



COLORADO

**Solid & Hazardous
Waste Commission**

Department of Public Health & Environment

NOTICE OF PROPOSED RULEMAKING HEARING
BEFORE THE
COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the amendments to 6 CCR 1007-2, Part 1, Section 1 and Reserving Section 18, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Amendment of 6 CCR 1007-2, Part 1, - Regulations Pertaining to Solid Waste Sites and Facilities - Additions to Section 1.2 (Definitions), Addition of Section 1.8 Regulations (Producer Responsibility Authorization and Dollar Limit Exemption), Placeholder for Addition of Section 18 (Producer Responsibility Regulations)

These modifications are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 25-17-713, C.R.S.

These proposed revisions to the regulations were developed in response to House Bill 22-1355, passed by the legislature in 2022, in which the General Assembly directed the Commission to adjust the Producer's dollar limitation exemption by the consumer price index annually by July 1.

Section 1.2 (Definitions) is being amended by adding the definition of "Producer" as defined in Section 25-17-703 (30) C.R.S.

Section 1.8 (Producer Responsibility Authorization and Dollar Limit Exemption) is being added to adjust by rule the dollar limitation based on the percentage change in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index (CPI) for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index.

Section 1.8.2 Producer Exemption Dollar Limit is also being added which describes that as of July 1, 2023, a producer is exempt from the requirements of Sections 25-17-701, et. seq., C.R.S., if the producer is a person with less than five million three hundred twenty thousand dollars (\$5,320,000) in realized gross total revenue, not including on-premises alcohol sales, during the prior calendar year.

Section 18 is being amended as a placeholder for the upcoming producer responsibility regulations.



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 rulemaking was submitted to the Secretary of State on April 14, 2023. 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 rulemaking in the Colorado Register on April 25, 2023.

The proposed rulemaking materials may also be accessed at <https://cdphe.colorado.gov/shwc-rulemaking-hearings>.

WRITTEN TESTIMONY

Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to cdphe.hwcrequests@state.co.us by Thursday, May 4, 2023, at 11:59 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.

HEARING SCHEDULE:

DATE: Tuesday, May 16, 2023
TIME: 9:00 a.m.
PLACE: **This meeting will be held online only at:**

<https://us02web.zoom.us/meeting/register/tZcldO2tqz8iGtWNIFbFjxIBKeAKk-6Rzco->

Oral testimony at the hearing regarding the proposed amendments may be limited.


Brandy Valdez Murphy, Administrator



1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2 Solid and Hazardous Waste Commission/Hazardous Materials and
3 Waste Management Division

4 6 CCR 1007-2

5 PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

6
7
8 Addition of Section 1.8 Producer Responsibility Authorization and Dollar Limit
9 Exemption. Placeholder for Section 18. Producer Responsibility Regulations, and
10 Associated Addition to Section 1.2 Definitions

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13
14 1) Section 1 of the Table of Contents of the Solid Waste Regulations is being amended by
15 revising Section 1.8 to read as follows:

16
17
18 PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

19
20
21 TABLE OF CONTENTS

22
23 PART B
24 REQUIREMENTS AND INFORMATION CONCERNING
25 ALL SOLID WASTE DISPOSAL SITES AND FACILITIES
26 IN THE STATE OF COLORADO

27
28 *****

29
30 SECTION 1 ADMINISTRATIVE INFORMATION

- 31 1.1 General information
32 1.2 Definitions
33 1.3 Scope and effective date
34 1.4 Exemptions
35 1.5 Waiver processes and procedures
36 1.6 Application for certificate of designation
37 1.7 Solid waste authorization and fees
38 1.8 ~~Reserved~~ Producer Responsibility Authorization and Dollar Limit Exemption
39 1.9 Inspections and enforcement

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41 *****

42 2) Section 1 of the Table of Contents of the Solid Waste Regulations is being amended by
43 revising Section 18 to read as follows:
44
45

46 **PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES**
47

48
49 **TABLE OF CONTENTS**
50

51 **PART B**
52 **REQUIREMENTS AND INFORMATION CONCERNING**
53 **ALL SOLID WASTE DISPOSAL SITES AND FACILITIES**
54 **IN THE STATE OF COLORADO**
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56 *****
57

