Colorado Register

42 CR 2

Volume 42 , No. 2

January 25, 2019

Introduction

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

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

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

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

Notice of Proposed Rulemaking

Tracking number

2019-00006

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-10

Rule title

TITLE AND REGISTRATION SECTION

Rulemaking Hearing

Date

02/20/2019

Time

03:30 PM

Location

1881 Pierce Street Room 110

Subjects and issues involved

The purpose of this rule is to establish reporting requirements for insurers that issue insurance policies under Part 6, Article 4 of Title 10 in order to maintain the Motorist Insurance Identification Database (MIIDB).

Statutory authority

The statutory basis for this rule is Part 6, Article 4 of Title 10, 42-1-204, C.R.S., and Article 7 of Title 42, C.R.S.

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DEPARTMENT OF REVENUE

Division of Motor Vehicles – ~~Title and Registration~~ Vehicle Services Section

1 CCR-204-10

RULE 7. MOTORIST INSURANCE IDENTIFICATION DATABASE (MIIDB)

Basis: The statutory ~~bases~~basis for this ~~regulation~~ rule ~~are~~is ~~part~~Part 6, ~~article~~Article 4 of ~~title~~Title 10, 42-1-204, C.R.S., and Article 7 of Title 42, C.R.S. ~~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~~ purpose of this rule~~s and regulations are promulgated~~ is to establish ~~Motorist Insurance Identification Database (MIIDB)~~ reporting requirements for ~~insurance companies issuing vehicle insurance policies in Colorado~~ insurers that issue insurance policies under Part 6, Article 4 of Title 10 in order to maintain the Motorist Insurance Identification Database (MIIDB).

1.0 Definitions

~~1.1 "Division" means the Division of Motor Vehicles in the Department of Revenue~~.

1.1 "Designated Agent" means an agent that contracts with the Department as defined in section 42-7-603(3), C.R.S.

1.2 "Secure File Transfer Protocol" (SFTP) means a ~~protocol~~ process for securely exchanging files ~~over the internet~~ between the insurer's system and the Designated Agent's system.

~~1.3 "Personal Motor Vehicle" means any vehicle for which non-commercial types of license plates are issued.~~

1.3 "Policy" means an automobile insurance policy as defined in section 10-4-601(10), C.R.S.

2.0 Insurer Reporting Requirements

2.1 ~~Each~~ An insurer shall report ~~the following policy~~ motor vehicle Policy information ~~to the designated agent:~~ required under 10-4-615(2), C.R.S., to the Department's Designated Agent as provided by 10-4-615(1)(a) and (b), C.R.S.

~~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 required in 2.1 above shall be reported and provided in a form or manner acceptable to the ~~designated agent~~ Designated Agent using the SFTP. An insurer must register with the Designated Agent and complete the required registration found at: https://www.colorado.gov/driveinsured/registration.html.

~~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~~3 Error Reporting

a. The ~~designated agent~~ Designated Agent will make error reports available to insurers ~~via~~ using the SFTP.

b. Each insurer ~~must~~ shall retrieve ~~the~~ error reports and develop an error correction process for ~~policy~~ Policy information that is rejected and returned.

c. Each insurer must correct rejected and returned ~~policy~~ Policy information and resubmit corrected ~~policy~~ Policy information ~~via the agreed upon transmission mode before update reporting~~ using the form or manner required in paragraph 2.2 above. Until it is corrected, a rejected ~~record~~ Policy may result in the vehicle record being 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 Exempt From MIIDB Reporting Requirements

3.1 The following motor vehicles are exempt from MIIDB reporting requirements.

a. ~~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 motor vehicle that is a commercial motor vehicle defined in 42-1-102(17.5), C.R.S.

b. A motor vehicle designed as a special use truck pursuant to 42-3-306(9), C.R.S., and Rule 33, 1 CCR 204-10.

c. A motor vehicle registered in the commercial fleet program pursuant to 42-3-107(27), C.R.S., and Rule 5, 1 CCR 204-10.

d. A motor vehicle registered in a rental program pursuant to 42-3-107(11), 42-3-107(12), and 42-3-107(16), C.R.S., and Rule 30, 1 CCR 204-10.

e. A motor vehicle owned by the State of Colorado or any agency or institution there of or by a town, city, county, or city and county pursuant to 42-104(4), C.R.S., and Rule 28, 1 CCR 204-10.

f. A motor vehicle registered with a gross vehicle weight rating pursuant to 42-1-102(23.5) and 42-3-306(5)(b), C.R.S., and Rule 4, 1 CCR 204-10.

g. A motor vehicle registered as a farm vehicle pursuant to 42-3-306(4), C.R.S.

h. A bus registered pursuant to 42-1-102(88) and 42-3-306(2)(c), C.R.S.

i. A motor vehicle registered with a Commercial Call Letter license plate pursuant to 42-3-201(210), C.R.S.

j. A vehicle that does not meet the definition of a motor vehicle under 10-4-601(6), C.R.S. This includes Trailers defined in 42-3-102(14), 42-3-102(60.3), 42-3-102(105), 42-3-105(106), and 42-3-102(111), C.R.S., and Special Mobile Machinery defined in 42-1-102(93.5), C.R.S.

3.2 The following registration records with license plates that are registered to a person and not a motor vehicle are exempt from MIIDB reporting requirements:

a. Dealer Demonstration, Dealer Full-Use, Dealer In-Transit, and SMM Dealer Demonstration license plates issued pursuant to 42-3-116, C.R.S., and Rule 48, 1 CCR 204-10.

b. Depot license plates issued pursuant to 42-3-116, C.R.S., and Rule 9, 1 CCR 204-10.

c. Manufacturer license plates issued pursuant to 42-3-116, C.R.S.

d. Transporter license plates issued pursuant to 42-3-116, C.R.S., and Rule 35, 1 CCR 204-10.

~~e. Buses: the first three character of the plate type field are BUS.~~

~~f. Dealers: the first three characters of the plate type field are DLR.~~

~~g. Farm Vehicles: the first three characters of the plate type field are FTK or FTR.~~

~~h. Special Mobile Equipment: the first three characters of the plate type field are SME or SMM.~~

~~i. Special Use Vehicle: the first three characters of the plate type field are SVW.~~

~~j. Trailers: the first three characters of the plate type field are TRL.~~

~~k. Truck Tractor: the first three characters of the plate type field are TTR.~~

~~l. Gross Vehicle Weight: the first three characters of the plate type field are GVW or TVW.~~

~~m. 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)~~

~~n. 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.~~

Notice of Proposed Rulemaking

Tracking number

2019-00016

Department

700 - Department of Regulatory Agencies

Agency

723 - Public Utilities Commission

CCR number

4 CCR 723-6

Rule title

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

Rulemaking Hearing

Date

03/07/2019

Time

09:00 AM

Location

Commission Hearing Room, Suite 250 1560 Broadway Denver, Colorado 80202

Subjects and issues involved

The Commission proposes these rules in order to permanently implement House Bill (HB) 18-1320. HB18-1320 defines the manner in which Large-Market Taxicab Service carriers may operate in the State of Colorado. The purpose of Rules 6800 through 6899 is to preserve the health, safety, and welfare of the traveling public who may have occasion to use Large-Market Taxicab Service carriers.

Statutory authority

The statutory authority for the proposed rules is found in §§ 24-4-104(4), 40-2-108, 40-2-110.5, 40-7-113(2), 40-10.1.101 through 116, and 40-10.1-701 et seq., C.R.S.

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-6

PART 6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

* * * *

[indicates omission of unaffected rules]

6800. Applicability of Large--Market Taxicab Service (LMT) Carriers.

Rules 6800 through 6899 apply to all Large--Market Taxicab Service carriers and to all Commission proceedings and operations concerning Large--Market Taxicab Service (LMT) carriers permit holders, employees, and drivers.

6801. Definitions.

In addition to the definitions in rule 6001, the following definitions apply to LMT:

(a) "Large--Market Taxicab Service" means indiscriminate passenger transportation for compensation in a taxicab on a call-and-demand basis, within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer and Weld, and between those points and all points within the state of Colorado, with the first passenger in the taxicab having exclusive use of the taxicab unless the passenger agrees to multiple loadings.

6802. Safety and Operations.

(a) Unless specifically modified by these rules, ~~A~~all safety rules (6000 through 6258) which apply to a taxicab carrier serving within and between any of the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer and Weld shall apply to a Large--Market Taxicab Service carrier.

(b) Unless specifically modified by these rules, all operational rules (6000 through 6258) which apply to a taxicab carrier serving within and between any of the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer and Weld shall apply to a Large--Market Taxicab Service carrier.

(c) A Large--Market Taxicab Service carrier must have a minimum number of vehicles in its fleet at all times, as described below:

(I) 25 vehicles for operations in the counties of Adams, Arapahoe, Broomfield, Boulder, Denver, Douglas, and Jefferson; and

(II) ten vehicles for operations in the counties of El Paso, Larimer, and Weld.

6803. Application.

(a) A person seeking a ~~temporary~~ permit to operate as a Large ~~-~~Market Taxicab Service carrier shall:

(I) file with the Commission, the prescribed application;

(II) cause to be filed the required proof of financial responsibility;

(III) file a Schedule of Rates pursuant to the requirements of rule 6805;

(III) pay ~~an~~ the annual filing fee ~~of $0.00~~;

(IV~~iv~~) provide proof that each vehicle operated under the permit has been inspected within the preceding twelve months by a qualified mechanic; and

(V~~v~~) pay or provide proof of previous payment of required vehicle identification fee for each vehicle to be operated.

(b) A permit ~~issued under these temporary rules~~ is valid for ~~210 days~~one year from the date of issuance ~~or until ten days after permanent Large Market Taxicab Service rules become effective, whichever is later~~.

6804. Maximum Rates for the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer and Weld.

(a) Maximum Rates

Flag drop	$3.50
Per mile	$2.80
Traffic Delay	$0.40
Waiting time per minute after five mins	$0.50
Additional passenger fee	$1.00
Additional baggage fee after three bags	$1.00

(b) Traffic delay may not be charged while a vehicle is moving at a speed greater than 15 miles per hour.

(c) Waiting time will only be charged for the time in excess of five minutes that the taxicab driver is required to wait for the passenger. The calculation of waiting time begins after the taxicab has arrived at the passenger's point of origin, and the passenger has been contacted by telephone or e-mail and advised the taxicab is at the requested pickup location.

(d) Maximum rates for Large ~~-~~Market Taxicab Service between Denver International Airport and the zones identified in paragraph 6257(d) are the rates set forth in paragraph 6257(c).

(e) The maximum rate for each passenger in a multiple loading situation shall be no more than 80 percent of the schedule of rates on file with the Commission.

6805. Schedule of Rates, Filing, and Notice.

(a) A Large--Market Taxicab Service carrier shall keep on file with the Commission, at all times, a schedule of rates, charges and collections to be assessed for all transportation and accessorial services provided by the carrier. Rates must be equal to or below the maximum rates set forth in rule 6804.

(b) Filing a schedule of rates.

(I) Rates must be filed on a Commission prescribed form and all applicable fields must be completed.

(II) The initial filing of the schedule of rates shall be submitted with the application.

(III) After the initial filing of the schedule of rates is filed, the carrier may change its rates as follows:

(A) carriers shall submit to the Commission by filing the a schedule of rates. The schedule of rates shall:

(i) be filed with the Commission using its E-Filings System into the proceeding 18M-0743TRdesignated by the Commission to receive such schedules using the Commission's E-Filings System.; and

(ii) Carriers shall be filedfile the schedule of rates concurrently or prior to the date and time the rate change is implemented.

(IV)B) All Drivers operating a vehicle under a carrier's Large--Market Taxicab Service permit shall charge the current rate that is on file with the Commission for that carrier in that county.

(VC) In the event a rate is changed while Driver is providing a ride to a passenger, the rate in effect when the ride initiated shall apply.

(c) Carriers shall post the maximum rates in each vehicle operated to provide service.

6806. Revocation of Large-Market Taxicab Service Permits for Failure to Pay Civil Penalty.

When a Motor Carrier operating under a Large-Market Taxicab Service Permit issued pursuant to Part 7 of Title 40, Article 10.1, C.R.S., fails to pay a Civil Penalty imposed by a final decision of the Commission within the time prescribed for payment, the Permit is revoked immediately. The Motor Carrier, any owner, Principal, officer, member, partner, or director of the Motor Carrier; and any other entity owned or operated by that owner, Principal, officer, member, partner, or director are disqualified from applying for a Permit for 24 months after the date of the Permit revocation.

6807. – 6899. [Reserved].

Decision No. C19-0037

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18R-0915TR

IN THE MATTER OF THE PROPOSED RULES REGULATING LARGE-MARKET TAXICAB SERVICES, 4 CODE OF COLORADO REGULATIONS 723-6.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: January 11, 2019
Adopted Date: December 19, 2018

TABLE OF CONTENTS

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) hereby issues this Notice of Proposed Rulemaking (NOPR) regarding proposed Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6.

2. The Commission proposes these rules in order to permanently implement House Bill (HB) 18-1320. HB18-1320 defines the manner in which Large-Market Taxicab Service carriers may operate in the State of Colorado. The purpose of Rules 6800 through 6899 is to preserve the health, safety, and welfare of the traveling public who may have occasion to use Large-Market Taxicab Service carriers.

3. The statutory authority for the proposed rules is found in §§ 24-4-104(4), 40-2-108, 40-2-110.5, 40-7-113(2), 40-10.1.101 through 116, and 40-10.1-701 *et seq.*, C.R.S.

4. The proposed rules in legislative (strikeout/underline) format [as Attachment A] and in final version [as Attachment B] are available in this proceeding (18R-0915TR), through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=18R-0915TR.

In the E-Filings system, select the "Search" button and enter this proceeding number (18R-0915TR).

B. Background

5. HB18-1320 became effective on August 8, 2018. It adds Part 7 to Article 10.1 of Title 40, and amends §§ 40-1-102, 40-1-103, 40-7-113, 40-10.1-101, 40-10.1-108, 40-10.1-109, 40-10.1-110, 40-10.1-111, and 40-10.1-203, C.R.S.

6. HB18-1320 significantly modified potential taxicab services that may be authorized in Colorado. The stated purpose of the bill is "a reduction in regulation of Large-Market Taxicab Service from regulation as a common carrier to regulation as a motor carrier of passengers."[1] For example, § 40-10.1-702, C.R.S., requires that a person obtain a

[1] *See,* HB 18-1320 attached to this Decision as Attachment C.

permit rather than a certificate of public convenience and necessity, to operate large-market taxicab service.

7. Large-market taxicab service is defined as:

> indiscriminate passenger transportation for compensation in a taxicab on a call-and-demand basis, within and between points in the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, and Weld, and between those points and all points within the state of Colorado, with the first passenger in the taxicab having exclusive use of the taxicab unless the passenger agrees to multiple loadings.

See, § 40-10.1-101(9.5), C.R.S.

8. In addition to requiring a permit for large-market taxicab service, the new scheme requires that: (1) a motor carrier providing large-market taxicab service in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson must have at least 25 vehicles in its fleet at all times; and (2) a motor carrier operating in El Paso, Larimer, and Weld Counties must have at least 10 vehicles in its fleet. *See*, § 40-10.1-702(4), C.R.S.

9. Although these large-market taxicab service carriers will no longer have tariffs on file with the Commission,[2] they are nonetheless required to file a schedule showing the rates that will be charged. *See*, § 40-10.1-704, C.R.S. Further, "the commission shall by rule determine the maximum rate that a motor carrier providing large-market taxicab service may charge its passengers" in each county. *See*, § 40-10.1-702(5), C.R.S.

10. Because a permit to operate large-market taxicab service under this new Part 7 is required on or after January 1, 2019, we earlier issued a decision adopting temporary rules partially implementing HB18-1320.[3] These temporary rules became effective on October 29,

[2] Notably, starting January 1, 2019, the law requires the Commission to remove large-market taxi authority currently authorized by certificates of public convenience and necessity. § 40-10.1-203(2)(c)(III).

[3] *See*, Decision No. C18-0963 issued October 29, 2018 in Proceeding No. 18R-0749TR implementing temporary Rules 6800 through 6805.

2018, and remain in effect until permanent rules become effective or for 210 days, whichever period is less, pursuant to § 40-2-108(2), C.R.S.

C. Description of Proposed Rules

11. Proposed Rule 6800 indicates that Rules 6800 *et seq*, apply to Large-Market Taxicab Service carriers.

12. Proposed Rule 6801 adopts the definition of "large-market taxicab service" pursuant to the language of § 40-10.1-101(9.5), C.R.S.

13. Proposed Rule 6802 concerns the safety and operations of large-market taxicab service carriers as motor carriers pursuant to § 40-10.1-106 and § 40-10.1-108, C.R.S., which provide for the Commission to establish reasonable rules to promote safety of operation for motor carriers. Other safety and operational rules are still pending in Proceeding No. 17R-0796TR. Once those rules become effective, if any changes are needed in regards to large-market taxicab service carriers, a supplement of the proposed rules in legislative (strikeout/underline) format will be issued with an opportunity for comment. The Commission is particularly interested in receiving input from interested persons on these rules.

14. Proposed Rule 6803 establishes the application process for obtaining a permit to provide large-market taxicab service pursuant to § 40-10.1-702, C.R.S.

15. Proposed Rule 6804 sets the maximum rates for each county served by a motor carrier providing large-market taxicab service in accordance with § 40-10.1-702(5), C.R.S. The rate established is based on the highest charge for the different rate components currently charged by the taxicab companies operating in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, and Weld.

16. Proposed Rule 6805 establishes the process for the filing of rate schedules as required by § 40-10.1-705, C.R.S.

17. Proposed Rule 6806 imposes the immediate revocation of a permit to provide large-market taxicab service for the failure to pay a civil penalty in accordance with § 40-10.1-704, C.R.S.

D. Conclusions

18. We issue this NOPR to permanently implement HB18-1320, and thereby, describe the manner of regulation over persons providing large-market taxicab service by motor vehicle in the State of Colorado. The proposed rules enhance public safety, protect consumers, and serve the public interest. As the purpose of the implementation of Part 7 under title 40, section 10.1 is to promote competition in the taxicab industry, it is imperative that we hear from the taxicab industry as to the efficacy of these proposed rules. While we have endeavored to propose rules that conform to Part 7 requirements, industry input in the form of written and oral comments is necessary to ensure that the rules are also compatible with marketplace realities.

19. Interested parties may file written comments, including data, views, or arguments, no later than **February 21, 2019.** We specifically request input from interested persons to include proposed or alternate rule language, as necessary, with their comments as we implement permanent rules that strike a balance between providing regulated industries the opportunity for success while protecting consumers and enhancing safety within the statutory framework in which the Commission must operate. The Commission prefers and encourages interested persons to submit comments through its Electronic Filing System in this proceeding (18R-0915TR). The Commission will consider all submissions, whether oral or written.

20. We refer this proceeding to an Administrative Law Judge (ALJ) to hold a public hearing on **March 7, 2019**. Interested persons may provide oral comments at the public hearing unless the ALJ deems oral presentations unnecessary.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the **January 25, 2019** edition of *The Colorado Register*.

2. A Hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: **March 7, 2019**

TIME: 9:00 a.m.

PLACE: Commission Hearing Room, Suite 250
1560 Broadway
Denver, Colorado

3. The ALJ may set additional hearings, if necessary.

4. Interested persons may file written comments on or before **February 21, 2019**. The Commission prefers and encourages interested persons to submit comments through its Electronic Filing System at https://www.dora.state.co.us/pls/efi/EFI.homepage. Interested persons may present comments orally at the hearing, unless the ALJ deems oral comments unnecessary.

5. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 19, 2018.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

WENDY M. MOSER

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director

COMMISSIONER FRANCES A. KONCILJA DISSENTING

III. COMMISSIONER FRANCES A. KONCILJA DISSENTING

1. This Notice of Proposed Rulemaking prepared by Staff of the Public Utilities Commission (Staff) incorporates by reference every existing rule that currently applies to Regulated Intrastate Carriers and Taxicab Carriers—current Rules 6000 through 6258, 4 *Code of Colorado Regulations* 723-6. Other than allowing a Large-Market Taxicab Service to file a maximum rate (*see* Rule 6305), the proposed rules do nothing to lighten the regulatory burden, which was and is the stated purpose of House Bill (HB) 18-1320.

2. In fact, the Proposed Rules increase the regulatory burden. Proposed Rule 6806, which mandates the immediate revocation of the Large-Market Taxicab Service Permit for

failure to pay a civil penalty, imposes a higher burden than currently exists under the rules. Proposed Rule 6806 also imposes a disqualification from applying for a Permit for 24 months, in the event of failing to pay a fine. Further, this disqualification applies to any "owner, Principal, officer, member, partner, or director…"

3. While the rules that are pending in Proceeding No. 17R-0796TR (a proceeding in which I was appointed the hearing commissioner) will reduce some regulation, there is no guarantee as to when those rules will go into effect. HB18-1320 demands immediate rules to reduce the regulation over Large-Market Taxicab Services.

4. As a result, I must disagree with my fellow commissioners that these proposed rules meet the statutory purpose of a reduction in regulation. I would reject the notice and instruct Staff to propose rules that actually reduce regulation.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

FRANCES A. KONCILJA

_____

Commissioner

Notice of Proposed Rulemaking

Tracking number

2019-00018

Department

700 - Department of Regulatory Agencies

Agency

732 - Division of Professions and Occupations - State Physical Therapy Board

CCR number

4 CCR 732-1

Rule title

PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

Rulemaking Hearing

Date

03/07/2019

Time

09:15 AM

Location

1560 Broadway, Suite 110D

Subjects and issues involved

The purpose of this rule is to establish procedures for determining whether a foreign-trained physical therapist applicant who has graduated from a non-accredited program has substantially equivalent education and training as required pursuant to section 12-41-111(1)(a), C.R.S.

