste code F006 generated after the effective date of this delisting.

CONDITIONS: This delisting is valid only for the waste stream specified above and referenced in the delisting petition submitted on August 4, 2014 and under the following conditions:

a. Changes to Current Operations

1. Depuy Synthes must notify the Hazardous Materials and Waste Management Division (the Division) at least 30-days prior to implementing any major change to the electroplating processes at the Facility. A major change is any change including alteration of the current wastewater treatment process or incorporating

different chemicals or reagents into the process such that the composition of the wastewater treatment sludge is altered.

2. Depuy Synthes must notify the Division within 15-days after implementing any change to the wastewater treatment or electroplating processes that causes a significant change in the type or concentration of any hazardous constituent in the waste or causes the waste to exhibit a hazardous waste characteristic. A significant change is defined as an increase in the total waste concentration for any constituent identified below:

Constituent	Average Concentration (ppm)	2xs the Standard Deviation	Concentration Requiring Notification to the Division (Two Standard Deviations above the Average Concentration)
Arsenic	Non-detect	Non-detect	Detection
Barium	19.0	42.8	61.8
Cadmium	Non-detect	Non-detect	Detection
Chromium (Total)	6,170	13,585.4	19,755.4
Chromium VI	0.035	0.08	0.12
Copper	525.5	1,157.8	1,683.3
Cyanide (amendable)	Non-detect	Non-detect	Detection
Cyanide (free/reactive)	0.005	0.0002	0.0052
Lead	870.4	2,139.0	3,009.4
Mercury	0.11	0.04	0.15
Nickel	2,197	4,958.6	7,155.6
Selenium	Non-detect	Non-detect	Detection
Silver	1.53	3.44	4.97

A significant change also includes the detection of any additional Part 264, Appendix IX hazardous constituents that are not identified in the above table.

3. The Division reserves the right to re-evaluate and, if necessary, remove this approval or modify these conditions in the event that a significant change, as defined above, is reported by Depuy Synthes. In such case, the Division may remove this delisting or impose temporary requirements on the delisted waste until such time as an appropriate amendment to this delisting can be considered by the Solid and Hazardous Waste Commission.

b. Sampling Requirements

Depuy Synthes shall conduct annual verification sampling of the delisted waste in January of each year to monitor for any significant change in the type or

concentration of any hazardous constituents in the delisted waste. Annual verification sampling shall be submitted to the Division within sixty (60) days of the sampling event for review against initial criteria and sampling methodology.

c. Storage Requirements

1. The delisted waste generated by Depuy Synthes may not be accumulated on-site for a period in excess of one year.

2. The volume of delisted waste accumulated on-site may not exceed 20 cubic yards at any given time.

3. The delisted waste must be stored in a container that is capable of being closed. The container must be marked or labeled to identify the contents as “delisted waste” and with an accumulation start date. The container must be kept closed except for when waste is being added to or removed from the container.

d. Recordkeeping Requirements

1. Depuy Synthes shall maintain records of the disposal or recycling of all delisted waste that documents that such activities are in accordance with the delisting petition.

2. Depuy Synthes shall maintain all records required by paragraph d.1 above for a period of at least three years.

e. Disposal Requirements

The delisted waste shall be disposed in a landfill meeting the requirements of the Colorado Solid Waste Regulations (6 CCR 1007-2) or recycled at an appropriate metals reclamation facility.

2) Add Section 8.84 {Statement of Basis and Purpose for the Rulemaking Hearing of November 18, 2014} to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of November 18, 2014

8.84 Basis and Purpose

This amendment to 6 CCR 1007-3, Part 261, Appendix IX is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Amendment of Part 261, Appendix IX to Conditionally Delist F006 Hazardous Waste Generated by Depuy Synthes located at 1051 Synthes Avenue in Monument, Colorado 80132.

Appendix IX of Part 261 is being amended to conditionally delist F006 hazardous waste generated at Depuy Synthes in Monument, Colorado. This delisting will allow Depuy Synthes to dispose of this waste at a solid waste landfill meeting the requirements of the Colorado Solid Waste Regulations (6 CCR 1007-2) or a metals recycling facility provided it complies with the conditions of the delisting. The Solid and Hazardous Waste Commission (the "Commission") is requiring an annual verification sampling of the delisted waste and the results of that verification sampling must be submitted to the Division within sixty (60) days of the sampling event for review against initial delisting criteria and sampling methodology.

Depuy Synthes operates a manufacturing facility in Monument, Colorado for the production of surgical quality screws, plates and nails for medical use. After manufacturing, a finish is applied to the metal parts in one or more metal finishing operations including electro-polishing (chemical etching), anodizing, or chemical conversion coating (passivation). Rinse water from these metal finishing operations is treated on-site in a wastewater treatment unit to remove heavy metals prior to discharging the treated wastewater to the publicly owned treatment works (POTW). The process of treating the wastewater generates wastewater treatment sludge. Pursuant to the listing description at § 261.31, wastewater treatment sludge generated from electroplating operations is classified as F006 hazardous waste.

The basis for the F006 hazardous waste listing is described in Appendix VII of Part 261 of the hazardous waste regulations. Each listing is based on hazardous constituents that are typically contained in the waste described by the listing. The hazardous constituents that formed the basis for the F006 listing include cadmium, hexavalent chromium (Chromium VI), nickel and complexed cyanide.

Samples of the wastewater treatment sludge generated at Depuy Synthes were collected and submitted for analysis prior to submittal of the delisting petition. Four discrete samples of the wastewater treatment sludge were collected in accordance with a sampling and analysis plan that was reviewed and approved by the Hazardous

Materials and Waste Management Division at the Colorado Department of Public Health and Environment.

Analytical results of the wastewater treatment sludge indicate that the sludge does not exhibit any of the hazardous waste characteristics. Sample results confirmed that the sludge does not contain organic toxicity characteristic constituents above detection levels. In addition, the sludge does not exhibit the toxicity characteristic for the eight heavy metals. The waste also does not exhibit the hazardous waste characteristic of corrosivity, ignitability or reactivity.

Copper and nickel were also analyzed using the toxicity characteristic leaching procedure (TCLP). The results of that analysis indicate that these two constituents were present in the leachate well below the EPA Residential Soil Screening Levels.

Analytical results of the wastewater treatment sludge indicate that the petitioned sludge contains hazardous constituents that are a basis for listing a waste as a F006 hazardous waste. These constituents include nickel, chromium VI and cyanide. Based on the chemical analysis of the waste samples, the average total concentration for these constituents is as follows: 2,197 parts per million (ppm) nickel, 0.005 ppm cyanide and 0.035 ppm chromium VI. With the exception of nickel, these average total constituent constituents are below the EPA Residential and Industrial Soil Screening Levels. The total average concentration of nickel is below the EPA Industrial Soil Screening Level.

Other constituents detected in the waste samples include barium, copper, lead, mercury and silver. The average total concentration for these constituents is: 19.0 ppm barium, 525.5 ppm copper, 870.4 ppm lead, 0.11 ppm mercury and 1.53 ppm silver. The average total concentration for these constituents is below the EPA Residential Soil Screening Level with the exception of lead. The average total concentration for lead is 70.4 ppm above the EPA Industrial Soil Screening Level of 800 ppm. However, as a condition of this delisting, all waste will be disposed in a solid waste landfill or recycled at an appropriate metals reclamation facility.

Using the average total concentrations of the constituents in the waste, health risk calculations were determined for residential exposure to the waste. The risk calculations were determined using the EPA's Regional Screening Level Calculator, which utilizes current health based toxicity data obtained from EPA's Integrated Risk Information System (IRIS) and Health Effects Assessment Summary Tables (HEAST). The calculator was used to determine the risk associated with the waste for a residential soil exposure scenario that evaluated the carcinogenic and non-carcinogenic risk through ingestion, dermal and inhalation pathways.

A total carcinogenic risk of greater than 1×10^{-6} of one added cancer death per million exposed individually represents an unacceptable risk to human health, according to EPA risk assessment guidance. The calculated carcinogenic risk for the wastewater treatment sludge is 1.42×10^{-7}. Therefore, this waste does not pose a carcinogenic risk.

The risk assessment calculations for the non-carcinogenic risk or cumulative total hazard quotient posed by the concentrations of detected metals in the waste were calculated at a level of 1.75. This level exceeds the hazard quotient index (HI) of 1 for the residential soil exposure scenario due to the presence of nickel. However, when nickel is excluded from the calculation the HI is reduced to 0.21. As a condition of this delisting, the wastewater treatment sludge will be disposed in a solid waste landfill or at a metals recycling facility.

This delisting is being granted under conditions specifying disposal, record keeping, storage and sampling requirements for the delisted sludge. Conditional delisting of the waste also prohibits any major changes to the metal finishing operations or wastewater treatment process without prior notification, evaluation, and approval by the Division.

The Colorado Solid and Hazardous Waste Commission, after a public hearing on November 18, 2014, voted to tentatively approve the petition to delist F006 hazardous waste generated by electroplating operations (anodizing and chemical etching) at the Depuy Synthes Facility located at 1051 Synthes Avenue in Monument, Colorado 80132. The Commission's tentative decision is subject to public written comment until January 26, 2015. If no adverse comments are received, the tentative decision will become the final decision, and the delisting will become effective on March 2, 2015 without further notice. If the Commission receives adverse comments, the Commission will publish a timely withdrawal in the Colorado Register informing the public that the rule will not take effect.

This delisting does not apply to waste that demonstrates a "significant change" as defined in Delisting #009 in Part 261, Appendix IX—Wastes Excluded Under § 260.20 and 260.22(d), or if any of the conditions specified in Part 261, Appendix IX for this delisting are not met. Should either of these occur, the waste is and must be managed as a hazardous waste. While the Commission is approving this conditional delisting for this specific waste at this specific site, the findings and criteria associated with the approval are unique. Other petitions for delisting, even if similar in material or use, will be reviewed by the Division on a case-by-case basis.

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Office of the Attorney General

Tracking number: 2014-01086

Opinion of the Attorney General rendered in connection with the rules adopted by the
Hazardous Materials and Waste Management Division

on 11/18/2014

6 CCR 1007-3

HAZARDOUS WASTE

The above-referenced rules were submitted to this office on 11/24/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:55:09

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Emergency Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-8

Rule title

1 CCR 301-8 RULES (FOR THE) ADMINISTRATION OF THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT 1 - eff 12/01/2014

Effective date

12/01/2014

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES (FOR THE) ADMINISTRATION OF THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT

1 CCR 301-8

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

2220-R-1.00 STATEMENT OF BASIS AND PURPOSE

1.00(1) The statutory authority for the enactment of these Rules and the repeal of previously existing Rules 1 CCR 301-8, Rules 2220-R-1.00 through 2220-R-10.07 (2) adopted by the State Board of Education on June 11, 1992, is found in Article 20 of Title 22, C.R.S., generally in Sections 22-20-104, 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-109. The purpose of these Rules is to provide the administrative framework for services offered to students pursuant to the terms of the Exceptional Children's Educational Act (ECEA). Current Rules 1 CCR 301-8, 2220-R-11.00 through 11.07 (5) are not affected by this enactment. The Rules reflect changes in educational practices and the manner of delivery of services to students within the legal parameters of the ECEA that have occurred since the prior Rules were originally enacted in 1976. The definitions of handicapping conditions and the eligibility criteria for receiving services have been clarified. The involvement of facilities that offer special education services to students has been recognized, and the conditions for approval for reimbursement have been established. Additionally, the criteria for creating and maintaining an administrative unit are set forth as are standards for the provision of educational services to eligible students. The Rules outline the procedure to be followed in identifying, assessing and serving those children eligible for services under the ECEA. The Rules also elaborate on the various procedural safeguards available to administrative units and children and their parents pursuant to the ECEA.

1.00(2) The statutory basis for the amendments to these Rules adopted by the State Board of Education on September 11, 1997 is found in Sections 22-2-107(1)(c), 22-2-107(1)(q), 22-20-103(1.7) and (5.7), 22-20-104, 22-20-108(4.5) and (4.7), 22-20-109(4) and (5) and 22-20-114 C.R.S. The purpose of the amendments is to conform the Rules to recent legislative changes in the ECEA, specifically with regard to definitions of communication mode or language and literacy mode, development of individual educational programs, and tuition for children with disabilities in Charter Schools and Schools of Choice.

1.00(3) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-20-104, 22-2-107(1)(a), 22-2-107(1)(c), and 22-2-107(1)(q). The purpose of the amendments to Rule 1 CCR 301-8, 2220-R-3.04(1)(f) is to reflect additional statutory requirements for the development of minimum standards for Educational Interpreters for the Deaf as specified in C.R.S. 22-20-116. The amendments to Rules 1 CCR 301-8, 2220-R-2.02(9), 3.01(5)(a), 4.01(3)(c), 4.02(4)(k)(v), 5.02(4), 6.02(2), and 8.02(1)(f)(i) are the result of a review by Legislative Legal Services.

1.00(4) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-104. The reasons for the amendments to these Rules are to bring the state into compliance with the Individuals with Disabilities Education Act Reauthorization of 1997, to respond to the review of the BOCES conducted by the State Auditors Office, and to make technical amendments to sections that contain incorrect citations or grammatical errors. Subsections of Section 3.01(5)(a) have been deleted because they were allowed to expire by action of the General Assembly, and under Colorado law shall not be repromulgated [C.R.S. 24-4-103(8)(d)].

1.00(5) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107(1)(q), and 22-20-104. The reason for the amendments to these Rules is to bring the State into compliance with the Individuals with Disabilities Education Act final regulations issued on March 12, 1999 and to rectify an incorrect citation.

1.00(6) The statutory authority for the amendments to these Rules, adopted by the State Board of Education on May 9, 2002, is found in Article 20 of Title 22, C.R.S., Sections 22-2-107(1)(a), 22-2-107(1)(c), 22-2-107 (1)(q), and 22-20-104. The reason for the amendments to these Rules is to bring the State into compliance with the Individuals with Disabilities Education Act and to provide clarification for implementation to the field.

1.00(7) The statutory authority for the amendments to these Rules is found in the Colorado Revised Statutes, Title 22, Article 20, Sections 108 and 109. The purpose of these amendments is: (A) to address new requirements in HB04-1397 and HB04-1141 that amended the special education tuition responsibility provisions of the Exceptional Children's Educational Act, Section 22-20-109, C.R.S.; (B) to add clarification regarding special education administrative unit responsibilities for special education services; and (C) to add additional clarifying language.

1.00(8) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 103, 104, 104.5, 108, 109, and 114, C.R.S. The purposes of the amendments are: (A) to address new requirements in SB06-118 and HB06-1375 that amended the special education tuition responsibility provisions and the out-of-home placement provisions of the Exceptional Children's Educational Act, Sections 22-20-103, 108 and 109, C.R.S.; (B) to address new requirements in SB06-118 that amended the gifted and talented provision of said Act, Sections 22-20-103, 104 and 104.5, C.R.S.; (C) to address new requirements in HB06-1375 regarding the special education funding provisions of said Act, Section 22-20-114, C.R.S.; (D) to add clarification regarding administrative unit responsibilities for gifted and talented programs; and (E) to add clarifying language.

1.00(9) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 102, 103, 105, 104.5, 106, 107.5, 108, 112, 114, 114.5 and 118. The purposes of the amendments are:

1.00(9)(a) To conform to amendments to the Exceptional Children's Educational Act (ECEA) as set forth in SB06-118, SB07-255, HB07-1244, including alignment with the federal Individuals with Disabilities Educational Improvement Act of 2004, 20 U.S.C. Section 1400 et seq., as amended, (IDEA) and its implementing Part B and Part C Regulations at 34 CFR Parts 300 and 303, respectively, including appendices.

1.00(9)(a)(i) The IDEA Part B and Part C Regulations were issued by the United States Department of Education, Office of Special Education and Rehabilitative Services. Throughout these Rules, the applicable Part B and Part C Regulations are referred to in general (e.g., "Part B Regulations" or "Part C Child Find Regulations") or by reference to specific regulatory section numbers (e.g., 34

CFR §300.1, 34 CFR §303.1) and are incorporated herein by reference as applicable. However, these Rules do not include later amendments or editions to the IDEA, the Part B Regulations or the Part C Regulations.

1.00(9)(a)(ii) Copies of the IDEA Part B and Part C Regulations are available for public inspection, upon appointment, during regular business hours at the Office of the State Board of Education. Upon request, a copy of the Part B and/or Part C Regulations shall be provided at cost to the person or entity requesting a copy. Inquiries regarding the procedure for examining such regulations or for obtaining a copy of such regulations shall be directed to:

Director
Office of the State Board of Education
201 East Colfax Avenue, Denver, CO, 80203
(303) 866-6817

1.00(9)(a)(iii) Copies of the Part B Regulations and Part C Regulations may be examined at any State Publication Depository Library.

1.00(9)(b) To adopt new criteria for the disability category "Specific Learning Disability" ;

1.00(9)(c) To reorganize these Rules for purposes of providing enhanced clarification for implementation;

1.00(9)(d) To clarify language;

1.00(9)(e) To make technical amendments, including:

1.00(9)(e)(i) Renumbering made necessary by reorganization of these Rules;

1.00(9)(e)(ii) Correction of typographical errors such as misspellings or inaccurate legal citations; and

1.009(e)(iii) Reformatting of these Rules.

1.00(10) The statutory authority for the amendments to these Rules is found in Article 20 of Title 22, C.R.S., Sections 22-20-103(12)(b) and (13), 22-20-104.5, and Sections 22-54-103(10)(a)(IV)(B) and (10)(b)(I). The purposes of the amendments are to: address new requirements in legislation for early access to educational services for children who are less than six years of age; provide an outline of the criteria and process for making early access determinations by administrative units who choose to permit early access; and, clarify the provisions that will allow administrative units to receive state education funds for early access students.

1.00(11) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 102, 103(5)(a) and 104. The purposes of these amendments are:

1.00(11)(a) Alignment with Regulations under Part B of the federal Individuals with Disabilities Educational Improvement Act of 2004, 20 U.S.C. Section 1400 et seq., as amended, (IDEA) and its implementing Part B Regulations at 34 CFR Parts 300 and include:

1.00(11)(a)(i) Amending, consistent with IDEA Part B Regulations effective October 13, 2006, the definition of "school day" ; and substituting the disability category term "speech or language impairment" for "speech language disability" ;

1.00(11)(a)(ii) Adding, consistent with IDEA Part B Regulations effective May 9, 2007, requirements regarding participation of children with disabilities in general and district-wide assessments; and

1.00(11)(a)(iii) Amending, consistent with IDEA Part B Regulations effective December 31, 2008, requirements regarding parental consent, including the definition of "consent."

1.00(11)(b) The IDEA Part B Regulations were issued by the United States Department of Education, Office of Special Education and Rehabilitative Services. Throughout these Rules, the applicable Part B Regulations are referred to in general (e.g., "Part B Regulations") or by reference to specific regulatory section numbers (e.g., 34 CFR §300.1) and are incorporated herein by reference as applicable. However, these Rules do not include later amendments or editions to the IDEA Part B Regulations.

1.00(11)(b)(i) Copies of the IDEA Part B Regulations are available for public inspection, upon appointment, during regular business hours at the office of the Exceptional Student Leadership Unit. Upon request, a copy of the Part B Regulations shall be provided at cost to the person or entity requesting a copy. Inquiries regarding the procedure for examining such regulations or for obtaining a copy of such regulations shall be directed to:

Director

Exceptional Student Leadership Unit

Colorado Department of Education

1560 Broadway, Suite 1175

Denver, CO 80202

(303) 866-6694

1.00(11)(b)(ii) Copies of the Part B Regulations may be examined at any State Publication Depository Library.

1.00(12) Beginning in 1990, the section of the Exceptional Children's Education Act pertaining to the rules for gifted education required administrative units to provide matching funds or greater than the state allocation to support local gifted student education program plans. In 2010, the question of the state board's authority to require matching funds was presented to the Attorney General's Office. The Attorney General's Office issued an informal opinion recommending that the state board's rules should be modified, removing the matching funds provision on the grounds that the statute does not provide authority to the state board to promulgate rules requiring matching funds. Pursuant to 22-20-104.5(1), 22-20-104(1)(XI)(b) and 22-2-107(1)(c), the state board has authority to promulgate rules concerning the Exceptional Children's Education Act.

1.00(13) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 102, 103, 106, and 108. The purposes of these amendments are: A) to replace the definition of Administrative Unit that was inadvertently deleted through previous emergency rulemaking; B) to repeal Section 2.08(6)(b)(i) and renumber, because by operation of rule the language has expired; and C) to bring the State into compliance with recent legislation adopting a Tier 1 Due Process Hearing System (SB11-061).

1.00(14) The statutory authority for these Rules is found in Title 22, Article 20, Sections 104(1)(b) and 107(1)(c). In October 2010, the Rules regarding standards for new and reorganized administrative units, which had been in place since 1973, were revised via emergency rules repealing language in the rules pertaining to variances from approved administrative unit standards while the Department developed recommendations for revised rules establishing new administrative standards in conjunction with a task force formed for that specific purpose. The emergency rules expired in February 2011. The purpose of these Rules is to implement the recommendations of the task force and to establish permanent rules regarding standards for new and reorganized administrative units that reflect current demographic, legal and financial conditions in the State.

1.00(15) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Sections 103 and 119. The purpose of these amendments is to comply with Colorado House Bill 11-1277, which was enacted in June 2011 to align Colorado's disability categories for students with disabilities with the eligibility categories in the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.* and 34 C.F.R. 300.8. The law requires that the new eligibility categories be implemented via adoption of new rules amending the existing eligibility categories in these Rules by December 1, 2012. HB 11-1277 also modified some of the terminology and definitions applicable to special education; these Rules have therefore been updated to reflect the new language by incorporating the language of the statute.

1.00(16) The statutory authority for the amendments to these Rules is found in Title 22, Article 2, Sections 406 and 407, which amended the law regarding facility schools; Title 22, Article 20, Section 103, which modifies the terminology and definitions relevant to facility schools and establishes the definition of " administrative unit " ; and Title 22, Article 20, Section 108. The purpose of these amendments is to update the Rules to makes them consistent with the law and Rules regarding facility schools, to clarify the definition of " administrative unit " to make it consistent with statute, to eliminate expired and outdated rules regarding special education due process hearings, and to comply with HB12-1345 which eliminated the " Preschooler with a Disability " eligibility category and charged the Department with promulgating a new eligibility category definition and criteria entitled " Child with a Developmental Delay "

(17) The statutory authority for the amendments to these Rules is found in Title 22, Article 20, Section 205 which amended the law regarding gifted education. The purpose of these amendments is to comply with Colorado House Bill 14-1102, which was enacted in August 2014 and establishes a grant program to offset costs incurred by administrative units in employing a qualified person in gifted education and conducting universal screenings as a part of identification no later than end of second grade and/or in middle school years in conjunction with the creation of each child's individual career and academic plan

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2220-R-2.00 DEFINITIONS USED IN THESE RULES

2.01 Act

Act, when used in 34 CFR Parts 300 and 303, means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §1400 et seq. (IDEA) as amended.

2.02 Administrative Unit

Administrative Unit (AU) means a school district, board of cooperative services, or the State Charter School Institute, that is providing educational services to exceptional children and that is responsible for

the local administration of these Rules. In order to qualify as an administrative unit, school districts and boards of cooperative services shall meet all minimum standards established in Section 3.01 of these Rules. All administrative units shall be approved by the Department of Education.

2.02(1) Administrative unit of residence.

Pursuant to sections 22-1-102 and 22-20-107.5, C.R.S., an administrative unit of residence (AUR) shall mean the unit in which the child resides on a day-to-day basis with the following exceptions to apply when a child has been determined to have a disability:

2.02(1)(a) If a child with a disability is living at one of the regional centers, an approved facility school, a mental health institute operated by the Department of Human Services, or if the child attends the Colorado School for the Deaf and the Blind, such child shall be deemed to reside where the parent or guardian of such child resides.

2.02(1)(b) If a child has been placed by a Colorado public agency and lives in one of the regional centers, a mental health institute, a facility, or a group home, and the administrative unit of residence cannot be determined because parental rights have been relinquished by the parents or terminated by a court, the parents are incarcerated, cannot be located, reside out of state, are deceased, or the child is legally emancipated, the child shall be considered a resident of the administrative unit in which the regional center, mental health institute, facility or group home is located

2.02(1)(c) If the child resides in a foster care home, the child shall be deemed to be a resident of the administrative unit in which the foster care home is located.

2.02(1)(d) When a child attends a school in another district under the provisions of the public schools of choice law, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.

2.02(1)(e) When a child attends a Charter School in another district, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.

2.02(1)(f) When a child attends a public school on-line program in another district, the child shall be considered a resident of the administrative unit in which the parent or guardian resides.

2.02(1)(g) If a child with a disability is homeless, as defined by Section 22-1-102.5, C.R.S., the provisions of Section 22-1-102(2), C.R.S., apply.

2.02(1)(h) Disputes regarding residency.

If there is a dispute as to which administrative unit constitutes the administrative unit of residence, the Commissioner of Education shall have the authority to determine questions of residency and thus responsibility after reviewing necessary details involved in the determination of residency.

2.02(2) Administrative unit of attendance.

An administrative unit of attendance (AUA) shall mean the unit that delivers the special education program for a child. It may be different from the administrative unit of residence when:

2.02(2)(a) The administrative unit of residence does not have an adequate number of children with similar needs, and chooses to send the child to another administrative unit for his or her special education program.

2.02(2)(b) The child resides at one of the regional centers, mental health institutes, residential child care facilities, hospitals, group care facilities or homes or in a facility formerly operated by or under contract to the Department of Institutions and now transferred to the Department of Human Services, or attends the Colorado School for the Deaf and the Blind and the special education program is provided by an administrative unit other than the administrative unit of residence.

2.02(2)(c) The child attends a Charter School, School of Choice or a public school on-line program and the Special Education program is provided by a special education administrative unit other than the administrative unit of residence.

2.03 Assistive Technology Device

Assistive Technology Device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

2.04 Assistive Technology Service

2.04(1) Assistive Technology Service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes-

2.04(1)(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

2.04(1)(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

2.04(1)(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

2.04(1)(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

2.04(1)(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

2.04(1)(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

2.05 Board of Cooperative Services

Board of Cooperative Services means a regional educational services unit created pursuant to Article 5 of Title 22, C.R.S. and designed to provide supporting, instructional, administrative, facility, community, or any other services contracted by participating members.

2.06 Charter School

2.06(1) District Charter School means a charter school authorized by a school district pursuant to Part 1 of Article 30.5 of Title 22, C.R.S.; or

2.06(2) Institute Charter School means a charter school authorized by the State Charter School Institute pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.

2.07 Child Find

Child Find means the program component of child identification that is more fully described in Section 4.02 of these Rules.

2.08 Children with Disabilities

Children with Disabilities shall mean those persons from three to twenty-one years of age who, by reason of one or more of the following conditions, are unable to receive reasonable benefit from general education. A child shall not be determined to have a disability if the determinant factor for that determination is: lack of appropriate instruction in reading or math or limited English proficiency; and if the child does not otherwise meet the eligibility criteria under this Section 2.08. A child upon reaching his/her third birthday becomes eligible for services as of that date. A child reaching the age of 21 after the commencement of the academic year has the right to complete the semester in which the 21st birthday occurs or attend until he/she graduates, whichever comes first. In such a case, the child is not entitled to extended school year services during the summer following such current academic year. If it is determined, through an appropriate evaluation, under Section 4.02(4) of these Rules, that a child has one of the following disabilities but only needs a related service (as defined in Section 2.37 of these Rules) and not special education (as defined in Sections 2.43 and 2.51 of these Rules), then the child is not a child with a disability under these Rules. For purposes of Part C of IDEA Child Find activities, *Children with Disabilities* also means persons from birth to twenty-one years of age consistent with Section 22-20-103(5)(b), C.R.S.

2.08(1) A child with an Autism Spectrum Disorder (ASD) is a child with a developmental disability significantly affecting verbal and non-verbal social communication and social interaction, generally evidenced by the age of three. Other characteristics often associated with ASD are engagement in repetitive activities and stereotyped movements, resistance to environmental changes or changes in daily routines, and unusual responses to sensory experiences.

2.08(1)(a) The Autism Spectrum Disorder prevents the child from receiving reasonable educational benefit from general education as evidenced by at least one characteristic in each of the following three areas (i.e., subsections (a)(i) through (a)(iii), below):

2.08(1)(a)(i) The child displays significant difficulties or differences or both in interacting with or understanding people and events. Examples of qualifying characteristics include, but are not limited to: significant difficulty establishing and maintaining social-emotional reciprocal relationships, including a lack of typical back and forth social conversation; and/or significant deficits in understanding and using nonverbal communication including eye contact, facial expression and gestures;

2.08(1)(a)(ii) The child displays significant difficulties or differences which extend beyond speech and language to other aspects of social communication, both receptively and expressively. Examples of qualifying characteristics include, but are not limited to: an absence of verbal language or, if verbal language is present, typical integrated use of eye contact and body language is lacking; and/or significant difficulty sharing, engaging in imaginative play and developing and maintaining friendships; and

2.08(1)(a)(iii) The child seeks consistency in environmental events to the point of exhibiting significant rigidity in routines and displays marked distress over

changes in the routine, and/or has a significantly persistent preoccupation with or attachment to objects or topics.

2.08(1)(b) The following characteristics may be present in a child with ASD, but shall not be the sole basis for determining that a child is an eligible child with ASD if the child does not also meet the eligibility criteria set out in subsection (a) of this rule, above.

2.08(1)(b)(i) The child exhibits delays or regressions in motor, sensory, social or learning skills.

2.08(1)(b)(ii) The child exhibits precocious or advanced skill development, while other skills may develop at or below typical developmental rates.

2.08(1)(b)(iii) The child exhibits atypicality in thinking processes and in generalization. The child exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness and judgment. Perseverative thinking and impaired ability to process symbolic information is present.

2.08(1)(b)(iv) The child exhibits unusual, inconsistent, repetitive or unconventional responses to sounds, sights, smells, tastes, touch or movement.

2.08(1)(b)(v) The child's capacity to use objects in an age appropriate or functional manner is absent or delayed. The child has difficulty displaying a range of interests or imaginative activities or both.

2.08(1)(b)(vi) The child exhibits stereotypical motor movements, which include repetitive use of objects and/or vocalizations, echolalia, rocking, pacing or spinning self or objects.

2.08(2) A child with Hearing Impairment, Including Deafness shall have a deficiency in hearing sensitivity as demonstrated by an elevated threshold of auditory sensitivity to pure tones or speech where, even with the help of amplification, the child is prevented from receiving reasonable educational benefit from general education.

2.08(2)(a) A "deficiency in hearing sensitivity" shall be one of the following as measured by behavioral or electrophysiological audiological assessments:

2.08(2)(a)(i) Three frequency, pure tone average hearing loss in the speech range (500 – 4000 Hertz Hz) of at least 20 decibels Hearing Level (dBHL) in the better ear which is not reversible.

2.08(2)(a)(ii) A high frequency, pure tone average hearing loss of at least 35 dBHL in the better ear for two or more of the following frequencies: 2000, 3000, 4000 or 6000 Hz.

2.08(2)(a)(iii) A three frequency, pure tone average unilateral hearing loss in the speech range (500 – 4000Hz) of at least 35 dBHL which is not reversible.