58 **SECTION 18 ~~{RESERVED}~~ PRODUCER RESPONSIBILITY (RESERVED)**
59
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61 *****

62 3) Section 1.2 (Definitions) is being amended by adding the following definition in
63 alphabetical order to read as follows:
64

65 **1.2 Definitions**
66

67 *****

68
69 “**Producer**” as defined in Section 25-17-703 (30) C.R.S.
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71 *****
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73

74 4) Section 1.8 (Producer Responsibility Authorization and Dollar Limit Exemption) is being
75 added to read as follows:
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77 **SECTION 1.8 ~~{RESERVED}~~ PRODUCER RESPONSIBILITY AUTHORIZATION AND DOLLAR LIMIT EXEMPTION**
78

79 **1.8.1 Authorization** The Commission is authorized pursuant to Section 25-17-713 (2) C.R.S. to adjust
80 by rule the dollar limitation set forth in Section 25-17-713(1)(a) C.R.S., based on the percentage change in
81 the United States Department of Labor’s Bureau of Labor Statistics Consumer Price Index (CPI) for
82 Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index. This Index is
83 available January of each year at [https://www.bls.gov/regions/mountain-plains/news-
84 release/consumerpriceindex_denver.htm](https://www.bls.gov/regions/mountain-plains/news-release/consumerpriceindex_denver.htm).
85

86 **1.8.2 Producer Exemption Dollar Limit** As of July 1, 2023, a producer is exempt from the requirements
87 of Sections 25-17-701 - 25-17-716, C.R.S., and Section 18 if the producer is a person with less than five
88 million three hundred twenty thousand dollars (\$5,320,000) in realized gross total revenue, not including
89 on-premises alcohol sales, during the prior calendar year.
90

91 5) Section 18 is being amended as a placeholder for the upcoming producer
92 responsibility regulations

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| 94

SECTION 18 – PRODUCER RESPONSIBILITY (RESERVED)

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1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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3 Solid and Hazardous Waste Commission

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5 Hazardous Materials and Waste Management Division

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7 6 CCR 1007-2 Part 1

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9 STATEMENT OF BASIS AND PURPOSE
10 AND SPECIFIC STATUTORY AUTHORITY FOR

11
12 Revision to Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-
13 2, Part 1) - Addition of Section 1.8 Regulations (Producer Responsibility
14 Authorization and Dollar Limit Exemption), Placeholder for Addition of Section 18
15 (Producer Responsibility Regulations), and Associated Additions to Section 1.2
16 (Definitions)

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19 **Statutory Authority**

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21 These regulations are promulgated pursuant to the authority granted to the Solid and
22 Hazardous Waste Commission in Section 25-17-713, C.R.S. These proposed revisions to the
23 regulations were developed in response to House Bill (HB) 22-1355, passed by the
24 legislature in 2022, in which the General Assembly directed the Commission to adjust the
25 Producer’s dollar limitation exemption by the consumer price index annually by July 1.

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27
28 **Overview of the Act**

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30 House Bill (HB) 22-1305 effectively codified this program in 25-17-701, C.R.S., by directing
31 the Department of Public Health and Environment (the “Department”) to oversee the
32 implementation and operations of a producer responsibility program that requires
33 producers to finance a program that provides statewide recycling services for covered
34 materials. While the producer responsibility program is responsible for the operations and
35 management of a statewide recycling program, the Department is required by the Act to
36 oversee the producer responsibility organization’s program plan and results.

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39 **Overview of the Proposed Regulations and Definitions**

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41 Section 1.2 (Definitions) is being amended by adding the definition of “Producer” as
42 defined in Section 25-17-703 (30) C.R.S. While the division sees a need for adding a more
43 detailed definition of a “producer” to provide additional clarity on which specific entities
44 will be subject to the Act and regulations, the Division views this as a complex issue that
45 will require further stakeholder input. Because the current stakeholder and rulemaking

46 process has a limited timeframe to achieve the July 1, 2023 deadline to set and adjust the
47 consumer price index dollar limitation exemption rate, the regulatory definition of a
48 producer which refines and clarifies the statutory definition of a producer will be addressed
49 in detail during the 2024 stakeholder process and rulemaking.