Statutory authority

24-4-103, 12-41-103.6(2)(b) and 12-41-111(1)(a) C.R.S.

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205. Licensing of Foreign-Trained Physical Therapist Graduates of Non-Accredited Programs

The purpose of this rule is to establish procedures for determining whether a foreign-trained physical therapist applicant who has graduated from a non-accredited program has substantially equivalent education and training as required pursuant to section 12-41-111(1)(a), C.R.S.

A. A foreign-trained applicant who has graduated from a non-accredited program must have education and training in physical therapy substantially equivalent to the entry-level education and training required at accredited physical therapy programs in the United States in effect at the time of the applicant's graduation. This includes an assessment of the applicant's general and professional education, as well as training in wound care and debridement.

B. Applicants who wish to have their general and professional education considered "substantially equivalent" in order to take the National Physical Therapy Examination (NPTE) through Colorado and qualify for licensure shall submit their credentials to the Foreign Credentialing Commission of Physical Therapy (FCCPT). The applicant must submit a credentials evaluation utilizing the version of the Coursework Evaluation Tool for Foreign-Educated Physical Therapists developed by the Federation of State Boards of Physical Therapy (FSBPT) that applies to the applicant's year of graduation in order to evaluate the applicant's credentials against the requirements at accredited physical therapy programs in place at the time of the applicant's graduation. The Board will not accept a credentials evaluation from an organization not listed in this rule.

C. A foreign-trained applicant who has graduated from a non-accredited program and already passed the NPTE may submit a credentials evaluation from a credentialing agency other than FCCPT provided that:

1. The credentialing agency utilized the version of the Coursework Evaluation Tool for Foreign-Educated Physical Therapists developed by FSBPT that applies to the applicant's year of graduation in order to evaluate the applicant's credentials against the requirements at accredited physical therapy programs in place at the time of the applicant's graduation; and

2. The applicant has been licensed in good standing and actively engaged in clinical practice as a licensed physical therapist in the United States for 2 out of the 5 years immediately preceding his/her application for licensure.

D. All expenses associated with the credential evaluation are the responsibility of the applicant.

E. Failure to have a credentials evaluation pursuant to the terms of this rule will result in the Board denying the application.

F. In the event a foreign-trained applicant's general education is found to be deficient, the applicant may take and pass subject examinations from the College-Level Examination Program (CLEP) to overcome the deficiency in general education.

G. In the event a foreign-trained applicant's professional education is found to be deficient, the applicant shall either:

1. Successfully complete a Board-approved plan to overcome deficiencies; or

2. Overcome the deficiency by obtaining a master or doctorate degree at an accredited physical therapy program.

H. Degrees obtained in a transitional program are not equivalent to a professional entry-level physical therapy degree and will not be accepted for initial licensure.

I. On or after January 1, 2019, applicant must submit fingerprints for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the Colorado Bureau of Investigation responsible for retaining the state's criminal records set forth in Section 24-60-3702(3)(B), C.R.S.

Notice of Proposed Rulemaking

Tracking number

2019-00019

Department

700 - Department of Regulatory Agencies

Agency

732 - Division of Professions and Occupations - State Physical Therapy Board

CCR number

4 CCR 732-1

Rule title

PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

Rulemaking Hearing

Date

03/07/2019

Time

09:15 AM

Location

1560 Broadway, Suite 110D

Subjects and issues involved

The purpose of this rule is to delineate the requirements for licensure by endorsement for physical therapists pursuant to section 12-41-109, C.R.S.

Statutory authority

24-4-103, 12-41-103.6(2)(b) and 12-41-109 C.R.S.

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206. Licensure by Endorsement for Physical Therapists

The purpose of this rule is to delineate the requirements for licensure by endorsement for physical therapists pursuant to section 12-41-109, C.R.S. In order to be qualified for licensure by endorsement, an applicant is required to demonstrate that he/she does not currently have a revoked, suspended, restricted, or conditional license to practice as a physical therapist, or is currently pending disciplinary action against such license in another state or territory of the United States. An applicant must meet one of the following requirements:

A. Graduated from an accredited physical therapy program within the past 2 years and passed the National Physical Therapy Examination (NPTE).

B. Practiced in the United States as a licensed physical therapist for at least 2 of the 5 years immediately preceding the date of the application.

C. If an applicant has not practiced as a licensed physical therapist for at least 2 of the 5 years immediately preceding the date of the application, then he/she is required to have passed the NPTE, or its equivalent, and may demonstrate competency through successful completion of 1 of the following:

1. Complete 60 hours of Educational Coursework Professional Development Activities (PDA) pursuant to Rule 213(C)(2) during the 2 years immediately preceding the application.

    a. An applicant seeking to demonstrate competency through this pathway shall:

        i. Complete the Federation of State Boards of Physical Therapy's (FSBPT) online continuing education competence learning and assessment tool (oPTion) or a comparable objective third-party assessment that compares a licensee's knowledge, skills, and abilities to the standards for entry-level practice accepted by the Board; and

        ii. Successfully complete 60 hours, directly related to the physical therapist's clinical practice and address any areas of deficiencies identified in the objective third-party assessment.

    b. The applicant must submit the results of the objective third-party assessment and the corresponding 60 hours for Board consideration within 1 year of completing the objective third-party assessment.

2. Successfully complete a Board authorized internship.

    a. An applicant seeking to demonstrate competency through an internship shall:

        i. Arrange for a Colorado-licensed, practicing physical therapist (the "supervising physical therapist") to supervise the internship; and

        ii. Ensure that the supervising physical therapist immediately notifies the Board in writing of the establishment of the internship and submits for the Board's approval a plan for supervision using the most current version of the "Physical Therapist Clinical Performance Instrument" (CPI) or a comparable objective third-party assessment that compares a licensee's knowledge, skills, and abilities to standards for entry-level practice accepted by the Board.

b. The internship shall not commence without the Board's written approval of the supervising physical therapist's plan for supervision specified in subparagraph (2)(c) of this rule.

c. The internship shall consist of:

i. The applicant's actual practice of physical therapy as defined in section 12-41- 103(6), C.R.S.;

ii. Supervision of the applicant at all times by any Colorado-licensed, practicing physical therapist on the premises where physical therapy services are being rendered; and

iii. A minimum of 240 hours clinical practice within a consecutive 6-month period commencing from the Board's written approval of the plan for supervision.

d. The applicant shall ensure that the supervising physical therapist files a written report at the completion of the internship. This report must indicate whether the applicant demonstrates entry-level performance in all skills assessed by the CPI or comparable objective third-party assessment. Hard copy or electronic copies of the CPI or comparable objective third-party assessment are acceptable.

D. An applicant who is unable to demonstrate competency under sections A, B, or C of this rule may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a license under this section D, the Board may subject said license to such lawful conditions as the Board finds are necessary to protect the public.

E. <u>On or after January 1, 2019, applicant must submit fingerprints for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the Colorado Bureau of Investigation responsible for retaining the state's criminal records set forth in Section 24-60-3702(3)(B), C.R.S.</u>

Notice of Proposed Rulemaking

Tracking number

2019-00020

Department

700 - Department of Regulatory Agencies

Agency

732 - Division of Professions and Occupations - State Physical Therapy Board

CCR number

4 CCR 732-1

Rule title

PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

Rulemaking Hearing

Date

03/07/2019

Time

09:15 AM

Location

1560 Broadway, Suite 110D

Subjects and issues involved

The purpose of this rule is to establish a continuing professional competency program pursuant to section 12-41-114.6, C.R.S., wherein a physical therapist shall maintain and demonstrate continuing professional competency in order to renew a license to practice physical therapy in the state of Colorado.

Statutory authority

24-4-103, 12-41-103.6(2)(b) and 12-41-114.6(1)(b) C.R.S.

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213. Continuing Professional Competency Requirements for Licensure Renewal for Physical Therapists

The purpose of this rule is to establish a continuing professional competency program pursuant to section 12-41-114.6, C.R.S., wherein a physical therapist shall maintain and demonstrate continuing professional competency in order to renew a license to practice physical therapy in the state of Colorado.

Furthermore, pursuant to section 12-41-114.6(2), C.R.S., records of assessment or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a physical therapist. A person or the Board shall not use the records or documents unless used by the Board to determine whether a physical therapist is maintaining continuing professional competency to engage in the profession.

A. Definitions

~~1. Assessment of Knowledge and Skills (AKS): an objective third-party assessment that compares a licensee's knowledge, skills, and abilities to the standards for entry-level practice.~~

2. Continuing Professional Competency: the ongoing ability of a physical therapist to learn, integrate, and apply the knowledge, skills, and judgment to practice as a physical therapist according to generally accepted standards and professional ethical standards.

3. Continuing Professional Development (CPD): the Board program through which a licensee can satisfy the continuing professional competency requirements in order to renew, reinstate, or reactivate a license.

4. Deemed Status: a licensee who satisfies the continuing professional competency requirements of a Colorado state agency or department, an accrediting body recognized by the Board, or an entity approved by the Board pursuant to section 12-41-114.6(1)(c), C.R.S., may qualify under this method in lieu of completing the Board's CPD program.

5. Learning Plan: a Board approved form through which a licensee documents his/her goals and plans of learning that were developed from his/her ~~Reflective~~ Self-Assessment (~~R~~SAT), which is defined below. ~~and AKS (when appropriately applied)~~. A licensee shall execute his/her learning plan by completing professional development activities (PDA) as required before a license is renewed. The plan can be amended/updated as needed during the renewal period.

6. Military Exemption: a method to satisfy continuing professional competency requirements. A licensee who has been approved for this exemption will not be required to meet continuing professional competency requirements during the renewal period in which he/she was approved by the Division of Professions and Occupations.

7. Professional Development Activities (PDA): learning activities undertaken to increase the licensee's knowledge and skill or hone existing knowledge and skill for the purpose of continuing professional development.

8. ~~Reflective~~ Self-Assessment Tool (~~R~~SAT): a ~~reflective~~ practice tool in which a licensee can reflect upon his/her knowledge and skills pertaining to the foundational areas of physical therapy practice taking into account the licensee's current level and area of practice.

B. Continuing Professional Competency Requirements

1. Effective after the 2014 license renewal, or upon the completion of the first renewal of a license thereafter, the licensee shall demonstrate continuing professional competency in order to renew a license by:

   a. Participation in the Continuing Professional Development (CPD) program;

   b. Participation in a program of continuing professional competency through a Colorado state agency or department, including continuing competency requirements imposed through a contractual arrangement with a provider as set forth in section 12-41-114.6(1)(c), C.R.S. This status is defined as "Deemed Status" in section A(4) of this rule and further described in section D of this rule; or

   c. Receiving an exemption for military service as defined in section 12-70-102, C.R.S. Military exemptions must be approved by the Division of Professions and Occupations. Licensees seeking a military exemption shall submit a request in writing with evidence that the licensee's military service meets the criteria established in section 12-70-102, C.R.S., and section E of this rule.

2. A licensee shall attest at the time of the renewal of a license to his/her compliance with continuing professional competency requirements.

C. Continuing Professional Development Program

1. The Continuing Professional Development (CPD) program entails the following:

   a. The licensee shall complete the ~~Reflective~~ Self-Assessment Tool (~~R~~SAT) once per 2- year renewal period. A licensee shall use the Board approved form.

      i. The execution of a Learning Plan once per 2-year renewal period that is based upon the licensee's ~~Reflective~~ Self-Assessment Tool (~~R~~SAT) ~~or Assessment of Knowledge and Skills (AKS).~~ A licensee shall use the Board approved form.

      ii. Accrual of 30 hours of Professional Development Activities (PDA) per 2-year renewal period.

2. Professional Development Activities (PDA)

   a. Professional Development Activities must be relevant to the licensee's practice as a physical therapist and pertinent to his/her Learning Plan. The Board will not pre-approve specific courses or providers. The licensee shall determine which activities and topics will meet his/her Learning Plan, and select an appropriate provider.

   ~~b. Professional Development Activities are separated into Category I, Category II, and Category III activities and each category has a corresponding point value. Points are used in lieu of continuing education units (CEU) or contact hours to allow credit for non-continuing education type activities.~~

   c. <u>Professional Development Activities are organized into the following five (5) categories.</u>

i. Educational Coursework
ii. Volunteer Service
iii. Mentoring/Supervision
iv. Presentations
v. Independent Study/In-service

d. Hours will be accepted if the activity is included in the Board's *Professional Development Activities List*. The Board may accept or reject activities submitted for consideration that are not identified on its list.

~~e. A minimum of 15 of the required 30 points must be Category I activities.~~

f. Professional Development Activities will only apply for one 2-year renewal period.

g. A minimum of 20 of the required hours must be in the educational coursework category.

h. A maximum of 10 of the required hours may be in one of the other categories as listed in 2(c)(ii-v).

~~3. The completion of an Assessment of Knowledge and Skills (AKS) will not be accepted more than once every 10 years.~~

~~a. An AKS must meet the following criteria:~~

~~i. Be drafted and validated by qualified physical therapists and psychometricians;~~

~~ii. Be comprised of evidence based practice;~~

~~iii. Be maintained for relevancy and advancements in and affecting the profession; and~~

~~iv. Provide feedback to the participant/licensee regarding his/her performance and suggested learning opportunities to enhance his/her knowledge and skills.~~

~~b. Administrative Approval. The Board finds the following AKSs to have met the criteria established in section C(3)(a) of this rule, and are administratively approved by the Board:~~

~~i. The online continuing competence learning and assessment tool (oPTion) administered by the Federation of State Boards of Physical Therapy (FSBPT).~~

~~ii. If the AKS is not listed as administratively approved by the Board in this rule, then additional documentation demonstrating the AKS satisfies the Board criteria will be required prior to registering and completing the AKS.~~

~~c. The licensee may count the completion of an AKS as a Category I activity toward a mandatory 30 PDA points for the corresponding 2-year renewal period in compliance with the State Physical Therapy Board's *Professional Development Activities List* for assigned point values.~~

4. Audit of Compliance. The following documentation is required for an audit of compliance of a licensee's Continuing Professional Development:

a. The Learning Plan that is signed and executed which contains the licensee's goals in the form and manner as approved by the Board.

~~b. A certificate of completion or other report issued by the AKS provider indicating the name of the licensee, AKS title, content, and the licensee's date of completion.~~

c. Documentation of 30 hours of Professional Development Activities in compliance with the State Physical Therapy Board's *Professional Development Activities List* for documentation requirements for PDAs.

d. The Board may accept or reject Professional Development Activities (PDA) that do not meet the criteria established by the ~~Board for PDA or standards of quality as defined in the State Physical Therapy~~ Board's *Professional Development Activities (PDA) List*~~, Standards of Quality for Category I Continuing Education Activities~~, and this rule.

D. Deemed Status. The following criteria must be met in order to claim this status:

1. In order to renew a license, a licensee shall attest to his/her Deemed Status.

2. To qualify, the licensee must be in full compliance with the requirements of his/her state agency or department during the entire 2-year renewal period of his/her physical therapist license and on track to successfully complete that program or have successfully completed it.

3. Licensees claiming Deemed Status are subject to an audit of compliance. To satisfy an audit of compliance, the licensee shall submit appropriate evidence of participation in a qualifying program through submission of:

a. Proof from the Colorado state agency or department or contractual entity verifying that the licensee is in compliance with its continuing professional competency program; and

b. A letter from his/her employer certifying dates of employment for the entire 2-year license renewal period, without any break; or

c. Other documentation approved by the Board which reflects the licensee's compliance with a program of continuing professional competency.

E. Military Exemption. Pursuant to section 12-70-102, C.R.S., licensees who have been called to federally funded active duty for more than 120 days for the purpose of serving in a war, emergency, or contingency may request an exemption from the continuing professional competency requirements for the renewal, reinstatement, or reactivation of his/her license for the 2-year renewal period that falls within the period of service or within six months following the completion of service.

1. Military exemptions must be approved by the Division of Professions and Occupations. Licensees seeking a military exemption shall submit a request in writing with evidence that the licensee's military service meets the criteria established in section 12-70-102, C.R.S.

2. After being granted a military exemption, in order to complete the renewal process, a licensee shall attest to his/her military exemption.

F. Records Retention. A licensee shall retain documentation demonstrating his/her compliance for 2 complete 2-year renewal periods.

G. Non-Compliance. Falsifying an attestation or other documentation regarding the licensee's compliance with continuing professional competency requirements constitutes the falsification of information in an application and may be grounds for discipline pursuant to sections 12-41-115(1)(k) and (r), C.R.S.

H. Reinstatement and Reactivation. A licensee seeking to reinstate or reactivate a license which has been expired or inactivated for 2 years or less shall meet the competency requirements outlined in Rule 207(B).

Notice of Proposed Rulemaking

Tracking number

2019-00021

Department

700 - Department of Regulatory Agencies

Agency

732 - Division of Professions and Occupations - State Physical Therapy Board

CCR number

4 CCR 732-1

Rule title

PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

Rulemaking Hearing

Date

03/07/2019

Time

09:15 AM

Location

1560 Broadway, Suite 110D

Subjects and issues involved

The purpose of this rule is to delineate the requirements for certification by examination for physical therapist assistants pursuant to section 12-41-205, C.R.S.

Statutory authority

24-4-103, 12-41-103.6(2)(b), 12.-41-201(3) and 12-41-205 C.R.S.

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303. Certification by Examination for Physical Therapist Assistants

The purpose of this rule is to delineate the requirements for certification by examination for physical therapist assistants pursuant to section 12-41-205, C.R.S.

A. An applicant is required to demonstrate that he/she has successfully completed a physical therapy program pursuant to Rule 204 or a physical therapist assistant program that is either:

1. Accredited by a nationally recognized accrediting agency pursuant to Rule 103; or

2. Substantially equivalent pursuant to Rule 304.

B. If applying to take the National Physical Therapy Examination (NPTE), an applicant:

1. Must have successfully completed a physical therapy or physical therapist assistant program, or be eligible to graduate within 90 days of a program pursuant to section A of this rule; and

2. Must meet the Federation of State Boards of Physical Therapy's (FSBPT) current eligibility requirements in effect at the time of registering for the NPTE, including any exam retake or low score limit policies.

C. An applicant for certification by examination must graduate from a physical therapy or physical therapist assistant program pursuant to section A of this rule and pass the NPTE within the 2 years immediately preceding the date of the application.

D. An applicant who is unable to meet the requirements under section C of this rule may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a certification under this section D, the Board may subject said certification to such lawful conditions as the Board finds are necessary to protect the public.

E. <u>On or after January 1, 2019, applicant must submit fingerprints for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the Colorado Bureau of Investigation responsible for retaining the state's criminal records set forth in Section 24-60-3702(3)(B), C.R.S.</u>

Notice of Proposed Rulemaking

Tracking number

2019-00022

Department

700 - Department of Regulatory Agencies

Agency

732 - Division of Professions and Occupations - State Physical Therapy Board

CCR number

4 CCR 732-1

Rule title

PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

Rulemaking Hearing

Date

03/07/2019

Time

09:15 AM

Location

1560 Broadway, Suite 110D

Subjects and issues involved

The purpose of this rule is to establish procedures for determining whether a foreign-trained physical therapist assistant applicant who has graduated from a non-accredited program has substantially equivalent education and training as required pursuant to section 12-41-207(1)(a), C.R.S.

Statutory authority

24-4-103, 12-41-103.6(2)(b), 12-41-201(3) and 12-41-207(1)(a) C.R.S.

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304. Certification of Foreign-Trained Physical Therapist Assistant Graduates of Non-Accredited Programs

The purpose of this rule is to establish procedures for determining whether a foreign-trained physical therapist assistant applicant who has graduated from a non-accredited program has substantially equivalent education and training as required pursuant to section 12-41-207(1)(a), C.R.S.

A. A foreign-trained applicant who has graduated from a non-accredited program must have education and training as a physical therapist assistant substantially equivalent to the entry-level education and training required at accredited physical therapist assistant programs in the United States in effect at the time of the applicant's graduation. This includes but is not limited to an assessment of the applicant's foundational studies and applied and technical education, as well as training in non-selective wound care.

B. Applicants who wish to have their foundational studies, and applied/technical education considered "substantially equivalent" in order to take the National Physical Therapy Examination (NPTE) through Colorado and qualify for certification shall submit their credentials to the Foreign Credentialing Commission of Physical Therapy (FCCPT). The applicant must submit a credentials evaluation utilizing the version of the Coursework Tool for Foreign Educated Physical Therapist Assistants developed by the Federation of State Boards of Physical Therapy (FSBPT) that applies to the applicant's year of graduation in order to evaluate the applicant's credentials against the requirements at accredited physical therapist assistant programs in place at the time of the applicant's graduation. The Board will not accept a credentials evaluation from an organization not listed in this rule.

C. A foreign-trained applicant who has graduated from a non-accredited program and already passed the NPTE may submit a credentials evaluation from a credentialing agency other than FCCPT provided that:

1. The credentialing agency utilized the version of the Coursework Evaluation Tool for Foreign-Educated Physical Therapists developed by FSBPT that applies to the applicant's year of graduation in order to evaluate the applicant's credentials against the requirements at accredited physical therapist assistant programs in place at the time of the applicant's graduation; and

2. The applicant has been licensed, certified, or registered in good standing and actively engaged in clinical practice as a physical therapist assistant in the United States for 2 out of the 5 years immediately preceding his or her application for certification.