2.08(2)(a)(iv) A transient hearing loss, meeting one of the criteria in (a)(i) – (a)(iii) above, that is exhibited for three (3) months cumulatively during a calendar year (i.e., any three months during the calendar year) and that typically is caused by non-permanent medical conditions such as otitis media or other ear problems.

2.08(2)(b) The Hearing Impairment, Including Deafness, as described above, prevents the child from receiving reasonable educational benefit from general education as evidenced by one or more of the following:

2.08(2)(b)(i) Delay in auditory skills and/or functional auditory performance including speech perception scores (in quiet or noise), which demonstrates the need for specialized instruction in auditory skill development or assistive technology use;

2.08(2)(b)(ii) Receptive and/or expressive language (spoken or signed) delay including a delay in syntax, pragmatics, semantics, or if there is a significant discrepancy between the receptive and expressive language scores and/or function which adversely impacts communication and learning;

2.08(2)(b)(iii) An impairment of speech articulation, voice and/or fluency;

2.08(2)(b)(iv) Lack of adequate academic achievement and/or sufficient progress to meet age or state-approved grade-level standards in reading, writing, and/or math;

2.08(2)(b)(v) Inconsistent performance in social and learning environments compared to typically developing peers; and/or

2.08(2)(b)(vi) Inability to demonstrate self advocacy skills or utilize specialized technology/resources to access instruction.

2.08(3) A child with a Serious Emotional Disability shall have emotional or social functioning which prevents the child from receiving reasonable educational benefit from general education.

2.08(3)(a) Serious Emotional Disability means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree:

2.08(3)(a)(i) An inability to learn which is not primarily the result of intellectual, sensory or other health factors;

2.08(3)(a)(ii) An inability to build or maintain interpersonal relationships which significantly interferes with the child's social development;

2.08(3)(a)(iii) Inappropriate types of behavior or feelings under normal circumstances;

2.08(3)(a)(iv) A general pervasive mood of unhappiness or depression; and/or

2.08(3)(a)(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

2.08(3)(b) As a result of the child's Serious Emotional Disability, as described above, the child exhibits one of the following characteristics:

2.08(3)(b)(i) Impairment in academic functioning as demonstrated by an inability to receive reasonable educational benefit from general education which is not primarily the result of intellectual, sensory, or other health factors, but due to the identified serious emotional disability.

2.08(3)(b)(ii) Impairment in social/emotional functioning as demonstrated by an inability to build or maintain interpersonal relationships which significantly interferes with the child's social development. Social development involves those

adaptive behaviors and social skills which enable a child to meet environmental demands and assume responsibility for his or her own welfare.

2.08(3)(c) In order to qualify as a child with a Serious Emotional Disability, all four of the following qualifiers shall be documented:

2.08(3)(c)(i) A variety of instructional and/or behavioral interventions were implemented within general education and the child remains unable to receive reasonable educational benefit from general education.

2.08(3)(c)(ii) Indicators of social/emotional dysfunction exist to a marked degree; that is, at a rate and intensity above the child's peers and outside of his or her cultural norms and the range of normal development expectations.

2.08(3)(c)(iii) Indicators of social/emotional dysfunction are pervasive, and are observable in at least two different settings within the child's environment. For children who are attending school, one of the environments shall be school.

2.08(3)(c)(iv) Indicators of social/emotional dysfunction have existed over a period of time and are not isolated incidents or transient, situational responses to stressors in the child's environment.

2.08(3)(d) The term "Serious Emotional Disability" does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability under paragraph (3)(a) of this section 2.08.

2.08(4) A child with an Intellectual Disability shall have reduced general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which prevents the child from receiving reasonable educational benefit from general education.

2.08(4)(a) Criteria for Intellectual Disability preventing the child from receiving reasonable educational benefit from regular education shall include:

2.08(4)(a)(i) A full scale score of 2.0 or more standard deviations below the mean on individually administered measures of cognition.

2.08(4)(a)(ii) A comprehensive adaptive skills assessment based on a body of evidence that reflects the child’s social, linguistic, and cultural background. The level of independent adaptive behavior is significantly below the culturally imposed expectations of personal and social responsibility. This body of evidence shall include results from each of the following:

2.08(4)(a)(ii)(A) A full scale score of 2.0 or more standard deviations below the mean on a standard or nationally normed assessment of adaptive behavior;

2.08(4)(a)(ii)(B) Interview of parents; and

2.08(4)(a)(ii)(C) Observations of the child’s adaptive behavior that must occur in more than one educational setting. A discrepancy must occur in two or more domains related to adaptive behavior in more than one educational setting.

2.08(4)(b) A deficiency in academic achievement, either as indicated by scores 2.0 or more standard deviations below the mean in formal measures of language, reading and math,

or a body of evidence on informal measures when it is determined that reliable and valid assessment results are not possible due to the student's functioning level.

2.08(5) A child with Multiple Disabilities shall have two or more areas of significant impairment, one of which shall be an intellectual disability. The other areas of impairment include: Orthopedic Impairment; Visual Impairment, Including Blindness; Hearing Impairment, Including Deafness; Speech or Language Impairment; Serious Emotional Disability; Autism Spectrum Disorders; Traumatic Brain Injury; or Other Health Impaired. The combination of such impairments creates a unique condition that is evidenced through a multiplicity of severe educational needs which prevent the child from receiving reasonable educational benefit from general education.

2.08(5)(a) In order to be eligible as a child with multiple disabilities, the child must satisfy all eligibility criteria for each individual disability, as described in these Rules. Documentation for each identified eligibility category must be included.

2.08(5)(b) The Multiple Disabilities, as described in section 2.08(5) above, prevents the child from receiving reasonable educational benefit from general education such that the child exhibits two or more of the following:

2.08(5)(b)(i) Inability to comprehend and utilize instructional information.

2.08(5)(b)(ii) Inability to communicate efficiently and effectively.

2.08(5)(b)(iii) Inability to demonstrate problem solving skills when such information is presented in a traditional academic curriculum.

2.08(5)(b)(iv) Inability to generalize skills consistently.

2.08(6) A child with an Orthopedic Impairment has a severe neurological/muscular/skeletal abnormality that impedes mobility, which prevents the child from receiving reasonable educational benefit from general education.

2.08(6)(a) Orthopedic Impairment may be a result of a congenital anomaly (e.g. spina bifida, osteogenesis imperfecta, clubfoot); effects of a disease (e.g. bone tumor, muscular dystrophy, juvenile arthritis); or from other causes (e.g. cerebral palsy, amputations, trauma, and/or fractures or burns that cause contractures).

2.08(6)(b) The Orthopedic Impairment, as described above, prevents the child from receiving reasonable educational benefit from general education because the disabling condition interferes with functions of daily living, including but not limited to, ambulation, attention, hand movements, coordination, communication, self-help skills and other activities of daily living, to such a degree that the child requires specialized instruction and related services, which may include special equipment.

2.08(7) Other Health Impaired (OHI) means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment due to a chronic or acute health problem, including but not limited to asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, leukemia, kidney disease, sickle cell anemia or Tourette syndrome. As a result of the child's Other Health Impairment, as described above, the child is prevented from receiving reasonable educational benefit from general education, as evidenced by one or more of the following:

2.08(7)(a) Limited strength as indicated by an inability to perform typical tasks at school;

2.08(7)(b) Limited vitality as indicated by an inability to sustain effort or to endure throughout an activity; and/or

2.08(7)(c) Limited alertness as indicated by an inability to manage and maintain attention, to organize or attend, to prioritize environmental stimuli, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.

2.08(8) A child with a Specific Learning Disability shall have a learning disorder that prevents the child from receiving reasonable educational benefit from general education.

2.08(8)(a) Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of: visual impairment, including blindness; hearing impairment, including deafness; orthopedic impairment; intellectual disability; serious emotional disability; cultural factors; environmental or economic disadvantage; or limited English proficiency.

2.08(8)(b) A child may be determined to have a Specific Learning Disability that prevents the child from receiving reasonable educational benefit from general education if a body of evidence demonstrates the following criteria are met:

2.08(8)(b)(i) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards and exhibits significant academic skill deficit(s) in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

2.08(8)(b)(i)(A) Oral expression;

2.08(8)(b)(i)(B) Listening comprehension;

2.08(8)(b)(i)(C) Written expression;

2.08(8)(b)(i)(D) Basic reading skill;

2.08(8)(b)(i)(E) Reading fluency skills;

2.08(8)(b)(i)(F) Reading comprehension;

2.08(8)(b)(i)(G) Mathematical calculation;

2.08(8)(b)(i)(H) Mathematics problem solving; and

2.08(8)(b)(ii) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in Section 2.08(8)(b)(i) when using a process based on the child's response to scientific, research-based intervention.

2.08(9) A child with a Speech or Language Impairment shall have a communicative disorder which prevents the child from receiving reasonable educational benefit from general education.

2.08(9)(a) Speech or Language Impairment may be classified under the headings of articulation, fluency, voice, functional communication or delayed language development and shall mean a dysfunction in one or more of the following:

2.08(9)(a)(i) Receptive and expressive language (oral and written) difficulties, including syntax (word order, word form, developmental level), semantics (vocabulary, concepts and word finding), and pragmatics (purposes and uses of language);

2.08(9)(a)(ii) Auditory processing, including sensation (acuity), perception (discrimination, sequencing, analysis and synthesis), association and auditory attention;

2.08(9)(a)(iii) Deficiency of structure and function of oral peripheral mechanism;

2.08(9)(a)(iv) Articulation including substitutions, omissions, distortions or additions of sound;

2.08(9)(a)(v) Voice, including deviation of respiration, phonation (pitch, intensity, quality), and/or resonance;

2.08(9)(a)(vi) Fluency, including hesitant speech, stuttering, cluttering and related disorders; and/or

2.08(9)(a)(vii) Problems in auditory perception such as discrimination and memory.

2.08(9)(b) The Speech or Language Impairment, as set out above, prevents the child from receiving reasonable educational benefit from general education and shall include one or more of the following:

2.08(9)(b)(i) Interference with oral and/or written communication in academic and social interactions in his/her primary language;

2.08(9)(b)(ii) Demonstration of undesirable or inappropriate behavior as a result of limited communication skills; and/or

2.08(9)(b)(iii) The inability to communicate without the use of assistive, augmentative/alternative communication devices or systems.

2.08(10) A child with a Traumatic Brain Injury (TBI) is a child with an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, which impairment adversely affects the child's ability to receive reasonable educational benefit from general education. A qualifying Traumatic Brain Injury is an open or closed head injury resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term "traumatic brain injury" under this rule does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

2.08(10)(a) To be eligible as a child with a Traumatic Brain Injury, there must be evidence of the following criteria:

2.08(10)(a)(i) Either medical documentation of a traumatic brain injury, or a significant history of one or more traumatic brain injuries reported by a reliable and credible source and/or corroborated by numerous reporters; and

2.08(10)(a)(ii) The child displays educational impact most probably and plausibly related to the traumatic brain injury.

2.08(10)(b) Additionally, to be eligible as a child with a Traumatic Brain Injury, the traumatic brain injury prevents the child from receiving reasonable educational benefit from general education as evidenced by one or more of the following:

2.08(10)(b)(i) A limited ability to sustain attention and/or poor memory skills, including but not limited to difficulty retaining short-term memory, long-term memory, working memory and incidental memory;

2.08(10)(b)(ii) An inefficiency in processing, including but not limited to a processing speed deficit and/or mental fatigue;

2.08(10)(b)(iii) Deficits in sensory-motor skills that affect either one, or both, visual or auditory processing, and may include gross motor and/or fine motor deficits;

2.08(10)(b)(iv) Delays in acquisition of information including new learning and visual-spatial processing;

2.08(10)(b)(v) Difficulty with language skills, including but not limited to receptive language, expressive language and social pragmatics;

2.08(10)(b)(vi) Deficits in behavior regulation, including but not limited to impulsivity, poor judgment, ineffective reasoning and mental inflexibility;

2.08(10)(b)(vii) Problems in cognitive executive functioning, including but not limited to difficulty with planning, organization and/or initiation of thinking and working skills;

2.08(10)(b)(viii) Delays in adaptive living skills, including but not limited to difficulty with activities of daily living (ADL); and/or

2.08(10)(b)(ix) Delays in academic skills, including but not limited to reading, writing, and math delays that cannot be explained by any other disability. They may also demonstrate an extremely uneven pattern in cognitive and achievement testing, work production and academic growth.

2.08(11) A child with a Visual Impairment, Including Blindness shall have a deficiency in visual acuity and/or visual field and/or visual functioning where, even with the use of lenses or corrective devices, he/she is prevented from receiving reasonable educational benefit from general education.

2.08(11)(a) A determination that a child is an eligible child with a Visual Impairment, Including Blindness shall be based upon one or more of the following:

2.08(11)(a)(i) Visual acuity of no better than 20/70 in the better eye after correction;

2.08(11)(a)(ii) Visual field restriction to 20 degrees or less; and/or

2.08(11)(a)(iii) A physical condition of visual system which cannot be medically corrected and, as such, affects visual functioning to the extent that specially designed instruction is needed. These criteria are reserved for special situations such as, but not restricted to cortical visual impairment and/or a progressive visual loss where field and/or acuity deficits alone may not meet the aforementioned criteria.

2.08(11)(b) As a result of the Visual Impairment, Including Blindness, as set out above, the child requires specialized instruction, which may include special aids, materials, and equipment, for learning, literacy, activities of daily living, social interaction, self advocacy, and, as needed, orientation and mobility.

2.08(11)(c) The term "Visual Impairment, Including Blindness" does not include children who have learning problems which are primarily the result of visual perceptual and/or visual motor difficulties.

2.08(12) A child with Deaf-blindness has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. A child may qualify as an eligible child with Deaf-blindness by meeting one of the following criteria:

2.08(12)(a) The child shall have a deficiency in hearing sensitivity as demonstrated by an elevated threshold of auditory sensitivity to pure tones or speech, as specified in section 2.08(2)(a) and (b); and a deficiency in visual acuity and/or visual field and/or visual functioning, as specified in section 2.08(11)(a) and (b), where, even with the help of amplification and/or use of lenses or corrective devices, he/she is prevented from receiving reasonable educational benefit from general education; or

2.08(12)(b) The child has documented hearing and/or visual impairment that, if considered individually per section 2.08(2)(a) and (b) and section 2.08(11)(a) and (b), may not meet the requirements for Hearing Impairment, Including Deafness or Visual Impairment, Including Blindness, but the combination of such losses adversely affect the student's educational performance; or

2.08(12)(c) The child has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses.

2.08(13) A child with a Developmental Delay shall be three through eight years of age and who is experiencing developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development and as a result is unable to receive reasonable educational benefit from general education and requires special education and related services.

2.08(13)(a) For children ages three through eight efforts will be made to identify a child's primary disability under one of the other Part B eligibility criteria. A child shall be determined to be eligible under the Developmental Delay category only in those situations in which a clear determination cannot be made under any other category as measured by developmentally appropriate diagnostic instruments and procedures. In order for a child to be deemed a child with a Developmental Delay, multiple sources of information must be used to determine if a child meets one or more of the following criteria:

2.08(13)(a)(i) A score in the seventh percentile or below on a valid standardized diagnostic instrument, or the technical equivalent in standard scores (77 if the mean is 100 and the standard deviation is 15) or standard deviations (1.5 standard deviations below the mean) in one or more of the following areas of development: physical development, cognitive development, communication development, social or emotional development, or adaptive development as one of the multiple sources of evaluation information;

2.08(13)(a)(ii) Empirical data showing a condition known to be associated with significant delays in development; or

2.08(13)(a)(iii) A body of evidence indicating that patterns of learning are significantly different from age expectations across settings and there is written documentation by the evaluation team which includes the parent(s).

2.08(14) An Infant / Toddler with a Disability shall be a child from birth through two years of age meeting the definition and criteria described in 2 CCR 503-1, 16.920 D.

2.09 Communication Mode or Language

Communication Mode or Language means one or more of the following systems or methods of communication applicable to children who are deaf or hard of hearing:

2.09(1) American Sign Language;

2.09(2) English-based manual or sign systems; or

2.09(3) Oral, aural, or speech-based training.

2.10 Consent

Consent means that:

2.10(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

2.10(2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

2.10(3)(a) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

2.10(3)(b) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

2.10(3)(c) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

2.11 Day; Business Day; School Day

2.11(1) *Day* means calendar day unless otherwise indicated as business day or school day.

2.11(2) *Business Day* means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day (e.g., 34 CFR §300.148(d)(1)(ii)).

2.11(3) *School Day* has the same meaning for all children in school, including children with and without disabilities and shall mean any day, including a partial day that children are in attendance at school for instructional purposes.

2.12 Department

Department means the Department of Education, created and existing pursuant to Section 24-1-115, C.R.S.

2.13 Educational Surrogate Parent

Educational Surrogate Parent shall mean a person who meets the qualifications established in Section 6.02(8)(e)(iii) of these Rules and is assigned to represent the child in all educational decision-making processes pertaining to the identification, evaluation, educational placement of the child and the provision of a free, appropriate public education to the child whenever the parent of a child with a disability is unknown, cannot be located, is unavailable or the child is a ward of the State. The assignment of an educational surrogate parent shall be in accordance with Section 6.02(8) of these Rules.

2.14 Equipment

Equipment means that equipment used especially for the instruction or evaluation of children with disabilities.

2.15 ESEA

ESEA means the federal " Elementary and Secondary Education Act ", 20 U.S.C. § §6301-9276.

2.16 Evaluation

2.16(1) For purposes of Part B of IDEA, the term *"Evaluation"* means procedures used in accordance with Section 4.02(2) of these Rules, to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

2.16(2) For purposes of Part C Child Find of IDEA, the term *"Evaluation"* means procedures used to determine a child's initial and continuing eligibility for Part C Child Find, including but not limited to:

2.16(2)(a) Determining the status of the child in each of the developmental areas;

2.16(2)(b) Identifying the child's unique strengths and needs;

2.16(2)(c) Identifying any early intervention services that might serve the child's needs; and

2.16(2)(d) Identifying priorities and concerns of the family and resources to which the family has access.

2.17 Excess Costs

When used in 34 CFR Part B, *Excess Costs* means those costs that are in excess of the average annual per-student expenditure in an AU or state-operated program during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting: When used in 34 CFR Part B, Excess Costs means those costs that are in excess of the average annual per-student expenditure in an AU or state-operated program during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting:

2.17(1) Amounts received:

2.18(1)(a) Under Part B of the Act;

2.18(1)(b) Under Part A of Title I of the ESEA; and

2.18(1)(c) Under Parts A and B of Title III of the ESEA and;

2.17(2) Any state or local funds expended for programs that would qualify for assistance under any of the Parts described in paragraph (1) of this Section, but excluding any amounts for capital outlay or debt service. (See Appendix A of 34 CFR Part 300 for an example of how excess costs must be calculated.)

2.17(3) This definition for "Excess Costs" is different from the term "Tuition Costs" as defined in Section 9.00 of these Rules.

2.18 Facility

Facility means a day treatment center, residential child care facility, or other facility licensed by the department of human services pursuant to section 26-6-104, C.R.S., or a hospital licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S.

2.18(1) *Approved Facility School* means an educational program that is operated by a facility to provide educational services to students placed in the facility, including special education services to children with disabilities, and that has been placed, pursuant to section 22-2-407, C.R.S., on the list of facility schools that are approved to receive reimbursement for providing those educational services. An educational program provided by an administrative unit at a facility is not an approved facility school, but rather is an educational program of the administrative unit that does not require approval by the Department.

2.19 Free Appropriate Public Education

Free Appropriate Public Education or FAPE means special education and related services that:

2.19(1) Are provided at public expense, under public supervision and direction, and without charge;

2.19(2) Meet the standards of the Department, including the requirements of these Rules;

2.19(3) Include an appropriate preschool, elementary school, or secondary school education in the State; and

2.19(4) Are provided in conformity with an individualized education program (IEP) that meets the IEP content, development, review and revision requirements of Section 4.03 of these Rules and 34 CFR § §300.320 through 300.324.

2.20 Highly Qualified Special Education Teachers

Special education teachers in administrative units, state-operated programs and approved facility schools, who are teaching core academic subjects (i.e., English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography) must meet the highly qualified requirements established in 34 CFR §300.18.

2.21 Homeless Children

Homeless Children has the meaning given the term Homeless Children and Youths in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq. and Section 22-1-102.5, C.R.S.

2.22 IDEA

IDEA means the federal "Individuals with Disabilities Education Improvement Act of 2004", 20 U.S.C. §1400 et seq., as amended, and its implementing regulations, 34 CFR Part 300 and also 34 CFR Part 303, as those regulations pertain to child find.

2.23 Include

Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

2.24 Individualized Education Program

Individualized Education Program or *IEP* means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Section 4.03 of these Rules and 34 CFR § §300.320 through 300.324.

2.25 Individualized Education Program Team

Individualized Education Program Team or *IEP* Team means a group of individuals described in Section 4.03(5) of these Rules that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

2.26 Individual Family Service Plan

Individual Family Service Plan or *IFSP* means a written statement for a child from birth through two years of age with a disability, which statement is developed, reviewed, and revised in accordance with Part C Child Find of IDEA and with rules promulgated by the Department of Human Services.

2.27 Institution of Higher Education

Institution of Higher Education -

2.27(1) Has the meaning given the term in Section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and

2.27(2) Also includes any community college receiving funds from the Secretary of the Interior under the tribally controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

2.28 Least Restrictive Environment

Consistent with 34 CFR §300.114(a)(2), *Least Restrictive Environment* means that:

2.28(1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

2.28(2) Special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general educational classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2.29 Limited English Proficient

Limited English Proficient has the meaning given the term in Section 9101(25) of the ESEA.

2.30 Literacy Mode

Literacy Mode means one of the following four systems or methods of achieving literacy applicable to children who are blind:

2.30(1) Auditory Mode means any method or system of achieving literacy that depends upon the auditory senses, including the use of readers, taped materials, electronic speech, speech synthesis, or any combination of the above.

2.30(2) Braille means the system of reading and writing by means of raised points, commonly known as Standard English Braille.

2.30(3) Print Enlargement means any method or system of achieving literacy that includes optical aids to enhance apprehension of printed material, electronic enlargement or printed material, books and textual materials printed in large print, and any combination of the above.

2.30(4) Regular Print Mode means any method or system of achieving literacy that depends upon the apprehension of regular-sized printed material.

2.31 Local Educational Agency

When used in 34 CFR Part B, the term *Local Educational Agency* means an administrative unit, as defined in Section 2.02 of these Rules, or a state-operated program as defined in Section 2.49 of these Rules.

2.32 Native Language

2.32(1) *Native Language*, when used with respect to an individual who is limited English proficient, means the following:

2.32(1)(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (1)(b) of this Section.

2.32(1)(b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

2.32(2) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

2.33 Parent

2.33(1) *Parent* means-

2.33(1)(a) A biological or adoptive parent of a child;

2.33(1)(b) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

2.33(1)(c) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

2.33(1)(d) An individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

2.33(1)(e) An educational surrogate parent who has been assigned in accordance with Section 6.02(8) of these Rules.

2.33(2)(a) Except as provided in Section (2)(b) of this Rule 2.33, the biological or adoptive parent, when attempting to act as the parent under these Rules and when more than one party is qualified under Section (1) of this Rule 2.33 to act as a parent, must be presumed to be the parent for purposes of this Section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

2.33(2)(b) If a judicial decree or order identifies a specific person or persons under Sections (1)(a) through (d) of this Rule 2.33 to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this Section.

2.34 Personally Identifiable

Personally Identifiable means information that contains-

2.34(1) The name of the child, the child's parent, or other family member;

2.34(2) The address of the child;

2.34(3) A personal identifier, such as the child's social security number or student number; or

2.34(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

2.35 Public Agency

The term *" Public Agency "* :

2.35(1) When used in connection with out of district placements, shall have the meaning given it in Section 9.01(5) of these Rules.

2.35(2) When used in 34 CFR Part 300, shall mean an administrative unit, as defined in Section 2.02 of these Rules, and a state-operated program as defined in Section 2.49 of these Rules.

2.36 Public Placement

The term *"Public Placement"* shall have the meaning given it in Section 9.01(6) of these Rules.

2.37 Related Services

2.37(1) General.

Related Services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and

includes audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and evaluation of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services; social work services in schools; and parent counseling and training.

2.37(2) Exception.

Services that apply to children with surgically implanted devices, including cochlear implants.

2.37(2)(a) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

2.37(2)(b) Nothing in Section 2.37(2)(a)-

2.37(2)(b)(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this Section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

2.37(2)(b)(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

2.37(2)(b)(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in 34 CFR §300.113(b).

2.37(3) Individual related services terms defined.

The terms used in this definition are defined as follows:

2.37(3)(a) Audiology includes-

2.37(3)(a)(i) Identification of children with hearing loss;

2.37(3)(a)(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

2.37(3)(a)(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

2.37(3)(a)(iv) Creation and administration of programs for prevention of hearing loss;

2.37(3)(a)(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

2.37(3)(a)(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

2.37(3)(b) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

2.37(3)(c) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

2.37(3)(d) Interpreting services that includes-

2.37(3)(d)(i) The following, when used with respect to children who are deaf or hard of hearing: oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), c-print, and typewell; and

2.37(3)(d)(ii) Special interpreting services for children who are deaf-blind.

2.37(3)(e) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

2.37(3)(f) Occupational therapy-

2.37(3)(f)(i) Means services provided by a qualified occupational therapist; and

2.37(3)(f)(ii) Includes-

2.37(3)(f)(ii)(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

2.37(3)(f)(ii)(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

2.37(3)(f)(ii)(C) Preventing, through early intervention, initial or further impairment or loss of function.

2.37(3)(g) Orientation and mobility services-

2.37(3)(g)(i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

2.37(3)(g)(ii) Includes teaching children the following, as appropriate:

2.37(3)(g)(ii)(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

2.37(3)(g)(ii)(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

2.37(3)(g)(ii)(C) To understand and use remaining vision and distance low vision aids; and

2.37(3)(g)(ii)(D) Other concepts, techniques, and tools.

2.37(3)(h) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

2.37(3)(i) Physical therapy means services provided by a qualified physical therapist.

2.37(3)(j) Psychological services includes-

2.37(3)(j)(i) Administering psychological and educational tests, and other assessment procedures;

2.37(3)(j)(ii) Interpreting assessment results;

2.37(3)(j)(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

2.37(3)(j)(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

2.37(3)(j)(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

2.37(3)(j)(vi) Assisting in developing positive behavioral intervention strategies.

2.37(3)(k) Recreation includes-

2.37(3)(k)(i) Assessment of leisure function;

2.37(3)(k)(ii) Therapeutic recreation services;

2.37(3)(k)(iii) Recreation programs in schools and community agencies; and

2.37(3)(k)(iv) Leisure education.

2.37(3)(l) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

2.37(3)(m) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

2.37(3)(n) Social work services in schools includes-

2.37(3)(n)(i) Preparing a social or developmental history on a child with a disability;

2.37(3)(n)(ii) Group and individual counseling with the child and family;

2.37(3)(n)(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

2.37(3)(n)(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

2.37(3)(n)(v) Assisting in developing positive behavioral intervention strategies.

2.37(3)(o) Transportation includes-

2.37(3)(o)(i) Travel to and from school and between schools;

2.37(3)(o)(ii) Travel in and around school buildings; and

2.37(3)(o)(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

2.38 Scientifically Based Research

Scientifically Based Research has the meaning given the term in Section 9101(37) of the ESEA.

2.39 School

2.39(1) Elementary School

When used in 34 CFR Part B, *Elementary School* means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

2.39(2) Secondary School

When used in 34 CFR Part B, *Secondary School* means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

2.40 School District

School District means a school district organized and existing pursuant to law, but shall not include a junior college district.

2.41 Services Plan

Services Plan means a written statement that describes the special education and related services the administrative unit will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR §300.132, and is developed and implemented in accordance with 34 CFR § §300.137 through 300.139.

2.42 Secretary

The term *"Secretary",* when used in 34 CFR Parts 300 and 303, means the Secretary of the United States Department of Education.

2.43 Special Education

2.43(1) General.

2.43(1)(a) *Special Education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including -

2.43(1)(a)(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

2.43(1)(a)(ii) Instruction in physical education.

2.43(1)(b) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (1)(a) of this Section -

2.43(1)(b)(i) Speech-language pathology services that includes -

2.43(1)(b)(i)(A) Identification of children with speech or language impairments;

2.43(1)(b)(i)(B) Diagnosis and appraisal of specific speech or language impairments;

2.43(1)(b)(i)(C) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

2.43(1)(b)(i)(D) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

2.43(1)(b)(i)(E) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

2.43(1)(b)(i)(F) Rule of construction: A child with a disability, as defined in Section 2.08 of these Rules, shall be entitled to receive speech language pathology services as specially designed instruction if the child's IEP Team determines that the child needs speech language pathology services in order to receive a free appropriate public education.

2.43(1)(b)(ii) Travel training; and

2.43(1)(b)(iii) Vocational education.

2.43(2) Individual special education terms defined.

The terms in this definition are defined as follows:

2.43(2)(a) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.

2.43(2)(b) *Physical education* means -

2.43(2)(b)(i) The development of -

2.43(2)(b)(i)(A) Physical and motor fitness;

2.43(2)(b)(i)(B) Fundamental motor skills and patterns; and

2.43(2)(b)(i)(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

2.43(2)(b)(ii) Includes special physical education, adapted physical education, movement education, and motor development.

2.43(2)(c) *Specially designed* instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction -

2.43(2)(c)(i) To address the unique needs of the child that result from the child's disability; and

2.43(2)(c)(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards of the responsible administrative unit or state-operated program as established in Section 8.00 of these Rules.

2.43(2)(d) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to -

2.43(2)(d)(i) Develop an awareness of the environment in which they live; and

2.43(2)(d)(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

2.43(2)(e) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

2.44 Special Education Expenditures

Special Education Expenditures are those costs which are incurred by an administrative unit, state-operated program or approved facility school for professional services associated with special education referrals and evaluations of children who may be disabled and for the provision of special education and related services as identified on individual students' Individualized Educational Programs (IEPs), and do not include costs of the regular education program. Special Education expenditures shall be supplemental to the general education program and shall be above what is provided by the administrative unit, state-operated program, or approved facility school for general education students and staff and may include:

2.44(1) Special education teachers;

2.44(2) Home-hospital teachers for students with disabilities;

2.44(3) Speech-language pathologists and speech-language pathology assistants;

2.44(4) Specialty teachers (e.g., adapted physical education teachers, music teachers, art teachers, family and consumer education teachers, and industrial/technical education teachers);

2.44(5) Special education instruction paraprofessionals;

2.44(6) Educational interpreters;

2.44(7) School nurses;

2.44(8) Occupational therapists and occupational therapy assistants;

2.44(9) Physical therapists and physical therapy assistants;

2.44(10) School psychologists;

2.44(11) School social workers;

2.44(12) Audiologists;

2.44(13) Orientation and mobility specialists;

2.44(14) Other special education professionals;

2.44(15) Special education administrators and office support;

2.44(16) Other noncertified or nonlicensed support;

2.44(17) Employee benefits for special education staff;

2.44(18) Supplies, materials, and equipment used for individual students' special education programs and services;

2.44(19) Purchased service contracts for personal services;

2.44(20) Tuition to other administrative units and approved tuition rates to approved facility schools for special education;

2.44(21) Staff travel related to special education;

2.44(22) Professional development for special education staff, or all staff, if the content of the professional development is specific to services for children with disabilities;

2.44(23) Other purchased services related to special education;

2.44(24) Dues, fees and other expenditures specific to the special education program; and

2.44(25) Parent counseling and training, as defined by the IDEA and its implementing regulations.