50
51 Section 1.8 (Producer Responsibility Authorization and Dollar Limit Exemption) is being
52 added to include the Commission’s authorization pursuant to Section 25-17-713 (2) C.R.S. to
53 adjust by rule the dollar limitation set forth in Section 25-17-713(1)(a) C.R.S., based on the
54 percentage change in the United States Department of Labor’s Bureau of Labor Statistics
55 Consumer Price Index (CPI) for Denver-Aurora-Lakewood for all items and all urban
56 consumers, or its successor index.

57
58 Section 1.8.2 Producer Exemption Dollar Limit is also being added which describes that as
59 of July 1, 2023, a producer is exempt from the requirements of Sections 25-17-701 - 25-17-
60 716, C.R.S., and Section 18 if the producer is a person with less than five million three
61 hundred twenty thousand dollars (\$5,320,000) in realized gross total revenue, not including
62 on-premises alcohol sales, during the prior calendar year.

63
64 Section 18 is being amended as a placeholder for the upcoming producer responsibility
65 regulations.

66 67 68 **Stakeholder Process**

69
70 In response to HB 22-1355, the division initiated the process to include the producer dollar
71 limitation exemption in the program regulation. The division held a stakeholder meeting on
72 March 7, 2023. This meeting was part of a successful regulation review process, during
73 which the department engaged with a stakeholder group that included local governments;
74 registered recycling facilities; manufacturers; landfills; transfer stations; household
75 hazardous waste (“HHW”) collection centers; trade associations; business advocacy
76 organizations; chambers of commerce; environmental and community nonprofits; compost
77 operators; producers; and other private operators and industry associations including
78 Recycle Colorado (“RC”), Solid Waste Association of North America (“SWANA”), Colorado
79 Municipal League (“CML”), Colorado Communities for Climate Action (“CC4CA”), and
80 Colorado Counties, Inc., and other Colorado Department of Public Health and Environment
81 (“CDPHE”) division representatives.

82 83 84 **Stakeholder Feedback, Questions and Answers on the Proposed Rules**

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86 Seventy-three (73) participants registered for the March 7, 2023 stakeholder meeting, of
87 which forty-four (44) attended in real-time. We received feedback and questions from eight
88 participants, which has been compiled for consideration, and in summary, included:

- 89
90 ● *I want to see producer responsibility succeed. Provide clarification around the*
91 *definition of producer, it should include the federal government.*

- 92 • *{unrelated to rulemaking} What will be covered in the material list, and how will*
- 93 *contaminated containers be handled?*
- 94 • *I want to express my gratitude to CDPHE for their hard work in rolling out this*
- 95 *program. We look forward to participating in making the program a success and*
- 96 *upcoming stakeholder engagement processes.*
- 97 • *Is the revenue dollar exemption for producers based on CO state revenue or total*
- 98 *revenues? Does that include products and services (e.g. spa/hair)?*
- 99 • *{unrelated to rulemaking} Is there a video that describes recycling guidelines?*
- 100 • *A broader interpretation of revenue (to include revenue from services) will have a*
- 101 *massive impact on how many producers are obligated versus not.*
- 102 • *{unrelated to rulemaking} Have you chosen the PRO yet? What is the timeline for*
- 103 *that?*

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106 **Stakeholder Process Result**

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108 The stakeholder meeting was conducted to allow for a systematic line-by-line review of the
109 proposed amendments to the Regulations. Stakeholder consensus was achieved on all
110 proposed amendments being presented to the Commission for adoption, and there was
111 consensus that another stakeholder meeting was not warranted. Stakeholders were asked to
112 provide their input on a variety of issues related to the inclusion of definitions, regulatory
113 authority, and applicability of the producer responsibility program for statewide recycling
114 program. Based on neutral feedback received from stakeholders, the division retained the
115 original draft version of the Rules and Regulations Governing the Producer Responsibility
116 Program for Statewide Recycling, and associated definitions. Adoption of the updated and
117 revised Regulations, and associated definitions, 6 CCR 1007-2 will ensure that Colorado's
118 producer responsibility program remains in compliance with C.R.S. 25-17-713, while
119 continuing to facilitate the development of a statewide recycling program.

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122 **Alternatives Considered and Why Rejected**

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124 No other regulatory alternatives were considered.

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127 **Cost Benefit Analysis**

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129 A cost benefit analysis will be performed if requested by the Colorado Department of
130 Regulatory Agencies.