D. All expenses associated with the credentials evaluation are the responsibility of the applicant.

E. Failure to have a credentials evaluation pursuant to the terms of this rule will result in the Board denying the application.

F. In the event a foreign-trained applicant's foundational studies are found to be deficient, the applicant may take and pass subject examinations from the College-Level Examination Program (CLEP) to overcome the deficiency in general education.

G. In the event a foreign-trained applicant's applied and technical education is found to be deficient, the applicant shall either:

1. Successfully complete a Board-approved plan to overcome deficiencies; or

2. Overcome the deficiency by obtaining an associate degree from an accredited physical therapist assistant program.

H. On or after January 1, 2019, applicant must submit fingerprints for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the Colorado Bureau of Investigation responsible for retaining the state's criminal records set forth in Section 24-60-3702(3)(B),C.R.S.

Notice of Proposed Rulemaking

Tracking number

2019-00023

Department

700 - Department of Regulatory Agencies

Agency

732 - Division of Professions and Occupations - State Physical Therapy Board

CCR number

4 CCR 732-1

Rule title

PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

Rulemaking Hearing

Date

03/07/2019

Time

09:15 AM

Location

1560 Broadway, Suite 110D

Subjects and issues involved

The purpose of this rule is to delineate the requirements for certification by endorsement for Physical Therapist Assistants pursuant to section 12-41-206, C.R.S.

Statutory authority

24-4-103, 12-41-103.6(2)(b), 12-41-201(3) and 12-41-206 C.R.S.

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305. Certification by Endorsement for Physical Therapist Assistants

The purpose of this rule is to delineate the requirements for certification by endorsement pursuant to section 12-41-206, C.R.S. In order to be qualified for certification by endorsement, an applicant is required to demonstrate that he/she does not currently have a revoked, suspended, restricted, or conditional license, certification, or registration to practice as a physical therapist assistant, or is currently pending disciplinary action against such license, certification, or registration in another state or territory of the United States. An applicant must meet one of the following requirements:

A. Graduated from an accredited physical therapy or physical therapist assistant program within the past 2 years and passed the National Physical Therapy Examination (NPTE).

B. Practiced in the United States as a licensed, certified, or registered physical therapist assistant for at least 2 of the 5 years immediately preceding the date of the application.

C. If an applicant has not practiced as a licensed, certified, or registered physical therapist assistant for at least 2 of the 5 years immediately preceding the date of the application, then he/she is required to have passed the NPTE, or its equivalent, and may demonstrate competency through successful completion of 1 of the following:

1. Completion of 60 hours of continuing education related to the practice of physical therapy during the 2 years immediately preceding the application.

    a. An applicant seeking to demonstrate competency through this pathway shall:

        i. Complete an objective third-party assessment that compares a certificate holder's knowledge, skills, and abilities to the standards for entry-level practice accepted by the Board; and

        ii. Successfully complete all hours as in compliance with the "Physical Therapy Board Standards for Continuing Education Activities", directly related to the physical therapist assistant's clinical practice and address any areas of deficiencies identified in the objective third-party assessment.

    b. The applicant must submit the results of the objective third-party assessment and the corresponding 60 hours continuing education hours for Board consideration within 1 year of completing the objective third-party assessment.

2. Successful completion of a Board authorized internship.

    a. An applicant seeking to demonstrate competency through an internship shall:

        i. Arrange for a Colorado-licensed, practicing physical therapist (the "supervising physical therapist") to supervise the internship; and

        ii. Ensure that the supervising physical therapist immediately notifies the Board in writing of the establishment of the internship and submits for the Board's approval a plan for supervision using the most current version of the "Physical Therapist Assistant Clinical Performance Instrument" (CPI) or a comparable objective third-party assessment that compares a certificate holder's knowledge, skills, and abilities to the standards for entry-level practice accepted by the Board.

b. The internship shall not commence without the Board's written approval of the supervising physical therapist's plan for supervision specified in subparagraph (2)(c) of this rule.

c. The internship shall consist of:

i. The applicant's actual practice of physical therapy as defined in section 12-41-103(6), C.R.S.;

ii. Direct supervision, as defined in Rule 101(B), of the applicant at all times by the Board approved Colorado-licensed, practicing physical therapist; and

iii. A minimum of 240 hours clinical practice within a consecutive 6-month period commencing from the Board's written approval of the plan for supervision.

d. The applicant shall ensure that the supervising physical therapist files a written report at the completion of the internship. This report must indicate whether the applicant demonstrates entry-level performance in all skills assessed by the CPI or comparable objective third-party assessment. Hard copy or electronic copies of the CPI or comparable objective third-party assessment are acceptable.

D. An applicant who is unable to demonstrate competency under sections A, B, or C of this rule may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a certification under this section D, the Board may subject said certification to such lawful conditions as the Board finds are necessary to protect the public.

E. <u>On or after January 1, 2019, applicant must submit fingerprints for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the Colorado Bureau of Investigation responsible for retaining the state's criminal records set forth in Section 24-60-3702(3)(B), C.R.S.</u>

Notice of Proposed Rulemaking

Tracking number

2019-00017

Department

700 - Department of Regulatory Agencies

Agency

732 - Division of Professions and Occupations - State Physical Therapy Board

CCR number

4 CCR 732-1

Rule title

PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

Rulemaking Hearing

Date

03/07/2019

Time

09:15 AM

Location

1560 Broadway, Suite 110D

Subjects and issues involved

The purpose of this rule is to delineate the requirements for licensure by examination for physical therapists pursuant to section 12-41-107, C.R.S.

Statutory authority

24-4-103, 24-41-103.6(2)(b) and 12.41-107 C.R.S.

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204. Licensure by Examination for Physical Therapists

The purpose of this rule is to delineate the requirements for licensure by examination for physical therapists pursuant to section 12-41-107, C.R.S.

A. An applicant is required to demonstrate that he/she has successfully completed a physical therapy program that is either:

1. Accredited by a nationally recognized accrediting agency pursuant to Rule 103; or

2. Substantially equivalent pursuant to Rule 205.

B. If applying to take the National Physical Therapy Examination (NPTE), an applicant:

1. Must have successfully completed a physical therapy program or be eligible to graduate within 90 days of a program pursuant to section A of this rule; and

2. Must meet the Federation of State Boards of Physical Therapy's (FSBPT) current eligibility requirements in effect at the time of registering for the NPTE, including any exam retake or low score limit policies.

C. An applicant for licensure by examination must graduate from a physical therapy program pursuant to section A of this rule and pass the NPTE within the 2 years immediately preceding the date of the application.

D. An applicant who is unable to meet the requirements under section C of this rule may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a license under this section D, the Board may subject said license to such lawful conditions as the Board finds are necessary to protect the public.

E. <u>On or after January 1, 2019, applicant must submit fingerprints for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the Colorado Bureau of Investigation responsible for retaining the state's criminal records set forth in Section 24-60-3702(3)(B), C.R.S.</u>

Notice of Proposed Rulemaking

Tracking number

2019-00024

Department

700 - Department of Regulatory Agencies

Agency

732 - Division of Professions and Occupations - State Physical Therapy Board

CCR number

4 CCR 732-1

Rule title

PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

Rulemaking Hearing

Date

03/07/2019

Time

09:15 AM

Location

1560 Broadway, Suite 110D

Subjects and issues involved

The purpose of this rule is to establish a continuing professional competency program pursuant to section 12-41-114.6, C.R.S., wherein a physical therapist assistant shall maintain and demonstrate continuing professional competency in order to renew a license to practice physical therapy assistant in the state of Colorado.

Statutory authority

24-4-103, 12-41-103.6(2)(b), 12-41-201(3), 12-41-114.6 and 12-41-208.5(1)(b) C.R.S.

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307. Continuing Professional Competency Requirements for Licensure Renewal for Physical Therapist Assistant

The purpose of this rule is to establish a continuing professional competency program pursuant to section 12-41-114.6, C.R.S., wherein a physical therapist assistant shall maintain and demonstrate continuing professional competency in order to renew a license to practice physical therapy assistant in the state of Colorado.

Furthermore, pursuant to section 12-41-114.6(2), C.R.S., records of assessment or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a physical therapist assistant. A person or the Board shall not use the records or documents unless used by the Board to determine whether a physical therapist assistant is maintaining continuing professional competency to engage in the profession.

A. Definitions

~~1. Assessment of Knowledge and Skills (AKS): an objective third-party assessment that compares a licensee's knowledge, skills, and abilities to the standards for entry-level practice.~~

2. Continuing Professional Competency: the ongoing ability of a physical therapist assistant to learn, integrate, and apply the knowledge, skills, and judgment to practice as a physical therapist assistant according to generally accepted standards and professional ethical standards.

3. Continuing Professional Development (CPD): the Board program through which a licensee can satisfy the continuing professional competency requirements in order to renew, reinstate, or reactivate a license.

4. Deemed Status: a licensee who satisfies the continuing professional competency requirements of a Colorado state agency or department, an accrediting body recognized by the Board, or an entity approved by the Board pursuant to section 12-41-114.6(1)(c), C.R.S., may qualify under this method in lieu of completing the Board's CPD program.

5. Learning Plan: a Board approved form through which a licensee documents his/her goals and plans of learning that were developed from his/her ~~Reflective~~ Self-Assessment (~~R~~SAT), which is defined below. ~~and AKS (when appropriately applied).~~ A licensee shall execute his/her learning plan by completing professional development activities (PDA) as required before a license is renewed.

6. Military Exemption: a method to satisfy continuing professional competency requirements. A licensee who has been approved for this exemption will not be required to meet continuing professional competency requirements during the renewal period in which he/she was approved by the Division of Professions and Occupations.

7. Professional Development Activities (PDA): learning activities undertaken to increase the licensee's knowledge and skill or hone existing knowledge and skill for the purpose of continuing professional development.

8. ~~Reflective~~ Self-Assessment Tool (~~R~~SAT): a ~~reflective~~ practice tool in which a licensee can reflect upon his/her knowledge and skills pertaining to the foundational areas of physical therapy practice taking into account the licensee's current level and area of practice.

B. Continuing Professional Competency Requirements

1. Effective after the 2014 license renewal, or upon the completion of the first renewal of a license thereafter, the licensee shall demonstrate continuing professional competency in order to renew a license by:

   a. Participation in the Continuing Professional Development (CPD) program;

   b. Participation in a program of continuing professional competency through a Colorado state agency or department, including continuing competency requirements imposed through a contractual arrangement with a provider as set forth in section 12-41-114.6(1)(c), C.R.S. This status is defined as "Deemed Status" in section A(4) of this rule and further described in section D of this rule; or

   c. Receiving an exemption for military service as defined in section 12-70-102, C.R.S. Military exemptions must be approved by the Division of Professions and Occupations. Licensees seeking a military exemption shall submit a request in writing with evidence that the licensee's military service meets the criteria established in section 12-70-102, C.R.S., and section E of this rule.

2. A licensee shall attest at the time of the renewal of a license to his/her compliance with continuing professional competency requirements.

C. Continuing Professional Development Program

1. The Continuing Professional Development (CPD) program entails the following:

   a. The licensee shall complete the ~~Reflective~~ Self-Assessment Tool (~~R~~SAT) once per 2- year renewal period. A licensee shall use the Board approved form.

      i. The execution of a Learning Plan once per 2-year renewal period that is based upon the licensee's ~~Reflective~~ Self-Assessment Tool (~~R~~SAT) ~~or Assessment of Knowledge and Skills (AKS).~~ A licensee shall use the Board approved form.

      ii. Accrual of 20 hours of Professional Development Activities (PDA) per 2-year renewal period.

2. Professional Development Activities (PDA)

   a. Professional Development Activities must be relevant to the licensee's practice as a physical therapist assistant and pertinent to his/her Learning Plan. The Board will not pre-approve specific courses or providers. The licensee shall determine which activities and topics will meet his/her Learning Plan, and select an appropriate provider.

   ~~b. Professional Development Activities are separated into Category I, Category II, and Category III activities and each category has a corresponding point value. Points are used in lieu of continuing education units (CEU) or contact hours to allow credit for non-continuing education type activities.~~

   c. <u>Professional Development Activities are organized into the following five (5) categories.</u>

i. Educational Coursework
ii. Volunteer Service
iii. Mentoring/Supervision
iv. Presentations
v. Independent Study/In-service

d. Hours will be accepted if the activity is included in the Board's *Professional Development Activities List*. The Board may accept or reject activities submitted for consideration that are not identified on its list.

~~e. A minimum of 15 of the required 30 points must be Category I activities.~~

f. Professional Development Activities will only apply for one 2-year renewal period.

g. A minimum of 15 of the required hours must be in the educational coursework category.

h. A maximum of 5 of the required hours may be in one of the other categories as listed in 2(c)(ii-v).

~~3. The completion of an Assessment of Knowledge and Skills (AKS) will not be accepted more than once every 10 years.~~

~~a. An AKS must meet the following criteria:~~

~~i. Be drafted and validated by qualified physical therapists and psychometricians;~~

~~ii. Be comprised of evidence based practice;~~

~~iii. Be maintained for relevancy and advancements in and affecting the profession; and~~

~~iv. Provide feedback to the participant/licensee regarding his/her performance and suggested learning opportunities to enhance his/her knowledge and skills.~~

~~b. Administrative Approval. The Board finds the following AKSs to have met the criteria established in section C(3)(a) of this rule, and are administratively approved by the Board:~~

~~i. The online continuing competence learning and assessment tool (oPTion) administered by the Federation of State Boards of Physical Therapy (FSBPT).~~

~~ii. If the AKS is not listed as administratively approved by the Board in this rule, then additional documentation demonstrating the AKS satisfies the Board criteria will be required prior to registering and completing the AKS.~~

~~c. The licensee may count the completion of an AKS as a Category I activity toward a mandatory 30 PDA points for the corresponding 2-year renewal period in compliance with the State Physical Therapy Board's *Professional Development Activities List* for assigned point values.~~

4. Audit of Compliance. The following documentation is required for an audit of compliance of a licensee's Continuing Professional Development:

a. The Learning Plan that is signed and executed which contains the licensee's goals in the form and manner as approved by the Board.

~~b. A certificate of completion or other report issued by the AKS provider indicating the name of the licensee, AKS title, content, and the licensee's date of completion.~~

c. Documentation of 20 hours of Professional Development Activities in compliance with the State Physical Therapy Board's *Professional Development Activities List* for documentation requirements for PDAs.

d. The Board may accept or reject Professional Development Activities (PDA) that do not meet the criteria established by the ~~Board for PDA or standards of quality as defined in the State Physical Therapy~~ Board's *Professional Development Activities (PDA) List*~~, Standards of Quality for Category I Continuing Education Activities~~, and this rule.

D. Deemed Status. The following criteria must be met in order to claim this status:

1. In order to renew a license, a licensee shall attest to his/her Deemed Status.

2. To qualify, the licensee must be in full compliance with the requirements of his/her state agency or department during the entire 2-year renewal period of his/her physical therapist assistant license and on track to successfully complete that program or have successfully completed it.

3. Licensees claiming Deemed Status are subject to an audit of compliance. To satisfy an audit of compliance, the licensee shall submit appropriate evidence of participation in a qualifying program through submission of:

a. Proof from the Colorado state agency or department or contractual entity verifying that the licensee is in compliance with its continuing professional competency program; and

b. A letter from his/her employer certifying dates of employment for the entire 2-year license renewal period, without any break; or

c. Other documentation approved by the Board which reflects the licensee's compliance with a program of continuing professional competency.

E. Military Exemption. Pursuant to section 12-70-102, C.R.S., licensees who have been called to federally funded active duty for more than 120 days for the purpose of serving in a war, emergency, or contingency may request an exemption from the continuing professional competency requirements for the renewal, reinstatement, or reactivation of his/her license for the 2-year renewal period that falls within the period of service or within six months following the completion of service.

1. Military exemptions must be approved by the Division of Professions and Occupations. Licensees seeking a military exemption shall submit a request in writing with evidence that the licensee's military service meets the criteria established in section 12-70-102, C.R.S.

2. After being granted a military exemption, in order to complete the renewal process, a licensee shall attest to his/her military exemption.

F. Records Retention. A licensee shall retain documentation demonstrating his/her compliance for 2 complete 2-year renewal periods.

G. Non-Compliance. Falsifying an attestation or other documentation regarding the licensee's compliance with continuing professional competency requirements constitutes the falsification of information in an application and may be grounds for discipline pursuant to sections 12-41-115(1)(k) and (r), C.R.S.

H. Reinstatement and Reactivation. A licensee seeking to reinstate or reactivate a license which has been expired or inactivated for 2 years or less shall meet the competency requirements outlined in Rule 207(B).

Notice of Proposed Rulemaking

Tracking number

2019-00010

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2

Rule title

SOLID WASTE REGULATIONS

Rulemaking Hearing

Date

02/19/2019

Time

10:00 AM

Location

CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive S., Denver, CO 80246

Subjects and issues involved

These amendments reduce the annual registration fees assessed to waste grease transporters and waste grease facilities in 6 CCR 1007-2, Section 1.7.5 to be in line with the Department's cost to implement the waste grease program in Colorado. The Department has accrued a balance each year that is greater than the program's administrative costs, and needs to lower the annual registration fees for waste grease transporters and facilities.

Section 1.7.5 will be changed to reflect a drop in annual registration fees for waste grease transporters from $570 per vehicle annually to $280 per vehicle annually. The annual registration fees for waste grease facilities will drop from $1,140 to $700 annually.

Statutory authority

These amendments to 6 CCR 1007-2, Part 1 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 30-20-123, 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 1007-2

PART 1 REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

Amendment of Section 1.7.5 Waste Grease Annual Fees

1) Paragraph (B) of Section 1.7.5 is being amended to read as follows:

Section 1

Administrative Information

1.7.5 Waste Grease Transporters, Facilities, and Personal Users of Waste Grease Annual Fees

(A) **Authorization**: The Department is authorized per Section 30-20-123(9)(a.5), C.R.S. as amended, to collect an annual registration fee for Waste Grease Transporters, Facilities and Personal Users of Waste Grease.

(B) **Applicability**: Beginning ~~January 30, 2012~~ July 1, 2019 all "Waste Grease Transporters", "Waste Grease Facilities" and "Personal Users of Waste Grease Other than For Use as Biofuel", as defined in Section 1.2 of these regulations are subject to the following annual fees as noted below:

1. Waste Grease Transporter: ~~$570 per vehicle per year, and $25 per set of five (5) temporary decals~~

   a. $280 per vehicle per year; and

   b. $25 per set of five (5) temporary decals.

2. Waste Grease Facility: $~~1,140~~700 per year

3. Personal Users of Waste Grease Other than For Use as Biofuel: $96 per year.

(C) *******

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

Part 1 – Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2)
Amendment of Waste Grease Regulations – Modification of waste grease transporter and facility annual fees requirements

Basis and Purpose

I. Statutory Authority

These amendments to 6 CCR 1007-2, Part 1 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 30-20-123, C.R.S.

II. Purpose of revised regulations

The Waste Grease Fund and registration fees were created in § 30-20-123, C.R.S. to provide funding to cover the Department's cost to implement the waste grease regulatory requirements. The Department has accrued a balance each year that is greater than the program administrative costs and needs to lower the annual registration fees for waste grease transporters and facilities.

III. Discussion of Regulatory Proposal

Annual Waste Grease Facility and Transporter Fees

The current fees charged to waste grease transporters and facilities pursuant § 30-20-123, C.R.S. and Section 1.7.5 of the solid waste regulations were estimated in 2012 as an estimate of Department cost to implement the regulatory requirements for Section 18, Waste Grease Transporters, Facilities, and Personal Users of Waste Grease. The Department has since found that the fees paid by waste grease registrants exceeds the cost to implement the program. The purpose of this change to the regulation is to lower the annual waste grease transporter and facility fees in Section 1.7.5 of the solid waste regulations to be in line with the cost to implement the program.

Section 1.7.5 will be changed to reflect a drop in annual registration fees for waste grease transporters from $570 per vehicle annually to $280 per vehicle annually. The

annual registration fees for waste grease facilities will drop from $1,140 to $700 annually.

Issues Encountered During the Stakeholder Process

No issues were encountered during the stakeholder process.

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 revised recycling regulations will have little effect on local governments.

Cost/Benefit Analysis

A cost benefit analysis will be performed upon request.

Notice of Proposed Rulemaking

Tracking number

2019-00013

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

HAZARDOUS WASTE

Rulemaking Hearing

Date

02/19/2019

Time

10:00 AM

Location

CDPHE, Bldg A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

These amendments revise sections 279.1, 279.10, 279.11, 279.22, 279.44, 279.45, 279.52, 279.54 279.55, 279. 64, and 279.74 of Colorados Part 279 Standards for the Management of Use Oil.

With the exception of the revisions to section 279.10, these amendments consist mainly of corrections to minor typographical and technical errors that exist in the Part 279 regulations.

The more substantive changes to section 279.10 include the following:

1) Amendment of Section 279.10(i) Applicability of the Used Oil Management Standards to PCB contaminated used oil. Paragraph (i) of section 279.10 is being amended to clarify the applicability of the RCRA used oil management standards to used oil containing PCBs.

2) Removal of Section 279.10(b)(3) Mixtures of used oil and very small quantity generator hazardous waste. The Division is removing the provision at § 279.10(b)(3) to clarify the states intent to be more stringent than the federal requirements regarding the management of mixtures of used oil and listed hazardous waste from very small quantity generators (VSQGs) of hazardous waste.

Statutory authority

These amendments to 6 CCR 1007-3, Part 279 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), 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 1007-3

HAZARDOUS WASTE

Amendment of the Part 279 Standards for the Management of Used Oil.