2.45 Special Education Services

Special Education Services or *Special Education Programs* means the services or programs provided to a child with a disability in conformity with the child's IEP or IFSP.

2.46 State Board

State Board means the State Board of Education, created and existing pursuant to Section 1 of Article IX of the State Constitution.

2.47 State Charter School Institute

State Charter School Institute means the State Charter School Institute created pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.

2.48 State Educational Agency

The term *"State Educational Agency",* when used in 34 CFR Parts 300 and 303, means the Colorado Department of Education.

2.49 State-Operated Program

State-Operated Program means an approved school program supervised by the Department and operated by:

2.49(1) The Colorado School for the Deaf and the Blind;

2.49(2) The Department of Corrections; or

2.49(3) The Department of Human Services, including but not limited to the Division of Youth Corrections and the Mental Health Institutes at Fort Logan and Pueblo.

2.50 Supplementary Aids and Services

Supplementary Aids and Services means aids, services, and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 34 CFR § §300.114 through 300.116.

2.51 Transition Services

2.51(1) *Transition Services* means a coordinated set of activities for a child with a disability that -

2.51(1)(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

2.51(1)(b) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes -

2.51(1)(b)(i) Instruction;

2.51(1)(b)(ii) Related services;

2.51(1)(b)(iii) Community experiences;

2.51(1)(b)(iv) The development of employment and other post-school adult living objectives; and

2.51(1)(b)(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

2.51(2) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

2.52 Universal Design

The term *"Universal Design",* when used in 34 CFR Parts 300 and 303, has the meaning given the term in Section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

2.53 Ward of the State

As used in 34 CFR Part B, the term *Ward of the State* means:

2.53(1) General. Subject to 2.53(2) of this Section, ward of the State means a child who, as determined by the State where the child resides, is -

2.53(1)(a) A foster child;

2.53(1)(b) A ward of the State; or

2.53(1)(c) In the custody of a public child welfare agency.

2.53(2) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in Section 2.33 of these Rules.

2220-R-3.00 ADMINISTRATION

3.01 Standards For Administrative Units

3.01(1) A special education administrative unit shall satisfy the following standards.

3.01(1)(a) The administrative unit shall be deemed to be of sufficient size and geographic makeup if it fulfills the requirements of the IDEA, the ECEA and their implementing regulations. Administrative unit compliance with these requirements shall be measured by:

3.01(1)(a)(i) The administrative unit's performance as determined by monitoring activities conducted by the Department including: desk audits; focused and comprehensive on-site monitoring; dispute resolution findings; and verification activities to ensure timely correction of noncompliance;

3.01(1)(a)(ii) The administrative unit's performance as determined by its annual determination issued by the Department consistent with 34 CFR § 300.604 and related indicators under Colorado's IDEA Part B State Performance Plan;

3.01(1)(a)(iii) A federal application, approved by the Department, for IDEA Part B and Preschool grant funds;

3.01(1)(a)(iv) Compliance with all federal and state reporting requirements, including fiscal and data reporting requirements;

3.01(1)(a)(v) Compliance with IDEA Part B and IDEA Preschool grant fiscal requirements, including maintenance of effort, excess costs and "supplement not supplant" requirements;

3.01(1)(a)(vi) Maintaining auditable documentation to track expenditures of state and federal special education funds, to ensure that the funds are used solely for allowable uses, as defined by federal and state law;

3.01(1)(b) Provide for sufficient instructional and related services staff to identify and evaluate children who are suspected of having a disability, and plan for and provide appropriate services for all children with disabilities as defined by ECEA Rule 2.08.

3.01(1)(c) Employment of a properly licensed and endorsed professional who will function at least half time as director of special education and who has the authority and responsibility to assure that all the duties and responsibilities of the administrative unit as specified in these Rules are carried out.

3.01(1)(d) Development and implementation of compliant special education comprehensive plan as required by IDEA and approved by the Department.

3.01(1)(e) Accurate completion and submission of all special education student, staff, cost and revenue data on or before dates established by the Department of Education.

3.01(1)(f) Governance by a board which may be a local board as follows:

3.01(1)(f)(i) In the case of a single district administrative unit, the local board of education;

3.01(1)(f)(ii) In the case of an administrative unit that is a board of cooperative services, the board of cooperative services;

3.01(1)(f)(iii) In the case of a multi-district consortium approved by the Department prior to January 1, 2011, a local board comprised of representatives from each of the member school districts; and

3.01(1)(f)(iv) In the case of the Charter School Institute, the Institute Board.

3.01(2) Organization of Administrative Units

Every school district and Board of Cooperative Services that provides services to children with disabilities shall be an administrative unit or a part of an administrative unit.

3.01(2)(a) Districts that do not meet the qualifications of an administrative unit shall enter into an operating agreement to become part of an approved administrative unit that is a board of cooperative services and shall abide by all policies and procedures contained in that unit's comprehensive plan. Multi-district administrative units shall have signed operating agreements entered into by the administrative unit with its member districts. Such operating agreements shall clearly set out the special education responsibilities of the administrative unit and each member district and shall be binding throughout the period of the operating agreement, regardless of change in governance of the member school districts, change in composition of the administrative unit, or personnel changes in a member district or the administrative unit. The operating agreement shall also address the special education fiscal arrangement between the AU and its member districts.

3.01(2)(b) The administrative unit shall provide special education services to all children with disabilities within its responsibility as defined in Section 8.00 of the Rules.

3.01(2)(c) Existing units that do not meet the qualifications and/or for the efficient administration of or provision of services stipulated in these Rules shall be subject to

revocation of unit status and loss of all state and federal special education funds. Notice of such revocation shall be in writing from the Department of Education and subject to the appeal process.

3.01(3) Applications for new or reorganized Administrative Units

3.01(3)(a) Administrative units or member school districts of administrative units desiring to form new or reorganized administrative units shall submit an application to the State Director of Special Education and the AU of which the district is currently a member by September 1 of the year preceding the fiscal year in which the new administrative unit proposes to begin operation. This application will demonstrate it has the capacity to meet the standards of 3.01 and shall include:

3.01(3)(a)(i) A letter of intent that:

3.01(3)(a)(i)(A) Specifies the objectives to be sought by the change;

3.01(3)(a)(i)(B) Outlines how the proposed administrative unit will comply with the requirements of the ECEA Rules, including the operating agreement requirement for multi-district administrative units;

3.01(3)(a)(i)(C) Includes a proposed compliant comprehensive plan for the newly reorganized administrative unit(s);

3.01(3)(b) For any applicant(s) that has not met its current maintenance of effort requirement, the application must demonstrate that the current and the proposed administrative units will satisfy the maintenance of effort requirement;

3.01(3)(c) For any applicants(s) that has or creates an average cost per student with disabilities greater than or equal to the 93rd percentile or less than or equal to the 7th percentile of the state's average cost per student with disabilities, an explanation in its application of legitimate reasons for the deviations (e.g., impact of high cost students, geographic constraints, staffing costs) and/or how the proposed administrative unit will efficiently deliver special education services.

3.01(3)(d) For any applicant(s) that has not met the federal and state requirements for provision of special education services to students with disabilities, the application must demonstrate that the proposed administrative unit will have the capacity to meet those requirements.

3.01(3)(e) Either the Department or any entity impacted by an application for a new or reorganized administrative unit may requests the entity seeking the change to secure and pay for a report prepared by a Department-approved independent third party, which report shall describe the anticipated revenues and expenditures for all affected administrative units. The independent third party shall possess sufficient expertise in the following areas: accounting, special education budget development and projection, and special education fiscal requirements. The request for the third party report must be made within 30 calendar days of the day the Department notifies the applicant and affected entities that the application is complete (see Rule 3.01(4)).

3.01(4) Timelines for Review of Application for a New or Reorganized Administrative Unit

Upon receipt of an application to form a new or reorganized administrative unit, the Department shall review the application to determine whether it contains the documentation and information required by this Rule. The Department shall have 15 calendar days from the date of receipt of the

application to determine whether the application is complete. The Department shall provide the applicant and affected entities with written notification of its determination by the 16th day following the receipt of the application.

3.01(4)(a) If an applicant to form a new or reorganized administrative unit fails to timely submit a complete application containing the documentation and information required by this Rule, the application shall be deemed incomplete and shall be denied.

3.01(4)(b) If an applicant to form a new or reorganized administrative unit timely submits a complete application and the Department determines that it does not require additional information or documentation, the Department shall have 60 calendar days from the day it provides the applicant with the notification required by this section in which to approve or deny the application.

3.01(4)(c) If an applicant timely submits a complete application but the Department or another entity determines it requires additional information or documentation, the Department's notification shall identify the specific information or documentation requested, including, as necessary, information from affected administrative units. The applicant shall provide the requested information or documentation to the Department by October 1. The Department shall have 60 calendar days from the day it receives the supplemental information or documentation to approve or deny the application.

3.01(5) Department of Education Approval of Application for a New or Reorganized Administrative Unit

3.01(5)(a) The Department shall approve an application for a new or reorganized administrative unit only if the application materials submitted by the applicant demonstrate by clear and convincing evidence:

3.01(5)(a)(i) That the proposed administrative unit will be able to meet all of its obligations, including maintenance of effort, under state and federal special education law; and

3.01(5)(a)(ii) That the existing or remaining administrative unit will be able to meet all of its obligations, including maintenance of effort, under state and federal special education law.

3.01(5)(b) In reviewing an application, the Department shall also consider the impact of approving additional administrative units on the efficiency and effectiveness of all existing AUs and on the Department.

3.01(5)(c) The Department shall present its decision approving or denying an application in writing to the applicant and affected entities, including its reasons for denying an application, as applicable.

3.01(5)(d) If an affected entity disagrees with the determination of the Department, the affected entity may appeal the decision to the Commissioner of the Department of Education. In hearing an appeal, the Commissioner shall only overturn a decision by the Department upon a finding that that in approving or denying the application, the Department or the applicant violated the application procedures or processes required by the ECEA, or that the Department's decision was not supported by clear and convincing evidence presented in the application. The party bringing the appeal bears all burdens of proof, presentation and persuasion to demonstrate that the decision of the Department should be overturned.

3.01(5)(d)(i) The affected entity shall submit its appeal to the Commissioner within 60 days of the entity's receipt of the Department's decision to approve or deny the application.

3.01(5)(d)(ii) The Commissioner shall consider the appeal and make a determination concerning the appeal within 60 days of the date the appeal is submitted. The Commissioner shall provide written notice of the decision on appeal to the affected entity.

3.01(5)(d)(iii) The decision of the Commissioner shall be final and shall not be subject to further review. Neither the decision of the Department nor the Commissioner's decision on an appeal shall be appealable to the State Board of Education pursuant to ECEA Rule 7.07.

3.02 Standards for Approved Facility Schools and State Operated Programs

3.02(1) Approved Facility Schools – see Rules for the Administration of the Facility Schools Act, 1 CCR 304-1.

3.02(2) State Operated Programs

3.02(2)(a) Minimum Standards for State Operated Programs.

State Operated Programs shall satisfy the following standards.

3.02(2)(a)(i) Employment of sufficient instructional and related services staff to identify and assess children who are suspected of having a disability, and plan for and provide appropriate services for all children who have been determined to have a disability.

3.02(2)(a)(ii) Each state-operated program shall employ or contract in writing, on at least a part-time basis, for a Director of Special Education who meets the qualification standards established by Section 3.04(1)(d) of these Rules.

3.02(2)(a)(iii) Development and implementation of an approved special education comprehensive plan.

3.02(2)(a)(iv) Accurate completion and submission of all special education student, staff, cost and revenue data on or before dates established by the Department of Education.

3.02(2)(a)(v) Provision of special education and related services to all children with disabilities placed in or committed to the State Operated Program.

3.03 Resource Allocation

Sufficient personnel shall be available to provide for identification, referral, evaluation, determination of disability and eligibility for special education services and development and review of IEPs, and to provide appropriate special education instructional and related services to implement all IEPs for children with disabilities.

3.03(1) Each administrative unit shall have a method or standards by which it determines the number and types of special education personnel required to meet the needs of children with disabilities. Such method or standard shall be a part of the local comprehensive plan.

3.03(2) Each administrative unit shall assure that licensed/certificated personnel qualified in a child's identified area(s) of need will have diagnostic and ongoing instructional responsibilities and contact with the child and the child's other service providers and parents.

3.04 Personnel Qualifications

All personnel providing special education services to children with disabilities shall be qualified.

3.04(1) Personnel qualifications.

3.04(1)(a) Teachers

3.04(1)(a)(i) Special education.

All special education teachers shall hold Colorado teacher's certificates or licenses with appropriate endorsements in special education. Special education teachers shall also be highly qualified, consistent with Section 2.20 of these Rules.

Each special education teacher will serve, at a minimum, a majority of special education students with the same identified area of need as that teacher's special education license or certification endorsement. The endorsement level must be appropriate for the age being taught.

3.04(1)(a)(ii) Home-hospital.

Home-hospital teachers for children with disabilities shall hold Colorado teacher's certificates or licenses.

3.04(1)(a)(iii) Specialty.

Specialty teachers in music, art, adapted physical education, home economics, industrial arts and vocational education shall possess Colorado teacher's certificates or licenses with endorsements in the area of instruction.

3.04(1)(b) Related services personnel.

All related services personnel providing services to children with disabilities shall hold Colorado special services licenses or certificates with appropriate endorsements. For those areas for which Colorado special services licenses or certificates are not available, appropriate licenses from the state regulatory agency or professional organization registration are required.

3.04(1)(c) Special education coordinators.

Special education coordinators shall have at least a Bachelor's degree and certification and/or licensure in a relevant field. Documentation of their expertise shall be submitted to the Department of Education.

3.04(1)(d) Administrators.

Special education directors and assistant directors must possess a certificate or administrator's license with appropriate endorsement.

3.04(1)(e) Paraprofessionals.

Each administrative unit or approved facility school will determine the qualifications and competencies required for paraprofessionals. Administrative units and approved facility schools shall assure and document that they meet the requirements for supervision of non-certificated personnel as mandated under Section 22-32-110(1)(ee), C.R.S.

3.04(1)(f) Educational Interpreters

As of July 1, 2000, any person employed as an Educational Interpreter by an administrative unit or approved facility school on a full-time or part-time basis shall meet the following minimum standards, and documentation for meeting these standards must be renewed every five years:

3.04(1)(f)(i) Demonstration of a rating of 3.5 (average) or better in the four areas of the Educational Interpreter Performance Assessment (EIPA).

3.04(1)(f)(ii) Documented content knowledge in these areas: child development, language development, curriculum, teaching and tutoring methods, deafness and the educational process for deaf children.

The Colorado Department of Education will provide guidelines for the implementation of these minimum standards.

3.04(2) [Expired 05/15/2014 per House Bill 14-1123]

3.05 Staff Development

Administrative units and approved facility schools shall provide for staff development to assure opportunities for appropriate educational services to children with disabilities.

3.05(1) Opportunities for staff development shall be provided to foster the continuing development of the awareness, skills and knowledge of each staff member.

3.05(1)(a) Opportunities for staff development shall be furnished to all staff providing direct or indirect services to children with disabilities.

3.05(1)(b) Opportunities for staff development activities shall be designed to bring about changes in knowledge, attitudes, actual performance skills and interpersonal relations of staff members.

3.05(2) Staff development shall include an evaluation component to determine its effectiveness.

3.06 Program Evaluation

Each administrative unit or approved facility school shall maintain records of results of all qualitative and quantitative evaluations of special education services rendered. Evaluations of special education services shall occur annually and within a period of five years systematically cover aspects of services to children with disabilities. Such evaluations shall review:

3.06(1) Extent to which quality special education policies and practices are in place and where improvements can occur.

3.06(2) Degree to which children with disabilities are achieving their individual goals as well as school, district, and state standards and student outcomes.

2220-R-4.00 CHILD FIND, EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

4.01 Parental Consent

Except for IDEA Part C Child Find, the parental consent requirements and procedures set forth in 34 CFR §300.300 shall apply in their entirety to this Section 4.00.

4.02 Child Identification Process

4.02(1) General Requirements

4.02(1)(a) Administrative Units.

Each administrative unit shall develop and implement procedures for locating, identifying and evaluating all children ages birth to 21 who may have a disability and are eligible for early intervention services under either IDEA Part C Child Find (birth through age 2); or are eligible for special education services under IDEA Part B (ages 3 to 21) even though such children are advancing from grade to grade. Such procedures shall be available throughout the year to all children including children who have not yet entered school, children who discontinue their education, children who are attending private schools, children whose parents choose home schooling, children who are wards of the State or children who are highly mobile (such as migrant or homeless children) and may be suspected of having a disability.

4.02(1)(a)(i) IDEA Part C Child Find

4.02(1)(a)(i)(A) For children ages birth through 2 years of age, each administrative unit of residence is responsible for certain child find activities under Part C of the IDEA consistent with Section 22-20-118 (2), C.R.S.

4.02(1)(a)(i)(B) Screening and evaluation activities required by Section 22-20-118 (2)(b), C.R.S., shall be consistent with Part C of the IDEA and its implementing regulations at 34 CFR Part 303.

4.02(1)(a)(ii) IDEA Part B Child Identification

Part B child identification shall include child find, special education referral, initial evaluation, and determination of disability and eligibility for special education. Child identification shall be the responsibility of the administrative unit in which the child attends public or private school or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides. For children ages 3 to 21 under IDEA Part B, child identification shall be consistent with Sections 4.01 and 4.02 of these Rules.

4.02(1)(b) State-Operated Programs – Part B Child Identification.

For children for whom a state-operated program is responsible, as established in Section 8.00 of these Rules, each state-operated program shall adopt and implement procedures for locating, identifying and evaluating all children who may have a disability and be eligible for special education, even though they are advancing from grade to grade. Child identification, when used in connection with state-operated programs, includes relevant components of child find; special education referral; initial evaluation; and determination of disability and eligibility.

4.02(2) IDEA Part B Child Find.

4.02(2)(a) The IDEA Part B child find process shall:

4.02(2)(a)(i) Be a process designed to inform the public and to identify children ages 3 to 21 who may be eligible to receive special education services. Notice shall be published or announced in newspapers or other media with adequate circulation to notify parents throughout the administrative unit.

4.02(2)(a)(ii) Be designed to utilize available resources within the community.

4.02(2)(a)(iii) Involve families and provide information to the families.

4.02(2)(b) Each administrative unit and state-operated program shall have one person designated as the child find coordinator who shall be responsible for an ongoing child identification process.

4.02(2)(c) The child find process shall include specific strategies for children 3 through five years of age, children in school, and children out of school who are discontinuers or dropouts. It shall be available throughout the year and shall include the following components:

4.02(2)(c)(i) Planning and development in the areas of public awareness, community referral systems, community and building based screening, diagnostic evaluations, service coordination and staff development.

4.02(2)(c)(ii) Coordination and implementation in the areas of interagency collaboration, public awareness, referral, screening and resource coordination.

4.02(2)(c)(iii) Screening procedures for identifying from the total population of children ages 3 to 21 years those who may need more in-depth evaluation in order to determine eligibility for special education and related services.

Follow up to vision and hearing screening shall interface with the vision and hearing screenings which occur for all children in public preschool, kindergarten, grades 1, 2, 3, 5, 7 and 9 yearly in accordance with Section 22-1-116, C.R.S. Appropriate educational referrals shall be made if the child is suspected of having an educationally significant vision or hearing loss and parents shall be informed of any need for further medical evaluation.

4.02(2)(c)(iv) A systematic procedure for considering those children ages 17 to 21 who are out of school and who may have a disability.

4.02(2)(c)(v) Referral procedures to ensure that parents of children are given information about all public and private resources that can meet identified needs. This may include a process for a building level referral. The purpose of the building level process is to consider all pertinent information, the unique needs of the child and to generate alternative strategies, such as Response to Intervention (RtI), for meeting these needs in non-special education settings or to determine the need for special education referral. These procedures may include dropout prevention strategies and recruitment of special education discontinuers.

4.02(2)(c)(vi) Evaluation of the effectiveness and efficiency of child identification procedures.

4.02(3) Special Education Referral Process

A special education referral shall be clearly distinguished from a building level referral or a referral for screening both of which are regular education processes. The administrative unit or state-operated program shall establish and follow procedures for referring a child for an initial evaluation to determine whether or not the child has a disability and needs special education and related services.

4.02(3)(a) A special education referral may be initiated by either:

4.02(3)(a)(i) An administrative unit or state-operated program as a result of a building level screening and/or referral process; or

4.02(3)(a)(ii) The parent of the child.

Any other interested person who believes that a child is in need of an initial evaluation must work with the parent or the appropriate administrative unit or state-operated program.

4.02(3)(b) A parent of any child referred shall be informed of the referral and be provided with prior written notice consistent with Section 6.02(3) and 34 CFR §300.503 and a copy of the Procedural Safeguards Notice consistent with Section 6.02(4) and 34 CFR §300.504.

4.02(3)(c) Once a written special education referral has been initiated, the initial evaluation, shall be completed within 60 calendar days from the point of initiation of the special education referral. The special education referral process is initiated when one of the following occurs:

4.02(3)(c)(i) The parent is informed of the special education referral as a result of the building level process or screening and the parent provides written consent to conduct the initial evaluation; or

4.02(3)(c)(ii) The request for an initial evaluation is received from the parent and the parent provides written consent to conduct the initial evaluation.

4.02(3)(c)(iii) Exception. The time frame described in Section 4.02(3)(c) within which to conduct an initial evaluation shall not apply to the administrative unit or state-operated program if:

4.02(3)(c)(iii)(A) The parent of a child repeatedly fails or refuses to produce the child for evaluation; or

4.02(3)(c)(iii)(B) A child enrolls in a school of another AU or state-operated program after the relevant timeframe in Section 4.02(3)(c) of these Rules has begun, and prior to a determination by the child's previous AU or state-operated program as to whether the child is child with a disability under Section 2.08 of these Rules.

4.02(3)(c)(iv) The exception in Section 4.02(3)(c)(iii) applies only if the subsequent AU or state-operated program is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent AU or state-operated program agree to a specific time when the evaluation will be completed.

4.02(3)(d) A record shall be maintained of the disposition of each special education referral.

4.02(4) Initial Evaluation Process.

An initial evaluation process for children ages three to twenty-one shall be provided for the purposes of determining whether the child is a child with a disability under Section 2.08 of these Rules and what the educational needs of the child are. The requirements and procedures for initial evaluations shall be in accordance with 34 CFR §300.301, §300.304 and §300.305 and shall ensure that the initial evaluation is sufficiently comprehensive to appropriately identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

4.02(4)(a) Parental Consent.

Prior to conducting an initial evaluation, the administrative unit or state-operated program shall comply with the parental consent requirements set forth in 34 CFR §300.300.

4.02(4)(b) Screening for instructional purposes is not an evaluation.

The screening of a student by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

4.02(4)(c) Personnel shall be appropriately licensed and endorsed.

Administrative unit and state-operated program personnel evaluating children for the purpose of determining eligibility for special education services shall be appropriately licensed and endorsed. For those areas where CDE licensure and endorsement are not available, appropriate professional licensure, registration or credentials is required.

4.02(5) Reevaluations.

The requirements and procedures for conducting and completing reevaluations shall be consistent with 34 CFR §300.303 and Section 4.02(4) of these Rules. The additional procedures for identifying specific learning disability shall also be utilized consistent with Section 4.02(7) of these Rules.

4.02(6) Determination of Disability and Eligibility.

Requirements and procedures for determining disability and eligibility shall be consistent with 34 CFR §300.306. Once a special education referral has been made and the initial evaluation has been completed, a meeting shall be held to determine if the child has a disability and if the child is eligible for special education. If the child is determined to have a disability and is eligible, an IEP shall be developed for the child in accordance with Section 4.03 of these Rules. These functions may occur at the same meeting or at different meetings.

4.02(6)(a) Timeline.

4.02(6)(a)(i) A meeting to discuss the initial evaluation of the child and to determine if the child has a disability and is eligible for special education shall be held within a reasonable period of time after the initial evaluation is completed.

4.02(6)(a)(ii) Following a reevaluation, a meeting shall be held within a reasonable period of time to discuss the reevaluation of the child to determine if the child continues to be eligible for special education and/or to identify all of the child's special education and related services needs.

4.02(6)(b) Participants.

Meetings to determine if the child has a disability and is eligible for special education, whether held separately or in connection with a meeting to develop an IEP, must include:

4.02(6)(b)(i) A multidisciplinary team knowledgeable about the child and about the meaning of the evaluation data. The multidisciplinary team shall include:

4.02(6)(b)(i)(A) At least one teacher or other specialist with knowledge in the area of the child's suspected disability;

4.02(6)(b)(i)(B) As necessary, other qualified professionals, e.g., an occupational therapist; a speech language pathologist; a physical therapist; and a school psychologist; and

4.02(6)(b)(i)(C) The parent of the child.

4.02(6)(b)(ii) At the discretion of the special education director for the administrative unit of residence, the special education director or designee for the administrative unit of residence.

4.02(6)(c) Change of disability and/or eligibility.

A change of disability and/or eligibility may only be made after reevaluation conducted in accordance with Section 4.02(5) of these Rules and at a meeting in which the results of reevaluation are considered in accordance with Section 4.02(6)(a)(ii). In addition, a change involving a specific learning disability shall be made consistent with the additional procedures set forth in Section 4.02(7) of these Rules.

4.02(6)(c)(i) The evaluation described in Section 4.02(6)(c) is not required before the termination of a child's eligibility for special education due to graduation from secondary school with a regular diploma, or due to reaching age 21.

4.02(6)(c)(ii) For a child whose eligibility terminates under circumstances described in Section 4.02(6)(c)(i), the administrative unit/state-operated program must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

4.02(7) Additional procedures for identifying children with specific learning disabilities.

The definition and criteria for the *Specific Learning Disability* category are set forth in Section 2.08(6) of these Rules. The additional requirements and procedures for identifying children with specific learning disabilities shall be consistent with 34 CFR §300.307(b), §300.308, §300.309(b) - (c), §300.310 and §300.311.

4.02(7)(a) Exception: The optional documentary statement contained in 34 CFR §300.311(a)(5)(ii)(B) shall not apply.

4.02(8) Record of meeting.

If the determination of disability and eligibility occur at a separate meeting from the IEP meeting, a record of the meeting shall be maintained which must include, when applicable, a statement of the child's disability and the criteria utilized to determine eligibility as identified in Section 2.02 of these Rules.

4.03 Individualized Education Programs

The term "Individualized Education Program" or "IEP" means a written statement for each child with a disability that is developed, reviewed and/or revised in accordance with these Rules. Except as is otherwise set forth in this Section 4.03, the requirements regarding IEPs shall be consistent with 34 CFR §300.320 through §300.325.

4.03(1) The requirements governing when IEPs must be in effect shall be consistent with 34 CFR §300.323. The topics addressed by 34 CFR §300.323 include:

4.03(1)(a) The general requirement that an IEP for each child with a disability must be in effect at the beginning of each school year;

4.03(1)(b) Options for utilizing an IEP or IFSP for children aged three through five;

4.03(1)(c) The administrative unit of residence shall participate in meetings regarding the transition planning process from infant/toddler to special education preschool services consistent with the requirements of 34 CFR §300.124;

4.03(1)(d) The initial provision of services, including timelines;

4.03(1)(d)(i) Exception: The initial IEP for a child shall be developed within 90 calendar days of the date that parental consent was obtained to conduct the initial evaluation.

4.03(1)(e) Accessibility of the child's IEP to teachers and others;

4.03(1)(f) IEPs for children who transfer public agencies within the State;

4.03(1)(g) IEPs for children who transfer from another State; and

4.03(1)(h) Transmittal of records.

4.03(2) The requirements for the development, review, and revision of the IEP shall be consistent with 34 CFR §300.324. The topics covered by 34 CFR §300.324 include:

4.03(2)(a) General factors that the IEP Team must consider;

4.03(2)(b) Special factors that the IEP Team must consider;

4.03(2)(c) Requirements with respect to the general education teacher;

4.03(2)(d) IEP changes mutually agreed to by the parent and the administrative unit or state-operated program after the annual IEP review meeting and without convening the IEP Team;

4.03(2)(e) Consolidation of IEP Team meetings;

4.03(2)(f) Amendments to the IEP;

4.03(2)(g) Review and revision of the IEP;

4.03(2)(h) Failure to meet transition objectives;

4.03(2)(i) Rule of construction;

4.03(2)(j) Children with disabilities in adult prisons;

4.03(3) Meetings to review and revise each child's IEP and to determine the child's placement shall be initiated and conducted at least once every 365 days.

4.03(4) Responsibility for IEP Meetings.

The relative responsibilities of administrative units, state-operated programs and approved facility schools for IEP development, review and revision are established in Rule 8.00.

4.03(5) Participants in meetings.

Except as is otherwise provided for in this Section 4.03(5), the IEP Team requirements contained in 34 CFR §300.321 shall apply in their entirety to meetings held for the development of an initial IEP or for the review of an IEP.

4.03(5)(a) The Director of special education or designee who is knowledgeable about the availability of resources of the administrative unit and has the authority to commit those resources shall be a required agency representative consistent with 34 CFR 300.321(a)(4). The requirements contained in 34 CFR §300.321(e) regarding the non-attendance or excusal of certain IEP Team members shall not apply to this IEP Team member.

4.03(5)(b) If the meeting is not the responsibility of the administrative unit of residence, the special education director or designee for the administrative unit of residence may, at his/her discretion, participate in the meeting.

4.03(5)(c) If the child has been publicly placed at an approved facility school or a private school, a representative of the approved facility school or private school must attend the IEP Team meeting. If the representative is unable to attend, his or her participation must be ensured through methods consistent with 34 CFR §300.328.

4.03(6) Content of IEP/Record of Meeting.

The IEP must meet the IEP content requirements established by 34 CFR §300.320(a) and §300.320(c). In addition, the following IEP content is required:

4.03(6)(a) The written IEP for each child with a hearing disability shall include a Communication Plan as developed by the IEP team. The Plan shall include the following:

4.03(6)(a)(i) A statement identifying the child's primary communication mode as one or more of the following: Aural, Oral, Speech-based, English Based Manual or Sign System, American Sign Language. Further, there should be no denial of opportunity for instruction in a particular communication mode based on:

4.03(6)(a)(i)(A) residual hearing,

4.03(6)(a)(i)(B) the parents' inability to communicate in the child's communication mode or language, nor

4.03(6)(a)(i)(C) the child's experience with another mode of communication or language.

4.03(6)(a)(ii) A statement documenting that an explanation was given of all educational options provided by the school district and available to the child.

4.03(6)(a)(iii) A statement documenting that the IEP team, in addressing the child's needs, considered the availability of deaf/hard of hearing adult role models and a deaf/hard of hearing peer group of the child's communication mode or language.

4.03(6)(a)(iv) The communication-accessible academic instruction, school services, and extracurricular activities the student will receive must be identified.

