



Dedicated to protecting and improving the health and environment of the people of Colorado

To: Larry Wolk, MD, MSP, Executive Director and Chief Medical Officer,
Colorado Department of Public Health and Environment

From: Cary E. Ruble, Regulation Development and Enforcement Coordinator,
Division of Environmental Health and Sustainability

Through: Jeff Lawrence, Director
Division of Environmental Health and Sustainability (jL)

Date: September 8, 2015

Subject: **Rulemaking Hearing**
Proposed Repeal of 6 CCR 1010-18, *Colorado Hazardous Playground Equipment Regulations*, for the rulemaking hearing to occur in September 2015

The Colorado Department of Public Health and Environment ("CDPHE") is proposing to repeal 6 CCR 1010-18, *Colorado Hazardous Playground Equipment Regulations*. When reviewing the rules pursuant to Executive Order 2012-002 (EO2), staff recommended review of other existing state and federal regulations to determine if more appropriately aligned authorities and rule administration capabilities were in place. This review established that the intent of the regulations are administered and enforced via rules established by multiple state and federal agencies, including; Colorado Department of Education, Colorado Department of Public Safety, American Disabilities Act, and the International Building Code.

Additionally, this rule was adopted in 1990 and was incorporated by reference in previous versions of the "*Rules and Regulations Governing Schools*" 6 CCR 1010-6 and "*Health and Sanitation of Child Care Facilities in the State of Colorado*" 6 CCR 1010-7. These rules were promulgated under the authority listed in CRS 25-1.5-101(1)(h) which states in part:

"To establish and enforce **sanitary standards** for the operation of...child care facilities,...schools..."

A legal review of these two regulations and the authority granted in the above referenced section of the Colorado Revised Statute to "establish and enforce **sanitary standards**" determined that the incorporation of the *Colorado Hazardous Playground Equipment Regulations* into these regulations was outside the established scope of authority and therefore these requirements have been removed from both the child care and school regulations since the late 1990's.

Therefore, in accordance with the CDPHE Policy Manual, Part 13.3, this rulemaking proposes to repeal the *Colorado Hazardous Playground Equipment Regulations*, because rules and appropriately aligned authorities exist with other state and federal agencies. Consequently, the standards included in 6 CCR 1010-18 are no longer necessary and the repeal of this rule creates efficiencies for staff and stakeholders.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Repeal of
6 CCR 1010-18, *Colorado Hazardous Playground Equipment Regulations*

Basis and Purpose.

The *Colorado Hazardous Playground Equipment Regulations* provided authority to CDPHE for the inspection of school playground equipment in the state in order to safeguard children from playground equipment that present mechanical hazards. Through review of these regulations it has been determined the regulations are duplicative of other state and federal regulations administered and enforced under separate state and federal rules through multiple agencies that include, but are not limited to:

- Colorado Department of Education, Division of Public School Capital Construction Assistance, *Public School Facility Construction Guidelines*, 1 CCR 303-1;
- Colorado Department of Public Safety, Division of Fire Prevention and Control, *Code Enforcement and Certification of Inspectors for Public Schools, Charter Schools and Junior Colleges*, 8 CCR 1507-30;
- 2010 American Disabilities Act Standards for Accessible Design, Chapter 2, Section 240 and Chapter 10, Section 1008; and
- International Building Code - Section 424, 2012 Edition.

Specific Statutory Authority.

These rules were promulgated pursuant to Section 25-5-508(2)(C)(I), C.R.S, as amended.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

_____ Yes, the bill number is _____; rules are ___ authorized ___ required.
 X No

Is this rulemaking due to a federal statutory or regulatory change?

_____ Yes
 X No

Does this rule incorporate materials by reference?

_____ Yes
 X No

Does this rule create or modify fines or fees?

_____ Yes
 X No

REGULATORY ANALYSIS
for Repeal of
6 CCR 1010-18, Colorado Hazardous Playground Equipment Regulations

1. **A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

This rule was adopted in 1990 and is no longer enforced by the Division. No persons will be affected by the repeal of this rule as the requirements outlined in this regulation are covered under separate rules administered by multiple state and federal agencies.

2. **To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.**

There is no quantitative, qualitative or economic impact due to the repeal of 6 CCR 1010-18.

3. **The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

There is no cost to the agency or any other agency due to the repeal of 6 CCR 1010-18.

4. **A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

The benefit of the repeal is to eliminate obsolete regulations, clarify which state agency has authority and eliminate confusion for citizens. There is no benefit of inaction.

5. **A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

There are no less costly or less intrusive methods for achieving the purpose of repeal.

6. **Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.**

There are no other alternative methods for achieving the purpose of the proposed rule repeal.

7. **To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.**

Not applicable.