1) Section 279.1 is amended by revising the definition of "Petroleum refining facility" to read as follows:

Subpart A - Definitions

§ 279.1 Definitions.

****

Petroleum refining facility means an establishment primarily engaged in producing gasoline, ~~kerosine~~kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e. facilities classified as SIC 2911).

****

2) Section 279.10 is amended by removing and reserving paragraph (b)(3) to read as follows:

Subpart B - Applicability

§ 279.10 Applicability.

This section identifies those materials which are subject to regulation as used oil under this part. This section also identifies some materials that are not subject to regulation as used oil under this part, and indicates whether these materials may be subject to regulation as hazardous waste under Parts 260 through 268, and Part 100 of these regulations.

(a) Used oil. EPA presumes that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in § 279.11, the regulations of this part apply to used

oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in Subpart C of Part 261 of these regulations.

(b) Mixtures of used oil and hazardous waste

****

(3) Reserved.~~Very small quantity generator hazardous waste.~~ ~~Mixtures of used oil and very small quantity generator hazardous waste regulated under § 262.14 of these regulations are subject to regulation as used oil under this part.~~

3) Section 279.10 is amended by revising paragraph (i) to read as follows:

Subpart B - Applicability

§ 279.10 Applicability.

****

(i) Used oil containing PCBs. ~~In addition to the requirements of Part 279, marketers and burners of used oil who market or burn used oil containing any quantifiable level of PCBs are subject to the requirements found at 40 CFR § 761.20(e).~~Used oil containing PCBs (as defined at 40 CFR § 761.3) at any concentration less than 50 ppm is subject to the requirements of Part 279 unless, because of dilution, it is regulated under 40 CFR Part 761 as a used oil containing PCBs at 50 ppm or greater. PCB-containing used oil subject to the requirements of Part 279 may also be subject to the prohibitions and requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of Part 279, but is subject to regulation under 40 CFR Part 761. No person may avoid these provisions by diluting used oil containing PCBs, unless otherwise specifically provided for in this Part 279 or 40 CFR Part 761.

4) Section 279.11 is amended to read as follows:

§ **279.11 Used oil specifications.**

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this part unless it is shown not to exceed any of the allowable levels of the constituents and properties ~~in the specification~~ shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any ~~specification~~allowable level and the person making that showing complies with §§ 279.72, 279.73, and 279.74(b), the used oil is no longer subject to this part.

Table 1--Used Oil Not Exceeding Any ~~Specification~~Allowable Level Shown Below Is Not Subject to this Part When Burned for Energy Recovery{1}

Constituent/property	Allowable level
Arsenic	5 ppm maximum.

Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash point	100 EF minimum.
Total Halogens	4,000 ppm maximum.{2}

{1} The ~~specification does~~ allowable levels do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see § 279.10(b)).

{2} Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under § 279.10(b)(1). Such used oil is subject to Subpart D of Part 267 of these regulations rather than this part when burned for energy recovery unless the presumption of mixing can be successfully rebutted.
Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR § 761.20(e).

5) Section 279.22 is amended by revising paragraph (d) to read as follows:

§ 279.22 Used oil storage.

****

(d) **Response to releases**. Upon detection of a release of used oil to the environment that is not subject to the requirements of 40 CFR Part 280, Subpart F, and which has occurred after the effective date of these regulations, a generator must perform the following cleanup steps:

****

6) Section 279.44 is amended by revising paragraph (c)(2) to read as follows:

§ 279.44 Rebuttable presumption for used oil.

****

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261 of these regulations. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part 261 of these regulations).

****

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

7) Section 279.45 is amended by revising paragraph (h) to read as follows:

§ 279.45 Used oil storage at transfer facilities.

****

(h) **Response to releases**. Upon detection of a release of used oil to the environment that is not subject to the requirements of 40 CFR Part 280, Subpart F, and which has occurred after the effective date of these regulations, the owner/operator of a transfer facility must perform the following cleanup steps:

****

8) Section 279.52 is amended by revising paragraph (b)(6)(ii) to read as follows:

§ 279.52 General facility standards.

****

(b) Contingency plan and emergency procedures. Owners and operators of used oil processing and re refining facilities must comply with the following requirements:

****

(6) Emergency procedures.

****

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He/she may do this by observation or review of facility records or manifests and, if necessary, by chemical ~~analysis~~analyses.

****

9) Section 279.54 is amended by revising paragraph (g) to read as follows:

§ 279.54 Used oil management.

****

(g) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of 40 CFR Part 280, Subpart F, and which has occurred after the effective date of these regulations, an owner/operator must perform the following cleanup steps:

****

10) Section 279.55 is amended by revising paragraph (b)(2)(i)(B) to read as follows:

§ 279.55 Analysis plan.

****

(b) **On specification used oil fuel in § 279.72**. At a minimum, the plan must specify the following if § 279.72 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Appendix I of Part 261 of these regulations; or

(B) A method shown to be equivalent under § 260.20 and § 260.21 of these regulations;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re refining;

11) Section 279.64 is amended by revising paragraph (g) to read as follows:

§ 279.64 Used oil storage.

(g) **Response to releases**. Upon detection of a release of used oil to the environment that is not subject to the requirements of 40 CFR Part 280, Subpart F, and which has occurred after the effective date of these regulations, a burner must perform the following cleanup steps:

****

12) Section 279.74 is amended by revising paragraph (b) to read as follows:

§ 279.74 Tracking.

****

(b) **On specification used oil delivery**. A generator, transporter, processor/re refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil to the facility to which it delivers the used oil ~~an on specification used oil burner~~. Records for each shipment must include the following information:

****
****

13) Section 8.93 (Statement of Basis for the Rulemaking Hearing of February 19, 2019) is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of February 19, 2019

8.93 Basis and Purpose.

These amendments to 6 CCR 1007-3, Part 279 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Amendment of the Part 279 Standards for the Management of Used Oil

These amendments revise sections 279.1, 279.10, 279.11, 279.22, 279.44, 279.45, 279.52, 279.54 279.55, 279. 64, and 279.74 of Colorado's Part 279 Standards for the Management of Use Oil.

With the exception of the revisions to section 279.10, these amendments consist mainly of corrections to minor typographical and technical errors that exist in the Part 279 regulations. The more substantive changes to section 279.10 include the following:

1) **Amendment of Section 279.10(i) – Applicability of the Used Oil Management Standards to PCB contaminated used oil**. Paragraph (i) of section 279.10 is being amended to clarify the applicability of the RCRA used oil management standards to used oil containing PCBs. The amendment clarifies that used oil that contains less than 50 ppm of PCBs is generally subject to regulation under the RCRA used oil management standards. However, the amendment notes that the Toxic Substances Control Act (TSCA) prohibition against the dilution of PCB concentrations below regulatory thresholds (40 CFR 761.1(b)(5)) applies to the dilution of PCB-containing used oil Used oil, therefore, that contains, or contained prior to dilution, 50 ppm or greater of PCBs in not subject to regulation under the RCRA used oil management standards, because the TSCA regulations at 40 CFR Part 761 provide comprehensive management of such used oil.

2) **Removal of Section 279.10(b)(3) – Mixtures of used oil and very small quantity generator hazardous waste**. The Division is removing the provision at § 279.10(b)(3) to clarify the state's intent to be more stringent than the federal requirements regarding the management of mixtures of used oil and listed hazardous waste from very small quantity generators (VSQGs) of hazardous waste.

Pursuant to the federal provisions of §§ 262.13(f)(iii) and 279.10(b)(3), mixtures of VSQG listed hazardous waste and used oil are exempt from regulation under the hazardous waste management regulations, and may be managed as used oil under the used oil management standards of 40 CFR Part 279.

The Division believes that VSQG generated mixtures of used oil and listed hazardous waste should be managed in accordance with the same requirements applicable to mixtures of used oil and listed hazardous waste generated by small quantity generators and large quantity generators. Allowing VSQG generated mixtures of used oil and listed hazardous waste to be managed as used oil makes compliance assurance difficult and significantly reduces a VSQG's incentive to minimize the amount of listed hazardous waste it generates, and may also lead to management of the waste in a manner that is not protective of human health and the environment.

In adopting state analogs to the federal hazardous waste generator improvements rule on May 15, 2018, Colorado included more stringent language in § 262.13(f) regarding VSQG mixtures of used oil and hazardous waste.

Pursuant to the requirements of 6 CCR 1007-3, § 262.13(f)(iii), if a VSQG's characteristic hazardous wastes are mixed with used oil, and the resulting mixture does not exhibit any hazardous waste characteristic, the mixture is subject to the Part 279 used oil regulations. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under the Part 279 regulations. However, pursuant to 6 CCR 1007-3, § 262.13(f)(iv), if a VSQG mixes any hazardous waste listed in subpart D of Part 261 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) with used oil, the resultant mixture is a newly generated listed hazardous waste and must be managed as hazardous waste. The VSQG must count both the resultant mixture amount plus all other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the very small quantity generator calendar month quantity limits identified in the definition of generator categories found in § 260.10 of these regulations. If so, to remain exempt from the permitting, interim status, and operating standards, the very small quantity generator must meet the conditions for exemption applicable to either a small quantity generator or a large quantity generator. The very small quantity generator must also comply with the applicable independent requirements for either a small quantity generator or a large quantity generator.

In its adoption of the hazardous waste generator improvements rule, Colorado inadvertently failed to amend § 279.10(b)(3) to be consistent with the more stringent provisions of § 262.13(f), and to include a discussion of this more stringent provision in the Statement of Basis and Purpose for the May 18, 2018 rulemaking.

This amendment removing the provision at § 279.10(b)(3) clarifies the state's intent pursuant to § 262.13(f)(iv) to be more stringent than the federal requirements regarding the management of VSQG mixtures of used oil and hazardous waste.

This Basis and Purpose incorporates by reference the applicable portions of the preamble language for the EPA regulations as published in the Federal Register at 68 FR 44659-44665, July 30, 2003 regarding the amendment of Section 279.10(i).

Notice of Proposed Rulemaking

Tracking number

2019-00011

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

HAZARDOUS WASTE

Rulemaking Hearing

Date

02/19/2019

Time

10:00 AM

Location

CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

This amendment to 6 CCCR 1007-3, Part 261, Appendix IX is a proposed delisting of the wastewater treatment sludge (a F006 hazardous waste), generated from zinc and chromate plating on cold rolled steel at the Acme Manufacturing facility located at 4650 S. Leydon St., Unit A, in Denver, Colorado, 80216.

If adopted by the Commission, this delisting will allow Acme Manufacturing 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.

Statutory authority

25-15-302(2), 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 1007-3

HAZARDOUS WASTE

Proposed Acme Manufacturing F006 Delisting

1) Appendix IX of Part 261 is amended by adding Delisting #10 to read as follows:

PART 261, APPENDIX IX – WASTES EXCLUDED UNDER §§ 260.20 AND 260.22

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DELISTING #: 10

FACILITY: Acme Manufacturing

ADDRESS: 4650 S. Leydon St., Unit A, Denver, Colorado 80216

WASTE: Wastewater treatment sludge from the on-site treatment of wastewater generated from zinc and chromate plating on cold rolled steel. 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 October 18, 2018 and under the following conditions:

a. Changes to Current Operations

1. Acme Manufacturing 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. Acme Manufacturing 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	13.2	1.4	14.6
Cadmium	Non-detect	Non-detect	Detection
Chromium (Total)	1,740	193	1,933
Chromium VI	Non-detect	Non-detect	Detection
Copper	40.1	6.8	46.9
Cyanide (amenable)	Non-detect	Non-detect	Detection
Cyanide (free/reactive)	Non-detect	Non-detect	Detection
Lead	6.1	1.0	7.1
Mercury	Non-detect	Non-detect	Detection
Nickel	28.8	3.7	32.5
Selenium	Non-detect	Non-detect	Detection
Silver	Non-detect	Non-detect	Detection
Zinc	78,325	8,569	86,894

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 Acme Manufacturing. 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

Acme Manufacturing 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 Acme Manufacturing 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. Acme Manufacturing 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. Acme Manufacturing shall maintain all records required by paragraph d.i 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) Section 8.93 {Statement of Basis and Purpose for the Rulemaking Hearing of February 19, 2019} is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of February 19, 2019

8.93 **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 Acme Manufacturing located at 4650 S. Leydon St., Unit A in Denver, Colorado 80216.

Appendix IX of Part 261 is being amended to conditionally delist F006 hazardous waste generated at Acme Manufacturing in Denver, Colorado. This delisting will allow Acme Manufacturing 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.

Acme Manufacturing operates a manufacturing facility in Denver, Colorado for the production of steel threaded rods for use in the construction industry. Manufacturing processes at the facility include the zinc plating of steel parts, followed by either a clear or yellow chromate seal. 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 Acme Manufacturing 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. The waste samples were analyzed using the toxicity characteristic leaching procedure (TCLP) to determine the leachability of contaminants from the waste as well as total concentrations.

TCLP 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 any 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.

Zinc concentrations in the waste sludge was also analyzed using TCLP. The results of the analysis indicate that zinc was present at an average concentration of 195 mg/L, with the State of Colorado Regulation 41 Domestic Water Supply – Drinking Water Standard for zinc being 5 mg/L. At such levels, zinc may leach out of the waste at concentrations that would not be protective of human health and the environment under unrestricted use standards.

The sample results indicated that the level of zinc that may leach from the waste is too high for unconditional delisting of the waste. However, further evaluation of the physical and chemical nature of the waste indicate that the waste does not pose an unacceptable risk to human health and the environment if subject to certain conditions regarding handling and disposal at a Subtitle D landfill. Zinc present in the sludge at 195 mg/L is less than 100 times the State of Colorado Regulation 41 Domestic Water Supply – Drinking Water Standard of 500 mg/L (5 mg/L X 100). Based on the zinc being present at levels less than 100 times the State of Colorado Regulation 41 Domestic Water Supply – Drinking Water Standard, using Table A2-1 of Appendix 2 of the Hazardous Materials and Waste Management Division's May 2002 Corrective Action Guidance, Option II: Restricted Use, the sludge may be disposed of as a solid waste in a Subtitle D landfill.

Total analysis of the wastewater treatment sludge also indicated that the petitioned sludge contains a hazardous constituent, nickel, which is a basis for listing the waste as a F006 hazardous waste. Based on the chemical analysis of the waste samples, the average total concentration for nickel is 28.8 parts per million (ppm). The total average concentration of nickel is below the EPA Residential and Industrial Soil Screening Level.

Hazardous constituents detected in the waste samples which were not a basis for listing the waste as a F006 hazardous waste include barium, chromium (Total), copper, lead and zinc. The average total concentration for these constituents is: 13.2 ppm barium, 1,740 chromium (Total), 40.1 ppm copper, 6.1 ppm lead, and 78,325 ppm zinc. The average total concentration for these constituents is below the EPA Residential Soil Screening Level with the exception of zinc, which is present greater than the EPA Residential Soil Screening Level of 23,000 ppm. Zinc present in the sludge at 78,325 ppm is less than 100 times the EPA Residential Soil Screening Level of 2,300,000 ppm (23,000 ppm X 100). Based on the zinc being present at levels less than

100 times the EPA Residential Soil Screening Level, using Table A2-1 of Appendix 2 of the Hazardous Materials and Waste Management Division's May 2002 Corrective Action Guidance, Option II: Restricted Use, the sludge may be disposed as a solid waste in Subtitle D landfill.

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.

This delisting does not apply to waste that demonstrates a "significant change" as defined in Delisting #010 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.

Notice of Proposed Rulemaking

Tracking number

2019-00014

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

HAZARDOUS WASTE

Rulemaking Hearing

Date

02/19/2019

Time

10:00 AM

Location

CDPHE, Bldg A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

These amendments to the Colorado Hazardous Waste Regulations (6 CCR 1007-3) correspond to and provide equivalency with the Environmental Protection Agency (EPA) Hazardous Waste Electronic Manifest User Fee rule published in the Federal Register on January 3, 2018 {83 FR 420-462}, and which became effective on June 30, 2018. The January 3, 2018 federal rule established the methodology that the EPA will use to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest system (e-Manifest system) that EPA developed under the Hazardous Waste Electronic Manifest Establishment Act, P.L. 112-195. That Act directed EPA to establish a national electronic manifest system (or e-Manifest system), and to impose reasonable user service fees as a means to fund the development and operation of the e-Manifest system. Many of the federal e-Manifest User Fee rule requirements were issued under the authority of the e-Manifest Act and can only be administered by the EPA. However, Colorado is required to adopt program revisions equivalent to and consistent with the federal requirements. These amendments provide equivalency to the federal manifest requirements, and provide notice to members of the regulated community of their responsibilities for submitting their final manifest copies to the e-Manifest system and for paying user fees to EPA for the processing of their manifests.

Statutory authority

These amendments to Parts 260, 262, 263, 264, and 265 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S. The federal e-Manifest system and e-Manifest user fee requirements were developed by EPA pursuant to the Hazardous Waste Electronic Manifest Establishment Act, P.L. 112-195.

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-3

HAZARDOUS WASTE

User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations.

1) The Table of Contents for Part 260 is amended by adding listings for Sections 260.4 and 260.5 to read as follows:

PART 260 HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subpart A General

Sec.

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2) Part 260 is amended by adding Section 260.4 to read as follows:

§260.4 Manifest copy submission requirements for certain interstate waste shipments.

(a) In any case in which the state in which waste is generated, or the state in which waste will be transported to a designated facility, requires that the waste be regulated as a hazardous waste or otherwise be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the state in which the facility is located:

(1) Complete the facility portion of the applicable manifest;

(2) Sign and date the facility certification;

(3) Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and

(4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of 40 CFR part 264.

3) Part 260 is amended by adding Section 260.5 to read as follows:

§260.5 Applicability of electronic manifest system and user fee requirements to facilities receiving state-only regulated waste shipments.

(a) For purposes of this section, "state-only regulated waste" means:

(1) A non-RCRA waste that a state regulates more broadly under its state regulatory program, or

(2) A RCRA hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.

(b) In any case in which a state requires a RCRA manifest to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving such a waste shipment for management shall:

(1) Comply with the provisions of §§ 264.71 (use of the manifest) and 264.72 (manifest discrepancies) of this chapter; and

(2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of 40 CFR part 264.

4) The Table of Contents for Part 262 is amended by removing and reserving the listing for the Appendix to Part 262 as follows:

PART 262 STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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APPENDIX TO PART 262 - RESERVED

~~UNIFORM HAZARDOUS WASTE MANIFEST AND INSTRUCTIONS (EPA FORMS 8700-22 AND 8700-22A AND THEIR INSTRUCTIONS)~~

5) Section 262.20 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

Subpart B Manifest Requirements Applicable to Small and Large Quantity Generators

§ 262.20 General requirements.

(a)(1) A generator ~~who~~that transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, ~~and~~or disposal facility ~~who~~that offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA form 8700-22

and, if necessary, EPA form 8700-22A~~,~~ ~~according to the instructions included in the Appendix to Part 262 of these regulations before transporting the waste off site.~~

(2) The revised manifest form and procedures in §§ 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, 262.34, 262.54, and 262.60, ~~and the Appendix to Part 262 of these regulations,~~ shall not apply until September 5, 2006. The manifest form and procedures contained in §§ 260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, and 262.60, ~~and the Appendix to Part 262~~ of these regulations at the time of the May 2006 rulemaking hearing shall be applicable until September 5, 2006.

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6) Section 262.21 is amended by revising paragraphs (f)(5), (f)(6) and (f)(7), and adding paragraph (f)(8) to read as follows:

§ 262.21 Manifest tracking numbers, manifest printing, and obtaining manifests.

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(f) Paper manifests and continuation sheets must be printed according to the following specifications:

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(5) The manifest and continuation sheet must be printed as five~~six~~-copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all five~~six~~ copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

(i) Page 1 (top copy): "Designated facility to EPA's e-Manifest system~~destination State (if required)~~".

(ii) Page 2: "Designated facility to generator ~~State (if required)~~".

(iii) Page 3: "Designated facility copy~~to generator~~".

(iv) Page 4: "Transporter~~Designated facility's~~ copy"~~.~~; and

(v) Page 5 (bottom copy): "Generator's initial ~~Transporter's~~ copy".

~~(vi) Page 6 (bottom copy): "Generator's initial copy".~~

(7) The instructions for the manifest form (EPA Form 8700-22) and the manifest continuation sheet (EPA Form 8700-22A) shall be printed in accordance with the content that is currently approved under OMB Control Number 2050-0039 and published to the e-Manifest program's website. The instructions ~~in the appendix to 40 CFR part 262~~ must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

(i) Manifest Form 8700-22.

(A) The "Instructions for Generators" on Copy 5~~6~~;

(B) The “Instructions for International Shipment Block” and “Instructions for Transporters" on Copy 45; and

(C) The “Instructions for Treatment, Storage, and Disposal Facilities” on Copy 34.

(ii) Manifest Form 8700-22A.

(A) The “Instructions for Generators” on Copy 56;

(B) The “Instructions for Transporters” on Copy 45; and

(C) The “Instructions for Treatment, Storage, and Disposal Facilities” on Copy 34.

(8) The designated facility copy of each manifest and continuation sheet must include in the bottom margin the following warning in prominent font: “If you received this manifest, you have responsibilities under the e-Manifest Act. See instructions on reverse side.”

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7) Section 262.24 is amended by revising paragraphs (c) and (e); removing and reserving paragraph (g); and adding paragraph (h) to read as follows:

§ 262.24 Use of the electronic manifest.