The teachers, interpreters, and other specialists delivering the communication plan to the student must have demonstrated proficiency in, and be able to accommodate for, the child's primary communication mode or language.

4.03(6)(b) The written IEP for each child with a vision disability shall include a Learning Media Plan as developed by the IEP team based on comprehensive assessment of the student's learning and literacy modalities by a licensed teacher endorsed in the area of visual impairment. Braille shall be the literacy medium selected unless the IEP team determines, based on the comprehensive literacy learning media assessment that instruction in Braille is not appropriate. The plan shall include the following:

4.03(6)(b)(i) a statement of how the selected learning and literacy mode or modes will be implemented as the student's primary or secondary mode for achieving literacy and why such mode or modes have been selected,

4.03(6)(b)(ii) a statement of how the student's instruction in the selected learning and literacy mode or modes will be integrated into educational activities.

4.03(6)(b)(ii) the date on which the student's instruction in the selected mode or modes shall commence, the amount of instructional time to be dedicated to each learning and literacy mode, and the service provider responsible for each area of instruction, and

4.03(6)(b)(iv) a statement of the level of competency in each selected learning and literacy mode or modes which the student should achieve by the end of the period covered by the IEP.

Colorado teachers licensed and endorsed in the area of Visual Impairment must have demonstrated competency in reading and writing literary Braille per the guidelines developed by the Colorado Department of Education.

4.03(6)(c) Academic Content Standards

4.03(6)(c)(i) The IEP for a child enrolled in a school district or the State Charter School Institute shall specify:

4.03(6)(c)(i)(A) Whether the child shall achieve the content standards adopted by the district in which the child is enrolled or by the State Charter School Institute; or

4.03(6)(c)(i)(B) Whether the child shall achieve individualized standards which would indicate that the child has met the requirements of his or her IEP:

4.03(6)(c)(ii) For each child attending school in an approved facility school or state-operated program, the IEP shall specify:

4.03(6)(c)(ii)(A) Whether the child shall achieve State or local content standards; or

4.03(6)(c)(ii)(B) Whether the child shall achieve individualized standards which would indicate that the child has met the requirements of his or her IEP.

4.03(6)(d) Exception: In lieu of 34 CFR §300.320(b), the IEP content requirement for transition services shall be as follows:

4.03(6)(d)(i) Beginning with the first IEP developed when the child is age 15, but no later than the end of 9th grade, or earlier if deemed appropriate by the IEP Team, and updated annually, thereafter, the IEP must include:

4.03(6)(d)(ii) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and;

4.03(6)(d)(iii) The transition services (as defined in Section 2.51 of these Rules and including courses of study) needed to assist the child in reaching those goals.

4.03(6)(e) Beginning not later than one year before the child reaches the age of majority (i.e., age 21), the IEP must include a statement that the child has been informed of the child's rights under 6.02(9) of these Rules and 34 CFR §300.520.

4.03(6)(f) Benchmarks and Short-Term Objectives.

4.03(6)(f)(i) Consistent with 34 CFR §300.320(a)(2)(ii), for students with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP shall contain a description of benchmarks or short-term objectives.

4.03(6)(f)(ii) Rule of construction: Nothing in these Rules shall be construed to prohibit an administrative unit or state-operated program from including benchmarks or short term objectives in a child's IEP.

4.03(7) Parent Participation

4.03(7)(a) The requirements for ensuring parent participation in the development of IEPs shall be consistent with 34 CFR §300.322.

4.03(7)(b) Exception: In lieu of 34 CFR §300.322(b)(2), the requirements regarding parent participation at meetings involving postsecondary goals and services for a child shall be as follows:

4.03(7)(b)(i) Beginning with the first IEP developed when the child is age 15, but no later than the end of 9 th grade, or earlier if deemed appropriate by the IEP Team, and updated annually, thereafter, the notice of meeting must:

4.03(7)(b)(i)(A) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services in accordance with Section 4.03(6)(d) of these Rules;

4.03(7)(b)(i)(B) Indicate that the responsible administrative unit or state-operated program will invite the student; and

4.03(7)(b)(i)(C) Identify any other agency that will be invited to send a representative. consistent with 34 CFR §300.321(b)(3), the administrative unit or state-operated program must obtain the consent of the parent to invite such representative.

4.03(8) The requirements for parent involvement in educational placement decisions shall be consistent with 34 CFR §300.327 and §300.501(c).

4.03(8)(a) The determination of placement must be based on the child's IEP and made by the IEP Team. The terms "placement" or "educational placement" are used interchangeably and mean the provision of special education and related services and do not mean a specific place, such as a specific classroom or specific school. Decisions regarding the location in which a child's IEP will be implemented and the assignment of special education staff responsibilities shall be made by the Director of Special Education or designee.

4.03(8)(b) Change in placement.

4.03(8)(b)(i) Nonsignificant change in program/services.

When a child's educational program is altered, such as a change in the amount of a given service, the change in program/services is a nonsignificant change in program/services.

4.03(8)(b)(i)(A) Prior written notice of such changes must be provided to the parent.

4.03(8)(b)(i)(B) Consent is not required.

4.03(8)(b)(i)(C) A non-significant change in program/services must be made by the IEP Team unless the parent and the administrative unit or state-operated program mutually agree to change the IEP after the annual IEP meeting in a school year consistent with 34 CFR §300.324(a)(4). However, reevaluation is not required.

4.03(8)(b)(ii) Significant change in placement:

4.03(8)(b)(ii)(A) A significant change in placement for educational purposes includes placement or referral to a private school or approved facility school by the administrative unit, the addition or termination of an instructional or related service or any change which would result in the following:

4.03(8)(b)(ii)(A)(I) The child having different opportunities to participate in nonacademic and extracurricular services;

4.03(8)(b)(ii)(A)(II) The new placement option is a change in the educational environment categories required for reporting data to the Secretary of the U.S. Department of Education pursuant to Section 618 of the IDEA; or

4.03(8)(b)(ii)(A)(III) The child transfers from a brick and mortar school to an on-line program or vice versa. The administrative unit for the entity sponsoring the on-line program is responsible for conducting the reevaluation and convening the IEP Team to determine whether the on-line program is an appropriate placement for the child.

4.03(8)(b)(ii)(B) A significant change in placement shall be made upon consideration of reevaluation. Such change shall be made only by an IEP

Team with the addition of those persons conducting such reevaluation unless the parent and the administrative unit or state-operated program mutually agree to change the IEP after the annual IEP meeting in a school year consistent with 34 CFR §300.324(a)(4).

4.03(8)(b)(iii) A change in building or location

A change in building or location that is not a change in placement, as described in Section 4.03(8)(b), may be accomplished without convening the child's IEP Team or conducting a reevaluation. Decisions changing location or building should be made with due consideration for the impact on the child's total education program. A location or building decision that does not constitute a change in placement does not require prior written notice or an IEP Team meeting.

4.03(8)(b)(iv) Public School Choice.

When a student transfers to a new school or program, including an on-line program, under Public School Choice, the transfer requirements contained in 34 CFR §300.323(e) apply. If the transfer constitutes a significant change in placement, as described in Section 4.03(8)(b)(ii) of these Rules, the administrative unit in which the receiving school or program is located must conduct a reevaluation consistent with Section 4.03(8)(b)(ii)(B) and also convene an IEP Team to ensure that the receiving school or program is an appropriate placement for the student. When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the IEP meeting required by this Rule, the charter school shall be responsible for the evaluation and IEP meeting. However, the administrative unit of the authorizer remains ultimately responsible for ensuring compliance with all special education requirements.

4.03(8)(c) The administrative unit or state-operated program shall consider the cost to the administrative unit or state-operated program when choosing between two or more appropriate placements.

4.03(9) Participation of the Administrative Unit of Residence

If the administrative unit of residence is not responsible for a meeting, as set forth in Section 8.00 of these Rules, the administrative unit of attendance or state-operated program shall timely notify the Special Education Director/designee for the administrative unit of residence. Such notification shall be provided at the same time and in the same manner that the parent is notified of the meeting.

4.03(10) Private Placements Made by Administrative Units and Public Agencies

Every administrative unit and every public agency, as that term is defined in Section 9.01(5) of these Rules, shall comply with the out-of-home and out-of-district placement requirements set forth in 34 CFR §300.325 and Section 9.00 of these Rules.

4.03(11) Alternative Means of Meeting Participation

Alternative means of meeting participation and carrying out administrative matters involving procedural safeguards shall be consistent with 34 CFR §300.328.

2220-R-5.00 REQUIREMENTS FOR FUNDING ELIGIBILITY

5.01 State Eligibility

The State of Colorado ("State") is eligible for assistance under Part B of the Individuals with Disabilities Education Act ("IDEA") if the State has in effect policies and procedures to ensure that the State meets the conditions of 34 CFR § §300.101 through 300.176 as follows:

5.01(1) FAPE requirements as established by:

5.01(1)(a) 34 CFR §300.101 which addresses the following topics:

5.01(1)(a)(i) General requirements for FAPE;

5.01(1)(a)(ii) FAPE for children beginning at age 3; and

5.01(1)(a)(iii) Children advancing from grade to grade.

5.01(1)(b) 34 CFR §300.102 which establishes the limitations and exceptions to FAPE requirements including:

5.01(1)(b)(i) Children who do not meet the State's age requirements for FAPE;

5.01(1)(b)(ii) Children incarcerated in adult correctional facilities;

5.01(1)(b)(iii) Children with disabilities who have graduated from high school with a regular diploma; and

5.01(1)(b)(iv) Children who are eligible under Subpart 34 CFR §300.800 through §300.818 (preschool grants for children with disabilities);

5.01(1)(c) 34 CFR §300.103 - Methods and payments;

5.01(1)(d) 34 CFR §300.104 - Residential placement;

5.01(1)(e) 34 CFR §300.105 - Assistive technology;

5.01(1)(f) 34 CFR §300.106 - Extended school year services;

5.01(1)(g) 34 CFR §300.107 - Nonacademic services;

5.01(1)(h) 34 CFR §300.108 - Physical education;

5.01(1)(i) 34 CFR §300.109 - Full educational opportunity goal;

5.01(1)(j) 34 CFR §300.110 - Program options;

5.01(1)(k) 34 CFR §300.111 - Child find;

5.01(1)(l) 34 CFR §300.112 - IEPs; and

5.01(1)(m) 34 CFR §300.113 - Routine checking of hearing aids and external components of surgically implanted medical devices.

5.01(2) Least restrictive environment (LRE) requirements as established by:

5.01(2)(a) 34 CFR §300.114 - General requirements;

5.01(2)(b) 34 CFR §300.115 - Continuum of alternative placements;

5.01(2)(c) 34 CFR §300.116 - Placements;

5.01(2)(d) 34 CFR §300.117 - Nonacademic settings;

5.01(2)(e) 34 CFR §300.118 - Children in public or private institutions;

5.01(2)(f) 34 CFR §300.119 - Technical assistance and training activities; and

5.01(2)(g) 34 CFR §300.120 - Monitoring activities.

5.01(3) Requirements for procedural safeguards as established by 34 CFR 300.121 and §300.500 through §300.536 except as is otherwise provided for in Section 6.02 of these Rules.

5.01(4) Requirements for evaluation as established by 34 CFR §300.122 and §300.300 through §300.311 except as is otherwise provided for in Section 4.03 of these Rules.

5.01(5) Requirements for safeguarding the confidentiality of personally identifiable information as established by 34 CFR §300.123 and §300.610 through §300.626 and Section 6.01 of these Rules.

5.01(6) Requirements regarding the transition of children from Part C programs to preschool programs under Part B of IDEA as established by 34 CFR §300.124.

5.01(7) Requirements regarding children with disabilities enrolled by their parents in private schools as established by 34 CFR §300.129 through §300.144.

5.01(8) Requirements regarding children with disabilities placed in or referred to private schools or approved facility schools by an administrative unit or a state-operated program as means of providing special education services as established by 34 CFR §300.145 through §300.147.

5.01(9) Requirements regarding children with disabilities enrolled by their parents in private schools when FAPE is at issue as established by 34 CFR §300.148.

5.01(10) Requirements regarding the Department's responsibilities for general supervision as established by 34 CFR §300.149 and §300.150.

5.01(11) Requirements regarding State complaint procedures as established by 34 CFR §300.151 through §300.153 and the Department's specific procedures.

5.01(12) Requirements regarding methods for ensuring services as established by 34 CFR §300.154.

5.01(13) Requirements regarding hearings related to LEA eligibility as established by 34 CFR §300.155 and Section 7.07 of these Rules.

5.01(14) Requirements regarding personnel qualifications as established by 34 CFR §300.156 and Sections 2.20 and 3.04 of these Rules.

5.01(15) Requirements regarding performance goals and indicators as established by 34 CFR §300.157.

5.01(16) Requirements regarding the supplementation of state, local and other federal funds as established by 34 CFR §300.162 through §300.164 and §300.166.

5.01(17) Requirements regarding public participation as established by 34 CFR §300.165.

5.01(18) Requirements regarding the Colorado Special Education Advisory Committee as established by 34 CFR §300.168 and §300.169.

5.01(19) Requirements regarding suspension and expulsion rates as established by 34 CFR §300.170.

5.01(20) Requirements regarding an annual description of Part B funds as established by 34 CFR §300.171.

5.01(21) Requirements regarding access to instructional materials, including the Department's adoption of the National Instructional Materials Accessibility Standard (NIMAS) as established by 34 CFR §300.172.

5.01(21)(a) The Department adopts the NIMAS, published as Appendix C to Part 300 of 34 CFR.

5.01(21)(b) The Department shall coordinate with the National Instructional Materials Access Center (NIMAC) for purposes of providing instructional materials in a timely manner to children with disabilities who may qualify to receive books and other publications in specialized formats.

5.01(21)(c) Definitions applicable to this subsection and Section 5.02(10) of these Rules:

5.01(21)(c)(i) "In a timely manner" means that all reasonable steps have been taken to provide children with disabilities instructional materials at the same time that instructional materials are provided to nondisabled peers;

5.01(21)(c)(ii) When used in 34 CFR §300.172, the term "blind persons or other persons with print disabilities" has the meaning given it in 34 CFR §300.172(e)(1)(ii);

5.01(21)(c)(iii) "National Instructional Materials Access Center" or "NIMAC" has the meaning given the term in 34 CFR §300.172(e)(1)(ii);

5.01(21)(c)(iv) "National Instructional Materials Accessibility Standard" or "NIMAS" has the meaning given the term in 34 CFR §300.172(e)(1)(iii).

5.01(22) Requirements regarding overidentification and disproportionality as established in 34 CFR §300.173.

5.01(23) Requirements, including the rule of construction, regarding the prohibition on mandatory medication as established by 34 CFR §300.174.

5.01(23)(a) Personnel of the Department, an administrative unit, a school district or a state-operated program are prohibited from requiring parents to obtain a prescription for substances identified in 34 CFR §300.174(a) as a condition of attending school, receiving an evaluation under Section 4.02 of these Rules, or receiving special education services.

5.01(24) Requirements regarding the participation of all children with disabilities in general state and district-wide assessment programs as established in 34 CFR §300.160.

5.02 Administrative Unit Eligibility

An administrative unit is eligible for assistance under Part B of the Individuals with Disabilities Education Act ("IDEA") if the administrative unit submits a plan that provides assurance to the Department that the administrative unit meets each of the conditions established by 34 CFR §300.200 through §300.213 as follows:

5.02(1) Consistency with State policies established under the relevant subsections of Section 5.01 of these Rules and 34 CFR §300.101 through §300.163, and §300.165 through §300.174 and §300.201;

5.02(2) Requirements regarding the use of amounts of Part B funds as established in 34 CFR §300.202;

5.02(3) Requirements regarding maintenance of effort as established in 34 CFR §300.203;

5.02(4) Requirements regarding exceptions to maintenance of effort established in 34 CFR §300.204;

5.02(5) Requirements regarding adjustment of local fiscal efforts in certain fiscal years as established in 34 CFR §300.205;

5.02(6) Requirements regarding schoolwide programs under Title I of the ESEA as established in 34 CFR §300.206;

5.02(7) Requirements regarding personnel development as established in 34 CFR §300.207;

5.02(8) Requirements regarding permissive use of funds as established in 34 CFR §300.208;

5.02(9) Requirements regarding the treatment of charter schools as established in 34 CFR §300.209;

5.02(10) Requirements regarding the purchase of instructional materials as established in 34 CFR §300.210;

5.02(11) Requirements regarding the provision of information to the department as established in 34 CFR §300.211;

5.02(12) Requirements regarding the accessibility of all Part B Eligibility Documents to parents and the general public as established in 34 CFR §300.212;

5.02(13) Requirements regarding records pertaining to migratory children with disabilities as established in 34 CFR §300.213;

5.02(14) Requirements regarding prior local plans as established by 34 CFR §300.220;

5.02(15) Requirements regarding administrative unit and state-operated compliance with 34 CFR § §300.200 through 300.221; and

5.02(16) Requirements regarding early intervening services.

5.03 State-Operated Program Eligibility

A state-operated program is eligible for assistance under Part B of the IDEA if the state-operated program demonstrates to the satisfaction of the Department that it meets the requirements set forth in 34 CFR §300.228.

5.04 Additional Funding and Reporting Requirements

5.04(1) In order to receive funding under Part B of the IDEA, administrative units and state-operated programs must timely provide the information required by Section 618 of the Act, 20 USC §1418.

5.04(2) In order to receive funding under the Exceptional Children's Educational Act, administrative units and state-operated programs must timely provide the information required by Section 22-20-114(4) and (6), C.R.S.

2220-R-6.00 CONFIDENTIALITY OF INFORMATION AND PROCEDURAL SAFEGUARDS - DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

6.01 Confidentiality of Information

Procedures regarding the confidentiality of information shall be consistent with 34 CFR §300.611 through §300.626 which address the following topics:

6.01(1) 34 CFR §300.611 - Definitions;

6.01(2) 34 CFR §300.612 - Notice to parents;

6.01(3) 34 CFR §300.613 - Parent access to records;

6.01(4) 34 CFR §300.614 - Record of access;

6.01(5) 34 CFR §300.615 - Records on more than one child;

6.01(6) 34 CFR §300.616 - List of types and locations of information;

6.01(7) 34 CFR §300.617 - Fees;

6.01(8) 34 CFR §300.618 - Amendment of records at parent's request;

6.01(9) 34 CFR §300.619 - Opportunity for a hearing;

6.01(10) 34 CFR §300.620 - Result of hearing;

6.01(11) 34 CFR §300.621 - Hearing procedures;

6.01(12) 34 CFR §300.622 - Consent;

6.01(13) 34 CFR §300.623 - Safeguards;

6.01(14) 34 CFR §300.624 - Destruction of information;

6.01(15) 34 CFR §300.625 - Children's rights; and

6.01(16) 34 CFR §300.626 - Enforcement.

6.02 Procedural Safeguards and Due Process Procedures for Parents and Children

Except as otherwise provided for in this Section 6.02, each administrative unit and state-operated program shall establish, maintain, and implement procedural safeguards that meet the requirements of 34 CFR § §300.500 through 300.536. The topics addressed by such regulations include:

6.02(1) 34 CFR §300.501—Opportunity to examine records and parent participation in meetings.

6.02(2) 34 CFR §300.502—Independent educational evaluation.

6.02(3) 34 CFR §300.503—Prior written notice and content of prior written notice.

6.02(4) 34 CFR §300.504—Procedural Safeguards Notice.

6.02(5) 34 CFR §300.505—Electronic mail.

6.02(6) 34 CFR §300.506—Mediation.

6.02(7) [Repealed]

6.02(7.5) Due Process Complaints and Civil Actions

6.02(7.5)(a) General.

Except as is otherwise provided for in this Section 6.02(7.5), the requirements regarding resolution meetings and due process hearings shall be consistent with 34 CFR §300.507 through §300.515.

6.02(7.5)(a)(i) Procedures regarding the due process complaint, including the content of the due process complaint and filing requirements, shall be consistent with 34 CFR §300.507 and §300.508.

6.02(7.5)(a)(ii) Consistent with 34 CFR §300.509, a parent or the administrative unit or state-operated program may use the model due process complaint form developed by the Department, or another form or other document, so long as the form or document that is used meets the due process complaint content requirements as set forth in 34 CFR §300.508(b).

6.02(7.5)(a)(iii) Upon receipt of the first due process complaint filed by a parent in a school year, the Special Education Director of the administrative unit or state-operated program must provide the parent with a copy of the procedural safeguards notice available to parents consistent with 34 CFR §300.504.

6.02(7.5)(b) Due Process Complaint – specific filing requirements.

6.02(7.5)(b)(i) The party filing a due process complaint shall file a copy of the due process complaint with the Department at the same time that the due process complaint is filed with the opposing party to ensure that the Department timely assigns an Administrative Law Judge (ALJ) to the case.

6.02(7.5)(b)(ii) If the party filing the complaint is a parent, the party shall file the due process complaint with the Special Education Director of the affected administrative unit or state-operated program.

6.02(7.5)(b)(iii) All timelines related to the due process complaint begin on the date that the complaint is received by both the opposing party and the Department.

6.02(7.5)(b)(iv) Regardless of whether the administrative unit/state-operated program or the parent has initiated the due process complaint, when the Special Education Director of the administrative unit or state-operated program knows that a due process complaint has been filed, it is the responsibility of the Special Education Director to:

6.02(7.5)(b)(iv)(A) By telephone, immediately notify the Department of the existence of the due process complaint; and

6.02(7.5)(b)(iv)(B) By facsimile, immediately provide a complete copy of the due process complaint to the Department accompanied by a written statement documenting the date when the due process complaint was filed.

6.02(7.5)(b)(v) Under no circumstance may the party receiving a due process complaint unilaterally determine that the due process complaint is insufficient or that it fails to state a claim under federal or state special education law. A notice of insufficiency may be presented to the ALJ pursuant to 34 CFR §300.508(d).

6.02(7.5)(c) Assignment of an Administrative Law Judge.

Within two business days after the Department's receipt of a due process complaint, the Department shall notify the Office of Administrative Courts (OAC) in order to have an ALJ assigned to the complaint.

6.02(7.5)(d) Timelines applicable to resolution meetings and mediation.

6.02(7.5)(d)(i) Resolution Meeting

6.02(7.5)(d)(i)(A) Within 15 days of receiving notice of the parent's due process complaint, and prior to the commencement of a due process hearing, the administrative unit or state-operated program must convene a resolution meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that -

6.02(7.5)(d)(i)(A)(I) Includes a representative of the administrative unit or state-operated program who has decision-making authority on behalf of that agency; and

6.02(7.5)(d)(i)(A)(II) May not include an attorney of the administrative unit or state-operated program unless the parent is accompanied by an attorney.

6.02(7.5)(d)(i)(B) The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the administrative unit or state-operated program has the opportunity to resolve the dispute that is the basis for the due process complaint.

6.02(7.5)(d)(i)(C) The resolution meeting described need not be held if -

6.02(7.5)(d)(i)(C)(I) The parent and the administrative unit or state-operated program agree in writing to waive the resolution meeting; or

6.02(7.5)(d)(i)(C)(II) The parent and the administrative unit or state-operated program agree to use the mediation process described in 34 CFR §300.506 and Section 6.02(6) of these Rules.

6.02(7.5)(d)(i)(D) The parent and the administrative unit or state-operated program determine the relevant members of the IEP Team to attend the resolution meeting.

6.02(7.5)(d)(ii) Resolution Period

6.02(7.5)(d)(ii)(A) The ALJ has no authority to extend the 30-day resolution period.

6.02(7.5)(d)(ii)(B) The parties may extend the resolution period but only under the circumstances described in Section 6.02(7.5)(d)(iii)(C).

6.02(7.5)(d)(ii)(C) If the administrative unit or state-operated program has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

6.02(7.5)(d)(ii)(D) Except as provided in Section 6.02(7.5)(d)(iii), below, the timeline for issuing a final due process decision begins at the expiration of the 30-day resolution period

6.02(7.5)(d)(ii)(E) Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

6.02(7.5)(d)(ii)(F) If the administrative unit or state-operated program is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented (using the procedures in 34 CFR §300.322(d)(1) through (3)), the administrative unit or state-operated program may, at the conclusion of the 30-day resolution period, request that the ALJ dismiss the parent's due process complaint.

6.02(7.5)(d)(ii)(G) If the administrative unit or state-operated program fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the ALJ to begin the due process hearing 45-day timeline.

6.02(7.5)(d)(iii) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing starts the day after one of the following events:

6.02(7.5)(d)(iii)(A) Both parties agree in writing to waive the resolution meeting;

6.02(7.5)(d)(iii)(B) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or

6.02(7.5)(d)(iii)(C) When a party withdraws from mediation after the parties previously agreed, at the end of the 30-day resolution period, to continue the mediation as described below:

6.02(7.5)(d)(iii)(C)(I) The parties' agreement to continue the mediation shall be in writing and signed by each party; and

6.02(7.5)(d)(iii)(C)(II) Immediately after the parties' execution of the agreement to continue mediation, the parties shall jointly and simultaneously file the written agreement to continue mediation with the ALJ and the Department.

6.02(7.5)(e) Timelines applicable to due process hearings and convenience of hearings.

6.02(7.5)(e)(i) The Department must ensure that not later than 45 days after the expiration of the 30 day resolution period, or the adjusted time periods described in Section 6.02(7.5)(d)(iii), above -

6.02(7.5)(e)(i)(A) A final decision is reached in the hearing; and

6.02(7.5)(e)(i)(B) A copy of the decision is mailed to each of the parties.

6.02(7.5)(e)(ii) At the request of either party, the ALJ may grant specific extensions of time beyond the 45 day due process hearing period. Any such extension of time shall be accomplished in accordance with the requirements for time extensions set forth in Section 6.02(7.5)(f)(v), below.

6.02(7.5)(e)(iii) Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

6.02(7.5)(f) Conduct of due process hearings

The procedures regarding the conduct of due process hearings shall be consistent with the requirements established by 34 CFR §300.511. The topics addressed in 34 CFR §300.511 include:

6.02(7.5)(f)(i) The qualifications of ALJs.

At a minimum, an ALJ must meet the qualifications established by 34 CFR §300.511(c). The Department, at its discretion, may require additional qualifications.

6.02(7.5)(f)(ii) The subject matter of due process hearings.

6.02(7.5)(f)(iii) The timeline and exceptions to the timeline for requesting a hearing.

6.02(7.5)(f)(iv) Specific procedures.

The ALJ shall:

6.02(7.5)(f)(iv)(A) Consistent with the timelines in Section 6.02(7.5)(e), above, establish the procedures and timelines to be followed during the hearing;

6.02(7.5)(f)(iv)(B) Schedule the time and place for the hearing;

6.02(7.5)(f)(iv)(C) Schedule a prehearing conference at which the issues will be identified and the specific requests of the parties determined;

6.02(7.5)(f)(iv)(D) At the request of either party, issue subpoenas to compel attendance of witnesses at the hearing;

6.02(7.5)(f)(iv)(E) Ensure that a written or electronic verbatim account of the hearing is kept; and

6.02(7.5)(f)(iv)(F) Provide to the Department a copy of any order or decision issued.

6.02(7.5)(f)(v) Extension of timelines

6.02(7.5)(f)(v)(A) The ALJ shall not have authority to extend the 45 day due process decision timeline until after the resolution period described in section 6.02(7.5)(d)(ii), above, has occurred.

6.02(7.5)(f)(v)(B) Any request by a party to extend a due process hearing decision timeline shall be made within a reasonable period of time prior to the expiration of the 45 day period or previously extended time period;

6.02(7.5)(f)(v)(C) The ALJ's decision regarding the requested extension of a due process decision timeline shall be issued on or before the date of the expiration of the existing timeline and documented in a written order; and

6.02(7.5)(f)(v)(D) The ALJ shall provide a copy of such written order to the parties and to the Department.

6.02(7.5)(f)(v)(E) Exception. In the case of an expedited due process hearing requested as a result of a disciplinary change of placement pursuant to 34 CFR § 300.532(c), the specific timelines established in Section 6.02(7.5)(i)(ii), below, shall apply.

6.02(7.5)(g) Hearing Rights

Hearing rights accorded to parties shall be consistent with 34 CFR §300.512.

6.02(7.5)(h) Hearing Decisions

6.02(7.5)(h)(i) General. Due process hearing decisions shall be consistent with the requirements established by 34 CFR §300.513. The topics addressed by 34 CFR §300.513 include:

6.02(7.5)(h)(i)(A) The decision of the ALJ on the provision of FAPE;

6.02(7.5)(h)(i)(B) Separate request for a due process hearing; and

6.02(7.5)(h)(i)(C) Transmittal of the findings and decision to the Colorado Special Education Advisory Committee and to the general public.

6.02(7.5)(h)(ii) Specific requirements for due process decisions.

6.02(7.5)(h)(ii)(A) The ALJ shall render, in writing, all findings of fact and the decision based upon the evidence.

6.02(7.5)(h)(ii)(B) The ALJ shall mail the decision by certified mail to the parties and the Department within the timelines specified by Section 6.02(7.5)(e) or, in the case of an expedited hearing, within the timelines specified by 6.02(7.5)(i)(ii).

6.02(7.5)(h)(ii)(C) The ALJ shall include within the decision notification that, any party aggrieved by the findings and decision, has the right to bring a civil action consistent with the requirements as set forth in 34 CFR §300.516.

6.02(7.5)(h)(ii)(D) Except for the caption of the case, the decision shall be written such that it does not disclose personally identifiable information of the child or the parent(s).

6.02(7.5)(h)(ii)(E) The record of the hearing shall include all findings of fact, evidence admitted during the hearing, the decision, and the recording of the hearing, if available. The record shall be forwarded to the Department within 100 days after the conclusion of all due process proceedings if no civil action is brought.

6.02(7.5)(i) Expedited Due Process Hearings

6.02(7.5)(i)(i) General.

Consistent with 34 CFR §300.532(a), the parent of a child with a disability who disagrees with any decision regarding a disciplinary placement under 34 CFR § §300.530 and 300.531, or the manifestation determination under §300.530(e), or an administrative unit or state-operated program that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing, and must have the opportunity for an expedited hearing. The requirements for expedited due process hearings, including timelines, shall be in accordance with 34 CFR §300.532.

6.02(7.5)(i)(ii) Specific Timelines

6.02(7.5)(i)(ii)(A) The Department is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The ALJ must make a determination within 10 school days after the hearing.

6.02(7.5)(i)(ii)(B) Unless the parents and administrative unit or state-operated program agree in writing to waive the resolution meeting described below, or agree to use the mediation process described in 34 CFR §300.506 -

6.02(7.5)(i)(ii)(B)(I) The resolution meeting must occur within seven days of receiving notice of the due process complaint; and

6.02(7.5)(i)(ii)(B)(II) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

6.02(7.5)(i)(ii)(B)(III) The ALJ has no authority to extend any of the timelines set forth in this section 6.02(7.5)(i)(ii).

6.02(7.5)(i)(ii)(B)(IV) The parties may not agree to mutually extend the resolution period to resolve an expedited due process complaint.

6.02(7.5)(i)(iii) The requirements and procedures contained in this Section 6.02(7.5)(a) through 6.02(7.5)(h) shall apply to expedited due process hearings to the extent that such requirements and procedures are not in conflict with 34 CFR §300.532.