STAKEHOLDER COMMENTS
for Repeal of
6 CCR 1010-18, *Colorado Hazardous Playground Equipment Regulations*

The following individuals and/or entities were included in the proposal to repeal 6 CCR 1010-15:

- CDPHE staff
 - Deborah Nelson, Office of Legal and Regulatory Compliance, Board of Health Administrator
 - Jeff Lawrence, Division of Environmental Health and Sustainability, Director
 - Sean Scott, Division of Environmental Health and Sustainability, Deputy Director
 - Cary Ruble, Regulation Development and Enforcement Coordinator

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Executive Director:

- CDPHE staff
 - Deborah Nelson, Office of Legal and Regulatory Compliance, Board of Health Administrator
 - Jeff Lawrence, Division of Environmental Health and Sustainability, Director
 - Sean Scott, Division of Environmental Health and Sustainability, Deputy Director
 - Cary Ruble, Regulation Development and Enforcement Coordinator

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

No major factual or policy issues have been encountered.

Please identify health equity and environmental justice impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

The repeal of 6 CCR 1010-18 has no health equity and environmental justice impacts.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Division of Environmental Health and Sustainability—promulgated by Colorado Board of Health

COLORADO HAZARDOUS PLAYGROUND EQUIPMENT REGULATIONS

6 CCR 1010-18

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

1.0 ADMINISTRATION

1.1 Authority: Section 25-5-508(2)(C)(I), Colorado Revised Statutes 1973, as amended.

1.2 Adopted: May 4, 1990

1.3 Effective Date: June 30, 1990

1.4 Purpose: The purpose of these regulations is to safeguard the health of children from playground equipment that present mechanical hazards.

1.5 Application: These regulations shall apply to all schools providing playground equipment intended for the use of children in playground activities.

2.0 DEFINITIONS;

2.1 Approved: Is acceptable to the Colorado Department of Health or its authorized agents or employees, based on determination as to conformance with appropriate standards and good public health practice.

2.2 Department: The Colorado Department of Health and its authorized agents and employees.

2.3 Executive Director: The Executive Director of the Department of Health.

2.4 Hazardous Substance: In accordance with C.R.S. 1973, 25-5-502(10)(b)(III), means any toy or other article intended for use by children which the Department by Regulation determines, in accordance with Section 25-5-508, presents an electrical, mechanical or thermal hazard.

2.5 Mechanical Hazard: In accordance with C.R.S. 1973, 25-5-502(14), means an article, the design or manufacture of which in normal use or when subjected to reasonably foreseeable damage or abuse, presents an unreasonable risk of personal injury or illness from fracture, fragmentation, or disassembly of the article; from propulsion of the article or any part or accessory thereof; from points or other protrusions, surfaces, edges, openings, or closures of the article; from moving parts or the article; from lack or insufficiency of controls to reduce or stop the motion of the article; as a result of self-adhering characteristics of the article; because the article or any part or accessory thereof, may be aspirated or ingested; because of the instability of the article; or because of any other aspect of the article's design or manufacture.

2.6 Playground Equipment: Play equipment intended for use by children in playground activities, including but not limited to, swings, teeter-totters, merry-go-rounds, slides, climbing structures, and tires, spools and concrete pipe. The term does not include equipment normally intended for sports' use or playground equipment used at home.

2.7 School: Any facility (public, proprietary, parochial, denominational, or eleemosynary) which is maintained for educational purposes for six or more persons except:

a. Structures or facilities used by a religious, fraternal, political or social organization

~~exclusively for worship, religious, instructional or entertainment purposes pertaining to that organization.~~

~~b.— Educational programs and health facilities licensed by the Colorado Department of Health under provisions of 25-3-101, Colorado Revised Statutes (CRS) 1973, as amended.~~

~~c.— Child Care Facilities Licensed by the Colorado Department of Social Services under provisions of Sections 26-6-102 (l)(a)(b)(4) and 26-6-104 Colorado Revised Statutes 1973, as amended.~~

~~3.0 PLAYGROUND EQUIPMENT; CRITERIA FOR DETERMINING MECHANICAL HAZARDS.~~

~~3.1— The following criteria shall apply in determining whether playground equipment presents a mechanical hazard;~~

~~a.— Equipment is structurally unstable or not constructed of durable, weather resistant materials.~~

~~b.— Presence of projecting screws or bolts, sharp cutting edges, pinch points or splinters.~~

~~c.— The diameter of ring openings and clearances between structural members not less than three and one half (3.5") inches or not greater than nine (9") inches.~~

~~d.— Equipment ladders intended for foot use not having a minimum incline of fifteen degrees (15°) forward from vertical or lack of adequate grab rails on both sides. Chain ladders intended for foot and hand use are excluded from this requirement.~~

~~e.— Deformation of open hooks, rings and links; worn chains, hangers or bearings; or broken or missing rails, steps, rungs and seats.~~

~~f.— A surface that lacks protective covering such as pea gravel, sand, mulching, or other approved shock absorbing material provided on the ground where playground equipment is located.~~

~~4.0 USE OF HAZARDOUS PLAYGROUND EQUIPMENT BANNED~~

~~4.1— Playground equipment meeting any of the criteria of section 3.0 are deemed to present a mechanical hazard and are declared hazardous substances.~~

~~5.0— These regulations shall not limit the powers and duties of Local Governments to issue such orders and adopt regulations as stringent as or more stringent than the provisions contained herein, as may be necessary for Public Health and Safety.~~

Editor's Notes

History