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(c) **Restriction on use of electronic manifests**. A generator may ~~prepare~~ use an electronic manifest for the tracking of hazardous waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the use of the ~~national~~ electronic manifest ~~system.~~, except that:

(1) A generator may sign by hand and retain a paper copy of the manifest signed by hand by the initial transporter, in lieu of executing the generator copy electronically, thereby enabling the transporter and subsequent waste handlers to execute the remainder of the manifest copies electronically.

(2) [Reserved]

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(e) **Special procedures when electronic manifest is unavailable**. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the national electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in accordance with the manifest instructions, ~~in the appendix to this part,~~ and use these paper forms from this point forward in accordance with the requirements of § 262.23.

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(g) **Reserved.** ~~**Imposition of user fee**. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and~~

~~update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the national electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262~~.

(h) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. Generators may participate electronically in the post-receipt data corrections process by following the process described in §264.71(l) of these regulations, which applies to corrections made to either paper or electronic manifest records.

8) The Appendix to Part 262 is amended by removing the Uniform Hazardous Waste Manifest and Instructions in their entirety and reserving the Appendix to Part 262 to read as follows:

Appendix to Part 262--~~Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)~~ RESERVED

9) Section 263.20 is amended by removing and reserving paragraph (a)(8) and adding paragraph (a)(9) to read as follows:

§ 263.20 The manifest system.

(a)(1) **Manifest requirements**. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the provisions of § 262.23.

****

(8) **Reserved**. ~~**Imposition of user fee for electronic manifest use.** A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the national electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.~~

(9) **Post-receipt manifest data corrections**. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. Transporters may participate electronically in the post-receipt data corrections process by following the process described in §264.71(l) of these regulations, which applies to corrections made to either paper or electronic manifest records.

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10) Section 263.21 is revised to read as follows:

§ 263.21 Compliance with the manifest.

(a) Except as provided in paragraph (b) of this section, ~~T~~the transporter must deliver the entire quantity of hazardous waste which ~~he/she~~ he or she has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter; or

(4) The place outside the United States designated by the generator.

(b)(1) **Emergency condition**. If the hazardous waste cannot be delivered in accordance with paragraph (a)(1), (2), or (4) of this section because of an emergency condition other than rejection of the waste by the designated facility or alternate designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(2) **Transporters without agency authority**. If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transporter additions or substitutions, then the current transporter must contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

(i) The hazardous waste is not delivered in accordance with paragraph (a)(3) of this section because of an emergency condition; or

(ii) The current transporter proposes to change the transporter(s) designated on the manifest by the generator, or to add a new transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

(iii) The generator authorizes the revision.

(3) **Transporters with agency authority**. If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a new transporter, during transportation without the generator's prior, explicit approval, provided that:

(i) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(ii) The transporter enters in Item 14 of each manifest for which such a change is made, the following statement of its agency authority: “Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf;” and

(iii) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

(4) **Generator liability**. The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under paragraph (b)(3) of this section does not affect the generator's liability or responsibility for complying with any applicable requirement under this chapter, or grant any additional authority to the transporter to act on behalf of the generator.

(c2) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(1i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with § 263.22 of these regulations, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in § 264.72(e)(1) through (6) or (f)(1) through (6) of these regulations or § 265.72(e)(1) through (6) or (f)(1) through (6) of these regulations.

(2ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with § 263.22 of these regulations, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with § 264.72(e)(1) through (6) of these regulations or § 265.72(e)(1) through (6) of these regulations.

11) Section 264.71 is amended by revising paragraphs (a)(2) and (j), and adding paragraph (l) to read as follows:

§ 264.71 Use of manifest system.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If athe facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 264.72(a)) in the manifest on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (Page 23) of the manifest to the generator; and

(v) ~~Within 30 days of delivery, send the top copy (Page 1) of the manifest to the national e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system.~~Paper manifest submission requirements are:

(A) **Options for compliance on June 30, 2018**. Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) **Options for compliance on June 30, 2021**. Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

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(j) **Imposition of user fee for electronic manifest use**.

(1) As prescribed in 40 CFR § 264.1311, and determined in 40 CFR § 264.1312, ~~A~~an owner or operator who is a user of the national electronic manifest system~~format may~~ shall be assessed a user fee by EPA for the ~~origination or~~ submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in 40 CFR § 264.1313. ~~An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under § 264.71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the national electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.~~

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of 40 CFR § 264.1314, subject to the informal fee dispute

resolution process of 40 CFR § 264.1316, and subject to the sanctions for delinquent payments under 40 CFR § 264.1315.

(k) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in 40 CFR § 262.25.

(l) **Post-receipt manifest data corrections**. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) shown on the manifest.

(1) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The item number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each item number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete:

(i) The certification statement must be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in paragraph (l)(3) of this section, and with notice of the corrections to other interested persons shown on the manifest.

12) Section 264.1086 is amended by revising paragraphs (c)(4)(i) and (d)(4)(i) to read as follows:

§ 264.1086 Standards: Containers.

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(c) **Container Level 1 standards**.

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(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in § 261.7(b) of these regulations), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the Subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the appendix to Part 262~~ (EPA Forms 8700-22 and 8700-22A), as required under Subpart E of this part, at § 264.71 of these regulations. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

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(d) **Container Level 2 standards**.

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(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in § 261.7(b) of these regulations), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the Subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the appendix to Part 262~~ (EPA Forms 8700-22 and 8700-22A), as required under Subpart E of this part, at § 264.71 of these regulations. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

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13) Section 265.71 is amended by revising paragraphs (a)(2) and (j); and adding paragraph (l) to read as follows:

§ 265.71 Use of manifest system.

(a)(1) If ~~a~~the facility receives hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 265.72(a)) ~~in the manifest~~ on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (Page ~~3~~2) of the manifest to the generator; ~~and~~

(v) ~~Within 30 days of delivery, send the top copy (Page 1) of the manifest to the national electronic manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to the electronic manifest system operator, the owner or operator may transmit to the system operator an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the national electronic manifest system.~~Paper manifest submission requirements are:

(A) **Options for compliance on June 30, 2018**. Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) **Options for compliance on June 30, 2021**. Beginning on June 30, 2021, the requirement to submit the top copy (Page1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

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(j) **Imposition of user fee for electronic manifest use**.

(1) As prescribed in 40 CFR § 265.1311, and determined in 40 CFR § 265.1312, ~~A~~an owner or operator who is a user of the national electronic manifest ~~format~~system ~~may~~ shall be assessed a user fee by EPA for the ~~origination or~~submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in 40 CFR § 265.1313. ~~An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under § 265.71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the national electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR Part 262.~~

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of 40 CFR § 265.1314, subject to the informal fee dispute resolution process of 40 CFR § 265.1316, and subject to the sanctions for delinquent payments under 40 CFR § 265.1315.

(k) **Electronic manifest signatures**. (1) Electronic manifest signatures shall meet the criteria described in 40 CFR § 262.25.

(l) Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) shown on the manifest.

(1) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each Item Number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete.

(i) The certification statement must be executed with a valid electronic signature; and

(ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in paragraph (l)(3) of this section, and with notice of the corrections to other interested persons shown on the manifest.

14) Section 265.1087 is amended by revising paragraphs (c)(4)(i) and (d)(4)(i) to read as follows:

§ 265.1087 Standards: Containers.

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(c) **Container Level 1 standards**.

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(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in § 261.7(b) of these regulations), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i;e;, the date the container becomes subject to the Subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the appendix to Part 262 of these regulations~~ (EPA Forms 8700-22 and 8700-22A), as required under subpart E of this part, at § 265.71 of these regulations. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

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(d) **Container Level 2 standards**.

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(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in § 261.7(b) of these regulations), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i;e;, the date the container becomes subject to the Subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the appendix to Part 262 of these regulations~~ (EPA Forms 8700-22 and 8700-22A), as required under subpart E of this part, at § 265.71 of these regulations. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

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15) Section 8.93 (Statement of Basis for the Rulemaking Hearing of February 19, 2019) is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of February 19, 2019

8.93 Basis and Purpose.

These amendments to 6 CCR 1007-3, Parts 260, 262, 263, 264, and 265 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

User Fees for the Electronic Hazardous Waste Manifest System and Amendments to the Manifest Regulations

These amendments to the Colorado Hazardous Waste Regulations (6 CCR 1007-3) correspond to the Environmental Protection Agency (EPA) Hazardous Waste Electronic Manifest User Fee rule published in the Federal Register on January 3, 2018 {83 FR 420-462}, and which became effective on June 30, 2018.

The January 3, 2018 federal rule established the methodology the EPA will use to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest system (e-Manifest system) that EPA developed under the Hazardous Waste Electronic Manifest Establishment Act, P.L. 112-195. That Act directed EPA to establish a national electronic manifest system (or e-Manifest system) and to impose reasonable user service fees as a means to fund the development and operation of the e-Manifest system.

EPA's Hazardous Waste Electronic Manifest rule was published in the Federal Register on February 7, 2014 {79 FR 7518-7563}. Corresponding amendments to the Colorado Hazardous Waste Regulations were adopted by the Colorado Solid and Hazardous Waste Commission on October 17, 2017, and became effective on November 30, 2017.

EPA began operation of its e-Manifest system on June 30, 2018. The goal of the e-Manifest

system is to transition away from the use of paper manifests and move to a fully electronic process for tracking hazardous waste shipments. Establishment of an electronic tracking system for hazardous waste shipments will allow tracking to be conducted in a more cost-effective manner, and result in reduced paperwork and processing burdens to the regulated community, as well as to the regulators. The e-Manifest system should also provide more timely access to manifest data and shipment information, and improve data quality shared among users, regulators, and their data management systems.

As a state with an authorized RCRA program under 40 CFR Part 271, Colorado is required to revise its state program in order to be equivalent to, consistent with, and no less stringent than the requirements of the federal e-Manifest User Fee rule.

Many of the regulatory provisions promulgated in the federal e-Manifest User Fee rule were issued under the authority of the e-Manifest Act, and can only be administered and enforced by the EPA. Colorado is required to adopt these provisions in order to maintain manifest program consistency.

Two sets of provisions in the federal that can only be administered by the EPA include the following:

1) Manifest printing specifications of § 262.21(f)(5), (6), and(7). These provisions describe the revised printing specification for the five-copy paper manifest and continuation sheet paper forms, the revised copy distribution requirements to be printed on each copy of the form, and the revised specification for printing the appropriate manifest instructions on the back of the form copies. These printing specifications apply to registered manifest printers and are administered solely by EPA, and

2) Fee methodology and related fee implementation provisions of subpart FF of 40 CFR Parts 264 & 265. The user fee provisions of subpart FF describe the methods and processes that EPA will use in setting fees to recover its program costs, and in administering and enforcing the user fee requirements. Although Colorado cannot receive authorization to administer or enforce EPA's e-Manifest system, Colorado is adopting the required state analog to 40 CFR § 264.71(j) and § 265.71(j) to reference the federal subpart FF provisions. This is necessary to ensure that members of the regulated community are on notice of their responsibilities to submit their final manifest copies to the system and to pay user fees to EPA for the processing of their manifests.

Additional provisions being adopted as part of this rulemaking include the following amendments:

Regulation	**Subject**
§ 260.4	Copy submission requirements for interstate shipments.
§ 260.5	Applicability of e-Manifest system and fees to facilities receiving state-only regulated wastes.
§ 262.20(a)(1) and (a)(2)	Removal of references to the Appendix to Part 262
§ 262.24(c)(1)	Use of mixed paper/electronic manifests.
§ 262.24(e)	Removal of references to the Appendix to Part 262

§ 262.24(g)	Removal of paragraph regarding imposition of user fees for electronic manifest use.
§ 262.24(h)	Generators and post-receipt data corrections.
Appendix to Part 262	Removal of the manifest form and instructions in the Appendix to Part 262
§ 263.20(a)(8)	Removal of paragraph regarding imposition of user fees for electronic manifest use for Transporters.
§ 263.20(a)(9)	Transporters and post-receipt data corrections.
§ 263.21(b)	En route changes to transporters
§ 264.71(a)(2)(v) and § 265.71.(a)(2)(v)	Receiving facilities' required paper manifest submissions to system.
§ 264.71(j) and § 265.71(j)	Imposition of user fees on receiving facilities for their manifest submissions.
§ 264.71(l) and § 265.71(l)	Receiving facilities and post-receipt data corrections.
§ 264.1086(c)(4)(i) and (d)(4)(i) and § 265.1087(c)(4)(i) and (d)(4)(i)	Removal of references to the Appendix to Part 262

This Basis and Purpose incorporates by reference the applicable portions of the preamble language for the EPA regulations as published in the Federal Register at 83 FR 420-462, January 3, 2018.

Notice of Proposed Rulemaking

Tracking number

2019-00012

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

HAZARDOUS WASTE

Rulemaking Hearing

Date

02/19/2019

Time

10:00 AM

Location

CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

These amendments to section 262.14 of the Colorado Hazardous Waste Regulations (6 CCR 10007-3) correct technical errors and inadvertent omissions that were identified in paragraph (a) of section 262.14 after Colorado adopted state analogs to the federal Hazardous Waste Generator Improvements Rule on May 15, 2018, and after the previous HW Generator Improvement Amendments had been filed for the rulemaking hearing on November 20, 2018. Section 262.14 lists the conditions for exemption that apply to a very small quantity generator (VSQG) of hazardous waste.

Paragraph (a) of the Section 262.14 conditions for exemption for a very small quantity generator (VSQG) of hazardous waste is being amended to:

1) Exempt VSQGs of hazardous waste from complying with the requirements of Part 263 (Standards Applicable to Transporters of Hazardous Waste).

2) Clarify that only VSQGs generating 3 gallons or more of F001, F002, F004, and/or F005 hazardous waste in a calendar year are required to comply with the requirements of § 262.18 (EPA identification numbers and re-notification for large quantity generators, small quantity generators, and very small quantity generators that generate 3 gallons or more in a calendar year of hazardous waste codes F001, F002, F004, and/or F005).

Statutory authority

These amendments to 6 CCR 1007-3, Part 262 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Contact information

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Title

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-3

HAZARDOUS WASTE

Amendment of Section 262.14(a)

1) Section 262.14 is amended by revising paragraph (a) to read as follows:

§ 262.14 Conditions for exemption for a very small quantity generator.

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in this section, hazardous waste generated by the very small quantity generator is not subject to the requirements of Part 262 (except §§ 262.9-262.14 and 262.43~~262.18~~) ~~and Parts 264~~ through 268, and 100 of these regulations, and the very small quantity generator may accumulate hazardous waste on site without complying with such requirements. VSQGs generating 3 gallons or more of F001, F002, F004, or F005 hazardous waste in a calendar year must also comply with § 262.18. The conditions for exemption are as follows:

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2) Section 8.93 (Statement of Basis for the Rulemaking Hearing of February 19, 2019) is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of February 19, 2019

8.93 Basis and Purpose.

These amendments to 6 CCR 1007-3, Part 262 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Amendment of the Section 262.14(a)

These amendments correct technical errors and inadvertent omissions in paragraph (a) of Section 262.14 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) that were identified after Colorado adopted state analogs to the federal Hazardous Waste Generator

Improvements Rule on May 15, 2018, and after the previous HW Generator Improvement Amendments had been filed for the November 20, 2018 rulemaking hearing.

Paragraph (a) of the Section 262.14 conditions for exemption for a very small quantity generator (VSQG) of hazardous waste is being amended to:

1) Exempt VSQGs of hazardous waste from complying with the requirements of Part 263 (Standards Applicable to Transporters of Hazardous Waste). As § 262.14(a) is currently written, VSQGs are subject to the Part 263 requirements. VSQGs are not required to manifest their hazardous waste under RCRA, and it is not the Division's intent to require VSQGs to do so under the state regulations. This amendment corrects this issue.

2) Clarify that **only** VSQGs generating 3 gallons or more of F001, F002, F004, and/or F005 hazardous waste in a calendar year are required to comply with the requirements of § 262.18 (EPA identification numbers and re-notification for large quantity generators, small quantity generators, and very small quantity generators that generate 3 gallons or more in a calendar year of hazardous waste codes F001, F002, F004, and/or F005). As currently written, § 262.14(a) implies that **all** VSQGs are required to comply with the requirements of § 262.18. This amendment corrects the VSQG exemption to specify that only VSQGs generating 3 gallons or more of F001, F002, F004, and/or F005 hazardous waste in a calendar year are required to comply with the requirements of § 262.18.

3) Add a reference to § 262.43 in Section 262.14 to require VSQGs to complete and return a Self-Certification Checklist if requested by the Division. VSQGs are already required to comply with the Self-Certification requirements of § 262.43 through § 262.10(a)(1)(i)(E). This amendment simply provides further clarification of this requirement.

Notice of Proposed Rulemaking

Tracking number

2019-00007

Department

1100 - Department of Labor and Employment

Agency

1101 - Division of Unemployment Insurance

CCR number

7 CCR 1101-2

Rule title

REGULATIONS CONCERNING EMPLOYMENT SECURITY

Rulemaking Hearing

Date

02/22/2019

Time

11:00 AM

Location

633 17th St, Conference Room 12-A, Denver, Colorado

Subjects and issues involved

The proposed change to the Regulations Concerning Employment Security are to streamline the hearing process. Thereby increasing claimant, employer, and staff satisfaction by easing the process to request, schedule, and participate in a hearing. Emphasis placed on the conduct of telephonic hearings between the hearing officer, the appellant, appellee, and other interested parties.

Statutory authority

The authority for the amendments of the rules in in § 8-72-102 C.R.S. Rules. (1) The director of the division has the power to adopt, amend, or rescind, in accordance with section24-4-103, C.R.S., reasonable and necessary rules relating to the administration of the Colorado Employment Security Act and governing hearings and procedures under such act.

Contact information

Name

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Title

Director

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11.2.9 Conduct of Hearing. Hearings shall be conducted informally with as few technical requirements as possible. The hearing officer shall control the evidence taken during a hearing in a manner best suited to fully and fairly develop the relevant evidence, safeguard the rights of all parties, and ascertain the substantive rights of the parties based on the merits of the issue(s) to be decided. The appealing party shall be required to present evidence that supports the party's position on the issues raised by the appeal. Parties to the appeal may present any relevant evidence. However, the hearing officer is charged with ensuring that the record is fully developed to the extent practicable based on the evidence reasonably available at the time of the hearing, whether or not a party is represented. Therefore, the hearing officer should oversee the development of the evidence and participate in the interrogation process to the extent necessary to fully develop the record.

.1 Parties and witnesses ~~ordinarily may elect to participate in a hearing in person or~~ SHALL ORDINARILY PARTICIPATE by telephone. However, based on the individual circumstances of a case, the chief hearing officer or designee shall have the discretion to determine ~~which~~ THE method of participation~~, in person or by telephone~~, THAT will best achieve the purposes of this rule 11.2.9 and to order the parties to participate in that manner. ~~The in-person presence of some parties or witnesses at the hearing shall not prevent the participation of other parties or witnesses by telephone. Sworn testimony from witnesses shall be received during telephone hearings under the same rules as other hearings.~~

.2 An interested party to a hearing must submit to the hearing officer any documents, subpoenaed documents, and any physical exhibits that can be reproduced that he or she intends to introduce at the hearing. Such materials must be submitted in time to ensure that the hearing officer receives them before the date of the scheduled hearing. Such party must also provide copies of all documents and physical exhibits sent to the hearing officer to any other interested party to the hearing or to that interested party's representative as shown on the hearing notice, in time to ensure the materials are received prior to the date of the scheduled hearing. Failure to timely submit such materials to the hearing officer, or to timely send the materials to the opposing party or such party's representative may result in their exclusion from the record. However, if a party has made a good faith effort to provide documents or physical exhibits in time to be received prior to the hearing, such materials shall not be excluded due to the failure of the hearing officer, the other interested party, or an interested party's representative to receive the materials. In any appropriate case where documents have been timely sent but not received in advance, an adjournment of the hearing may be permitted by the hearing officer pursuant to rule 11.2.11 unless waived on the record by both parties.

.3 Hearing Procedure. Prior to taking evidence, the hearing officer shall state the issues and the order in which evidence will be received. The hearing officer also shall inform the parties of any written documents or other tangible materials that have been received and explain the procedure for introducing the materials and offering them into evidence. The sequence of receiving testimony shall be in the hearing officer's discretion. Computer records of the division concerning continued weeks claimed or payment for continued weeks claimed are

admissible as evidence and may be filed in the record as evidence without formal identification if relevant to the issues raised by the appeal. The hearing officer also may consider any other relevant division file documents without a formal request or identification. However, parties shall be advised during the hearing of the division records and documents to be considered. All physical materials offered into the record shall be clearly identified and marked. Further, materials admitted shall be expressly received for the record. The hearing officer shall permit the parties to testify on their own behalf and present witnesses, and opposing parties may cross-examine each other and the others' witnesses. The hearing officer shall examine the parties and witnesses as necessary and, after notice to the parties, may hear such additional evidence as deemed necessary. All testimony shall be presented under oath and the hearing shall be timed. At the conclusion of the hearing, the hearing officer shall inform the parties of the time consumed by the hearing and the approximate cost of the preparation of the transcript of the hearing, if any, and shall instruct the parties that a decision will be promptly issued as to the issues brought forth at the hearing. The hearing officer shall also instruct the parties that such decision may be appealed and, if applicable, that the appellant must bear the cost of preparation of a transcript. The sum paid may, at a later date, be reimbursed by the panel without interest, if such appeal results in a decision favorable to the appellant. It shall also be stated to the parties that the cost of preparation of the transcript may be waived pursuant to rule 11.2.15. The hearing officer shall verify the accuracy of the addresses on file for the parties.