6.02(7.5)(j) Civil Action.

Any party aggrieved by the findings and decision of the administrative law judge has the right to bring a civil action consistent with the requirements set forth in 34 CFR §300.516.

6.02(7.5)(k) Attorneys' fees.

Reasonable attorneys' fees may be awarded to a prevailing party by a court of competent jurisdiction, as described in 34 CFR §300.516, and consistent with the requirements established by 34 CFR §300.517.

6.02(7.5)(l) Child's status during proceedings

The child's status during the pendency of any administrative or judicial proceeding shall be governed by the requirements established by 34 CFR §300.518 unless the due process complaint involves the disciplinary placement of the child, in which case the provisions of 34 CFR §300.533 apply.

6.02(8) 34 CFR §300.519 - Educational Surrogate Parents

6.02(8)(a) General.

The administrative unit of attendance and each state-operated program must ensure that the rights of a child are protected when -

6.02(8)(a)(i) No parent (as defined in Section 2.33 of these Rules) can be identified;

6.02(8)(a)(ii) The administrative unit of attendance or the state-operated program, after reasonable efforts, cannot locate a parent;

6.02(8)(a)(iii) The child is a ward of the State; or

6.02(8)(a)(iv) The child is a homeless child as defined in Section 22-1-102.5, C.R.S.

6.02(8)(b) Educational Surrogate Parent Registry

The Department shall maintain a registry of each child with a disability determined to be in need of an educational surrogate parent and the educational surrogate parent assigned to the child. The purpose of the registry is to track those students for whom an educational surrogate parent has been assigned through the procedures established in this Section 6.02(8).

6.02(8)(c) Duties of the administrative unit of attendance or state-operated program.

The duties of an administrative unit of attendance or a state-operated program under Section 6.02(8) include the assignment of an individual to act as an educational surrogate parent for the child. This must include a method-

6.02(8)(c)(i) For determining whether a child needs an educational surrogate parent; and

6.02(8)(c)(ii) For assigning an educational surrogate parent to the child.

6.02(8)(d) Children placed in the legal custody of the Colorado Department of Human Services.

In the case of a child who is placed in the legal custody of the Colorado Department of Human Services, the educational surrogate parent alternatively may be appointed by the court overseeing the child's case, provided that the educational surrogate parent meets the requirements in Section 6.02(8)(e)(iii).

6.02(8)(e) Criteria for selection of educational surrogate parents.

6.02(8)(e)(i) The Special Education Director of the administrative unit of attendance or state-operated program shall assign educational surrogate parents.

6.02(8)(e)(ii) After determining that a child needs an educational surrogate parent but before the educational surrogate parent is assigned, the Special Education Director must contact the Department to verify that there is no existing educational surrogate assignment for the child.

6.02(8)(e)(iii) The Special Education Director must ensure that a person selected and assigned as an educational surrogate parent -

6.02(8)(e)(iii)(A) Is not an employee of the Department, the administrative unit of residence, the administrative unit of attendance (if different from the administrative unit of residence), or state-operated program, or any other public agency that is involved in the education or care of the child;

6.02(8)(e)(iii)(B) Has no personal or professional interest that conflicts with the interest of the child whom the educational surrogate parent represents; and

6.02(8)(e)(iii)(C) Has knowledge and skills that ensure adequate representation of the child.

6.02(8)(f) Requirement for written certification

The Special Education Director shall document in writing, on a form approved by the Department of Education, each assignment of an educational surrogate parent, including a written certification that the requirements of Section 6.02(8)(e)(iii) have been met. The Special Education Director shall provide a copy of the written assignment to the Department within three (3) business days of the date of the assignment.

6.02(8)(g) Non employee requirement; compensation.

A person otherwise qualified to be an educational surrogate parent under Section 6.02(8)(e)(iii) is not an employee of the administrative unit of attendance or state-operated program solely because he or she is paid by such administrative unit or state-operated program to serve as an educational surrogate parent.

6.02(8)(h) Homeless children.

In the case of a child who is an unaccompanied homeless child, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary educational surrogate parents without regard to Section 6.02(8)(e)(iii), above, until an educational surrogate parent can be appointed that meets all of the requirements of Section 6.02(8)(e)(iii).

6.02(8)(i) Educational surrogate parent responsibilities.

The educational surrogate parent may represent the child in all matters relating to -

6.02(8)(i)(i) The identification, evaluation, and educational placement of the child; and

6.02(8)(i)(ii) The provision of FAPE to the child.

6.02(8)(j) Responsibility of the Department.

The Department must make reasonable efforts to ensure the assignment of an educational surrogate parent not more than 30 days after the responsible administrative unit or state-operated program determines that the child needs an educational surrogate parent.

6.02(8)(k) Approved Facilities Schools.

Notwithstanding Section 6.02(8)(c), above, if it is determined that a child placed in an approved facility school needs an educational surrogate parent, the child's administrative unit of residence or state-operated program is responsible for locating and assigning the educational surrogate parent. If the approved facility school is not located within the boundaries of the administrative unit of residence, the administrative unit in which the approved facility school is located shall cooperate with the administrative unit of residence in locating an educational surrogate parent for the child.

6.02(9) 34 CFR §300.520 - Transfer of parental rights at age of majority. The age of majority for educational purposes in the State of Colorado is age 21;

6.02(10) 34 CFR §300.530 through §300.537 - Student discipline procedures.

Student discipline procedures and protections for children with disabilities shall be consistent with the requirements set forth in 34 CFR §300.530 through §300.537. The topics addressed by those requirements include:

6.02(10)(a) Authority of school personnel - 34 CFR §300.530;

6.02(10)(b) Removals for not more than ten (10) consecutive school days and patterns of removal - 34 CFR §300.530(b)(1);

6.02(10)(c) Removals cumulating to more than ten (10) school days in a school year - 34 CFR §300.530(b)(2);

6.02(10)(d) Removals exceeding 10 consecutive schools days - 34 CFR §300.530(c);

6.02(10)(e) Required provision of services for students suspended or expelled for more than ten cumulative school days in a school year - 34 CFR §300.530(b)(2) and 34 CFR §300.530(d);

6.02(10)(f) Manifestation determinations - 34 CFR §300.530(e) and 34 CFR §300.530(f);

6.02(10)(g) Special circumstances - 34 CFR §300.530(g);

6.02(10)(h) Requirements regarding notification to parents - 34 CFR §300.530(h);

6.02(10)(i) Applicable definitions - 34 CFR §300.530(i);

6.02(10)(j) Determination of setting - 34 CFR §300.531;

6.02(10)(k) Appeal (including expedited due process hearings) - 34 CFR §300.532;

6.02(10)(l) Placement during appeals - 34 CFR §300.533;

6.02(10)(m) Protections for children not determined eligible for special education and related services - 34 CFR §300.534;

6.02(10)(n) Referral to and action by law enforcement and judicial authorities - 34 CFR §300.535; and

6.02(10)(o) Change of placement because of disciplinary removals - 34 CFR §300.536.

2220-R-7.00 COORDINATION BETWEEN SEA AND LEAs

7.01 Record Keeping

To meet the requirements of Sections 22-20-104(4), C.R.S., an administrative unit shall maintain a management and information system which provides for the collection, documentation, aggregation, and reporting of student, staff, revenue and expenditure data.

7.01(1) Student data.

7.01(1)(a) Administrative units should maintain an individual student data base of the following information:

7.01(1)(a)(i) Student name.

7.01(1)(a)(ii) Date of birth.

7.01(1)(a)(iii) Primary disability.

7.01(1)(a)(iv) Student's gender and ethnicity.

7.01(1)(a)(v) Primary educational setting.

7.01(1)(a)(vi) Date of the most recent meeting at which the child was determined to have a disability.

7.01(1)(a)(vii) Date of the most recent meeting at which the IEP was reviewed.

7.01(1)(a)(viii) Individual staff who are providing special education programs and services identified in the student's IEP.

7.01(1)(b) Administrative units, community centered boards, and approved facility schools should maintain individual student records that contain the following:

7.01(1)(b)(i) Information about the disposition of each referral.

7.01(1)(b)(ii) Signed permission forms for initial assessment and initial placement.

7.01(1)(b)(iii) Verification that parent(s) were advised of and understood their due process rights.

7.01(1)(b)(iv) Any written assessment reports.

7.01(1)(b)(v) Documentation that appropriate written notice was given to parent(s).

7.01(1)(b)(vi) Documentation that required participants were in attendance at meetings.

7.01(1)(b)(vii) Records of all meetings at which the child was determined to have a disability.

7.01(1)(b)(viii) A copy of all IEPs.

7.01(1)(b)(ix) Any additional information which documents that the child is eligible for special education services.

7.01(1)(c) Individually identifiable information shall be held confidential and protected in accordance with Section 6.01 of these Rules.

7.01(1)(d) Destruction of records shall be in compliance with Section 6.01(14) of these Rules and 34 CFR §300.624.

7.01(2) Staff data.

Administrative units should maintain the following data for all special education services staff:

7.01(2)(a) Name.

7.01(2)(b) Special education position assignment.

7.01(2)(c) FTE and salary attributable to special education, and source of funds supporting that salary.

7.01(2)(d) Documentation of time spent with students with disabilities for each staff member who is employed part-time in special education and part-time in regular education.

7.01(3) Revenue and expenditure data.

7.01(3)(a) Administrative units shall maintain auditable records of all special education expenditures and of the state, federal, local and other revenues which are received in support of those expenditures.

7.01(3)(b) Using the accrual basis of accounting, administrative units shall operate a budgeting and accounting procedure which records the objects of expenditure for each special education instructional and support service area.

7.01(3)(c) Community centered boards and approved facility schools shall maintain auditable records of all information used to establish tuition costs reported on forms developed by the Department of Education.

7.02 Reporting

Each administrative unit shall submit to the Department of Education annual student, staff, revenue and expenditure data according to the instructions and on forms or computer programs provided by the Department of Education. If accurate data are not submitted according to deadlines established by the Department, the disbursement of state and federal funds to that particular unit shall be delayed.

7.03 SPECIAL EDUCATION FUNDING

7.03(1) Federal funds.

7.03(1)(a) Administrative units shall obtain prior approval from the Department of Education for the use of federal funds in support of special education services.

7.03(1)(b) The approval criteria and procedures for the use of federal funds shall be governed by relevant rules and regulations promulgated pursuant to state and federal laws.

7.03(1)(c) Federally funded programs shall be considered supplementary to the basic program required by the Exceptional Children's Educational Act (ECEA).

7.03(2) ECEA funds.

Under the requirements of Section 22-20-104(4), C.R.S., an administrative unit shall use its state ECEA funds only on special education services and programs, as outlined in Section 2.44 of these Rules.

7.03(3) Payments of ECEA funds.

ECEA funds shall be distributed in accordance with Sections 22-20-114 and 22-20-114.5, C.R.S.

7.04 (Reserved)

7.05 Monitoring

Each administrative unit, State Operated Program and approved facility school shall comply with all state statutes and regulations regarding the identification and/or education of children with disabilities

7.05(1) Each administrative unit, State Operated Program or approved facility school shall be subject to ongoing monitoring by the Department of Education of its policies, procedures and practices relating to the identification and/or education of children with disabilities.

7.05(1)(a) Monitoring procedures shall include:

7.05(1)(a)(i) A determination of compliance with statutes according to the administrative unit on-site checklist developed by the Department of Education.

7.05(1)(a)(ii) An assessment of program quality based on the standards established by the Department of Education.

7.05(1)(b) Monitoring activities shall be determined by the Department of Education and shall include:

7.05(1)(b)(i) Review of the comprehensive plan of the administrative unit, state-operated program or approved facility school,

7.05(1)(b)(ii) A review of the data routinely collected by the Department of Education,

7.05(1)(b)(iii) A planned comprehensive or targeted on-site process to identify and verify compliance with and implementation of policies and procedures as well as delivery of services,

7.05(1)(b)(iv) Count audits consisting of periodic checks of student eligibility criteria through verification of documentation as found in students' files and on individual education programs.

7.05(1)(c) Follow-up to assure non-compliance issues have been rectified shall be ongoing. Follow-up of non compliance issues identified from the count audits will occur as part of the comprehensive on-site monitoring process.

7.05(2) Within 90 days from the completion of any monitoring procedure or activity, the Department of Education shall provide a written report based on the administrative unit on-site checklist, to the administrative unit, state-operated program or approved facility school which shall include findings, non-compliance items, directives for corrective action, and recommendations for improvement.

7.05(2)(a) Should the Department of Education determine that an administrative unit, state-operated program or approved facility school is in non-compliance with pertinent statutes and implementing regulations, the Department of Education shall provide such administrative unit, state-operated program or approved facility school with the legal citation of the statute or regulation it is found to have violated and the directive for corrective action or request for a corrective action plan

7.05(2)(b) Should the Department of Education determine that an administrative unit, state-operated program or approved facility school does not reasonably satisfy quality standards or guidelines established by the Department of Education, recommendations will be made

7.05(3) Within 90 days following any report of non-compliance, the administrative unit, state-operated program or approved facility school shall provide the Department of Education with a corrective action plan including timelines, or sufficient documentation that corrective actions ordered by the Department have been made, whichever is applicable.

7.05(4) Within 20 days following the receipt of the corrective action plan of the administrative unit, state-operated program or approved facility school, the Department of Education shall acknowledge receipt of such and indicate whether or not it is accepted or, if rejected, notification of the revision necessary before acceptance would be given.

7.05(5) If the administrative unit, state-operated program or approved facility school does not agree with any findings or directives for corrective action it may appeal in accordance with Section 7.07 of these Rules.

7.05(6) If the Department of Education is unable to secure voluntary compliance through the actions described above, the administrative unit, state-operated program or approved facility school shall be notified of the noncompliance and the subsequent steps to be taken by the Department of Education which may include any of the following or any other appropriate means of enforcing compliance requirements:

7.05(6)(a) disapproval or failure to approve in whole or part, the application of the administrative unit, state-operated program or approved facility school for funding;

7.05(6)(b) order, in accordance with a final state audit resolution determination, the repayment of misspent federal funds;

7.05(6)(c) withhold and/or terminate further financial assistance to the administrative unit, state-operated program or approved facility school;

7.05(6)(d) suspend payments, under an approved project, to the administrative unit, state-operated program or approved facility school.

7.05(7) Information regarding monitoring findings and resolutions shall be forwarded to the appropriate Department of Education staff for consideration in the accreditation process for a school district or the Colorado School for the Deaf and the Blind.

7.07 Appeals

7.07(1) Unless otherwise specified by these Rules, any decision of the Department relating to an administrative unit, a state-operated program or an approved facility school may be appealed by the affected entity to the state board within 60 days of the entity's receipt of the written notice from the Department.

7.07 (2) The State Board of Education will conduct a hearing and make a determination concerning the appeal within 60 days from the date of request. The decision of the State Board shall be final.

7.07(3) A written notice of denial or approval shall be prepared and delivered to the administrative unit, state-operated program or approved facility school.

2220-R-8.00 RESPONSIBILITIES OF ADMINISTRATIVE UNITS, STATE-OPERATED PROGRAMS AND APPROVED FACILITY SCHOOLS

General Responsibilities

8.01(1) Duties and responsibilities of administrative units.

An administrative unit shall carry out all applicable State and Federal statutes and regulations and shall be responsible for and provide assurances for:

8.01(1)(a) The development and adoption of a Comprehensive Plan in accordance with the applicable statutes and regulations. Such Plan shall also include a description of the following:

8.01(1)(a)(i) Financial commitments and agreements of the unit and of the participating districts for special education programs and services.

8.01(1)(a)(ii) Method or standards utilized to determine the number and types of special education personnel required to meet the needs of children with disabilities.

8.01(1)(a)(iii) Procedures for regular, periodic evaluation of programs, services and student progress.

8.01(1)(b) Resource allocation and management to assure adequate personnel, facilities, materials and equipment in accordance with the provisions of Section 3.03 of these Rules to meet the needs of children with disabilities.

8.01(1)(c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.

8.01(1)(d) Maintenance of and access to student records in accordance with Section 7.01 of these Rules.

8.01(1)(e) Child find, referral, evaluation, planning and delivery of services in accordance with the provisions of Sections 4.00, 5.00, and 8.00 of the Rules.

8.01(1)(f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of the Rules.

8.01(1)(g) Staff development in accordance with Section 3.05 of these Rules.

8.01(1)(h) Program evaluation in accordance with Section 3.06 of these Rules.

8.01(2) Duties and responsibilities of approved facility schools.

An approved facility school with an on-grounds school approved by the Facility School Board in accordance with the Rules for the Administration of the Facility Schools Act, 1 CCR 304-1, shall be responsible for:

8.01(2)(a) Development of a Comprehensive Plan in accordance with the Rules for the Administration of the Facility Schools Act, 1 CCR 304-1.

8.01(2)(b) Resource allocation and management in accordance with Section 3.03 of these Rules to assure adequate personnel, facilities, materials and equipment to meet the needs of children with disabilities.

8.01(2)(c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.

8.01(2)(d) Maintenance and access to student records in accordance with Section 7.01 of these Rules.

8.01(2)(e) IEP planning, in collaboration with the responsible administrative unit, and the delivery of services in accordance with the provisions of Sections 4.00, 5.00 and 8.00 of these Rules.

8.01(2)(f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of the Rules.

8.01(2)(g) Staff development in accordance with Section 3.05 of these Rules.

8.01(2)(h) Program evaluation in accordance with Section 3.06 of these Rules.

8.01(3) Duties and Responsibilities of state-operated programs.

A state-operated program shall carry out all applicable State and Federal statutes and regulations and shall be responsible for and provide assurances for the development and adoption of a Comprehensive Plan in accordance with the applicable statutes and regulations. Such Plan shall also include a description of the following:

8.01(3)(a) Method or standards utilized to determine the number and types of special education personnel required to meet the needs of children with disabilities.

8.01(3)(b) Resource allocation and management in accordance with Section 3.03 of these Rules to assure adequate personnel, facilities, materials and equipment to meet the needs of children with disabilities.

8.01(3)(c) Qualified personnel in accordance with the provisions of Section 3.04 of these Rules.

8.01(3)(d) Maintenance of and access to student records in accordance with Section 7.01 of these Rules.

8.01(3)(e) Child find, referral, evaluation, planning and delivery of services in accordance with the provisions of Sections 4.00 and 5.00 of these Rules.

8.01(3)(f) Procedures for ensuring confidentiality and required procedural safeguards in accordance with Section 6.00 of these Rules.

8.01(3)(g) Staff development in accordance with Section 3.05 of these Rules.

8.01(3)(h) Program evaluation in accordance with Section 3.06 of these Rules.

8.02 Specific Responsibilities for Special Education Functions and Services

8.02(1) Except as is otherwise provided for in these Rules, the administrative unit of attendance is responsible for child identification, as defined by Section 4.02 of these Rules, IEP planning, delivery of special education services, and the provision of a free appropriate public education to each child with a disability attending public school within the administrative unit, including convening and conducting required meetings related to such special education functions.

8.02(1)(a) A child with a disability attending public school is entitled to all special education services specified by the child's IEP and to a free appropriate public education.

8.02(1)(b) Consistent with 34 CFR § §300.129 through 300.144, each administrative unit is responsible for conducting child identification and serving designated parentally placed private school students with disabilities in elementary and secondary private schools located within the boundaries of the administrative unit, including developing a services plan for such designated students.

8.02(1)(c) The administrative unit of attendance is not responsible for the delivery of special education services or the provision of a free appropriate public education to a child with a disability placed in an approved facility school approved by the Facility Schools Board. It is, however, responsible for certain other special education functions identified in this Rule 8.00.

8.02(2) If a child with a disability is not enrolled in school, the administrative unit of residence is responsible for the provision of child find identification services.

8.03 Responsibility for Special Education Tuition

8.03(1) Pursuant to Section 9.03 of these Rules, the district of residence is responsible for the payment of special education tuition as that term is defined by Section 9.01(8) of these Rules.

8.03(2) The relative responsibilities of administrative units, districts of residence, approved facility schools, charter schools and on-line programs for public out-of-district placement of students, school choice placement of students, and special education tuition are established in Section

9.00 of these Rules. Each BOCES and its member districts shall jointly develop procedures and/or cooperative agreements that will ensure compliance with such Rules.

8.03(3) If the child's district of attendance is not the child's district of residence but is within the same administrative unit as the child's district of residence, the payment of tuition, if any, shall be determined by the administrative unit and the two districts involved.

8.04 Responsibility for Initial Assessment and Reevaluation

8.04(1) Responsibility for initial assessment and reevaluation shall be with the administrative unit in which the child attends school, or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides. The administrative unit of attendance shall invite the Special Education Director or designee of the administrative unit of residence to participate in the process of the initial assessment or re-evaluation. State-operated programs and approved facility schools shall be excepted from this Rule as follows:

8.04(1)(a) Initial assessment and re-evaluation for children attending the Colorado School for the Deaf and the Blind or residing at the Mental Health Institutes or the Division of Youth Corrections shall be the responsibility of those agencies which shall invite the administrative unit of residence to participate.

8.04(1)(b) Initial assessment and re-evaluation for incarcerated children shall be the responsibility of the Department of Corrections.

8.04(1)(c) Re-evaluation for children at approved facility schools shall be the responsibility of the administrative unit of residence.

8.04(1)(d) When the charter contract between a charter school and its authorizer allows the charter school to provide initial evaluations and reevaluations, the charter school shall be responsible for conducting such evaluations and complying with Section 4.02 of these Rules. However, the administrative unit of the charter school remains ultimately responsible for ensuring that all such evaluations meet the requirements of Section 4.02.

8.05 Meetings During Which a Disability or Eligibility is Initially Considered

8.05(1) Meetings during which a disability or eligibility is initially considered shall be the responsibility of the administrative unit in which the child attends school or, if (s)he is not enrolled in school, it shall be the responsibility of the administrative unit in which the child resides.

8.05(1)(a) If the administrative unit in which the parent resides would be different from the administrative unit of attendance, the administrative unit of attendance shall notify the Special Education Director of the administrative unit in which the child's parent resides prior to the assessment process so that the administrative unit of residence may choose to participate in the process.

8.05(1)(b) If the administrative unit in which the parent resides disagrees with the determination of eligibility, the administrative unit of residence may elect to initiate an informal process such as negotiation or mediation or it may request the Commissioner of Education to review the process of determination. Disagreements subject to this informal dispute resolution option are limited to those involving allegations that the administrative unit of attendance failed to comply with the evaluation and eligibility determination procedures established by Section 4.02 of these Rules, including the requirement that the administrative unit of residence be invited to participate in the evaluation of the child consistent with Section 8.05(1)(a) of these Rules.

8.05(1)(c) Except for state-operated programs and approved facility schools, review meetings in which the determination of disability and eligibility is reconsidered shall be the responsibility of the administrative unit of attendance. This includes review meetings for children with disabilities attending on-line programs within the administrative unit of attendance. For state-operated programs, review meetings in which the determination of disability and eligibility are reconsidered shall be the responsibility of the state-operated programs. For approved facility schools, review meetings in which the determination of disability and eligibility are reconsidered shall be the responsibility of the administrative unit of residence.

8.05(1)(d) When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the eligibility determination meetings required by these Rules, the charter school shall be responsible for meeting the eligibility determination requirements in compliance with Section 4.02 of these Rules. However, the administrative unit of the charter school remains ultimately responsible for ensuring that all eligibility determinations and related meetings comply with the requirements of Section 4.02.

8.06 Meetings to Initially Develop or to Subsequently Review the Child's Individualized Educational Program (IEP)

8.06(1) If the determination is made that the child has a disability and is eligible for special education, all meetings to initially develop or to subsequently review the child's individualized educational program (IEP) shall be the responsibility of the administrative unit of attendance which shall timely invite the Special Education Director of the administrative unit of residence to participate as an IEP team member. This includes on-line programs operated within the administrative unit of attendance. Exceptions to this Rule are as follows:

8.06(1)(a) All meetings for children attending the Colorado School for the Deaf and the Blind or residing at the Mental Health Institutes and the Division of Youth Corrections shall be the responsibility of those agencies which shall invite the administrative unit of residence to participate.

8.06(1)(b) All meetings for incarcerated children at the Department of Corrections shall be the responsibility of that agency.

8.06(1)(c) Meetings to develop the initial individualized educational program (IEP) for children at approved facility schools shall be the responsibility of the administrative unit of attendance (the administrative unit in which the facility is located). Thereafter IEP review meetings and re-determination of eligibility shall be the responsibility of the administrative unit of residence.

8.06(1)(d) When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the meetings required by these Rules, the charter school shall be responsible for meetings to initially develop and subsequently review the IEP in compliance with Section 4.03 of these Rules. However, the administrative unit of the charter school remains ultimately responsible for ensuring that IEP planning and related meetings comply with the requirements of Section 4.03.

8.07 Transfers Under Public School Choice Involving a Significant Change in Placement

8.07(1) When a child seeks to transfer to a new school or program, including an on-line program under public school choice, and the transfer constitutes a significant change in placement, as described in Section 4.03(8)(b)(ii) of these Rules:

8.07(1)(a) A reevaluation consistent with Section 4.03(8)(b)(ii)(B) must be conducted by the administrative unit in which the school or program is located, and an IEP Team convened by such administrative unit. The purpose of the IEP Team meeting is to ensure that the receiving school or program is an appropriate placement for the student. Consistent with this Section 8.00, if the administrative unit of the receiving school or program is different from the administrative unit of residence, the Special Education Director of the administrative unit of residence shall be notified of the reevaluation and also invited to the IEP meeting.

8.07(1)(b) When the charter contract between a charter school and its authorizer allows the charter school to provide the special education services and to conduct the IEP meeting required by Section 4.03, the charter school shall be responsible for the reevaluation and the IEP meeting in compliance with this section and Section 4.03(8)(b)(ii). However, the administrative unit of the authorizer remains ultimately responsible for ensuring compliance with this section and Section 4.03(8)(b)(ii).

8.08 Responsibility for IDEA Part C Child Find

The administrative unit of residence is responsible for IDEA Part C child find consistent with Section 22-20-118, C.R.S.

2220-R-9.00 OUT OF DISTRICT PLACEMENTS

9.01 DEFINITIONS

9.01(1) **" Applicable Revenues "** means:

9.01(1)(a) The Per Pupil Operating Revenue (PPOR) or the Per Pupil Revenue (PPR), whichever is applicable, as follows:

9.01(1)(a)(i) The state average PPOR when an administrative unit of residence initiates a placement of a child with a disability into an approved facility school for its day treatment or residential program, and the approved facility school also provides the child's educational program;

9.01(1)(a)(ii) The PPOR of the district of residence when an administrative unit of residence places a child with a disability into an approved facility school for the educational program only;

9.01(1)(a)(iii) The PPR of the chartering school district when a child with a disability enrolls in and attends a charter school pursuant to Article 30.5 of Title 22, C.R.S., not including a charter school that provides an on-line program pursuant to Section 22-33-104.6, C.R.S.;

9.01(1)(a)(iv) The PPR of the accounting district, as defined under Section 22-30.5-513 (1)(a), C.R.S., when a child with a disability enrolls in and attends an institute charter school pursuant to Part 5 of Article 30.5 of Title 22, C.R.S.

9.01(1)(a)(v) The PPR of the district of attendance when a child with a disability enrolls in and attends a school in an administrative unit other than the child's administrative unit of residence pursuant to Section 22-36-101, C.R.S., and the school does not provide the child an on-line program and the school is not a charter school;

9.01(1)(a)(vi) The PPOR of the district of residence when an administrative unit of residence purchases services from another administrative unit for a specific special education program not available in the administrative unit of residence; or

9.01(1)(a)(vii) The state minimum PPR when a child with a disability enrolls in and attends a public on-line program pursuant to section 22-33-104.6, C.R.S., including an on-line program provided by a charter school.

9.01(1)(b) For three- and four-year old children with disabilities, and for five-year old children with disabilities who are not enrolled in kindergarten, 50 percent PPOR shall be considered applicable revenue.

9.01(1)(c) Monies available from federal sources.

9.01(1)(d) Monies received under ECEA.

9.01(1)(e) Monies received from other state agencies.

9.01(1)(f) Monies received from other administrative units, not including tuition.

9.01(1)(g) Monies received through grants and donations.

9.01(2) **" Charter School "** means a charter school authorized under Article 30.5 of Title 22, C.R.S. **" District Charter School "** means a charter school authorized by a school district pursuant to Part 1 of Article 30.5, C.R.S. **" Institute Charter School "** means a charter school authorized by the state Charter School Institute pursuant to Part 5 of Article 30.5, C.R.S.

9.01(3) **" Facility "** and " Approved Facility School " are defined in section 2.18 of these Rules.

9.01(4) **" On-line Program "** means an alternative on-line education program as defined in Section 22-33-104.6(2)(b), C.R.S.

9.01(5) **" Public Agency "**, for purposes of this Rule 9.00, means a public agency that is not an administrative unit and is legally authorized to place a child in a facility with an approved facility school or another out-of-home placement.

9.01(6) **" Public Placement "** means the placement of a child with a disability in a facility with an approved facility school or another out-of-home placement by a court or public agency.

9.01(7) **" Special Education Expenditures "** means the expenditures as defined in Section 2.00 of these Rules.

9.01(8) **" Tuition Costs "** shall mean the amount of expenditures for special education services over and above applicable revenues, as defined in Section 9.01(1) of these Rules, for a child with a disability who receives his or her special education services in an approved facility school, charter school, public school of choice pursuant to Section 22-36-101, C.R.S., or a public on-line program pursuant to Section 22-33-104.6, C.R.S.

9.02 OUT OF HOME PLACEMENT

9.02(1) If it becomes necessary for a court or a public agency to place a child in a public placement (e.g., placements in approved facility schools and foster care homes):

9.02(1)(a) Non-emergency placement: prior to the public placement, the court or public agency shall work cooperatively with the child's then current administrative unit of

residence and the administrative unit in which the placement is to be made to ensure that appropriate special education services are available for the child. The receiving agency, institution, administrative unit, state-operated program, or approved facility school providing the services shall cooperate in the development of the IEP.

9.02(1)(b) Emergency placement: if an emergency placement for the safety of the child is required, the placing court or placing public agency may make the emergency placement without first cooperating with the child's then current administrative unit of residence or the administrative unit in which the placement is to be made.

9.02(2) In no event shall a child be placed in an approved facility school or an administrative unit that is unable to ensure the provision of special education services that are appropriate for the child.

9.03 RESPONSIBILITY FOR TUITION COSTS

9.03(1) **Criteria for School Choice Placements**

Tuition shall be owed to the charter school, district of attendance, or on-line program for a child who has a disability identified under 9.03(1)(a) and meets one of the factors set forth in 9.03(1)(b):

9.03(1)(a) Eligible Disabilities

The child has been identified as having one or more of the following disabilities, as defined by Section 2.00 of these Rules:

9.03(1)(a)(i) A Vision Impairment, Including Blindness;

9.03(1)(a)(ii) A Hearing Impairment, Including Deafness;

9.03(1)(a)(iii) Deaf-blindness;

9.03(1)(a)(iv) A Serious Emotional Disability;

9.03(1)(a)(v) Autism Spectrum Disorder;

9.03(1)(a)(vi) A Traumatic Brain Injury;

9.03(1)(a)(vii) Multiple Disabilities; or

9.03(1)(a)(viii) Intellectual Disability.

9.03(1)(b) Indicators of Intensity and Duration of Services

9.03(1)(b)(i) For schools or programs serving a broad range of children with and without disabilities, tuition shall be owed only for those children with disabilities identified in Section 9.03(1)(a) whose program intensity and duration of services differ significantly from the intensity and duration of services provided by the school or program to children with disabilities not included in Section 9.03(1)(a).

9.03(1)(b)(ii) For schools or programs designed primarily to serve children with disabilities which provide an intensity and duration of services that differ significantly from other programs in the administrative unit of attendance, tuition shall be owed for all students listed in Section 9.03(1)(a).

9.03(2) **Type of Tuition Placements**

9.03(2)(a) Placement in Approved Facility Schools

9.03(2)(a)(i) When a child with a disability is placed, by a public agency, into an approved facility school, the district of residence is responsible for paying the educational costs over and above applicable revenues, also known as tuition costs. The administrative unit of residence shall count the child for the December 1 Special Education Count. The tuition costs shall be determined by the Department of Education for each approved facility school in accordance with Section 9.06(1) of these Rules. Such tuition costs shall be the maximum amount the district of residence shall be obligated to pay for the special education program. The district of residence may pay a higher tuition cost than the cost established and approved by the Department of Education for children in need of specialized services, if these services were included in a child's IEP but were not included in the approved tuition cost. The district of residence is not responsible for paying tuition costs for extended school year services for a child unless the child's IEP specifies the need for extended school year services. The Department of Education does not set the amount of tuition costs the administrative unit of attendance may charge the district of residence for children in group homes served by the administrative unit of attendance.

9.03(2)(a)(ii) Any court of record, the Department of Human Services, or any other public agency authorized by law to place a child with a disability in a facility with an approved facility school shall notify in writing the child's administrative unit of residence, the administrative unit in which the approved facility school is located and the Department of the placement within fifteen calendar days after the placement. If a court or public agency makes a public placement but fails to provide the required written notice, such court or public agency shall be responsible for the tuition costs for the child until such time as the required notification is made. If the child's administrative unit of residence does not provide written notice of disapproval of the child's placement in an approved facility school by a court or public agency within fifteen calendar days after the required notification, the placement shall be deemed appropriate. A decision to disapprove a placement must be based solely on the unavailability of appropriate educational services. If the placement is disapproved, the administrative unit of residence must assure that the child receives a free appropriate public education until an appropriate placement can be determined in accordance with Sections 5.04(1) and (2) of these Rules.

9.03(2)(a)(ii)(A) If an administrative unit of residence initiates a placement of a child with a disability into an approved facility school for its day treatment or residential program, and the approved facility school also provides the child's educational program, the administrative unit of residence shall count the child on its December 1 Special Education Count. The approved facility school shall count the student on the October 1 Count, bill the department for the state average per pupil operating revenue, and the administrative unit of residence shall pay the approved facility school all remaining day treatment or residential costs, as well as any additional educational costs agreed to by the parties.

9.03(2)(a)(ii)(B) If an administrative unit of residence places a child with a disability into an approved facility school for the educational program only, the district of residence must count the child on the October 1 Count as being in a private school placement, and the administrative unit of residence shall count the child on its December 1 Special Education

Count as being in a private school placement. The approved facility school shall not bill the Department for the state average PPOR for the child. Instead the approved facility school shall bill the administrative unit of residence for the total cost of the child's educational program, as agreed to by the approved facility school and the administrative unit of residence.

9.03(2)(b) Placement in Charter Schools

When a child with a disability enrolls in and attends a charter school pursuant to Article 30.5 of Title 22, C.R.S., including a charter school that provides an on-line program pursuant to Section 22-33-104.6, C.R.S., the district of residence shall be responsible for paying to the charter school or the chartering authority, whichever is providing the special education services, the tuition costs incurred in educating the child. The chartering authority shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The amount of the tuition costs shall be determined pursuant to Section 9.06(2) of these Rules. A written approval for the placement is not required from the administrative unit of residence or from the district of residence. Nothing in this subsection shall be construed to apply to the charter contract entered into between a charter school and its chartering authority or to allow a charter school to seek tuition costs from its chartering authority. The tuition responsibility shall be reflected in a contract among the charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, in a form approved by the chartering authority, and consistent with Section 9.05(1) of these Rules. Under the circumstances described in this subsection, the provisions of Section 22-20-108(8), C.R.S. shall not apply.

9.03(2)(b)(i) Tuition shall be owed to the charter school for those children based on the criteria set forth in Section 9.03(1) of these Rules.

9.03(2)(b)(ii) The provisions in Section 9.03(2)(b) also apply when:

9.03(2)(b)(ii)(A) A child is already enrolled in the charter school and is subsequently identified as a child with a disability in connection with the child find process; or

9.03(2)(b)(ii)(B) A charter school, which has not been billing for tuition costs for an enrolled child with a disability, decides to initiate a tuition contract.

9.03(2)(b)(iii) The provisions in Section 9.03(2)(b) apply only if the charter school complies with the Rules herein governing tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with Sections 9.03(2)(b), 9.05(1), 9.06(2) and 9.07(2) of the Rules. Section 9.04(2) of these Rules applies regardless of whether the charter school intends to bill the district of residence for tuition costs. This subsection in no way relieves the charter school or the administrative unit of attendance, depending on the charter contract, from the obligation to provide a free appropriate public education to the children with disabilities attending the charter school.

9.03(2)(c) Placement in Traditional Schools of Choice

When a child with a disability enrolls in and attends a school in an administrative unit other than the child's administrative unit of residence pursuant to the provisions of Section 22-36-101, C.R.S., and the school does not provide the child an on-line program pursuant to Section 22-33-104.6, C.R.S., and the school is not a charter school pursuant

to Article 30.5 of Title 22, C.R.S., the district of residence shall be responsible for paying the tuition costs for educating the child to the district of attendance. The district where the child attends shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence, and the district of residence, if it is not an administrative unit, must negotiate a contract which does not need to be approved by the Department of Education. No written approval for the placement is required from the administrative unit of residence and/or the district of residence. The administrative unit of attendance shall provide notice in accordance with Section 9.04(1) of these Rules.

9.03(2)(c)(i) Tuition shall be owed to the district of attendance for those children based on the criteria set forth in Section 9.03(1) of these Rules.

9.03(2)(c)(ii) The provisions in Section 9.03(2)(c) of these Rules also apply when:

9.03(2)(c)(ii)(A) A child is already enrolled in the district of attendance under public schools of choice and is subsequently identified as a child with a disability in connection with the child find process; or

9.03(2)(c)(ii)(B) A district of attendance, which has not been billing for tuition costs for an enrolled child with a disability, decides to initiate a tuition contract.

9.03(2)(c)(iii) The provisions in Section 9.03(2)(c) of these Rules apply only if the district of attendance complies with the Rules herein governing tuition costs. Likewise, if the district of attendance does not intend to seek tuition costs, neither it nor the administrative unit of attendance is required to comply with Sections 9.03(2)(c), 9.06(3) and 9.07(1) of these Rules. Section 9.04(1) of these Rules applies regardless of whether the district of attendance intends to bill for tuition costs. This subsection in no way relieves the administrative unit of attendance from the obligation to provide a free appropriate public education to the children with disabilities attending school in the administrative unit under public schools of choice.

9.03(2)(d) Placement in On-line Programs

When a child with a disability enrolls in and attends a public on-line program pursuant to Section 22-33-104.6, C.R.S., that is not provided by a charter school, the district of residence shall be responsible for paying to the provider of the on-line program the tuition costs incurred in educating the child. The district where the child attends school shall count the child for the October 1 Count, and the administrative unit of attendance shall count the child for the December 1 Special Education Count. The tuition responsibility shall be reflected in a contract among the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence and the district of residence, if it is not an administrative unit, in accordance with Section 9.04(3) of these Rules, and in a form approved by the Department of Education. A written approval for the placement is not required from the administrative unit of residence or from the district of residence. The on-line provider shall provide notice in accordance with these Rules when a child with a disability applies to enroll in the on-line program. The amount of the tuition costs shall be determined pursuant to Section 9.06(4) of these Rules. Under the circumstances described in this subsection, the provisions of Section 22-20-108(8), C.R.S. shall not apply.

9.03(2)(d)(i) Tuition shall be owed to the on-line program for those children based on the criteria set forth in Section 9.03(1) of these Rules.

9.03(2)(d)(ii) The provisions in Section 9.03(2)(d) of these Rules also apply when:

9.03(2)(d)(ii)(A) A child is already enrolled in the on-line program and is subsequently identified as a child with a disability in connection with the child find process; or

9.03(2)(d)(ii)(B) An on-line program, which has not been billing for tuition costs for a child with a disability enrolled in its program, decides to initiate a tuition contract.

9.03(2)(d)(iii) The provisions in Section 9.03(2)(d) of these Rules apply only if the on-line program complies with the Rules herein governing tuition costs. Likewise, if the on-line program does not intend to seek tuition costs, Sections 9.03(2)(d), 9.05(2), 9.06(4) and 9.07(3) of these Rules do not apply. Section 9.04(3) of these Rules applies regardless of whether the on-line program intends to bill for tuition costs. This subsection in no way relieves the administrative unit of attendance for the on-line program from the obligation to provide a free appropriate public education to the children with disabilities attending the on-line program.

9.03(2)(d)(iv) The provisions in Section 9.03(2)(d), 9.04(3), 9.05(2), 9.06(4) and 9.07(3) of these Rules do not apply to any on-line program that is providing services that are supplemental to the curriculum of a school district.

9.03(2)(e) Placement by Administrative Units

An administrative unit may purchase services from one or more administrative units where an appropriate special education program exists. The district of residence shall count the child for the October 1 Count, and the administrative unit of residence shall count the child for the December 1 Special Education Count. The two administrative units must negotiate a contract, including the cost of the program, which does not need to be approved by the Department of Education.

9.04 SCHOOLS OF CHOICE NOTIFICATION REQUIREMENTS

9.04(1) **Notice - Public Schools Of Choice That Are Not Charter Schools Or On-line Programs**

The district of attendance shall provide written notice to the district of residence when a child applies to enroll or is enrolled in one of its schools and the principal of the school knows that the child is a child with a disability. The specific requirements for the written notice are set forth below:

9.04(1)(a) Applies to Enroll

"Applies to enroll" means that the district of attendance has offered a space to the child and the parent(s) has accepted the offer.

9.04(1)(b) Content of Notice

The written notice by the district of attendance shall identify the child by name; date of birth; state assigned student identifier (SASID), if available; date of the enrollment application; anticipated date of admission; and that the child has been identified as a child with a disability.

9.04(1)(c) Manner

The notice shall be in writing, shall be signed by the school principal and shall be sent to the superintendent of the district of residence, if the district of residence is not an administrative unit, and to the special education directors of the administrative units of attendance and residence. The manner in which the written notice is provided must maintain the confidentiality of the child's personal information in accordance with the policy of the administrative unit of attendance.

9.04(1)(d) Timing

The notice shall be sent within 15 calendar days after the occurrence of the following two events:

9.04(1)(d)(i) The child has applied to enroll, as that term is defined in this section, or is enrolled in the district of attendance; and

9.04(1)(d)(ii) Upon exercising timely and due diligence, the school principal knows that the child is a child with a disability.

9.04(1)(e) Change in District of Residence

If there is a change in the child's district of residence, the same notification and timelines set forth in this Section 9.04(1) must be followed. In addition, the district of attendance must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director of the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.04(2) **Notice - Charter Schools**

The charter school shall provide written notice to the district of residence when a child applies to enroll or is enrolled in the charter school and the charter school's administrator knows that the child is a child with a disability. The specific requirements for the written notice are set forth below:

9.04(2)(a) Applies to Enroll

"Applies to enroll" shall mean that the charter school has offered a space to the child and the parent(s) has accepted the offer.

9.04(2)(b) Content of Notice

The written notice by the charter school shall identify the child by name; date of birth; state assigned student identifier (SASID), if available; date of the enrollment application; anticipated date of admission; and that the child has been identified as a child with a disability.

9.04(2)(c) Manner

The notice shall be in writing, shall be signed by the charter school administrator and shall be sent to the superintendent of the district of residence, if the district of residence is not an administrative unit, and to the directors of special education for both the administrative units of residence and attendance. The manner in which the written notice

is provided must maintain the confidentiality of the child's personal information in accordance with the policy of the administrative unit of attendance.

9.04(2)(d) Timing

The notice shall be sent within 15 calendar days after the occurrence of the following two events:

9.04(2)(d)(i) The child has applied to enroll, as defined in this section, or is enrolled in the charter school; and

9.04(2)(d)(ii) Upon exercising timely and due diligence, the charter school administrator knows that the child is a child with a disability.

9.04(2)(e) Change in District of Residence

If there is a change in the child's district of residence, the same notification and timelines set forth in this Section 9.04(2) must be followed. In addition, the charter school must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director for the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.04(3) **NOTICE - Public On-line Programs Under section 22-33-104.6, C.R.S.**

The on-line program shall provide written notice to the district of residence when a child applies to enroll or is enrolled in the on-line program and the on-line program's director knows that the child is a child with a disability. The specific requirements for the written notice are set forth below:

9.04(3)(a) Applies to Enroll

"Applies to enroll" shall mean that the on-line program has offered a space to the child and the parent(s) has accepted the offer.

9.04(3)(b) Content of Notice

The written notice by the on-line program director shall identify the child by name; date of birth; state assigned student identifier (SASID), if available; the date of the enrollment application; the anticipated date of admission; and that the child has been identified as a child with a disability.

9.04(3)(c) Manner

The notice shall be signed by the director of the on-line program and shall be sent to the superintendent of the district of residence, if the district of residence is not the administrative unit of residence, and to the directors of special education for the administrative units of attendance and residence. The manner in which the written notice is provided must maintain the confidentiality of the child's personal information in accordance with the policy of the administrative unit of attendance.

9.04(3)(d) Timing

The notice shall be sent within 15 calendar days after the occurrence of the following two events:

9.04(3)(d)(i) The child has applied to enroll or is enrolled in the on-line program, as defined in this Section; and

9.04(3)(d)(ii) Upon exercising timely and due diligence, the on-line program director knows that the child is a child with a disability.

9.04(3)(e) Change in District of Residence

If there is a change in the child's district of residence the same notification and timelines set forth in this Section 9.04(3) must be followed. In addition, the on-line program must notify the special education director of the former administrative unit of residence, the superintendent of the former district of residence, if it is not an administrative unit, and the special education director for the administrative unit of attendance that the child has moved and the date that the move occurred, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.05 CONTRACT FOR TUITION RESPONSIBILITY

9.05(1) Charter School

9.05(1)(a) Contract Elements

The charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, shall establish the tuition responsibility of the district of residence for each child with a disability through a written contract in a form approved by the chartering authority. The provisions of this section apply only if the charter school intends to seek tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with this section. The written contract must contain, at a minimum, the following elements:

9.05(1)(a)(i) The name of the district of residence;

9.05(1)(a)(ii) The name of the administrative unit of residence, if different from the district of residence;

9.05(1)(a)(iii) The name of the charter school;

9.05(1)(a)(iv) The name of the chartering authority;

9.05(1)(a)(v) The name of the administrative unit of attendance, if different from the chartering authority;

9.05(1)(a)(vi) The name of the child;

9.05(1)(a)(vii) The child's date of birth;

9.05(1)(a)(viii) The child's address;

9.05(1)(a)(ix) The child's primary disability;

9.05(1)(a)(x) Whether the child will be attending full-time or part-time;

9.05(1)(a)(xi) The charter school's tuition cost rate as approved by the state board, or, if the tuition cost rate has not been approved as of the date that the contract has been signed, a statement that the state board approved rate will be charged;

9.05(1)(a)(xii) The number of school days (student contact days) covered by the contract;

9.05(1)(a)(xiii) The schedule for billing and payment, which should be on a monthly basis;

9.05(1)(a)(xiv) A statement that the charter school will notify the directors of special education for the administrative units of residence and attendance, as well as the superintendent of the district of residence, if the district is not an administrative unit, within 15 calendar days of the date of the child's withdrawal from the charter school or when the child is otherwise no longer attending the charter school. If the charter school is an on-line program, this section shall not apply. Instead, Section 9.05(2)(a)(xiii) shall apply.

9.05(1)(a)(xv) A statement that the charter school will not bill the district of residence for more than 5 consecutive days of unexcused absences or for more than 10 cumulative days of unexcused absences during the school year;

9.05(1)(a)(xvi) A statement that the charter school or the administrative unit of attendance, whichever is responsible according to the charter contract, will timely notify the director of special education for the administrative unit residence when the child's IEP team is being convened to review the child's IEP or to consider a change in placement for the child. The meeting notification shall be provided at the same time that notice is sent to the parent(s);

9.05(1)(a)(xvii) A statement that the tuition cost responsibility commences on the date that services under an existing IEP commence, unless the child's IEP team determines that the charter school is not an appropriate placement for the child or that the child is no longer a child with a disability as defined by these Rules. Nothing herein shall be construed to modify current educational placement requirements under Section 6.03(14) of these Rules; and

9.05(1)(a)(xviii) Signature lines for the individuals who are legally authorized to sign the contract on behalf of the charter school, the administrative unit of residence, and the district of residence if it is not an administrative unit.

9.05(1)(b) Additional Contract Elements for Children Enrolled in Charter School On-line Programs

If the charter school sponsors an on-line program, the costs of direct speech language instruction and related services will not be included in the charter school's tuition cost rate. Instead, the cost of those services may be added to the total tuition cost amount. When a child's IEP specifies speech/language instruction and/or related services, the contract between the charter school, the administrative unit of residence and the district of residence, if it is not an administrative unit, must contain the following additional elements:

9.05(1)(b)(i) A statement that the child's IEP specifies speech/language instruction and/or related services and a description of the nature and duration of such services;

9.05(1)(b)(ii) A statement identifying which entity (i.e., the charter school, the chartering school authority, the administrative unit of attendance, if different from the chartering authority, the administrative unit of residence or a third party) will deliver such services;

9.05(1)(b)(iii) If the parties agree that the administrative unit of residence will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties if it is determined that the administrative unit of residence is failing or has failed to provide appropriate services as specified by the child's IEP;

9.05(1)(b)(iv) If the parties agree that the administrative unit of attendance will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties if it is determined that the administrative unit of attendance is failing or has failed to provide appropriate services as specified by the child's IEP;

9.05(1)(b)(v) A statement describing whether the costs of providing the speech-language instruction and/or related services will be an add-on to the tuition cost rate approved by the State Board that will be billed and an identification of what those costs will be;

9.05(1)(b)(vi) If the speech-language instruction and/or a related service are to be provided by the charter school or a third party contractor with the charter school that is not the administrative unit of residence, the contract shall contain a statement that the district of residence will be responsible for only the cost of providing the service in the amount of time specified on the child's IEP. If such services are to be provided by the charter school or a third party contractor of the charter school, the contract shall contain a statement describing the responsibilities of the parties if it is determined that the charter school or its third party contractor is failing or has failed to provide appropriate services as specified by the child's IEP; and

9.05(1)(b)(vii) If speech-language instruction and/or related services associated with child find are being claimed, then such services must be included in the charter school's tuition cost rate.

9.05(1)(c) Change in District of Residence

If there is a change in the child's district of residence the charter school must notify the new district of residence in accordance with Section 9.04(2) of these Rules. The charter school must also enter into a tuition contract with the new district of residence in accordance with Section 9.05(1) of these Rules, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.05(1)(d) Extended School Year Services

If the child's IEP specifies that the child is to receive extended school year services, a separate contract for those services must be entered into between the charter school, the administrative unit of residence, and the district of residence, if it is not an administrative unit.

9.05(1)(e) Contract Timelines

9.05(1)(e)(i) The charter school shall send the proposed tuition contract to the special education director of the administrative unit of residence, and to the district to residence, if it is not an administrative unit, within 15 calendar days following the date it is determined that the charter school is an appropriate placement for the child.

9.05(1)(e)(ii) The district of residence shall provide written acknowledgement of the receipt of the proposed tuition contract within 15 calendar days of its receipt of the contract. The district of residence shall have 30 additional calendar days to negotiate, execute and return the contract. In the event that the contract is not executed and returned within 45 calendar days of the district of residence's receipt of the proposed contract, the tuition responsibility shall be as stated in Section 22-20-109(5), C.R.S., even though a contract has not been executed.

9.05(2) **On-line Programs (Excluding Charter School On-line Programs)**

9.05(2)(a) Contract elements

The administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence, and the district of residence, if it is not an administrative unit, shall establish the tuition responsibility of the district of residence for each child with a disability through a written contract in a form approved by the Department of Education. The provisions of this section shall apply only if the on-line program intends to seek tuition costs. Likewise, if the on-line program does not intend to seek tuition costs, the administrative unit of attendance and the district of attendance, if it is not an administrative unit, is not required to comply with this section. The written contract must contain, at a minimum, the following elements:

9.05(2)(a)(i) The name of the district of residence;

9.05(2)(a)(ii) The name of the administrative unit of residence, if different from the district of residence;

9.05(2)(a)(iii) The name of the on-line program;

9.05(2)(a)(iv) The name of the sponsoring district(s) and/or the board of cooperative services;

9.05(2)(a)(v) The name of the child;

9.05(2)(a)(vi) The child's date of birth;

9.05(2)(a)(vii) The child's address;

9.05(2)(a)(viii) The child's primary disability;

9.05(2)(a)(ix) Whether the child will be attending full-time or part-time;

9.05(2)(a)(x) The on-line program's tuition cost rate as approved by the state board or, if the tuition cost rate has not been approved as of the date that the contract has been signed, a statement that the State Board approved rate will be charged;

9.05(2)(a)(xi) The number of school days (student contact days) covered by the contract;

9.05(2)(a)(xii) The schedule for billing and payment, which should be on a monthly basis;

9.05(2)(a)(xiii) A statement that when a child with a disability withdraws from the on-line program, or is otherwise not attending the on-line program, the on-line program shall provide notice to the special education directors of the administrative units of residence and attendance, and to the superintendent of the district of residence if the district is not an administrative unit. This contract element shall not be interpreted to relieve the on-line program of its obligations regarding truancy pursuant to Section 22-33-107, C.R.S. Notice pursuant to this rule for unexcused nonattendance shall be provided upon the earliest occurrence of the following:

9.05(2)(a)(xiii)(A) The child is absent for 10 consecutive school days from the on-line program's regular education program; or

9.05(2)(a)(xiii)(B) The child is absent for 3 consecutive sessions of scheduled direct special education services, or the parent is absent for 3 consecutive sessions of consultative special education services; or

9.05(2)(a)(xiii)(C) The child is absent for scheduled direct special education services during 10 cumulative school days or the parent is absent for consultative special education services for 10 cumulative school days.

9.05(2)(a)(xiv) A statement that the on-line program will not bill the district of residence for unexcused absences in excess of the earliest occurrence of the circumstances defined above in Section 9.05(2)(a)(xiii);

9.05(2)(a)(xv) A statement that the on-line program will timely notify the special education director of the administrative unit of residence when the child's IEP team is being convened to review the child's IEP or to consider a change in placement for the child. The meeting notification shall be provided at the same time that notice is sent to the parent(s);

9.05(2)(a)(xvi) A statement that the tuition cost responsibility commences on the date that services under an existing IEP commences, unless the child's IEP team determines that the on-line program is not an appropriate placement for the child or that the child is no longer a child with a disability as defined by these Rules. Nothing herein shall be construed to modify current educational placement requirements under Section 6.03(14)(a) of these Rules; and

9.05(2)(a)(xvii) Signature lines for the individuals who have legal authority to sign the contract on behalf of the administrative unit of attendance, the district of attendance if it is not an administrative unit, the administrative unit of residence, and the district of residence if it is not an administrative unit.

9.05(2)(b) Transfer of Special Education Revenues

If the administrative unit of attendance and the district of attendance, if it is not an administrative unit, on behalf of the on-line program, contracts with the administrative unit of residence for all special education and related services, then all state and federal special education funds shall be forwarded to the administrative unit of residence for those services.

9.05(2)(c) Additional Contract Elements for Contracts Involving Speech-language Instruction and/or Related Services.

The costs of direct speech-language instruction and related services shall not be included in the on-line program's tuition cost rate. Instead, the cost of those services may be added to the total tuition cost amount. When a child's IEP specifies speech-language instruction and/or related services, the tuition contract must contain the following additional elements:

9.05(2)(c)(i) A statement that the child's IEP specifies speech-language instruction and/or related services, and a description of the nature and duration of such services as specified by the IEP;

9.05(2)(c)(ii) A statement identifying which entity (i.e., the administrative unit of attendance, the administrative unit of residence or a third party) will deliver such services;

9.05(2)(c)(iii) If the parties agree that the administrative unit of residence will deliver the speech-language instruction and/or related services, a statement describing the responsibilities of the parties should it be determined that the administrative unit of residence is failing, or has failed, to provide appropriate services as specified by the child's IEP;

9.05(2)(c)(iv) If the parties agree that the administrative unit of attendance will deliver the speech-language instruction and/or related services and the district of residence will pay the tuition costs for such services, a statement describing the responsibilities of the parties should it be determined that the administrative unit of attendance is failing, or has failed, to provide appropriate services as specified by the child's IEP;

9.05(2)(c)(v) If the on-line program is providing the speech-language instruction and/or related services, a statement describing whether the costs of providing the speech-language instruction and/or related service will be an add-on to the tuition cost rate approved by the State Board and an identification of what those costs will be;

9.05(2)(c)(vi) If the speech-language instruction and/or a related service are to be provided by the on-line program through a third party contractor that is not the administrative unit of residence, the contract shall contain a statement that the district of residence will be responsible for only the cost of providing the services for the amount of time specified on the child's IEP. If such services are to be provided by the on-line program or a third party contractor of the on-line program, the contract shall contain a statement describing the responsibilities of the parties if it is determined that the service provider is failing, or has failed, to provide appropriate services as specified by the child's IEP, and

9.05(2)(c)(vii) If speech-language instruction and/or related services associated with child find are being claimed, then such instruction and/or related services must be included in the on-line program's tuition cost rate.

9.05(2)(d) Change in District of Residence

If there is a change in the child's district of residence the on-line program must notify the new district of residence in accordance with Section 9.04(3) of these Rules. The on-line program must also enter into a tuition contract with the new district of residence in

accordance with Section 9.05(2) of these Rules, thereby removing from the former district of residence the tuition cost responsibility for that child as of the date of the change in residency.

9.05(2)(e) Extended School Year Services

If the child's IEP specifies that the child is to receive extended school year services, a separate contract for those services must be entered into between the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence, and the district of residence, if it is not an administrative unit.

9.05(2)(f) Contract Timelines

9.05(2)(f)(i) The district of attendance shall send the proposed tuition contract to the district of residence within 15 calendar days following the date that the child's IEP team determines that the on-line program is an appropriate placement for the child.

9.05(2)(f)(ii) The district of residence shall provide written acknowledgement of the receipt of the proposed tuition contract within 15 calendar days of its receipt of the contract. The district of residence shall have 30 additional calendar days to negotiate, execute and return the contract. In the event that the contract is not executed and returned within 45 calendar days of the district of residence's receipt of the proposed contract, the tuition responsibility shall be as stated in Section 22-20-109(6), C.R.S., even though a contract has not been executed.

9.06 DOCUMENTATION OF TUITION COSTS

9.06(1) **Approved Facility Schools**

9.06(1)(a) Annually, approved facility schools must submit to the Department of Education an itemized documentation of the proposed amount of tuition costs charged to an administrative unit of residence for special education services provided to a child with disabilities who is determined to be the responsibility of the administrative unit of residence.

9.06(1)(b) The documentation must be submitted on forms developed by the Department of Education, and must include the following:

9.06(1)(b)(i) Special education expenditures defined in Section 2.00 of these Rules;

9.06(1)(b)(ii) The number of days in the school year during which the approved facility school offers the program; and

9.06(1)(b)(iii) A separate set of proposed costs for services that differ from those offered during the regular academic year.

9.06(1)(c) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.

9.06(1)(d) A percentage of the per pupil operating revenue, to be determined annually by the Department of Education, shall be applied as revenue toward indirect costs of the special education program, such as utilities, maintenance, administrative support services, regular education, and other items that may be determined by the Department.

9.06(1)(e) In no instance shall the total revenues received by the approved facility school for Department of Education approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services. Based on this information, the Department will recommend to the State Board of Education tuition rates for approved facility school. Costs for additional services required by an individual child, and documented on an IEP may be negotiated with the administrative unit of residence.

9.06(2) **Charter Schools, Excluding Charter Schools That Are On-line Programs**

The provisions of this section apply only if the charter school intends to seek tuition costs. Likewise, if the charter school does not intend to seek tuition costs, the charter school is not required to comply with this section.

9.06(2)(a) Annually, charter schools, excluding charter schools that are also on-line programs, must submit to the Department an itemized documentation of the proposed amount of tuition costs to be charged to a district of residence for special education services provided to a child with disabilities who is enrolled in the charter school. If appropriate, multiple rates may be set for different programs within the charter school. The special education director of the administrative unit of attendance shall certify that the information contained in the documentation is accurate and that the criteria set forth in 9.03(1) are met.

9.06(2)(b) The documentation must be submitted on forms developed by the Department and in accordance with timelines established by the Department. The documentation must include the following:

9.06(2)(b)(i) Special education expenditures defined in Section 2.00 of these Rules;

9.06(2)(b)(ii) The number of days in the school year during which the charter school offers the program;

9.06(2)(b)(iii) Expenditures for the regular education program, administration, personnel costs, business services, and occupancy; and

9.06(2)(b)(iv) The average number of children enrolled in the charter school, and the number of those children with disabilities.

9.06(2)(c) For the purpose of establishing a tuition rate, student/staff ratios in a particular program shall be approved by the chartering authority, and shall be reasonably consistent with the ratios of the chartering authority, for serving students with comparable disabilities.

9.06(2)(d) The type of supplies and equipment that may be included in the documented special education costs shall be unique for children with disabilities. The Department shall limit the amount for supplies and equipment to be included in the rate to no more than 1.1 times the average cost per child with disabilities for supplies and equipment for administrative units in the most recent year for which data are available.

9.06(2)(e) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.

9.06(2)(f) If the charter school accepts a child for which it has not received PPR funding, the PPR amount must still be included as an applicable revenue for purposes of establishing tuition costs.

9.06(2)(g) If the charter school provides an extended school year program for children with disabilities, a separate tuition rate form must be submitted for the program.

9.06(2)(h) In no case shall the total revenues received by the charter school for Department approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services.

9.06(2)(i) In no case shall regular education and other education costs exceed the per pupil revenue received by the charter school.

9.06(2)(j) A percentage of the per pupil revenue, as documented on the rate setting form for each charter school, shall be applied as revenue toward the special education costs submitted on the rate setting form by the charter school.

9.06(2)(k) Based on this information, the Department will recommend to the State Board of Education for approval, tuition rates for charter schools.

9.06(2)(l) Costs for additional services, supplies or equipment required by an individual child, and documented on an IEP, shall be negotiated with the administrative unit of residence and the district of residence, if it is not an administrative unit, and shall not be included in the tuition rate submitted for approval.