.4 New Issues. Parties are entitled to advance notice of the factual issues that may be considered at a hearing. The hearing officer shall not permit an interested party to present factual issues at a hearing that have not been disclosed to the other interested party(ies) in writing, as shown by the claim file. If good cause, as set forth in rule 12.1.8, is found for a party not providing proper notice of the factual issues it intends to present, the hearing officer may adjourn the hearing. If good cause is not found, the hearing shall proceed as scheduled, and those new factual issues raised shall not be considered. In determining whether there is good cause for permitting a new factual issue, the hearing officer shall give substantial weight to an absence of prejudice to the other interested party and to the overall interests of an accurate and fair resolution. An interested party may, at the hearing, waive the requirement that it be provided with proper notice.

~~.5 Based on the individual circumstances of a case, the chief hearing officer or designee shall have the discretion to determine which method of participation, in person or by telephone, will best achieve the purposes of this regulation 11.2.9 and to order the parties to participate in that manner.~~

11.2.13 Failure to Appear.

.1 Appealing Party. If the appealing party fails to ~~appear at the time of the hearing before the hearing officer~~ PARTICIPATE IN THE HEARING AS DIRECTED, the appeal shall be dismissed and the decision that was the subject of the appeal shall become final. Written notice that the appeal has been dismissed shall be provided to the interested parties named in the caption. The appealing party may request that the appeal be reinstated and the hearing be

rescheduled pursuant to the procedures set forth in part XII of the regulations. The request must be received by the division within twenty calendar days after the date the dismissal notice was mailed by the division. An untimely request that a hearing be rescheduled may be permitted by the division for good cause shown, pursuant to the procedure set forth in part XII of the regulations.

.2 Nonappealing Party. If any other interested party fails to ~~appear~~ PARTICIPATE AS DIRECTED for a scheduled hearing, and a decision is issued by a hearing officer on the merits of the appeal, the party who failed to ~~appear~~ PARTICIPATE AS DIRECTED may request that a new hearing be scheduled either by filing a written request with the panel or filing a written appeal from the hearing officer's decision. The written statement shall include details, pursuant to part XII of the regulations, to establish that he or she had good cause for the failure to ~~appear for~~ PARTICIPATE IN the appeal hearing. The request for a new hearing shall be filed with the panel in person, by mail, by facsimile machine, by panel-approved electronic means, or at a public employment office, the central office of the division, the office where the hearing officer is located, or by division-approved electronic means and shall be received by the panel within twenty calendar days after the date mailed on the hearing officer's decision. An untimely request for a new hearing may be permitted by the panel for good cause shown, pursuant to the procedure set forth in part XII of the regulations. If it is determined that the party has shown good cause for the failure to ~~appear~~ PARTICIPATE, the hearing officer's decision that was issued on the merits of the appeal shall be vacated and a new hearing scheduled forthwith.

12.1.3 Procedure.

.1 Whenever an interested party files an untimely appeal from a deputy's decision, a rebuttable presumption of good cause shall be established and a hearing shall be scheduled unless the appeal was received more than 180 days beyond the expiration of the timely filing period. The notice of hearing shall contain a statement indicating that the appeal was filed beyond the expiration of the timely filing period and that the nonappealing party may object to the hearing being granted at the time of the new hearing. If the nonappealing party fails at the time of the hearing to object to the hearing proceeding, that party waives the opportunity to object to the hearing going forward. If the nonappealing party objects at the time of the hearing to the matter being scheduled, the hearing officer shall determine whether good cause has been shown, pursuant to section 12.1.8, for permitting the untimely appeal. If the hearing officer determines that good cause has been shown for permitting the untimely appeal, the hearing shall proceed. If the hearing officer determines that good cause has not been shown for permitting the untimely appeal, the appeal shall be dismissed.

.2 In the event an interested party files an untimely appeal from a deputy's decision or makes a request for a new hearing and the appeal or hearing request is received more than 180 days beyond the expiration of the timely filing period, good cause may not be established, a hearing shall not be scheduled, the appeal shall be dismissed, and the deputy's decision shall become final.

.3 Whenever an interested party files an untimely appeal from a hearing officer's decision, or fails to ~~appear for a~~ PARTICIPATE AS DIRECTED IN A hearing held on an appeal from a deputy's decision and has filed a request for a new hearing, the panel shall determine if good cause has been shown, pursuant to section 12.1.8, for permitting the untimely appeal or excusing the failure to ~~appear~~ PARTICIPATE IN THE HEARING AS DIRECTED. The panel shall make a determination of good cause only if the untimely appeal or request for new hearing contains a statement of the reasons for which the party failed to act in a timely manner or if information within the appeal file supports a determination of good cause. If the party's untimely appeal or request for a new hearing does not establish good cause, the panel may request an explanation in writing, by postal mail, by approved electronic means, or by telephone. The party shall respond to any such request within ten days.

.4 Whenever an appeal from a deputy's decision has been dismissed because the appealing party failed to ~~appear~~ PARTICIPATE AS DIRECTED IN A ~~for a~~ scheduled hearing before a hearing officer and the appealing party requests that a new hearing be scheduled, a rebuttable presumption of good cause shall be established and a new hearing shall be scheduled. The notice of the new hearing shall contain a statement indicating that the hearing is being rescheduled because the appealing party did not ~~appear for~~ PARTICIPATE IN the prior hearing AS DIRECTED and that the nonappealing party may object at the beginning of the new hearing to the matter being rescheduled. If, at the time of the new hearing, the nonappealing party objects to the matter being rescheduled, the hearing officer shall determine whether good cause has been shown, pursuant to section 12.1.8, to excuse the failure to ~~appear~~ PARTICIPATE IN THE HEARING AS DIRECTED. If, at the time of the hearing, the nonappealing party fails to object to the hearing proceeding, that party waives the opportunity to object to the hearing going forward. If the hearing officer determines that good cause has been shown to excuse the failure to ~~appear~~ PARTICIPATE IN THE HEARING AS DIRECTED, the hearing on the deputy's decision shall proceed. If the hearing officer determines that good cause has not been shown to excuse the failure to ~~appear~~ PARTICIPATE IN THE HEARING AS DIRECTED, the appeal shall be dismissed.

.5 Notwithstanding these provisions, good cause may not be established for the failure of an appealing party to ~~appear~~ PARTICIPATE IN a second hearing AS DIRECTED which was set because that party failed to ~~appear for~~ PARTICIPATE AS DIRECTED IN the first hearing. In the event that the appealing party fails to ~~appear~~ PARTICIPATE AS DIRECTED IN the first setting of a hearing on a deputy's decision and then subsequently fails to ~~appear for~~ PARTICIPATE AS DIRECTED IN the second setting of a hearing, the appeal shall be dismissed and the deputy's decision shall become final. Under such circumstances, the division shall issue a notice to all interested parties that the appeal has been dismissed and that no further rescheduled hearings shall be granted.

Notice of Proposed Rulemaking

Tracking number

2019-00009

Department

1100 - Department of Labor and Employment

Agency

1101 - Division of Oil and Public Safety

CCR number

7 CCR 1101-9

Rule title

EXPLOSIVES REGULATIONS

Rulemaking Hearing

Date

02/14/2019

Time

09:00 AM

Location

633 17th Street, Suite 500, Denver, CO 80202

Subjects and issues involved

Updated contact information to Section 1-5 Definitions. Updates for clarification to Section 3-3 and 3-4.

Statutory authority

Section 9-7-105, C.R.S. (2004)

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COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT

DIVISION OF OIL AND PUBLIC SAFETY

EXPLOSIVES REGULATIONS

7 C.C.R. 1101-9

Effective: ~~December 1, 2018~~May 1, 2019

Table of Contents

ARTICLE 1 GENERAL PROVISIONS

Section 1-1 Basis and Purpose

These regulations are promulgated to establish rules for the use, manufacture, possession, sale, storage, transport, or disposal of explosives materials or blasting agents in the interest of the life, health, and safety of employees and the general public, as well as the protection of property.

To this end, a procedure for the granting of explosives permits is contained herein whereby the opportunity to use, manufacture, possess, sell, store, transport, or dispose of explosives materials is restricted to such permittees and conditioned upon satisfactory continued compliance with these rules and regulations. Failure to comply with these rules and regulations subjects the permittee to suspension, denial, or revocation of the permit.

Adoption of these rules and regulations is intended to greatly clarify the Division of Oil and Public Safety requirements pertaining to the use of explosive materials, to ease the burden on the permittee where interpretation has been necessary, and to better incorporate the numerous requirements from other governmental agencies. These rules and regulations provide for uniformity of compliance and elimination of numerous areas of confusion and duplication in an effort to better serve and protect the public.

Section 1-2 Statutory Authority

The amendments to these regulations are created pursuant to Section 9-7-105, C.R.S. (2004) of the Colorado Revised Statutes. All prior rules for explosive materials are hereby repealed.

Section 1-3 Effective Date

These amended regulations shall be effective on ~~December 1, 2018~~May 1, 2019. The previous versions of these regulations were effective on December 1, 2018, March 10, 2015, and January 1, 2009.

Section 1-4 Scope

These rules and regulations shall apply to the use, manufacture, purchase, possession, sale, storage, transportation, and disposal of explosive materials in the State of Colorado by any individual, corporation, company, firm, partnership, association, or state or local government agency.

These rules and regulations shall not apply to:

(A) The shipment, transportation, and handling of military explosives by the Armed Forces of the United States or the State Militia.

(B) The normal and emergency operations of any government law enforcement agency including all departments, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties and functions.

(C) Explosives in the forms prescribed by the official United States Pharmacopoeia or the National Formulary and used in medicines and medicinal agents.

(D) Explosive materials while in the course of transportation by for-hire commercial carriers via railroad, water, highway, or air when the explosive materials are moving under the jurisdiction of, and in conformity with, regulations adopted by any Federal Department or Agency.

(E) The components for hand loading rifle, pistol, and shotgun ammunition and/or rifle, pistol, and shotgun ammunition.

(F) The manufacture, sale and use (public display) of pyrotechnics commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes.

(G) Gasoline, fertilizers, installed propellant/powder-actuated safety devices or propellant/powder-actuated power tools.

(H) The use and storage of model rocket motors containing a propellant weight of 62.5 grams or less and which produce less than 17.92 pound seconds of total impulse.

No permit shall be required for the occasional purchase of explosives by a person for normal agricultural purposes where such person is known by the seller of such explosives, and a record is kept of such transactions by the seller, including the specific purpose for which such explosives will be used, the location of the purposed use, the signature of the purchaser, and the certification of the seller as to his personal knowledge of the purchaser. Violation of this record requirement shall cause the seller's permit to be canceled. A permit is required for any manufacturing, storage, dealing, or non-agricultural use of explosives as outlined in Article 3 of this regulation.

No person, firm, partnership, or corporation whose possession of explosive materials is for the purpose of underground mining, surface or underground metal mining, or surface or underground coal mining and whose use and storage is subject to regulation by the provisions of 30 Code of Federal Regulations (CFR) - Parts 56, 57, 75 or 77 shall be subject to the provisions of the Explosives Act, Sections 9-7-101, et seq., Colorado Revised Statutes (C.R.S.).

No person, firm, partnership, or corporation whose possession, use, or storage of explosive materials is subject to regulation by the provisions of Colorado Mining Law, Sections 34-21-104 and 34-21-110, C.R.S. shall be subject to the provisions of the Explosives Act, Sections 9-7-101, et seq., C.R.S.

A permit issued by the Division of Oil and Public Safety shall be required for the possession, use, or storage of explosives in mining operations whose use and storage is not subject to the provisions of 30 CFR - Parts 56, 57, 75 or 77 or Colorado Mining Law, Sections 34-21-104 and 34-21-110, C.R.S.

Except as noted in the foregoing, the Division of Oil and Public Safety may approve or disapprove the location for, and limit the quantity of, explosives or blasting agents which may be loaded, unloaded, reloaded, stored, or temporarily retained at any facility within the State of Colorado.

The Division of Oil and Public Safety may issue an explosive permit for continued use for a period of time not to exceed 36 months.

Section 1-5 Definitions

The following publications and codes are hereby incorporated by this reference:

- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), U.S. Department of Justice, Publication ATF P 5400.7, ATF- Explosives Law and Regulations (2012) – Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 99 New York Avenue, NE; Washington, DC 20226. https://www.atf.gov

- Title 49 CFR - Parts 100-177 (inclusive) https://www.govinfo.gov Parts 390-397 U.S. Department of Transportation (Revised September 27, 2012) – US DOT FMCSA, 1200 New Jersey Avenue, SE; Washington, DC 80590. https://www.fmcsa.dot.gov

- National Electric Code (NEC), 2017 Edition, National Fire Protection Association (NFPA) – NFPA (NEC), 1 Batterymarch Park, Quincy, MA 02169. https://catalog.nfpa.org

- Institute of Makers of Explosives (IME) Safety Library Publication No. 22 (February 2007) – IME, 1212 New York Avenue, NW, Suite 650; Washington, DC 20005. https://www.ime.org

- Institute Of Makers Of Explosives (IME) Safety Library Publication No. 20 (December 2011) - IME, 1212 New York Avenue, NW, Suite 650; Washington, DC 20005. https://www.ime.org

- The Avalanche Artillery Users of North America Committee (AAUNAC) Training Standard (Revised May 16, 2012) – AAUNAC, PO Box 8095, 8920 South Collins Road; Alta, UT 84092

These rules incorporate the editions and revisions specified. Subsequent editions and revisions have not been incorporated by this reference. The publications incorporated by this reference may be examined and a copy of them may be obtained upon request and payment of the cost of reproduction during regular business hours from the Colorado Department of Labor and Employment, Division of Oil and Public Safety, 633 17th Street, Suite 500, Denver, CO 80202, and may also be inspected at the state depository libraries.

The following words when used in these rules and regulations shall mean:

AIR OVERPRESSURE, OVERPRESSURE: The airborne shock wave or acoustic transient generated by an explosive.

AMERICAN TABLE OF DISTANCES: A quantity-distance table prepared and approved by the Institute of the Makers of Explosives, for storage of explosive materials to determine safe distances from inhabited buildings, public highways, passenger railways, and other stored explosive materials. See Section 4.6 of these regulations.

AMMONIUM NITRATE: The ammonium salt of nitric acid represented by the formula NH_4NO_3.

APPROVED STORAGE FACILITY (APPROVED MAGAZINE): A facility for the storage of explosives materials conforming to the requirements of these rules and regulations.

ATTEND(ED): The physical presence of an authorized person within the field of vision of explosives or the use of explosives.

AUTHORIZED, APPROVED, OR APPROVAL: Terms which mean approved, approval, or authorized by the Division.

AUTHORIZED PERSON: A person approved or assigned by the management to perform a specific type of duty or duties or to be at a specific location or locations at the job site.

ARMED CHARGE: An explosive cartridge that contains a detonator.

ARTIFICIAL BARRICADE: An artificial mound, berm, or wall of earth of a minimum thickness of 3 feet, or any other approved barricade that offers equivalent protection.

AVALAUNCHER: A compressed gas explosives delivery system designed for avalanche hazard mitigation.

BARRICADED: The effective screening of a building or magazine containing explosive materials from another magazine or building, railway, or highway by a natural or artificial barrier. A straight line from the top of any sidewall of the building or magazine containing explosives materials to the eave line of any magazine or building or to a point 12 feet above the center of a railway or highway shall pass through the barrier.

BINARY (TWO-COMPONENT) EXPLOSIVE: A blasting explosive formed by the mixing or combining of two precursor chemicals, (e.g., ammonium nitrate and nitromethane).

BLACK POWDER: A deflagrating or low explosive compound of an intimate mixture of sulfur, charcoal and an alkali nitrate (usually potassium or sodium nitrate).

BLAST AREA: Area of the blast within the influence of flying rock missiles, gases, vibration, and concussion.

BLASTER: A Type I permitted individual who is permitted by the Division to possess and control the use of explosives.

BLASTER IN CHARGE: A Type I permittee who is in charge of and responsible for the loading or preparing of the explosives charges, and either physically initiates the charge or is physically present when the charge is initiated at a specific job site. This individual is in charge of the planning of the blast at a specific job site, the supervision of all persons assisting on the blast and all persons in training, and is responsible for the inventory, inventory records, and blast records for the blast.

BLASTING AGENT: An explosive material which meets prescribed criteria for insensitivity to initiation.

For storage, Title 27, CFR, Section 55.11, defines a blasting agent as any material or mixture consisting of fuel and oxidizer intended for blasting, not otherwise defined as an explosive provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 Blasting Cap when unconfined (Bureau of Alcohol, Tobacco, Firearms, and Explosives Regulation).

For transportation, Title 49 CFR defines a blasting agent as a material designed for blasting which has been tested and found to be so insensitive that there is very little probability of accidental initiation to explosion or transition from deflagration to detonation (US Department of Transportation Regulation).

BLASTING MAT: A mat of woven steel, wire, rope, scrap tires, or other suitable material or construction to cover blast holes for the purpose of preventing flying rock missiles.

BLAST PATTERN, DRILL PATTERN: The plan of the drill holes laid out for blasting; an expression of the burden distance, the spacing distance and their relationship to each other.

BLAST SITE: Area where explosive material is handled during blasting operations, including the perimeter of blast holes and a distance of 50 feet in all directions from explosive charges, loaded boreholes or boreholes to be loaded.

BOOSTER: An explosive charge, usually of high detonation velocity and detonation pressure, designed to be used in the initiation sequence between an initiator or primer and the main charge.

BOREHOLE, BLAST HOLE, DRILL HOLE: A hole drilled in the material to be blasted, for the purpose of containing an explosive charge.

BULK MIX: A mass of explosive material prepared for use in bulk form without packaging.

BULK MIX DELIVERY EQUIPMENT: Equipment (usually a motor vehicle with or without a mechanical delivery device) which transports explosive material in bulk form for mixing and/or loading directly into blast holes.

BULLET-RESISTANT: Magazine walls or doors of construction resistant to penetration of a bullet of 150-grain M2 ball ammunition having a nominal muzzle velocity of 2,700 feet per second fired from a .30 caliber rifle from a distance of 100 feet perpendicular to the wall or door.

When a magazine ceiling or roof is required to be bullet-resistant, the ceiling or roof shall be constructed of materials comparable to the side walls or of other materials which will withstand penetration of the bullet described above when fired at an angle of 45 degrees from perpendicular.

Tests to determine bullet resistance shall be conducted on test panels or empty magazines which shall resist penetration of 5 out of 5 shots placed independently of each other in an area of at least 3 feet by 3 feet. Examples of construction that meet this definition are given in Article 4 as alternate construction standards for Type 1 and Type 2 magazines.

BULLET-SENSITIVE EXPLOSIVE MATERIAL: Explosive material that can be detonated by 150 grain M2 ball ammunition having a nominal muzzle velocity of 2,700 feet per second when the bullet is fired from a .30 caliber rifle at a distance of not more than 100 feet and the test material, at a temperature of 70-75 degrees Fahrenheit, is placed against a backing material of 2 inch steel plate.

BURDEN: The distance from the borehole and the nearest free face, or the distance between boreholes measured perpendicular to the spacing. Also, the total amount to be blasted by a given hole, which is usually measured in cubic yards or tons.

BUS WIRE: Expendable heavy gauge bare copper wire used to connect detonators or series of detonators in parallel.

CHARGE-PER-DELAY: Any charges firing within any 8-millisecond time period are considered to have a cumulative effect on vibration and air over-pressure effects. Therefore, the maximum charge-per-delay (w) is the maximum weight of all charges firing within any 8-millisecond (ms) time period from the time a blast starts until the time it ends. For example, if two 10-lb charges fire at 100 ms and one 15-lb charge fires at 105 ms, the maximum charge-per-delay (w) for this time period would be 35 lbs.

COLLAR: The mouth or opening of a borehole.

CONNECTING WIRE: Wire used to extend the firing line or leg wires in the electric blasting circuit.

CONTROL: To directly exercise authority or dominating influence over the use, manufacture, acquisition, purchase, sale, distribution, storage, transportation, or disposal of explosive materials.

CORNICE: An overhanging mass of windblown snow or ice, usually located near a sharp terrain break.

DATE-SHIFT CODE: A code, required by federal regulation (ATF), applied by manufacturers to the outside shipping containers, and, in many instances, to the immediate containers of explosive materials to aid in their identification and tracing. The code indicates the date, work shift and plant of manufacture.

DAY BOX: A portable magazine for the temporary and attended storage of explosives. Day boxes shall meet construction requirements of a Type 3 magazine.

DEALER: Any person engaged in the business of distributing explosive material at wholesale or retail.

DECK: An explosive charge that is separated from other charges in the blast hole by stemming or an air cushion.

DEFLAGRATION: An explosive reaction, such as rapid combustion, that moves through an explosive material at a velocity less than the speed of sound in the material.

DENSITY: The mass of an explosive per unit volume, usually expressed in grams per cubic centimeter or pounds per cubic foot.

DETONATING CORD: A flexible cord containing a center core of high explosives, which may be used to initiate other high explosives.

DETONATION: An explosive reaction that moves through an explosive material at a velocity greater than the speed of sound in the material.

DETONATOR: Any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, electronic detonators, blasting caps for use with safety fuses, detonating cord delay connectors, and non-electric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires.

DIVISION: The Director of the Division of Oil and Public Safety of the Department of Labor and Employment or any designees thereof which may include certain employees of the Division of Oil and Public Safety or other persons.

DOWN LINE: A line of detonating cord or plastic tubing in a blast hole which transmits detonation from the trunkline or surface delay system down the hole to the primer.

ELECTRIC DETONATOR: A detonator designed for and capable of initiation by means of an electric current.

ELECTRONIC DETONATORS: A detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.