9.06(3) **School Districts**

Special Education tuition costs involving two school districts should be negotiated between the administrative unit of attendance, the district of attendance, if it is not an administrative unit, the administrative unit of residence and the district of residence, if it is not an administrative unit, and do not need to be submitted to the Department of Education for approval. This includes costs for children with disabilities who are attending school outside their district of residence under the Public Schools of Choice law. In establishing the tuition cost, all applicable revenues as defined in Section 9.01(1) of these Rules shall be deducted.

9.06(4) **On-line Programs, Including Charter Schools That Are On-line Programs**

The provisions of this section apply only if the on-line program intends to seek tuition costs. Likewise, if the on-line program does not intend to seek tuition costs, it is not required to comply with this section.

9.06(4)(a) Annually, on-line programs must submit to the Department of Education an itemized documentation of the proposed amount of tuition costs to be charged to a district of residence for special education services provided to children with disabilities who are enrolled in the on-line program. The special education director of the administrative unit of attendance shall certify that the information contained in the documentation is accurate and that the criteria set forth in 9.03(1) are met.

9.06(4)(b) The documentation must be submitted on forms developed by the Department and in accordance with timelines established by the Department. The documentation must include the following:

9.06(4)(b)(i) Special education expenditures defined in Section 2.00 of these Rules;

9.06(4)(b)(ii) The number of days in the school year during which the on-line program offers the program;

9.06(4)(b)(iii) Expenditures for the regular education program, administration, personnel costs, occupancy, and business services; and

9.06(4)(b)(iv) The average number of children enrolled in the on-line program, and the number of those children with disabilities.

9.06(4)(c) For the purpose of establishing a tuition rate, student/staff ratios in a particular program shall be approved by the administrative unit of attendance, and shall be reasonably consistent with that unit's ratios for serving students with comparable disabilities.

9.06(4)(d) The type of supplies and equipment that may be included in the documented special education costs shall be unique for children with disabilities. The Department shall limit the amount for supplies and equipment to be included in the rate to no more than 1.1 times the average cost per child with disabilities for supplies and equipment for administrative units in the most recent year for which data are available.

9.06(4)(e) Tuition costs shall be determined after deducting applicable revenues, as defined in Section 9.01(1) of these Rules.

9.06(4)(f) If the on-line program accepts a child for which it has not received the state minimum PPR funding, the state minimum PPR must still be included as an applicable revenue for purposes of establishing tuition costs.

9.06(4)(g) If the on-line program provides an extended school year program for children with disabilities, a separate tuition rate form must be submitted for the program.

9.06(4)(h) In no case shall the total revenues received by the on-line program for Department of Education approved costs for special education services exceed 100 percent of the total expenditures for the provision of those special education services.

9.06(4)(i) In no case shall regular education and other education costs exceed the per pupil revenue received by the on-line program.

9.06(4)(j) A percentage of the per pupil revenue, as documented on the rate setting form for each on-line program, shall be applied as revenue toward the special education costs submitted on the rate setting form by the program.

9.06(4)(k) Based on this information, the Department will recommend to the State Board of Education for approval, tuition rates for on-line programs.

9.06(4)(l) Costs for additional services, supplies or equipment required by an individual child, and documented on an IEP, shall be negotiated with the administrative unit of residence, and the district of residence, if it is not an administrative unit, and shall not be included in the tuition rate submitted for approval.

9.07 PROCEDURES FOR RESOLVING DISAGREEMENTS

The following procedures shall be available for resolving disputes involving tuition charges:

9.07(1) **school Districts**

9.07(1)(a) If a district of attendance determines that the district of residence has not paid the tuition costs incurred in educating a child with a disability as required in Section 22-

20-109(4), C.R.S., the district of attendance may seek a determination from the State Board in accordance with the following provisions:

9.07(1)(a)(i) If a district of attendance determines that the district of residence has not forwarded to the district of attendance the amount due to it in accordance with the terms of the tuition contract and these rules, the district of attendance may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to it. A district of attendance that chooses to request a determination of issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the district of attendance to complete any requirements prior to seeking a determination from the State Board, the district of attendance shall submit the request no later than the end of the next fiscal year following the fiscal year in which the district of attendance completes said requirements.

9.07(1)(a)(ii) Upon receipt from a district of attendance of a request for a determination of whether the district of residence has improperly withheld any portion of the amount due to it, the State Board Shall direct the Department of Education to review the terms of the tuition contract and the relevant information of the district of attendance and the district of residence, and make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to it. The Department shall request from the district of residence and the district of attendance all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the districts of attendance and residence.

9.07(1)(a)(iii) At the next State Board meeting following receipt of the recommendation of the Department, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the district of attendance. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the district of attendance, the district of residence shall pay to the district of attendance, within thirty days after issuance of the decision, the amount improperly withheld.

9.07(1)(a)(iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the district of attendance may notify the department. The department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the district of attendance.

9.07(1)(a)(v) Third Party Facilitation

The parties may utilize third party facilitation as a dispute resolution process for resolving tuition charge disputes including disputes arising out of the contract itself and disputes arising during the formation of a proposed contract. Third party facilitation must be voluntary. The parties agreeing to third party facilitation are responsible for paying its costs.

9.07(1)(b) The dispute resolution procedure established in Section 9.07(1)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying a tuition charge for a child who withdrew from the district of attendance, or who otherwise

has not been attending the district of attendance, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

9.07(2) **Charter Schools**

9.07(2)(a) If a charter school determines that the district of residence has not paid the tuition costs incurred in educating a child with a disability as required in Section 22-20-109(5), C.R.S., the charter school may seek a determination from the State Board in accordance with the following provisions:

9.07(2)(a)(i) If a charter school determines that the district of residence has not forwarded to the charter school the amount due to the charter school in accordance with the terms of the tuition contract and these Rules, the charter school may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the charter school. A charter school that chooses to request a determination of issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the charter school to complete any requirements prior to seeking a determination from the State Board, the charter school shall submit the request no later than the end of the next fiscal year following the fiscal year in which the charter school completes said requirements.

9.07(2)(a)(ii) Upon receipt from a charter school of a request for a determination of whether the district of residence has improperly withheld any portion of the amount due to the charter school, the State Board shall direct the Department to review the terms of the tuition contract and the relevant information of the charter school and the district of residence, and make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the charter school. The Department shall request from the district of residence and the charter school all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the district of residence and the charter school.

9.07(2)(a)(iii) At the next State Board meeting following receipt of the recommendation of the Department of Education, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the charter school. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the charter school, the district of residence shall pay to the charter school, within thirty days after issuance of the decision, the amount improperly withheld. In addition, the district of residence shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation. If the State Board finds that the district of residence did not improperly withhold any portion of the amount due to the charter school, the charter school shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation.

9.07(2)(a)(iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the charter school may notify the Department. The Department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the charter school.

9.07(2)(a)(v) If the State Board finds that the district did not improperly withhold any portion of the amount due to the charter school, the charter school shall pay the costs incurred by the Department in reviewing the necessary information to make its recommendation.

9.07(2)(a)(vi) Third Party Facilitation

The parties may utilize third party facilitation as a dispute resolution process for resolving tuition cost disputes including disputes arising out of the contract itself and disputes arising during the formation of a proposed contract. Third party facilitation must be voluntary. The parties agreeing to third party facilitation are responsible for paying its costs.

9.07(2)(b) The dispute resolution procedure established in Section 9.07(2)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying tuition costs for a child who withdrew from the charter school, or who otherwise has not been attending the charter school, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

9.07(3) **On-line Programs**

9.07(3)(a) If an on-line program determines that the district of residence has not paid the tuition charge for excess cost incurred in educating a child with a disability, as required in Section 22-20-109(6), C.R.S., the district of attendance, on behalf of the on-line program, may seek a determination from the State Board in accordance with the following provisions:

9.07(3)(a)(i) If the district of attendance determines that the district of residence has not forwarded to the on-line program the amount due to the on-line program in accordance with the terms of the tuition contract and the provisions of these Rules, the district of attendance may seek a determination from the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. A district of attendance that chooses to request a determination of the issues shall submit the request within the next fiscal year following the fiscal year in which the district of residence may have improperly withheld funding; except that, if the tuition contract requires the on-line program and/or the district of attendance to complete any requirements prior to seeking a determination from the department, the district of attendance shall submit the request no later than the end of the next fiscal year following the fiscal year in which the on-line program and/or the district of attendance completes said requirements.

9.07(3)(a)(ii) Upon receipt from a district of attendance of a request for a determination of whether the district of residence improperly withheld any portion of the amount due to the on-line program, the State Board shall direct the Department to review the terms of the tuition contract and other relevant information of the on-line program, and the Department shall make a recommendation to the State Board regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. The Department shall request from the district of residence, the district of attendance and the on-line program, all information as soon as possible following the request, but in no event later than thirty days after completion of the annual financial audit. The Department shall forward its recommendation to the State Board within sixty days after receiving all of the requested information from the district of residence, the district of attendance and the on-line program.

9.07(3)(a)(iii) At the next State Board meeting following receipt of the recommendation of the Department, the State Board shall issue its decision regarding whether the district of residence improperly withheld any portion of the amount due to the on-line program. If the State Board finds that the district of residence improperly withheld any portion of the amount due to the on-line program, the district of residence shall pay to the on-line program, within thirty days after issuance of the decision, the amount improperly withheld.

9.07(3)(a)(iv) If the district of residence fails within the thirty-day period to pay the full amount that was improperly withheld, the on-line program may notify the Department. The Department shall withhold from the state equalization payment of the district of residence the unpaid portion of the amount improperly withheld by the district of residence and pay the unpaid portion directly to the on-line program.

9.07(3)(a)(v) Third Party Facilitation

The parties may utilize third party facilitation as a dispute resolution process for resolving tuition charge disputes including disputes arising out of the contract itself and disputes arising during the formation of a proposed contract. Third party facilitation must be voluntary. The parties agreeing to third party facilitation are responsible for paying its costs.

9.07(3)(b) The dispute resolution procedure established in Section 9.07(3)(a) of these Rules may also be utilized by the district of residence if it determines that it has been paying a tuition charge for a child who withdrew from the on-line program, or who otherwise has not been attending the on-line program, or if the child's residency, as defined in Section 22-20-107.5, C.R.S., has changed.

2220-R-10.00 (reserved)

2220-R-11.00 (reserved)

2220-R-12.00 GIFTED AND TALENTED STUDENT PROGRAMMING

12.01 Definitions.

12.01(1) **"Administrative Unit"** or "AU" means a school district, a board of cooperative services, or the state Charter School Institute that: oversees and/or provides educational services to exceptional children; is responsible for the local administration of Article 20 of Title 22, C.R.S.; and meets the criteria established in Section 3.01 of these Rules.

12.01(2) **"Advanced Learning Plan"** OR "ALP" means a written record of gifted and talented programming utilized with each gifted child and considered in educational planning and decision making.

12.01(3) **"Affective Development"** means social and emotional programming intended to:

12.01(3)(a) assist gifted and talented students in understanding themselves as gifted learners, and the implications of their abilities, talents, and potential for accomplishment (intrapersonal skills); and

12.01(3)(b) assist gifted and talented students in developing and/or refining interpersonal skills.

12.01(4) **"Aptitude"** means abilities or behaviors that can be monitored, evaluated, or observed to determine potential or a level of performance in problem solving, reasoning, and other cognitive functions (e.g., memory, synthesis, creativity, speed in problem solving). Aptitude or general ability assessments predict potential in an area of giftedness and/or academic school success.

12.01(5) **"Aptitude Test"** means an ability test to determine potential or level of performance in problem solving, reasoning and other cognitive functions. Aptitude or ability tests predict potential in an area of giftedness and/or future academic school success.

12.01(6) **"Articulation",** for purposes of this Rule 12.00, means the communication that occurs as students move or transition through the school system, grade by grade and school level to school level.

12.01(7) " **Board of Cooperative Services"** means a regional educational services unit created pursuant to Article 5 of Title 22, C.R.S., and designed to provide supporting, instructional, administrative, facility, community, or any other services contracted by participating members.

12.01(8) **"Commensurate Growth"** means the academic and affective progress that can be measured and should be expected of a gifted student given the student's level of achievement, learning needs, and abilities matched with the appropriate instructional level."

12.01(9) **"Early Access"** means early entrance to kindergarten or first grade for highly advanced gifted children under the age of six.

12.01(10) **"Early Childhood Special Educational Services"** means those instructional strategies, curriculum, affective and programming options that nurture and develop exceptional abilities or potential for gifted students, including but not limited to an early entrance strategy or advanced level pre-school interventions.

12.01(11) **"Early Entrance"** means a gifted student is placed in a grade level above other same aged peers based upon the following conditions:

12.01(11)(a) the student is formally identified as gifted as specified in 12.01(12); and

12.01(11)(b) the student meets requirements for accelerated placement as determined in an auditable body of evidence (e.g., achievement, ability, social-emotional factors, school learning skills, developmental characteristics, and family and school support).

12.01(12) **"Gifted and Talented Children"** means those persons between the ages of four and twenty-one whose abilities, talents, and potential for accomplishment are so exceptional or developmentally advanced that they require special provisions to meet their educational programming needs. Gifted and talented children are hereafter referred to as gifted students. Children under five who are gifted may also be provided with early childhood special educational services. Gifted students include gifted students with disabilities (i.e. twice exceptional) and students with exceptional abilities or potential from all socio-economic and ethnic, cultural populations. Gifted students are capable of high performance, exceptional production, or exceptional learning behavior by virtue of any or a combination of these areas of giftedness:

12.01(12)(a) General or Specific Intellectual Ability.

12.01(12)(a)(i) Definition

Intellectual ability is exceptional capability or potential recognized through cognitive processes (e.g., memory, reasoning, rate of learning, spatial reasoning,

ability to find and solve problems, ability to manipulate abstract ideas and make connections, etc.).

12.01(12)(a)(ii) Criteria

Intellectual ability is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized cognitive tests.

12.01(12)(b) Specific Academic Aptitude

12.01(12)(b)(i) Definition

Specific academic aptitude is exceptional capability or potential in an academic content area(s) (e.g., a strong knowledge base or the ability to ask insightful, pertinent questions within the discipline, etc.).

12.01(12)(b)(ii) Criteria

Specific academic aptitude is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized achievement tests.

12.01(12)(c) Creative or Productive Thinking

12.01(12)(c)(i) Definition

Creative or productive thinking is exceptional capability or potential in mental processes (e.g., critical thinking, creative problem solving, humor, independent/original thinking, and/or products, etc.).

12.01(12)(c)(ii) Criteria

Creative or productive thinking is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized tests of creative/critical skills or creativity/critical thinking.

12.01(12)(d) Leadership Abilities.

12.01(12)(d)(i) Definition

Leadership is the exceptional capability or potential to influence and empower people (e.g., social perceptiveness, visionary ability, communication skills, problem solving, inter and intra-personal skills and a sense of responsibility, etc.).

12.01(12)(d)(ii) Criteria

Leadership is demonstrated by advanced level on performance assessments or ninety-fifth percentile and above on standardized leadership tests.

12.01(12)(e) Visual Arts, Performing Arts, Musical or Psychomotor Abilities.

12.01(12)(e)(i) Definition

Visual arts, performing arts, musical or psychomotor abilities are exceptional capabilities or potential in talent areas (e.g., art, drama, music, dance, body awareness, coordination and physical skills, etc.).

12.01(12)(e)(ii) Criteria

Visual arts, performing arts, musical or psychomotor abilities are demonstrated by advanced level on performance talent-assessments or ninety-fifth percentile and above on standardized talent-tests.

12.01(13) **"Highly Advanced Gifted Child"** means a gifted child whose body of evidence demonstrates a profile of exceptional ability or potential compared to same-age gifted children. To meet the needs of highly advanced development, early access to educational services may be considered as a special provision. For purposes of early access into kindergarten or first grade, the highly advanced gifted child exhibits exceptional ability and potential for accomplishment in cognitive process and academic areas.

12.01(14) **"Parent"** for purposes of this Rule 12 means the natural or adoptive parent, or legal guardian, unless the gifted student is also a child with a disability in which case parent shall be defined consistent with federal special education law.

12.01(15) **"Performance Assessment"** means systematic observation of a student's performance, examples of products, tasks, or behaviors based upon established criteria, scoring rubric or rating scale norms.

12.01(16) **"Pre-Collegiate"** means a variety of programs to help students plan, apply and pay for college. Programs may be offered through middle and high schools, colleges and universities or community organizations and businesses.

12.01(17) **"Pre-Advanced Placement"** means a variety of programs and strategies that prepare students to take advanced placement courses beginning in the early grades, through middle school and high school. "Advanced Placement" means college-level courses and/or exams offered and certified through the College Board.

12.01(18) **"Qualified Personnel"** or **"Qualified Person"** means a licensed, content endorsed teacher who also has an endorsement or higher degree in gifted education; or who is working toward an endorsement or higher degree in gifted education.

12.01(19) **"Screening"** means an assessment method that uses a tool(s) to determine if the resulting data provides evidence of exceptional potential in an area of giftedness. Screening tools may be qualitative or quantitative in nature, standardized and/or normative. Screening data are one component in a body of evidence for making identification and instructional decisions.

12.01(20) **"Special Educational Services"** or **"Special Educational Programs"** means the services or programs provided to exceptional children including children with disabilities and gifted students.

12.01(21) **"Special Provisions"** means the programming options, strategies and services necessary to implement the gifted student's ALP.

12.01(22) **"Twice Exceptional"** means a student who is:

12.01(22)(a) Identified as a gifted student pursuant to Section 12.01(9) of these Rules; and

12.01(22)(b)(1) Identified as a child with a disability pursuant to Section 4.02 of these Rules; or

12.01(22)(b)(2) A qualified individual pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §794.

12.01 (23) **Universal screening**, for purposes of section 22-20-103 C.R.S., means the systematic assessment of all students within a grade level of an administrative unit or district for identifying student with exceptional ability or potential, especially students from traditionally underrepresented populations; and/or screening in conjunction with creation of each student's individual career and academic plan (ICAP).

12.02 Administrative Unit Gifted Education Program Plan.

In order to be eligible for funding under these Rules, an AU shall submit a gifted education program plan (program plan) for educating gifted students to the Department on an annual basis. Filing of the program plan shall constitute application for funding. Plans shall be filed by April 30 of the fiscal year prior to the funding year. The Department will review all program plans for completeness. A program plan shall be deemed complete if it addresses all elements specified in Section 12.02(1)(a) through 12.02(1)(f) of these Rules.

12.02(1) **Elements of the program plan.**

A program plan for the education of gifted students submitted to the Department for funding purposes shall contain the following elements:

12.02(1)(a) **Communication Outreach.**

The program plan shall describe how the AU will communicate to parents and educators about available gifted programming options within the AU and how those options may be accessed.

12.02(1)(b) **Definition of "gifted and talented student" .**

The program plan shall include a written definition that is the same as or substantially similar to the definition of "gifted and talented student" specified in section 12.01(12) of these Rules. This definition shall serve as the basis for the implementation of all other program plan elements described below.

12.02(1)(c) **Identification procedure.**

The program plan shall describe the assessment process used by the AU for identifying students who meet the definition specified in section 12.01(12) and for identifying the educational needs of gifted students. The assessment process shall recognize a student's exceptional abilities or potential, interests, and needs in order to guide student instruction and individualized programming. The assessment process shall include, but need not be limited to:

12.02(1)(c)(i) A method(s) to ensure equal and equitable access for all students. The program plan shall describe the efforts the AU will make to identify gifted students from all populations, including preschool (if applicable) through twelfth grade students, minority students, economically diverse students, culturally

diverse students, students with limited English proficiency and children with disabilities;

12.02(1)(c)(ii) Referral and screening procedures;

12.02(1)(c)(iii) Multiple sources of data in a body of evidence (i.e. qualitative and quantitative);

12.02(1)(c)(iv) Criteria for determining exceptional ability or potential;

12.02(1)(c)(v) A review team procedure; and

12.02(1)(c)(vi) A communication procedure by which parents are made aware of the assessment process for their student, gifted determination, and development and review of the student's ALP.

12.02(1)(d) **Programming.**

The program plan shall describe the programming components, options, and strategies that will be implemented by the administrative unit and schools to appropriately address the educational needs of gifted students. Programming shall match the strengths and interests of the gifted student. Other educational needs shall be addressed according to the individual student's profile. The program plan components, options, and strategies shall include, but need not be limited to:

12.02(1)(d)(i) Alignment of assessment data to programming options in the areas of giftedness;

12.02(1)(d)(ii) Structures by which gifted students are served at the different school levels (e.g., the general classroom, resource, and/or pullout);

12.02(1)(d)(iii) Support in differentiated instruction and methods (e.g., acceleration, cluster grouping and higher order thinking skills);

12.02(1)(d)(iv) Affective and guidance support systems (e.g., social skills training, early college and career planning);

12.02(1)(d)(v) Diverse content options provided for gifted students in their areas of strength (e.g., mentorship, socratic seminars, advanced math, honors courses);

12.02(1)(d)(vi) The means by which articulation for preschool (if applicable) through grade 12 is planned and implemented;

12.02(1)(d)(vii) Pre-collegiate and/or pre-advanced placement support;

12.02(1)(d)(viii) ALP development and annual review conducted through the collaborative efforts of the teacher(s), other school personnel (as needed), parents and the student (as appropriate); and

12.02(1)(d)(ix) Post secondary options available to gifted students.

12.02(1)(e) **Evaluation and Accountability.**

The administrative unit program plan shall describe:

12.02(1)(e)(i) Methods by which student achievement is monitored and measured for continual learning progress and how such methods align with the state accreditation process (e.g., intervention progress monitoring data sources, advanced learning plan goals, and performance, district, and state assessment data);

12.02(1)(e)(ii) Methods by which student affective growth is monitored and measured for continual development (e.g., rubrics for personal journals and anecdotal data, student surveys, demonstration of self-advocacy, and student career and/or college plans);

12.02(1)(e)(iii) Methods for ensuring that gifted student achievement and reporting are consistent with accreditation requirements (i.e., disaggregation of state assessment data for gifted students, identification of discrepancies in the data, goal setting and demonstration of growth); and

12.02(1)(e)(iv) Methods for self-evaluation of the gifted program including a schedule for periodic feedback and review (e.g., review of gifted policy, goals, identification process, programming components, personnel, budget and reporting practices, and the impact of gifted programming on student achievement and progress); and

12.02(1)(e)(v) Methods by which parents, educators, and other required persons are informed about the methods described in 12.02(1)(e)(i-iv) above.

12.02(1)(f) **Personnel.**

12.02(1)(f)(i) The program plan shall describe the personnel who provide instruction, counseling, coordination and other programming for gifted students. Personnel shall be knowledgeable in the characteristics, differentiated instructional methods and competencies in the special education of gifted students. Qualified personnel with endorsement or an advanced degree in gifted education are preferred in specific programs and classrooms consisting of mainly gifted students. Beginning with the 2010-2011 school year, every administrative unit shall employ or contract with a person who is responsible for:

12.02(1)(f)(i)(A) Management of the program plan; and

12.02(1)(f)(i)(B) Professional development activities, the purposes of which are:

12.02(1)(f)(i)(B)(I) To improve and enhance the skills, knowledge and expertise of teachers and other personnel who provide instruction and other supportive services to gifted students; and

12.02(1)(f)(i)(B)(II) To increase, to the extent practicable, the number of qualified personnel providing instruction to gifted students.

12.02(1)(f)(ii) Administrative units are highly encouraged to collaborate with universities and colleges for the development of qualified personnel.

12.02(1)(f)(iii) Personnel responsible for the instruction and learning of gifted students in core academic areas must meet the requirements under federal law for highly qualified teachers.

12.02(1)(f)(iv) Paraprofessionals may serve in supportive roles, but may not be the sole instructional provider, nor may such paraprofessionals be funded using state gifted education funds.

12.02(1)(f)(v) The program plan shall also indicate the content of and means by which the administrative unit supports the acquisition and/or improvement of the knowledge and competencies of personnel through appropriate professional development relating to the instruction, programming and counseling for gifted students. (e.g., induction and inservice programs, job-embedded training and coaching, gifted education workshops or institutes and college coursework). Key topics should include, but need not be limited to, gifted characteristics and myths, differentiated instruction, affective needs, counseling, content instructional options and advanced curricular strategies (e.g., higher order thinking strategies).

12.02(1)(g) **Budget.**

The program plan shall propose a budget for gifted education which reflects the collaborative efforts of the administrative unit and cost of implementing the programming, goals and objectives stated in the program plan. The budget shall detail the funding committed by the administrative unit and funding requested from the Department. Funding committed by the Administrative Unit shall be an amount determined by the AU to contribute towards the gifted student education elements described in the AU's program plan. Funds requested from the Department may be used for:

12.02(1)(g)(i) salaries for appropriately certified, endorsed, or licensed personnel serving primarily gifted students (e.g., gifted education directors, coordinators, resource teachers, counselors and teachers of gifted classrooms);

12.02(1)(g)(ii) professional development and training relating to gifted education;

12.02(1)(g)(iii) activities associated with gifted programming options specific to gifted students and their advanced learning plans;

12.02(1)(g)(iv) supplies and materials used in instructional programming for gifted education; and

12.02(1)(g)(v) technology and equipment necessary for the education of gifted students, not to exceed twenty-five percent of the total amount requested from the Department.

12.02(1)(H) **Early Access.**

If early access is permitted in the AU, an AU shall include in its program plan provisions to identify and serve highly advanced gifted children pursuant to Section 12.08 of these Rules. Constituent schools or districts within the AU shall abide by the requirements established in the program plan.

12.03 Reports.

Any AU receiving funding under the provision of Section 12.00 shall submit to the Department by September 30 a report for the prior fiscal year, including:

12.03(1) a detailed report of financial income and expenditures;

12.03(2) the number of formally identified gifted students served through gifted student programming reported by:

12.03(2)(a) each grade level, preschool (if applicable) through grade 12;

12.03(2)(b) gender and ethnicity;

12.03(2)(c) twice exceptional; and

12.03(2)(d) gifted preschoolers served through early entrance per local policies and procedures, if applicable;

12.03(3) the number of non-identified students served through gifted student programming;

12.03(4) the percent of students in the AU who have been identified as gifted and talented through a formal identification procedure;

12.03(5) the number of qualified personnel;

12.03(6) the types of programming strategies utilized most commonly at each school level to address the needs of gifted students reported by:

12.03(6)(a) programming options for each area of giftedness as specified in 12.01(12) of these Rules;

12.03(6)(b) methods of articulation through the grades; and

12.03(6)(c) methods and tools used in accountability to monitor gifted student achievement and commensurate growth related to the implementation of the programming components; and

12.03(7) administrative units and their member districts, if any, shall comply with the requirements of accreditation, pursuant to Article 11 of Title 22, C.R.S., with regard to gifted student achievement, identification of disparities in the data, instructional goals, growth and reporting.

12.04 Audits.

All programs receiving funding under the provisions of the Exceptional Children's Educational Act are subject to monitoring by the Department as is more fully described in Section 12.07 of these Rules.

12.05 Record Keeping.

Any administrative unit receiving funding will have the following record keeping and reporting responsibilities:

12.05(1) **Financial Records.**

Financial records shall be kept in accordance with generally accepted principles of governmental accounting. Recommended accounting principles are listed in the Financial Policies and Procedures Handbook.

12.05(2) **Inventory.**

An inventory shall be maintained of all equipment for which funding was received. These records shall be maintained throughout the useful life of the equipment.

12.05(3) **Student Education Records**

The ALP shall record programming options, and strategies utilized with individual students and shall be part of the student's record. The ALP shall be considered in educational planning and decision-making concerning subsequent programming for that student and be used in the articulation process, preschool (if applicable) through grade 12. Gifted student records shall describe the body of evidence that identifies strengths, interests and needs, and the ongoing programming and student achievement results.

12.05(4) **Confidentiality of Student Education Records**

Individually identifiable records of students referred, assessed, evaluated, and/or served through programming for gifted and talented students in any administrative unit shall be held to be confidential and protected in accordance with applicable federal and state laws and regulations.

12.05(5) **Maintenance and Destruction of Student Education Records**

Gifted student education records and ALPs shall be maintained, retained and destroyed consistent with the ongoing system of student record keeping established in the administrative unit, including its member districts or the Charter School Institute for student records, preschool (if applicable) through grade 12.

12.06 Dispute Resolution

The program plan shall describe a dispute resolution process to be used for resolving disagreements about the identification and programming for gifted students. The dispute resolution process shall, at a minimum, afford the aggrieved individual notice of the decision giving rise to the dispute and an opportunity to be heard before the decision is implemented.

12.07 Monitoring

12.07(1) Each administrative unit shall comply with all applicable state and federal laws and regulations regarding the program plan, identification and special educational services for gifted students.

12.07(2) Each administrative unit shall be subject to ongoing monitoring by the Department concerning implementation of the program plan.

12.07(3) Monitoring procedures shall include:

12.07(3)(a) A determination of compliance with all applicable state and federal laws and regulations, and

12.07(3)(b) An assessment of program quality based on the standards established by the Department of Education.

12.07(4) Monitoring activities shall include:

12.07(4)(a) A review of the program plan;

12.07(4)(b) A review of the annual report;

12.07(4)(c) A planned comprehensive on-site process integrated with the continuous improvement and monitoring process in the Department of Education; and

12.07(4)(d) Follow-up activities including the provision of technical assistance in areas of non-compliance and verification that areas of non-compliance have been corrected.

12.08 Early Access

12.08(1) General Provisions

12.08(1)(a) Early access shall be provided by the AU to identify and serve highly advanced gifted children who are:

12.08(1)(a)(i) Four years of age and for whom early access to kindergarten is deemed appropriate by the AU; and

12.08(1)(a)(ii) Five years of age and for whom early access to first grade is deemed appropriate by the AU.

12.08(1)(b) If the AU permits early access, early access provisions shall be included in its early childhood and gifted instructional programs, and the AU shall expand access to kindergarten through grade one for students deemed appropriate for early access.

12.08(1)(c) Early access shall not be an acceleration pattern recommended for the majority of age 4 or age 5 gifted children who will benefit from preschool gifted programming that responds to the strength area. The purpose of early access is to identify and serve the few highly advanced gifted children who require comprehensive academic acceleration.

12.08(1)(d) When an AU permits early access, its program plan shall describe the elements of an early access process and how those elements, criteria and components will be implemented. Determinations made by the AU shall be made after consideration of criteria required by Section 12.08(2)(d) of these Rules.

12.08(1)(e) In 2008, an AU may submit an early access addendum to its program plan by September 10, 2008. Thereafter, AUs shall submit an addendum for early access by January 1 preceding the initial school year in which early access will be permitted, thus early access assessment may occur after the addendum is approved by the Department.

12.08(2) Elements of an Early Access Process

An early access process shall include the following elements:

12.08(2)(a) **Communication**

The AU shall communicate with parents, educators and community members as specified in Section 12.02(1)(a) of these Rules. Early access communication is:

12.08(2)(a)(i) Information about the criteria and process for identifying a highly advanced gifted child for whom early access is deemed appropriate, time frames, portfolio referral, deadlines, specific tests and threshold scores used to make final determinations concerning such a student;

12.08(2)(a)(ii) Professional development of educators, or other means to increase the understanding of a highly advanced gifted child and the educational needs of such a student;

12.08(2)(a)(iii) A method for collaborative efforts among preschool, general and gifted education personnel and parents; and

12.08(2)(a)(iv) An advanced learning plan for the highly advanced gifted child determined appropriate for early access.