EMULSION: An explosive material containing substantial amounts of oxidizers dissolved in water droplets surrounded by an immiscible fuel, or droplets of an immiscible fuel surrounded by water containing substantial amounts of oxidizer.

EXPLOSIVE: Any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

EXPLOSIVE MATERIALS: These include explosives, blasting agents, and detonators. The term includes but is not limited to dynamite and other high explosives; slurries, emulsions, and water gels, black powder, initiating explosives, propellant rockbreaking cartridges (such as Rockrackers™), detonators (blasting caps), safety fuses, squibs, detonating cord, igniter cord, and igniters. Binary explosives (such as Kinepak™ or Execon™), sold in two or more components, are considered an explosive material requiring a Division explosives permit.

EXPLOSIVE OILS: Liquid explosive sensitizers for explosive materials (.e.g., nitroglycerin, ethylene glycol dinitrate and metriol trinitrate).

EXTRANEOUS ELECTRICITY: Electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter a blasting circuit. It includes stray current, static electricity, electromagnetic waves, and time varying electric and magnetic fields.

FIRE EXTINGUISHER RATING: A rating set forth in the National Fire Code which may be identified on an extinguisher by a number (5, 20, 70, etc.) indicating the extinguisher's relative effectiveness, followed by a letter (A, B, C, etc.) indicating the class or classes of fires for which the extinguisher has been found to be effective.

FIRE-RESISTANT: Construction designed to provide reasonable protection against fire. For exterior walls or magazine constructed of wood, this shall mean fire resistance equivalency provided by sheet metal of not less than #26 gauge.

FIRING LINE: The wire(s) connecting the electrical power source with the electric or electronic blasting circuit.

FLYROCK: Dirt, mud, stone, fragmented rock or other material that is propelled from the blast site by the force of an explosion.

FREE FACE: A rock surface exposed to air or water which provides room for expansion upon fragmentation.

FUSE (SAFETY): A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to a cut end. A fuse detonator is usually attached to that end, although safety fuse may be used without a detonator to ignite material such as deflagrating explosives.

FUSE DETONATOR, BLASTING CAP: A detonator which is initiated by a safety fuse or used in an avalauncher round; also referred to as an ordinary blasting cap. Also see detonator.

FUSE LIGHTERS: Pyrotechnic devices for the rapid and certain lighting of safety fuse.

FUEL: A substance which may react with oxygen to produce combustion.

GRAINS: In the avoirdupois system of weight measurement, 7,000 7000 grains are equivalent to one standard, 16-ounce pound (0.45 kg). A grain is 0.0648 grams in both the avoirdupois and troy systems.

GROUND VIBRATION: Shaking the ground by elastic waves emanating from a blast; usually measured in inches per second of particle velocity.

HARDWOOD: Red Oak, White Oak, Hard Maple, Ash, or Hickory, free from loose knots, wind shakes, or similar defects.

HIGH EXPLOSIVES: Explosives which are characterized by a very high rate of reaction, high pressure development and the presence of a detonation wave, including, but not limited to, dynamite, detonating cord, cast boosters, detonators, cap-sensitive slurry, emulsion, or water gels, and mixed binaries.

HOWITZER: A military cannon that delivers projectiles at medium muzzle velocity at low or high trajectories.

INHABITED AREA OR BUILDING: A building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage, and use of explosive materials.

INSPECTOR: An Inspector of the Division.

INITIATION: The start of deflagration or detonation in an explosive material.

INITIATION SYSTEM: Combination of explosive devices and accessories (detonators, wire, cord, etc.) designed to convey a signal and initiate an explosive charge.

LAWFUL POSSESSOR: A Type II permittee who has legally purchased or acquired explosive materials.

LOADING DENSITY: The weight of explosive, expressed as pounds per foot or kilograms per meter of borehole.

LOW EXPLOSIVES: Explosives which are characterized by deflagration or a low rate of reaction and the development of low pressure.

MAGAZINE: Any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.

MAGAZINE DISTANCE: Shall mean the minimum distance permitted between any two storage magazines which is expected to prevent propagation of an explosion from one magazine to another from a blast.

MAKE-UP ROOM: A room located inside an uninhabited building which shall be used for the assembly of cap and fuse or for the arming of explosive charges used in avalanche mitigation work.

MANUFACTURER: Any individual, corporation, company, firm, partnership, association, or state or local government agency engaged in the business of manufacturing explosive materials for the purpose of sale, distribution or for his own use.

MASS DETONATION: When a unit or any part or quantity of explosive material detonates and causes all or a substantial part of the remaining material to detonate.

MISFIRE: A blast that fails to detonate completely after an attempt at initiation. This term is also used to describe the explosive material itself that has failed to detonate as planned.

MOTOR VEHICLE: A vehicle, machine, tractor, semi-trailer or other conveyance propelled or drawn by mechanical power. Does not include vehicles operated exclusively on rail.

NATURAL BARRICADE: Natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

NON-ELECTRIC DETONATOR: A detonator that does not require the use of electric energy to function.

OXIDIZER OR OXIDIZING MATERIAL: A substance, such as nitrite, that readily yields oxygen or other oxidizing substances to promote the combustion of organic matter or other fuel.

PERMANENT STORAGE MAGAZINE: Type 1 magazines or Type 2, Type 4, or Type 5 magazines that have been at the same location for longer than 90 days.

PARTICLE BOARD: A composition board made of small pieces of wood that have been bonded together.

PARTICLE VELOCITY: A measure of the intensity of ground vibration, specifically the velocity of motion of the ground particles as they are excited by the wave energy.

PERMITTEE: Any user, purchaser, manufacturer, dealer, storer, disposer, or transporter of explosives for a lawful purpose, who has obtained a permit from the Division.

PERSON: Any individual, corporation, company, firm, partnership, association, or state or local government agency.

PETN: Pentaerythritol tetranitrate.

PLACARDS: Division of Transportation Approved Title 49 CFR signs placed on vehicles transporting hazardous materials (including explosive materials) indicating the nature of the cargo.

PLYWOOD: Exterior construction-grade plywood.

POSSESS: The physical possession of explosives on one's person, or in the person's vehicle, magazine or building.

POWDER: A common synonym for explosive materials.

POWDER FACTOR: The amount of explosives used per unit of blasted material (see Loading Density).

PRIMER: A unit, package, or cartridge of explosives used to initiate other explosives or blasting agents, which contains either a detonator or a detonating cord to which a detonator designed to initiate the detonating cord is attached.

PROPELLANT/POWDER-ACTUATED POWER DEVICE: Any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

PUBLIC CONVEYANCE: Any railroad car, streetcar, ferry, cab, bus, aircraft, or other vehicle carrying passengers for hire.

PUBLIC HIGHWAY: Shall mean any public street, alley, or road.

PUBLIC HIGHWAY DISTANCE: Shall mean the minimum distance permitted between a public highway and an explosives magazine.

PUBLIC PLACE: A place which the public or a substantial number of the public has access, and includes but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities.

PURCHASER: A Type II permittee who acquires explosives.

PYROTECHNICS, FIREWORKS: Any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects.

RAILWAY: Any steam, electric, or other type of railroad or railway.

RESPONSIBLE PERSON: A Type I permitted individual who is directly responsible for a Type II permittee's compliance with the provisions of the Explosives Act, 9-7, C.R.S., and any rules and regulations promulgated thereunder.

SAFETY FUSE: A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to a cut end. A fuse detonator is usually attached to that end, although safety fuse may be used without a detonator to ignite material such as deflagrating explosives.

SCALED DISTANCE (D_S): A factor relating similar blast effects from various weight charges of explosive material at various distances. Scaled Distances referring to blasting effects are obtained by dividing the distance of concern by a fractional power of the charge weight per delay of the explosive materials.

SECURED STORAGE: An area which is protected from weather and is theft-resistant and in compliance with the uniform fire code.

SEISMOGRAPH: An instrument that is useful in monitoring blasting operations for recording records

ground vibration. Particle velocity, displacement or acceleration is generally measured and recorded in three mutually-perpendicular directions.

SEMI-CONDUCTIVE HOSE: A hose used for pneumatic conveying of explosive materials, having an electrical resistance high enough to limit flow of stray electric currents to safe levels yet not so high as to prevent drainage of static electric charges to ground. A hose of not more than 2 megohms resistance over its entire length and of not less than 1,000 ohms per foot (3280 ohms per meter) meets this requirement.

SENSITIVITY: A physical characteristic of an explosive material classifying its ability to be initiated upon receiving an external impulse, such as heat impact, shock, friction, static electricity, stray current or other influence which can cause explosive decomposition.

SHALL: Means that the rule establishes a minimum standard which is mandatory.

SHOCK TUBE: A small diameter plastic tube containing reactive material used for initiating detonators. It contains only a limited amount of reactive material such that the energy that is transmitted through the tube by means of a detonation wave is guided through and confined within the walls of the tube.

SITE: Area where active blasting is taking place or the location of explosives storage magazines.

SLURRY/WATER GEL: An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener.

SMALL ARMS AMMUNITION: Any cartridge for a shotgun, rifle, pistol, or revolver, and cartridges for propellant-actuated power device and industrial guns. Military-type ammunition containing explosive bursting charges, or any incendiary, tracer, spotting, or pyrotechnic projectile is excluded from this definition.

SOFTWOOD: Douglas Fir, or other wood of equal bullet-resistance, free of loose knots, wind shakes, or similar defects.

SPACING: The distance between boreholes. In bench blasting, the distance is measured parallel to the free face and perpendicular to the burden.

STATIC ELECTRICITY: Electric charge at rest on a person or object. It is most often produced by the contact and separation of dissimilar insulating materials.

STEMMING: Inert material placed in a borehole on top of or between separate charges of explosive material, used for the purpose of confining explosive materials or to separate charges of explosive material in the same borehole.

STEEL: General purpose (hot or cold rolled) low carbon steel, such as specification ASTM A366 or equivalent.

STORAGE: The safekeeping of explosives in unattended magazines.

TEMPORARY STORAGE MAGAZINE: A Type 1, Type 2, Type 4, or Type 5 magazine that is at a location for a period not to exceed 90 days.

THEFT-RESISTANT: Construction designed to deter illegal entry into facilities used for the storage of explosive material.

TWO-COMPONENT: See binary explosive.

TRANSPORTATION: The conveyance or carrying of explosives from one place to another by means of a motorized vehicle or device.

TYPE I EXPLOSIVES PERMIT: A permit issued by the Division to individuals who possess and control explosive materials during the use, manufacture, acquisition, purchase, sale, distribution, storage, transportation, or disposal of explosives materials.

TYPE II EXPLOSIVES PERMIT: A permit issued by the Division to corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies involved in the use, purchase, sale, manufacture, transportation, acquisition, distribution or disposal of explosives materials.

TYPE III EXPLOSIVES PERMIT: A permit issued by the Division to corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies for the storage of explosives in approved magazines.

WEATHER-RESISTANT: Construction designed to offer reasonable protection against weather.

U.S. DEPARTMENT OF TRANSPORTATION EXPLOSIVE CLASSIFICATIONS FOR THE TRANSPORTATION OF EXPLOSIVES:

Division 1.1: Explosives that have a mass explosion hazard

Division 1.2: Explosives that have a projection hazard but not a mass explosion hazard

Division 1.3: Explosives that have a fire hazard and either a minor blast hazard or minor projection hazard or both, but not a mass explosion hazard

Division 1.4: Explosives that present minor explosion hazard

Division 1.5: Very insensitive explosives that have a mass explosion hazard, but are so insensitive that there is little probability of initiation or of transition from burning to detonation under normal conditions of transport (Blasting Agents)

ARTICLE 2 GENERAL REQUIREMENTS

Section 2-1 Miscellaneous Requirements

(A) No person shall sell, display, or expose for sale an explosive or blasting agent on any public way or public place.

(B) No person shall sell, deliver, or give possession and control of explosives materials to any person not in possession of a valid permit except an authorized for-hire commercial carrier transporting between two valid permittees.

(C) No person shall sell, purchase, store, transport, use or otherwise possess or control any explosive material without the authorization of the lawful possessor of the explosive material. The lawful possessor shall file a written list of authorized Type I permittees with the Division and shall notify the Division of any changes in writing.

(D) Any theft or loss of explosives or blasting agents, whether from a storage magazine or area, a vehicle in which they are being transported, or from a site where they are being used, or from any other location, shall immediately (but in no event later than 24 hours) be reported by the person having control of such explosives or blasting agents to the local sheriff or local police, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the Division.

(E) All individuals, corporations, companies, firms, partnerships, associations, or state or local government agencies conducting an operation or activity requiring the use, possession, purchase, sale, manufacturing, storage, acquisition, distribution, transportation or disposal of any explosive materials shall:

(1) Obtain a permit from the Division prior to conducting such operation or activity and shall be responsible for the results and any other consequences of any loading and firing of the explosive materials; and

(2) NOT delegate either performance of the blast or accountability for such performance to another person(s).

(F) The Division, Public Safety Section and local law enforcement authority shall be notified immediately by the permittee of any accident, explosion, fire, or misuse of explosives which occurs in connection with the use, manufacture, possession, sale, transportation, storage or disposal of explosives that results in the loss of life, personal injury, or damage to any property.

(G) The Division may inspect the site where any accident, explosion, fire, misuse, theft or loss of explosives occurred.

(H) A Division representative may enter during normal business hours, without advance notice, the premises of any permittee, including places of storage or use, for the purpose of inspecting or examining any records or documents required under these regulations and any explosives material used or stored at the premises.

(I) All corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies conducting blasting operations shall have a certificate of liability insurance, be named as an also insured on another liability insurance policy, or shall have obtained a signed release of liability for damages from blasting operations from all parties who may be potentially affected by blasting operations. The U.S. Forest Service (USFS) should be notified prior to all blasting activities that occur on USFS land.

ARTICLE 3 EXPLOSIVES PERMIT

Section 3-1 Basic Legal Obligations

(A) Except as specifically allowed by these regulations, it is unlawful for any person to use, possess and control, manufacture, purchase, sell, store, transport, or dispose of any explosive material without possessing a valid permit from the Division (18-12-109 (2) and 9-7-101, et seq., C.R.S.).

Section 3-2 General Requirements

(A) Permits issued under these rules and regulations shall be dated and numbered. Each permit will indicate class of permit, and shall be valid for up to 36 months after the date of issue unless revoked or suspended by the Division, and shall be renewed on or before the expiration date. The application for renewal of permits shall be made to the Division prior to the renewal date to avoid possible lapse of said permit. The Division shall send a notice a minimum of 60 days prior to the expiration date. The failure of the permittee to receive timely notice from the Division shall not excuse the permittee's requirement to submit a renewal application not less than 30 days prior to the expiration date.

(B) Upon notice from the Division or any law enforcement agency having jurisdiction, a person using, manufacturing, purchasing, selling, storing, transporting, disposing, or otherwise in possession and control of any explosives without a permit shall immediately surrender any and all such explosives to the Division or to the law enforcement agency designated by the Division.

(C) The Division shall require, as a condition precedent to the original issuance of any explosives permit, fingerprinting and criminal history record checks for every individual applicant. Fingerprints shall be submitted on forms provided to the applicant by the Division. If a Type I permit holder submits a complete application for renewal, fingerprint cards are not required unless requested by the Division. As a condition precedent to renewal of any explosives permit for an individual, a criminal background check is required.

(D) No person shall withhold information or make any false statement or fictitious oral or written statement or furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining or retaining an explosives permit.

(E) No person shall knowingly make any false entry in any record that a permittee is required to keep pursuant to these regulations.

(F) When a permit has expired and has not been renewed, the applicable County Sheriff's Department shall be notified by the Division, and the Type II permittee must turn over any remaining explosives which the permittee is in possession of directly to the Division or the law enforcement agency designated by the Division, or in the presence of the Division or the law enforcement agency designated by the Division, surrender control of all remaining explosives which the permittee is in possession of to a valid Type II permittee.

(G) All permittees shall take every reasonable precaution to protect their permits from loss, theft, defacement, destruction, or unauthorized duplication. The loss or theft of any permit shall be reported immediately to the local law enforcement agency and to the Division.

Section 3-3 Revocation, Suspension, or Denial of Explosives Permits

(A) The Division shall not issue a permit to any person who:

(1) Is under 21 years of age;

(2) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(3) Is currently charged with, or has a charge pending for a crime punishable by imprisonment for a term exceeding 1 year;

(4) Is a fugitive from justice;

(5) Has been convicted of a crime involving the illegal distribution of marijuana, any depressant or stimulant drug, or narcotic drug, perjury, fraud, false swearing, or bomb threats;

(6) Has been adjudicated developmentally disabled, mentally unstable, mentally ill or insane, or to be incompetent due to any mental disability or disease;

(7) Has been discharged from the armed forces under dishonorable conditions;

(8) Is an alien, other than an alien who is lawfully admitted for permanent residence or an alien who has obtained either a letter of clearance or letter of restoration of explosives privileges from the ATF; or

(9) Having been a citizen of the United States, has renounced citizenship.

(B) The Division shall deny or revoke and not renew the permit of any person who is currently charged with, has a charge pending or has been convicted of any of the following offenses:

(1) A crime punishable by imprisonment for a term exceeding 1 year;

(2) A crime involving the illegal distribution of marijuana, any depressant or stimulant drug, or narcotic drug, bomb threats, perjury, fraud, or false swearing, including making a false affidavit or statement under oath to the Division in an application or report; or

(3) A crime relating to use, manufacturing, sale, transportation, possession, or disposal of explosives.

(C) The Division may revoke and not renew the permit of any person when the violation of any law or regulation relating to explosive material or the misuse of explosive materials results in loss of life or serious injury to any person.

(D) A permit may be denied, suspended, or revoked by the Division because of, but not limited to the following:

(1) Unlawful use of, or addiction to, alcohol, narcotics or illegal drugs;

(2) Failure to exercise reasonable safeguards resulting in hazard to life, health, or property;

(3) Failure to show legitimate use for a permit;

(4) Failure to show sufficient proof of training or prior experience with explosives;

(5) Non-compliance with an order issued by the Division within the time specified in such order;

(6) Proof that the permittee or applicant advocates, or knowingly belongs to any organization or group that advocates the violent overthrow of, or violent action against any federal, state, or local government or institution;

(7) Failure to comply with the Colorado Explosives Act, these regulations and Bureau of Alcohol,

Tobacco, Firearms and Explosives (ATF), U.S. Department of Justice, Publication ATF P 5400.7, ATF- Explosives Law and Regulations (2012)~~, federal, state and/or local explosives laws and regulations~~;

(8) Giving false information or a misrepresentation being willfully made to the Division and its investigators or inspectors to obtain or maintain a permit;

(9) Making a false affidavit or statement under oath to the Division in an application or report; or

(10) Other factors which, at the discretion of the Division, indicate an unfitness to hold an explosive permit in compliance with state and federal law and these regulations.

(E) The Division shall revoke the permit of any person adjudicated to be mentally unstable, mentally ill or insane, or to be incompetent due to any mental disability or disease. The Division shall not renew the permit until the person has been legally restored to competency.

Section 3-4 Procedure on Revocation, Suspension, or Denial of Explosives Permit

(A) In any case where the Division denies~~, suspends, or revokes~~ or suspends a permit, the Division shall notify the applicant or permittee in writing. Said notice shall state the reason for denial, or suspension, ~~or revocation~~ and state that, upon receiving a written request, a hearing shall be scheduled.

(B) Upon notice of the revocation or suspension of any permit, the former permittee shall immediately surrender to the Division the permit and all copies thereof. In addition, the former permittee must surrender control of all explosive material in his/her possession to the Division or the law enforcement agency designated by the Division, or in the presence of the Division or the law enforcement agency designated by the Division surrender control of all explosive material in his/her possession to a valid Type II permittee until a final determination on the charges is made.

(C) The period of denial, suspension, or revocation shall be within the sound discretion of the Division.

(D) Any person whose permit has been denied, suspended, or revoked under Section 3.3 may apply to the Division for a hearing in order to seek relief.

(1) The hearing shall be conducted by the Division or an Administrative Law Judge with the Division of Administrative Hearings on behalf of the Division in accordance with the procedures of 24-4-105 C.R.S.

(2) The Division may grant the relief requested in the hearing if the Division determines that

i. The applicant is in compliance with all federal regulations; and

ii. The circumstances regarding the denial, suspension, or revocation, and the applicant's record and reputation are such that the granting of such relief is not contrary to public safety.

(E) Any person aggrieved by a decision or order of the Division may seek judicial review pursuant to the provisions of 24-4-106 C.R.S.

(F) Any person who has been denied a permit may not reapply to the Division for an explosives permit within one year of the decision, unless exception is made by the Division and the applicant establishes a substantial change in circumstances to indicate fitness to hold an explosive permit in accordance with the requirements of these regulations, State and Federal law.

(G) In case of revocation or suspension of a permit, the Division shall notify all vendors of explosives of such revocation or suspension (24-4-104 C.R.S.).

Section 3-5 Permit Types and Classifications

Permits are separated according to type. A permit may have more than one designated classification; however, for each and every classification requested, the applicant must show legitimate use and qualifications.

3-5-1 Type I Explosives Permit

(A) All individuals who possess and control explosive materials shall have a valid Type I Explosives Permit issued by the Division.

(B) The requirements of permitting a Type I permittee shall be:

(1) An individual who possesses and controls explosive materials during the use, transportation, storage, distribution, manufacturing, sale, acquisition, or purchase of explosive materials.

(2) An individual who makes any or all of the following decisions:

(i) Decides total quantity of explosives used;

(ii) Decides borehole size, spacing, or depth;

(iii) Decides quantity of explosives in each borehole or charge;

(iv) Decides initiation system to be used;

(v) Decides timing delays to be used.