12.08(2)(b) **Optional Fee Condition**

12.08(2)(b)(i) The AU may charge parents a reasonable fee for assessment and other procedures performed for the purpose of identifying a highly advanced gifted child and making determinations for early access. The AU shall describe the fee related to the implementation of the referral, testing and/or decision making processes.

12.08(2)(b)(ii) No charge shall be assessed if the child who is the subject of such assessments is eligible for a reduced-cost meal or free meal pursuant to the federal "National School Lunch Act", 42 U.S.C. §1751,et seq.

12.08(2)(b)(iii) When evaluating the need for fees, the AU will:

12.08(2)(b)(iii)(A) Integrate the costs of assessment and decision making into the ongoing general instructional and assessment practices conducted by early childhood and gifted education personnel to the maximum extent possible;

12.08(2)(b)(iii)(B) Take into account the economic circumstances of the community and applicant's family; and

12.08(2)(b)(iii)(C) Consider test results within three months of application from outside licensed professionals paid by the parent.

12.08(2)(c) **Funding and Reporting**

Administrative units that permit early access shall receive funding from the state education fund created in Article IX, Section 17(4) of the Colorado Constitution. To receive funding the AU shall abide by the Rules in this Section 12.08, and:

12.08(2)(c)(i) Support integration of early access in early childhood and gifted programming;

12.08(2)(c)(ii) Report age four gifted children provided early access using date of birth, grade level placement and gifted student designations on the October Enrollment Count and the End-of-Year Report; and

12.08(2)(c)(iii) Report age five gifted children provided early access using date of birth, grade level placement and gifted student designations on the October Enrollment Count and the End-of-Year Report.

12.08(2)(d) **Criteria for Early Access**

The AU shall evaluate a child referred by the parent for early access using the following criteria. The evaluation will lead to a student profile of strengths, performance, readiness, needs and interests, and a determination of appropriate placement. All criteria must be considered in making the determination – test scores alone do not meet the standards of a determination.

12.08(2)(d)(i) Aptitude

12.08(2)(d)(i)(A) Aptitude supporting early access is indicated by a highly advanced level of performance compared to age-peers on cognitive abilities rating scales or 97th percentile and above on standardized cognitive ability tests. Every child with a score above 97th percentile may not benefit from early access to kindergarten or first grade.

12.08(2)(d)(i)(B) The AU shall describe the method(s) and the developmentally appropriate tools for assessment that will be used to determine potential in general cognitive abilities and school success (e.g., individualized ability test, such as the Wechsler Preschool and Primary Scale of Intelligence or Woodcock Johnson Cognitive Ability Scale, or Kaufman Brief Intelligence Test).

12.08(2)(d)(ii) Achievement

12.08(2)(d)(ii)(A) Achievement supporting early access is indicated by a highly advanced level of performance compared to age-peers on achievement rating scales, performance assessment, or 97th percentile and above on standardized achievement tests. Typically, early access children function two or more years above their age peers.

12.08(2)(d)(ii)(B) The AU shall describe the method(s) and tools for assessment that will be used to determine knowledge and skills in reading, writing and mathematics (e.g., curriculum-based assessment, above-level testing, and individualized achievement tests, such as the test of early math ability/reading ability, Woodcock Johnson III Tests of achievement, or Iowa Tests of basic skills).

12.08(2)(d)(iii) Performance

12.08(2)(d)(iii)(A) Performance supporting early access is indicated by work samples and informal teacher and/or parent data indicating demonstrated ability above age peers.

12.08(2)(d)(iii)(B) The AU shall describe the method(s) and tools for assessment that will be used to determine actual demonstration of the student's work (e.g., work samples, independent reading, advanced vocabulary, observational data).

12.08(2)(d)(iv) Readiness, Social Behavior and Motivation

12.08(2)(d)(iv)(A) Readiness, social behavior and motivation for early access are determined by the child's ability to demonstrate the indicators deemed necessary for kindergarten or first grade by the district's standards or national standards (e.g., district readiness checklist, normed-checklists and rating scales, such as the California Preschool Competency Scale or the Preschool/Kindergarten Behavioral and Social Scale or Bracken School Readiness).

12.08(2)(d)(iv)(B) The AU shall describe the method(s) and tools for evaluation that will be used to determine a child's readiness for kindergarten or first grade, social maturity, and eagerness to learn.

12.08(2)(d)(v) Support Systems

12.08(2)(d)(v)(A) The AU shall define and implement a support system to assist in a child's success in and transition through early access by evidence of:

12.08(2)(d)(v)(A)(I) A letter of determination of the early access decision signed by the parent, gifted education staff, early childhood staff, the receiving teacher and building administrator indicating recognition and support of the child's placement (determination letters will be placed in the child's cumulative file);

12.08(2)(d)(v)(A)(II) A transition goal in the child's advanced learning plan for the first year of early access;

12.08(2)(d)(v)(A)(III) Methods of communication with the student about school success; and

12.08(2)(d)(v)(A)(IV) Methods for parent-teacher communication.

12.08(2)(d)(v)(B) The AU will describe how parents, teachers, school administrators and the learning environment will contribute to a positive support system.

12.08(2)(e) **Process for Early Access**

The AU shall establish a collaborative process among parents, preschool, general and gifted educators and school administration for evaluating early access referrals. The process implemented shall include the following components:

12.08(2)(e)(i) Timelines

12.08(2)(e)(i)(A) Applications for early access are due by April 1 for the next school year. Each AU shall declare when it will begin accepting applications.

12.08(2)(e)(i)(B) Determinations shall be made within 60 calendar days of the AU receiving the child's portfolio submitted by the child's parent in accordance with Section 12.08(2)(e)(iii)(A) of these Rules.

12.08(2)(e)(i)(C) For referrals received after April 1, the AU may, at its discretion, consider the child's information, provided the determination is made by September 1 or by the start of the upcoming school year, whichever is earlier.

12.08(2)(e)(i)(D) A student shall be age 4 by the district's start date for kindergarten; and, age 5 by the district's start date for first grade.

12.08(2)(e)(ii) Personnel

The AU shall identify personnel at the AU, district, and/or school level who will be involved in the early access process based on the following list. Designated personnel may serve in multiple capacities during the early access process.

12.08(2)(e)(ii)(A) A person designated to collect portfolio referrals;

12.08(2)(e)(ii)(B) Educators designated to collect data used in a body of evidence including the test examiner(s), early childhood teacher(s), a gifted education resource person, and others as identified by the AU (e.g., a performance assessment team, principal);

12.08(2)(e)(ii)(C) A determination team consisting of an AU level or school level gifted education resource person, a teacher in early childhood, and others as identified by the AU (e.g., principal, psychologist, counselor, parent);

12.08(2)(e)(ii)(D) A support team during transition including the receiving teacher and school administrator, parents, and gifted education/early childhood personnel; and

12.08(2)(e)(ii)(E) Other persons helpful in collecting data or making determinations, including the person who assisted in developing the screening portfolio.

12.08(2)(e)(iii) Evaluation

The AU shall describe the implementation steps for early access evaluation. The steps shall include, but not be limited to:

12.08(2)(e)(iii)(A) Screening Portfolio

Parents are responsible for collecting the information required for an early access portfolio application, and for submitting the portfolio to the appropriate AU personnel. The AU must describe the requirements for an application portfolio that shall include:

12.08(2)(e)(iii)(A)(I) Applicant contact information;

12.08(2)(e)(iii)(A)(II) A screening tool completed, individually, by the parent and the child's current teacher; or, if the child is not in school, by the parent and another adult who knows the child from other early childhood experiences (developmentally appropriate screening tools are district-developed tools and/or standardized tools, like the Gifted Rating Scales for Preschool and Kindergarten or the Kingore Observation Scale); and

12.08(2)(e)(iii)(A)(III) Information about the performance of the child that provides evidence of a need for early access evaluation (e.g., work samples, data from the child's current teacher or an adult from early childhood experiences, or indicators of early access readiness factors).

12.08(2)(e)(iii)(B) Referral

The AU shall designate the gifted education director/coordinator, principal, or other qualified person, to accept the referral portfolio provided by the parent, and make an initial decision as to whether early access assessment should continue.

12.08(2)(e)(iii)(C) Testing and a Body of Evidence

The AU shall conduct the necessary tests and collect student information, including test results accepted pursuant to Section 12.08(2)(b)(iii)(C) of these Rules, regarding the criteria and factors for early access outlined in Section 12.08(2)(d) of these Rules. The body of evidence is complete if data regarding all criteria, and other considerations deemed necessary by the AU, are compiled for data analysis and decision making.

12.08(2)(e)(iii)(D) Decision Making

12.08(2)(e)(iii)(D)(I) Early access decisions will be a consensus process within the determination team that analyzes multiple criteria from a body of evidence resulting in a student profile of strengths, needs and interests of the child. Test scores alone will not determine early access. If the team cannot reach consensus, the building principal or the gifted education director/coordinator shall make the final decision in accordance with the AU's early access program plan.

12.08(2)(e)(iii)(D)(II) A determination letter will be signed by members of the determination team and the parent; and, forwarded for signature of the receiving teacher and principal if they are not on the determination team. Parents may accept or decline the offer of early access. When a child is deemed appropriate for early access, an advanced learning plan (ALP) shall be developed according to the AU's procedures, but no later than the end of the first month after the start of school. The ALP shall include academic and transition goals.

12.08(2)(e)(iii)(D)(III) If the determination team finds the child gifted, but does not find that the child meets the criteria for early access, the team will provide the child's school with the child's assessment portfolio for serving the area of exceptionality in the child's public preschool or public kindergarten program.

12.08(2)(e)(iii)(D)(IV) If the student transfers during the first year of an early access placement the new AU shall maintain the placement.

12.08(2)(e)(iv) Monitoring of Student Performance

The student's teacher shall monitor student performance at least every five weeks during the student's first year of early access. The monitoring process shall be based on the advanced learning plan and performance reports shared with the parents and child.

12.08(2)(e)(v) Dispute Resolution

A dispute resolution process for early access shall be in accordance with Section 12.06 of these Rules.

12.09 Gifted Education Grants

12.09 (1) **Screening Grants.** An Administrative Unit may apply to the Department for a grant for the universal screenings it conducts. An Administrative Unit may conduct a universal screening of enrolled students no later than end of second grade; and/or a second universal screening in conjunction with the creation of each child's individual career and academic plan by end of eighth grade year,

12.09 (1) (a) The amount of each grant request must be based on the number of students who participate in the screening and the per pupil cost of the screening.

12.09 (2) **Grants to offset the costs incurred in employing qualified personnel.** An Administrative Unit that hires a qualified person to administer the Administrative Unit's gifted programs and implement the Administrative Unit's program plan may apply to the Department for a grant to offset the costs incurred in employing the qualified person up to .5 FTE.

12.09 (2) (a) The amount of each grant request must be equal to the costs incurred by the applying Administrative Unit in employing the qualified person up to .5 FTE.

12.09 (3) **Grant Distribution.** Grants are dependent upon the annual appropriation provided to the Department in any given year and shall be distributed to applicants in accordance with 22-20-205, C. R. S.

(a) If funds are sufficient to fully fund all requests received by the Department, the Department shall distribute awards to each AU applicant.

(b) If funds are insufficient to fully fund all the requests received by the Department, the Department shall distribute funds in the order in which the Department received the applications by date of receipt over the course of three days. If funds are sufficient to fully fund each request received on the first date of receipt, the Department shall distribute awards to each AU application received on that date. If funds are insufficient to fund each request received on day-one of receipt, then funds will be proportionally distributed to each day-one applicant on a pro-rata basis. If grant funds remain after day-one distributions, then funds for day-two applicants and day-three applicants would be distributed in the same manner, until all funds are expended.

(c) If grant funds are not fully expended in a given fiscal year, the Department shall distribute the monies appropriated in the same manner that it distributes AU annual allocations.

12.09 (4) **Application Window.** During the first year of implementation, 2014-15 school year, applications will be due to the Department during a three-day application window no later than December 15 as specified in the grant application. Beginning on April 15-17, 2015, and each year thereafter, subject to available appropriations, Gifted Education Grant applications will be due during an April 15-17 application window for funding available July 1 of the subsequent fiscal year.

12.09 (5) **Application Procedures.** The Department will develop an application, pursuant to the Department's grant process and pursuant to the requirements and timelines found in 22-20-205, C.R.S. Each grant application may include a request for one, or more, of the allowable uses: one qualified personnel (up to .5 FTE), as the term is defined by 22-20-202(7), C. R. S. and universal screenings in K-2 and/or middle school years.

12.09 (5) (a) Each universal screening grant request shall at a minimum specify the name of the screening tool, the number of students who will participate in the universal screening, and the per pupil cost of the screening;

12.09 (5) (b) Each qualified personnel grant request shall at a minimum specify the cost to employ a qualified person and a letter or certified document that verifies the qualified person has an endorsement or higher degree in gifted education, or is working toward attaining an endorsement or higher degree in gifted education.

12.09 (6) **Duration of Grant Awards.** Each grant shall have a term of one year. Funds must be utilized within the fiscal year (July-June) of the distribution of grant funds.

12.09 (7) **Reporting.** In any fiscal year in which the General Assembly makes an appropriation to the Department for the purposes of the grant program, each Administrative Unit that receives a grant shall report the following Information to the Department each year during the term of the Grant:

12.09 (7) (a) The number of and grade of students who participated in the universal screening, the per pupil cost of the screening, evidence of payment for the screening tool, and the name of tool(s) used; and/or

12.09 (7) (b) The number of qualified personnel hired using grant moneys, and the type of endorsement/degree held by the qualified person or documentation that the qualified person is working toward the attaining an endorsement or higher degree in gifted education.

Editor's Notes

History

Entire rule eff. 12/30/2007.

Regulations 2220-R-1.00, 2220-R-12.00 emer. rule eff. 08/14/2008.

Regulations 2220-R-1.00, 2220-R-12.00 eff. 10/31/2008.

Regulations 2220-R-1.00 (11); 2220-R-2.08 (7), 2.08 (7)(b) - (b)(i-iii), 2.10 - 2.11; 2220-R-5.01, 5.01 (24) eff. 09/30/2009.

Regulations 2220-R-1.00 (12); 2220-R-2.02; 2220-R-3.01(1)(a), 3.01(2)(a), 3.01(3), 3.01(4)(a-c); 7.06 emer. rule eff. 10/06/2010; expired eff. 02/03/2011.

Regulations 2220-R-1.00(12); 2220-R-12.01(1), 12.02(1)(g) eff. 03/02/2011.

Regulations 2220-R-1.00(13), 2220-R-2.02, 2.08(6), 2220-R-6.02 - 6.02(7.5) emer. rule eff. 06/08/2011.

Regulations 2220-R-1.00(13), 2220-R-2.02, 2.08(6), 2220-R-6.02 - 6.02(7.5) eff. 09/30/2011.

Regulations 2220-R-1.00(13) – (14), 2220-R-2.02, 2220-R-3.01, 2220-R-7.07 eff. 7/30/2012.

Regulations 2220-R-1.00(15), 2220-R-2.02, 2220-R-2.08, 2220-R-2.14, 2220-R-2.44, 2220-R-3.02, 2220-R-9.01(3) eff. 10/30/2012.

Regulations 2220-R-1.00(16), 2.02, 2.02(1)(b), 2.08(13), 2.14 – 2.18, 2.20, 3.02(1), 3.04(1)(e) – (f), 3.04(2), 3.05, 3.06, 4.03(4), 4.03(5)(c), 4.03(6)(c)(ii), 4.03(8)(b)(ii)(A), 5.01(8), 6.02(7.5), 6.02(7.5)(d)(ii)(D), 6.02(8)(k), 7.01(1)(b), 7.01(3)(c), 7.05, 7.07, 8.00, 8.01(2), 8.01(2)(a), 8.02(1)(c), 8.03(2), 8.04(1), 8.04(1)(c), 8.05(1)(c), 8.06(1)(c), 9.01(1)(a)(i) – (ii), 9.01(3), 9.01(5) – (6), 9.01(8), 9.02(1), 9.02(1)(a), 9.02(2), 9.03(1)(a), 9.03(2)(a), 9.06(1) eff. 03/02/2013. Regulation 2220-R-6.02(7) repealed eff. 03/02/2013.

Annotations

Rule 3.04(2) (adopted 01/09/2013) was not extended by House Bill 14-1123 and therefore expired 05/15/2014.

Pursuant to C.R.S. 24-4-103(6), C.R.S., that immediate adoption of the Rules for the Gifted Education Grant Program is imperatively necessary in order to allow the release of the grant application and distribution of funds, so that administrative units may benefit from grant funds this school year.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01188

Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado State Board of Education

on 11/12/2014

1 CCR 301-8

RULES (FOR THE) ADMINISTRATION OF THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT

The above-referenced rules were submitted to this office on 11/13/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:53:00

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Emergency Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-51

Rule title

1 CCR 301-51 RULES FOR THE ADMINISTRATION OF THE COLORADO SCHOOL AWARDS PROGRAM 1 - eff 12/01/2014

Effective date

12/01/2014

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE COLORADO SCHOOL AWARDS PROGRAM

1 CCR 301-51

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

2207-R-1.00 Statement of Basis and Purpose.

The statutory basis for these rules is found in § § 22-2-106 (1) (a) and (c), C.R.S., State Board duties; § 22-2-107 (1) (c), C.R.S., State Board powers; and § § 22-11-601 through 604, C.R.S., Colorado School Awards Program. The Colorado School Awards Program, § § 22-11-601 through 604, C.R.S., requires the State Board of Education to promulgate rules which include, but are not limited to procedures for transmitting the financial awards to schools that demonstrate outstanding performance. The modifications to the rules adopted by the State Board on February 9, 2011 were made in compliance with the requirements of the Committee on Legal Services.

Amendments to these rules were made pursuant to H.B. 14-1385, § 22-11-603.7, C.R.S., concerning the creation of High School Academic Growth Awards and authorizing the State Board to adopt rules establishing the method by which to identify the public high schools that demonstrate the highest rate of student longitudinal growth.

2207-R-2.00 Definitions.

2.01 "Classification" means the grouping of schools established biennially by the statewide association for high school activities for the sport of football.

2.02 "Colorado Growth Model" means a scientifically rigorous statistical model that the Department uses to calculate students' annual academic growth in the subjects included in the Statewide Assessments based on students' scores on the annual Statewide Assessments, which model is adopted by the State Board pursuant to § 22-11-202, C.R.S.

2.03 "Colorado School Awards Program" or "Program" means the Awards program administered by the Department of Education pursuant to § § 22-11-601 through 604, C.R.S. whereby the State Board of Education annually presents financial awards to schools that demonstrate outstanding performance.

2.04 "Department" means the Department of Education created and existing pursuant to § 24-1-115, C.R.S.

2.05 "Public School" shall have the same meaning as provided in § 22-1-101, C.R.S., and includes, but is not limited to, a charter school of a public school district, an Institute charter school, and an online program, as defined in § 22-30.7-103 (9), C.R.S.

2.06 "School Accountability Committee" means the committee established by the Public School pursuant to § 22-11-401, C.R.S.

2.07 "State Board" means the State Board of Education created pursuant to Section 1 of
Article IX of the State Constitution.

2.08 "Statewide Assessments" means the assessments administered pursuant to the Colorado student assessment program created in § 22-7-409, C.R.S., or as part of the system of assessments adopted by the State Board pursuant to § 22-7-1006, C.R.S.

2207-R-3.00 Implementation Procedures.

3.01 John Irwin Schools of Excellence Awards

3.01 (A) Of the moneys available for the Colorado School Awards Program pursuant to part 6 of article 11 of title 22 and remaining after the distribution of funding under the Centers of Excellence Awards, one third shall be awarded as John Irwin Schools of Excellence Awards.

3.01 (B) These awards shall be granted to the Public Schools whose level of attainment on the performance indicator concerning student achievement levels, as calculated pursuant to § 22-11-204 (3), C.R.S., is within the top eight percent of all Public Schools in the state.

3.01 (C) Subject to available appropriations, each John Irwin Schools of Excellence
Award shall be five thousand, ten thousand, or fifteen thousand dollars.

3.01 (D) These amounts shall depend on the number of pupils attending the Public School as reported in the state's October 1 student count, pursuant to the Public School Finance Act, during the academic school year in which the school's outstanding performance was achieved.

3.01 (D) (1) An amount of five thousand dollars shall be awarded to those schools not exceeding 200 pupils.

3.01 (D) (2) An amount of ten thousand dollars shall be awarded to those schools with more than 200 pupils but not exceeding 500 pupils.

3.01 (D) (3) An amount of fifteen thousand dollars shall be awarded to those schools with more than 500 pupils.

3.01 (D) (4) If the available appropriations are insufficient to award each school the amount specified, the Department shall reduce all awards for that year proportionately.

3.01 (D) (5) The monetary award shall be based on the total number of pupils within the school.

3.02 Governor's Distinguished Improvement Awards.

3.02 (A) Of the moneys available for the Colorado School Awards Program pursuant to part 6 of article 11 of title 22 and remaining after the distribution of funding under the Centers of Excellence Awards, two thirds shall be awarded as Governor's Distinguished Improvement Awards.

3.02 (B) These awards shall be granted to the Public Schools in the state demonstrating the highest rates of sustained student longitudinal growth across multiple years, measured by median student growth percentiles as calculated by the Colorado Growth Model, and in a manner that appropriately considers school size.

3.02 (C) Awards shall be given to those elementary, middle and high schools with the highest sustained student growth rates as determined pursuant to subsection

(B) of this section and, as appropriate, as informed by the school performance evaluation framework established pursuant to article 11 of title 22.

3.02 (D) The number of Public Schools recognized with awards shall be based on the amount of funding available.

3.03 Centers of Excellence Awards.

3.03 (A) Of the moneys available for the Colorado School Awards Program pursuant to part 6 of article 11 of title 22, two hundred fifty thousand dollars shall be awarded under the Centers of Excellence Awards.

3.03 (B) These awards shall be granted to the Public Schools in the state that (1) enroll a student population of which at least seventy-five (75) percent are at-risk pupils, as defined in § 22-54-103 (1.5), C.R.S., and (2) demonstrate the highest rates of sustained student longitudinal growth across multiple years, measured by median student growth percentiles as calculated by the Colorado Growth Model and in a manner that appropriately considers school size.

3.03 (C) Awards shall be given to those elementary, middle and high schools with the highest sustained student growth rates as determined pursuant to subsection (B) of this section and, as appropriate, as informed by the school performance evaluation framework established pursuant to article 11 of title 22.

3.03 (D) The number of Public Schools recognized with awards shall be based on the amount of funding available.

3.04 High School Academic Growth Awards.

3.04 (A) Subject to available appropriations, the State Board shall annually present an award to the public high school that demonstrates the highest levels of student academic growth within each Classification.

3.04 (B) The High School Academic Growth Awards must be in the form of trophies that resemble the trophies presented for athletic accomplishments.

3.04 (C) The following criteria will be used to identify the public high schools that demonstrate the highest rate of student longitudinal growth in one or more years, as measured by the Colorado growth model.

3.04 (C) (1) In order to be eligible for the high school growth award, schools must have at least 20 or more students that have growth scores in each of the growth content areas: reading, writing and math. For schools that have at least 20 or more students that have growth scores based on the most recent single year of data, award determinations will be based on a single year of data. For schools that do not have at least 20 or more students that have growth scores based on the most recent single year of data, award determinations will be based on three years of data. Schools that do not

have at least 20 or more students that have growth scores based on either one or three years of data will not be considered for a growth award.

3.04 (C) (2) A single cross-content median student growth percentile will be used to determine which high schools have demonstrated the highest rates of student growth within each classification. This median will reflect growth data from all three content areas (reading, writing, and math).

3.04 (D) (3) Within each Classification, schools with the highest cross-content median growth percentiles should be identified as the highest performers. If there are ties within a given Classification, all schools with the highest ranked cross-content median growth percentile should be eligible
for an award.

3.04 (E) The High School Academic Growth Awards are named for each Classification and known as the academic growth award for that Classification.

3.04 (F) any moneys that the department may receive pursuant to § 22-11-605, C.R.S. (1) in the form of public or private gifts, grants, or donations, in the 2014-15 budget year and each budget year thereafter, the department shall use up to one thousand five hundred dollars to award trophies pursuant to § 22-11-603.7. The department shall apportion the remainder of the moneys available for awards as provided in §§ 22-11-602, 22-11-603, and 22-11-603.5, C.R.S.

3.05 Distribution of Awards

3.05 (A) The State Board shall award funding to Public Schools for use within the Public School as the principal, after consultation with the School Advisory Council, deems appropriate.

3.05 (B) Funding shall be distributed directly to the recipient Public School's district or the Charter School Institute, whichever is applicable, on behalf of the recipient Public School. Funding shall only be used for the purposes identified by the Public School's principal.

3.05 (C) These award funds shall not supplant moneys made available to the public school from funding received by the school district pursuant to Article 54 of the Colorado School Laws or pursuant to the taxing authority of the school district.

3.06 Timeline for Distribution.

3.06 (A) Within 90 days after the Department has conducted its annual review of each Public School's performance, pursuant to § 22-11-210, C.R.S., the State Board shall notify recipients of any of the Colorado School Awards that they have been granted an award.

3.06 (B) Distribution of the award funds, pending annual appropriations, will occur as soon as final determination of award amounts is calculated and moneys become available for distribution.

3.0~~6~~7 School Awards Program Fund.

3.07 (A) Funds for the program shall be appropriated to the Department by the
General Assembly.

3.07 (B) Any funds unexpended and unencumbered at the end of the fiscal year will remain in the program fund. However, interest from the deposit and investment of these moneys shall be credited to the General Fund.

3.07 (C) No moneys are available to the Department for administering the program.

3.07 (D) The amount allocated by the state for the program may be increased by grants, gifts, and donations from public or private sources that will be credited to the fund.

Pursuant to C.R.S. 24-4-103(6), C.R.S., that immediate adoption of the Rules for the Administration of the Colorado School Awards Program is imperatively necessary in order to allow distribution of allocated funds for expenditure in this school year and so that the department may begin administering the award.

John W. Suthers
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Chief Deputy Attorney General

Daniel D. Domenico
Solicitor General

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-01184

Opinion of the Attorney General rendered in connection with the rules adopted by the
Colorado State Board of Education

on 11/12/2014

1 CCR 301-51

RULES FOR THE ADMINISTRATION OF THE COLORADO SCHOOL AWARDS PROGRAM

The above-referenced rules were submitted to this office on 11/13/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

December 01, 2014 08:50:32

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Department

Department of Natural Resources

Agency

Oil and Gas Conservation Commission

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. **1412-RM-02**

NOTICE OF CONTINUATION 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") met on December 15 and 16, 2014 to consider additions and amendments to Rule 100 Series (Definitions for "Bradenhead", "Container", "Produced Water Pits", "Regulatory Compliance Program", "Suspended Operations Wells", "Tank", "Temporarily Abandoned Well", and "Waiting on Completion Well") and Rules 205, 303, 308A, 309, 311, 316A, 316B, 317, 318A, 319, 321, 325, 326, 327, 330, 506, 507, 521, 522, 523, 603, 710, 901, 904, 905, 907, 909, 910, and 1100 of the Commission's Rules of Practice and Procedure, 2 C.C.R. 404-1 ("Rules"), in an "Enforcement and Penalty Rulemaking." The Commission considered and voted on proposed rule changes except for those changes proposed for Rules 522 and 523. The Commission closed the rulemaking record and voted to defer deliberation and voting on changes to Rules 522 and 523 until a later date.

The Commission has the authority to conduct this rulemaking pursuant to §§ 34-60-105, 34-60-106(2)(a), 34-60-106(2)(d), amended 34-60-121, and 34-60-130, C.R.S.

NOTICE IS HEREBY GIVEN that the Commission has scheduled the continued rulemaking hearing on Rules 522 and 523 to commence on:

Date:	Monday, January 5, 2015
Time:	9:00 a.m.
Place:	Colorado Oil and Gas Conservation Commission 1120 Lincoln Street, Suite 801 Denver, CO 80203

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.

OIL AND GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO

By _____
Jill Dorancy, Acting Secretary

Dated: December 19, 2014

Calendar of Hearings

Hearing Date/Time	Agency	Location
01/12/2015 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
01/14/2015 08:00 AM	Colorado Parks and Wildlife (405 Series, Parks)	Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216
01/14/2015 08:00 AM	Colorado Parks and Wildlife (405 Series, Parks)	Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216
01/14/2015 08:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216
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01/14/2015 08:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Colorado Parks and Wildlife, Hunter Education Building, 6060 Broadway, Denver, CO 80216
01/14/2015 09:00 AM	Division of Real Estate	1560 Broadway, Suite 110-D, Denver, CO
01/14/2015 02:00 PM	Division of Motor Vehicles	1881 Pierce Street, Lakewood, CO 80214, Room 110 Boards/Commissions Meeting Room
01/15/2015 01:30 PM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
01/15/2015 01:30 PM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
01/15/2015 04:00 PM	Plant Industry Division	Colorado Potato Administrative Committee, 1305 Park Avenue Monte Vista, CO 81144
01/22/2015 09:30 AM	Division of Professions and Occupations - Board of Dental Examiners	1560 Broadway; Denver, CO 80202; Conference Room 1250 C
01/22/2015 10:00 AM	Income Maintenance (Volume 3)	Colorado Department of Human Services, Conference Room 4A/B, 1575 Sherman Street, Denver, CO 80203
01/23/2015 09:00 AM	Inspection and Consumer Services Division	Colorado Department of Agriculture, 305 Interlocken Parkway Broomfield, CO 80021
01/23/2015 09:00 AM	Inspection and Consumer Services Division	Colorado Department of Agriculture, 305 Interlocken Parkway Broomfield, CO 80021
01/23/2015 10:00 AM	Plant Industry Division	Colorado Department of Agriculture, 305 Interlocken Parkway Broomfield, CO 80021
01/27/2015 01:00 PM	Colorado State Patrol	700 Kipling St., Lakewood, CO 1st Floor Conference Room
01/27/2015 01:00 PM	Colorado State Patrol	700 Kipling Street, Lakewood, Co 1st Floor Conference Room
01/27/2015 01:00 PM	Colorado State Patrol	700 Kipling St., Lakewood, CO 1st Floor Conference Room
01/27/2015 02:00 PM	Colorado State Patrol	700 Kipling Street, Lakewood, Co. 1st Floor Conference Room
01/28/2015 09:00 AM	Division of Reclamation, Mining and Safety	Department of Natural Resources, 1313 Sherman Street, Room 313, Denver, CO 80203
01/29/2015 09:00 AM	Division of Workers' Compensation	633 17th st Denver CO 80214
02/17/2015 09:30 AM	Water Quality Control Commission (1003 Series)	Colorado Department of Public Health and Environment Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
02/17/2015 09:30 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
02/19/2015 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
02/19/2015 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
02/19/2015 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
02/26/2015 09:00 AM	Passenger Tramway Safety Board	1560 Broadway, Conference Room 1250-C Denver CO 80202
03/10/2015 09:30 AM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
04/13/2015 09:30 AM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
04/13/2015 09:30 AM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
04/13/2015 01:30 PM	Water Quality Control Commission (1002 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246