(3) An individual who directly supervises all personnel assisting in the use of explosives and supervises all personnel in training.

(4) An individual who shall also be physically present during the use of explosives, at the point of initiation when a charge is detonated and either initiates the detonation or gives the order to initiate the detonation of the charge.

(C) The classification of permits the applicant may apply for shall be:

(1) Construction

(i) Applicant must also apply for a Type I transporter permit, or provide to the Division a written plan documenting the manner in which explosives shall be legally transported to and from construction sites.

(2) Construction Limited

(i) Applicant may use or possess class 1.4 or 1.5 explosives or binary products only.

(3) Possession

(i) An individual who possesses explosive materials during the storage, distribution, component assembly, manufacturing, sale, acquisition or purchase of explosive materials. This endorsement does not allow an individual to exercise responsibilities as

described in 3-5-1 (B) (2) through (4).

(ii) The requirement listed in 3-5-1(D)(3) does not apply to this classification.

(4) Quarry Operations

(5) Avalanche Mitigation

(6) Geophysical Research

(7) Transporter

(i) Applicant must submit a copy of his/her Commercial Driver's License with the Hazardous Material Endorsement included on it.

(ii) Required for the transportation of explosive materials and blasting agents in quantities required to be placarded across or over roads within the state.

(8) Well Perforation

(9) Manufacturer

(10) Special (special use or possession and control as described on the permit, including but not limited to fabrication, research and development, rock-breaker cartridges, demolition, law enforcement, unexploded ordnance disposal, purchasing agent, sales agent,.)

(D) Type I permittee qualifications

(1) The Type I permittee shall be able to understand and give written and oral orders.

(2) The Type I permittee shall be qualified by reason of training, knowledge, and experience in the field of using, transporting, possessing, storing and handling of explosives, and have a working knowledge of state, federal and local laws and regulations which pertain to explosives.

(3) The Type I permit applicant shall be required to submit proof of not less than one year of explosives experience or on the job training in explosives specific to at least one classification of permit. Avalanche mitigation applicants must meet training requirements as defined in Section 7-2.

(4) The Type I permit applicant shall be required to submit proof of not less than six months of explosive experience or on-the-job training in explosives specific to each additional classification of permit applied for.

(5) The Type I permittee shall be knowledgeable and competent in the use of each type of blasting method and initiation system used.

(6) A Type I permit applicant for a transportation classification permit only shall have a valid commercial driver's license with a hazardous materials endorsement and experience in the transportation of explosive materials for a period of not less than ninety days.

(E) Type I permit limitations

(1) A Type I permit shall be limited to possession and control of explosives while authorized by the Type II permittee(s) for whom the Type I permittee is employed or otherwise associated.

(2) The Type I permit shall be placed on inactive status by the Division upon notification in accordance with Section 3-9(D) that the Type I permittee is no longer authorized to possess and control explosives for a Type II permittee.

(3) Upon receipt of written notification by a Type II permittee of authorization and the return of the original Type I permit card, the Division shall return the Type I permit to active status and issue an updated permit card reflecting the change in employment or association.

(4) An active status Type I permit card shall be carried by the Type I permittee at all times when using, transporting, or possessing explosives.

3-5-2 Type II Explosives Permit

(A) Corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies involved in the use, purchase, sale, manufacture, transportation, or disposal of explosives shall have a valid Type II Explosives Permit.

(B) Only one Type II permit shall be required of any corporation, company, partnership, firm, individual operating a business, association, or state or local government agency, and may be issued for all or any of the following classifications:

(1) CLASSIFICATION AS A MANUFACTURER OF EXPLOSIVES authorizes the possession, manufacture, and purchase of materials required in the process of manufacturing the finished product. A corporation, company, partnership, firm, individual operating a business, association, or state or local government agency that combines compounds to manufacture an explosive is engaged in the business of manufacturing explosives and shall be responsible for compliance with the provisions of 9-6-105 C.R.S., the Explosives Act, 9-7-101, et seq. C.R.S., and any rules and regulations promulgated thereunder.

(2) CLASSIFICATION AS A DEALER OF EXPLOSIVES authorizes the purchase, possession, and resale of explosives or blasting agents. A dealer permit is required of jobbers, wholesalers, distributors, dealers, and retailers, whether or not they physically handle, store, or have possession of the explosives or blasting agents. This permit is also required for all nonresidents who desire to sell explosives within the State of Colorado.

(3) CLASSIFICATION AS A PURCHASER OF EXPLOSIVES authorizes the purchase or acquisition and possession of explosives and blasting agents.

(4) CLASSIFICATION AS A PURCHASER LIMITED authorizes the purchase or acquisition and possession of 1.4 and 1.5 classes of explosives and binary products.

(5) CLASSIFICATION AS A USER OF EXPLOSIVES authorizes the possession and use of explosives and blasting agents by a corporation, company, partnership, firm, individual operating a business, association, or state or local government agency conducting an operation or activity which requires the use of such materials. User permits shall be issued for the following types of operations:

(i) Construction

(a) Applicant must also apply for a Type II transportation permit, or provide to the Division a written plan documenting the manner in which explosives shall be legally transported to and from construction sites.

(ii) Construction Limited

(a) Applicant's use and possession of explosives is limited to 1.4 and 1.5 classes of

explosives and binary products.

(iii) Quarry Operations

(iv) Avalanche Mitigation

(v) Geophysical Research

(vi) Well Perforation

(vii) Manufacturer

(viii) Special (special use or possession and control as described on the permit, including but not limited to fabrication, research and development, rock-breaker cartridges, demolition, law enforcement, unexploded ordnance disposal, purchasing agent, , sales agent, etc.)

(6) A TRANSPORTATION permit authorizes the transportation of explosive materials and blasting agents in quantities that are required to be placarded across or over roads within the state when such transportation is in compliance with federal, state and local transportation laws and regulations.

(i) A copy of a Hazardous Materials Transport Permit issued by the Public Utilities Commission (PUC) shall be submitted with the application.

3-5-3 Type III Storage Permit

(A) Corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies that store explosives shall have a valid Type III permit.

(B) Storage permits shall be issued to those persons who have approved storage magazine sites.

(C) Approval by the Division of a permanent storage magazine site shall include a site inspection by a Division representative. Written notification of the location of the permanent storage magazine site shall be made to the applicable fire district or department.

(D) Approval by the Division of temporary magazine sites shall be made for a period not to exceed 90 days upon written notification to the Division as to the location of the magazine site, the type(s) and supplier of the magazines being utilized, the type and quantity of explosives being stored and proof of written notification of the location of the storage magazine to the applicable fire district or department and county sheriff.

(E) An inspection shall be required at each permanent storage magazine site, including any added permanent storage magazine sites, prior to the renewal of the Type III permit.

Section 3-6 Permit Application

(A) Application for each type of original permit or renewal shall be made on forms available from the Division and shall provide the following information:

(1) The name and address of the applicant

(2) Front and reverse side copies of applicant's driver's license

(3) The reason for desiring to use, purchase, sell, store, manufacture, transport or dispose of

explosives

(4) The applicant's citizenship, if the applicant is an individual

(5) If the Type II applicant is a partnership, the names and addresses of the Type I permitted partners and their citizenship

(6) If the Type II or Type III permit applicant is a corporation, company, firm, association or state or local government agency, the names and addresses of the Type I permitted owner(s), manager(s) or other designated individual thereof, and their citizenship

(7) Where application for a Type II explosives permit is made in the name of a corporation, company, partnership, association, state or local government agency or firm, the application shall be signed by the permitted owner(s), partner(s), manager(s) or other designated individual(s) who will have access to explosive materials and be directly responsible for compliance with the provisions of the Explosives Act, 9-7-101, et seq. C.R.S., and any rules and regulations promulgated thereunder

(8) The name(s) of the valid Type II permittee the Type I permit applicant is employed by or associated with, and for whom the applicant will possess and control explosive materials

(9) Evidence that the Type I applicant is sufficiently trained and experienced in the use, transportation, storage, purchase, sale, disposal or manufacturing of explosives

(10) Such other pertinent information as the Division shall require to effectuate the purpose of these regulations

(B) Application forms may be obtained from the Division.

(C) The submission of an application shall be a certification by the Type I permit applicant that the applicant, or Type I permittee acting as the responsible person for the Type II or Type III permit applicant, has read, understands and accepts these regulations and shall comply with all requirements of these regulations.

(D) Payment of the application fee for a period of 36 months, according to the following list, must accompany each application for a permit.

Type I Explosives Permit:	$110.00
Type II Explosives Permit:	$225.00
Type III Explosives Permit:	$375.00

(E) A check or money order for the fee shall be made payable to the Division and submitted to the address provided on the application.

(F) The applicant may be asked to supply additional information requested by the Division in order to verify statements in an application or in order to facilitate a Division inquiry prior to the issuance or renewal of a permit.

(G) Each Type II application for a manufacturer or dealer permit shall be accompanied by a copy of the applicant's current federal license issued by The Bureau of Alcohol, Tobacco, Firearms and Explosives.

(H) The Type II application for a manufacturer or dealer permit shall list the location(s) in Colorado where explosives will be manufactured or from where explosives will be sold. This shall not be required for the manufacturers of binary explosives.

(I) A valid Type I permit shall be held by at least one of the individual owners, partners, managers or other designated individual for each classification of use requested on the Type II Explosives Permit application.

(J) Each application for an original Type II permit or a renewal permit shall be accompanied by a list of valid Type I permittees authorized to possess and control explosives on behalf of the Type II permittee. The Division shall be notified of any changes of such Type I permittees.

(K) An application for a Type III storage permit shall include the location of all storage facilities and types of magazines to be utilized.

(L) Each application for a Type II permit to purchase shall have a list of Type I permittees authorized to order and receive explosives on behalf of the purchaser. The list of Type I permittees authorized to order and receive explosives on behalf of the purchaser shall be provided to dealers prior to the purchase of explosives.

(M) In addition to the application form, all new Type I applicants, all Type I applicants requesting a change in classification of their permit, and all Type I applicants who have not renewed their permit within 60 days after expiration will be required to obtain a score of not less than 90% on a written examination prepared and administered by the Division. A Type I applicant failing the examination may retake the examination at any time. A Type I applicant failing the examination a second time must wait for a period of at least 14 days before retaking the exam.

(N) All Type I applicants renewing their permits are required to obtain a score of not less than 90% on a written examination prepared and administered by the Division every 3 years or provide proof of 16 hours attendance during the previous 3 years in a training course approved by the Division.

(O) The Division shall obtain a photograph of Type I permit applicants.

(P) Upon receipt of an incomplete application or an application requiring additional information, the applicant will be notified of the deficiency or additional requirements. If the deficiency is not corrected or if the Division does not receive the additional information within 180 days following the date of notification, the application shall be considered abandoned and the Division shall not retain the application.

(Q) Upon receipt of a completed Type I application the applicant will be sent an exam notification. If the Type I permit applicant fails to complete the exam within 180 days of the exam notification, the application shall be considered abandoned and the Division shall not retain the application.

(R) A Type I renewal applicant must complete the exam, if required, within 180 days of the date of the renewal notification letter sent by the Division. Should the renewal applicant fail to complete the exam within 180 days of the date of the renewal letter, the application shall be considered abandoned and the Division shall not retain the application.

Section 3-7 Protection and Exhibition of Permits

Permittees shall take every reasonable precaution to protect their permits from loss, theft, defacement, destruction or unauthorized duplication.

The loss or theft of any permit shall be reported immediately to the local law enforcement agency and to the Division.

Permits, or copies thereof, shall be exhibited in conformity with the following provisions:

(A) Manufacturer - the permit shall be posted at the facility where explosives or blasting agents are manufactured. Manufacturing permits for bulk mix trucks shall be posted in the office of the

permittee.

(B) Dealer- the permit shall be posted in the office at the location where explosives or blasting agents are sold.

(C) Purchaser - the permit or a copy of the permit must be displayed at magazine/warehouse where explosives or blasting agents are received and stored.

(D) User - the permit shall be posted in the main office of explosives operations.

(E) Storage - a copy of the permit must be displayed at the office, warehouse, or in at least one magazine where explosives or blasting agents are received for storage.

(F) A Type I permit card shall be carried by the Type I permittee at all times when using, transporting, or possessing explosives and presented to representatives of the Division and law enforcement officials, upon request, along with valid personal identification.

Section 3-8 Records of Transactions

All permittees shall keep a complete record of all transactions in, or operations involving explosives for five years following the year in which the transactions or operations involving explosives or blasting agents occurred. The permittees must retain copies thereof and furnish such copies to the Division during normal business hours upon request. When the permittee is employed by another person who holds a valid permit, the records of the employer shall be deemed to satisfy these record-keeping requirements.

3-8-1 Manufacturer

The records of a person having a permit to manufacture explosives or blasting agents shall include the following information:

(A) Amount and kinds manufactured.

(B) Amounts and kinds acquired for manufacture.

(C) Names and addresses of the persons from whom acquired and dates on which acquired.

(D) Amount and kinds sold or otherwise disposed of.

(E) Names, addresses and permit numbers of persons to whom sold or otherwise disposed of and dates of the sales or other dispositions.

(F) Amounts and kinds on hand at each location at the end of each day on which there are transactions or operations.

(G) The records kept in accordance with Section 6-1(U) shall meet the record requirements for the manufacture of binary products.

3-8-2 Dealer

The records of a person having a permit for dealer shall include the following information:

(A) Amounts and kinds acquired.

(B) Names and addresses of persons from whom acquired and dates on which acquired.

(C) Amounts and kinds sold or otherwise disposed of.

(D) Names, addresses, and permit numbers of persons to whom sold or otherwise disposed of and the dates of sales or other dispositions. This requirement shall not apply to the sale of smokeless powder.

3-8-3 Type II Permit

A person holding a Type II permit to use explosives or blasting agents shall maintain a record of all explosive material transactions including a daily inventory record of all explosives received, removed from, or returned to each storage magazine in accordance with Section 4-1(F)(6) of these regulations, and records completed by Type I permittees in accordance with Section 6-1(U) and Section 7-4(B)(11).

3-8-4 Type I Permit

Type I permittees shall complete and sign records of explosives used in accordance with Section 6-1(U) or Section 7-4(B)(11) of these regulations.

Section 3-9 Permit Changes

The Division shall be notified immediately when:

(A) There is a change in the permittee's permanent address.

(B) There is a change in the name of a permittee, or a change in the Type I permitted owner(s), manager(s), or other designated individual(s) acting as the responsible person of any Type II or Type III permittee.

(C) The location of an explosives storage facility is changed or added and the address of the new location shall be provided.

(D) There is a change in the Type II permitted employer or association for whom the Type I permittee will possess and control explosive materials.

(E) There is a change in the Type I permitted individuals authorized to possess and control explosives on behalf of a Type II permittee.

(F) A Type I Permit holder is currently charged with, has a pending charge of or has been convicted of any of the offenses listed in 3-3 (B) 1-3.

Section 3-10 Explosives Sales to Permittees

(A) When an order for explosives is placed by a purchaser, the dealer shall request proper authorization and identification from the purchaser and shall record the purchaser's permit number on the sales record.

(B) The purchaser shall provide to the dealer a list of Type I permittees authorized to order and receive explosives on behalf of the purchaser. A dealer shall not distribute explosive materials to a company or individual on the order of a person who does not appear on the most current list of authorized Type I permittees, and if the person does appear on the list, the dealer shall verify the identity of such person.

(C) The authorized Type I permittee who physically receives the purchased explosives shall present his permit and proper identification to the dealer. The receiver of the explosives shall sign a receipt documenting the explosives received with his legal signature and permit number.

(D) All such receipts shall be retained by the dealer for not less than 5 years from the date of purchase.

(E) The dealer shall keep a record of all explosives purchased and sold as required by federal regulations.

(F) Any package containing any explosive or blasting agent that is sold or is delivered for shipment by a dealer shall be properly labeled in accordance with 9-6-105 C.R.S. to indicate its explosive classification.

ARTICLE 4 STORAGE OF EXPLOSIVE MATERIALS

Section 4-1 General Requirements

(A) All explosive materials, special industrial explosive materials, and any newly developed and unclassified explosive materials shall be kept in magazines which meet the requirements as defined in these regulations, unless they are in the process of manufacture, being physically handled in the operating process, being used, or being transported to a place of storage or use. Refer to Section 4-3 for a summary of storage requirements.

(B) High explosives shall not be stored unattended outdoors, or in any building or structure, except in a Type 1 or Type 2 magazine.

(C) Detonators that will not mass detonate (1.4s and 1.4b classification) and are in the original and closed shipping container may also be stored in a Type 4 magazine.

(D) The requirements for the storage of binary explosives shall be:

(1) Storage of the flammable liquid component of a binary explosive shall be in secure storage that complies with the uniform fire code.

(2) Storage of the powder component of a binary explosive shall be in secure storage.

(3) Liquid and powder components shall not be stored together.

(E) Detonators shall not be stored in the same magazine in which other explosives are kept or stored except under the following circumstances:

(1) In a Type 1 or Type 2 magazine, detonators may be stored with delay devices, electric squibs, safety fuse, igniters, and igniter cord.

(2) In a Type 4 magazine, detonators that will not mass detonate (1.4s and 1.4b classification) may be stored with electric squibs, safety fuse, igniters, and igniter cord.

(F) Inventory and Responsibility

(1) Magazines shall be in the charge of a valid permittee at all times who shall be held responsible for the enforcement of all safety precautions.

(2) All explosives shall be accounted for at all times.

(3) Explosives not being used shall be kept in a locked magazine and the keys or combinations to the locks shall be unavailable to persons not holding a valid Type I permit.

(4) The Type II permittee shall maintain an inventory and use record of all explosive materials.

(5) Type I permittees shall record any receipt, removal, or return of explosives materials on inventory records within the magazine or at one central location on the business premises provided that transactions for each magazine are kept separate.

(6) The inventory records shall be maintained on forms approved by the Division and shall include:

(i) Type of explosive material product

(ii) Manufacturer's name or brand name

(iii) Identifying or date shift code

(iv) Amounts received, removed from or returned to the magazine

(v) The signature of the permittee receiving, removing or returning explosive materials

(vi) Total quantity remaining on hand

(7) Explosive materials shall be physically counted at least monthly.

(8) Explosive materials sold and received in individual unit quantities shall be inventoried as individual units.

(9) Explosive materials sold and received as pounds shall be inventoried as pounds when in unopened cases, and as individual cartridges or units when in opened cases.

(10) The Federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the Division, and local law enforcement agencies shall be notified immediately of any loss, theft, or unauthorized entry into a magazine.

(G) Surrounding Area

(1) The land surrounding a magazine shall be kept clear of trash, dried grass, leaves or trees (except for live trees more than 10 feet tall) for a distance of at least 25 feet. Living foliage used to stabilize the earthen coverings of a magazine need not be removed.

(2) Any other combustible materials shall not be stored within 50 feet of magazines.

(3) Smoking, matches or an open flame shall not be permitted:

(i) In any magazine;

(ii) Within 50 feet of any outdoor magazine; or

(iii) Within any room containing an indoor magazine.

(4) Firearms shall not be permitted inside of, or within 50 feet of magazines.

(5) The premises on which all outdoor magazines are located shall be posted with signs with the words "DANGER—KEEP OUT" in letters at least 3 inches high. Signs shall be posted to warn any person approaching the magazine of the hazard, but shall be located so that a bullet passing through the sign will not strike the magazines.

(6) All normal access routes to outdoor explosives storage sites shall be posted with a sign with the words "DANGER- NEVER FIGHT FIRES ON THIS SITE. CALL _____" in letters at least 2 inches high. An emergency contact number shall be written on the sign.

(7) Indoor magazines shall be visibly marked with the words "DANGER – KEEP FIRE AWAY."

(H) Temporary storage at a site for blasting operations shall be located away from neighboring inhabited buildings, railways, highways, and other magazines in accordance with the American Table of Distances (see Section 4-5).

(I) Storage Within Magazines

(1) Packages of explosive materials shall be laid flat with top side up. Corresponding grades and brands shall be stored together in such a manner that brands and grade marks show. All stocks shall be stored so as to be easily counted and checked. Packages of explosives shall be stacked in a stable manner. When any kind of explosive is removed from a magazine for use, the oldest of that particular kind shall always be taken first.

(2) Packages of explosives requiring impact or potentially spark producing methods to open or to close shall not be opened or closed in a magazine, nor within 50 feet of a magazine or in close proximity to other explosive materials.

(3) Tools used for opening packages of explosives shall be constructed of non-sparking materials.

(4) Opened packages of explosives shall be securely closed before being returned to a magazine.

(5) Magazines shall not be used for the storage of any metal tools nor any commodity except explosives; however, this restriction shall not apply to the storage of blasting agents and non-metal blasting supplies.

(6) Magazine floors shall be regularly swept, kept clean, dry, and free of grit, paper, empty used packages, and rubbish. Brooms and other cleaning utensils shall not have any spark-producing metal parts. Sweepings from floors of magazines shall be properly disposed of. Magazine floors stained with nitroglycerin shall be cleaned according to instructions of the manufacturer.

(7) When any explosive has deteriorated to an extent that it is in an unstable or dangerous condition, or if nitroglycerin leaks from any explosives, then the person in possession of such explosives shall immediately proceed to destroy such explosives in accordance with the instructions of the manufacturer. Only Type I permittees experienced in the destruction of explosive materials shall be allowed to do the work of destroying explosives.

(8) When magazines need inside repairs, all explosives shall be removed and the floors cleaned. In making outside repairs, if there is a possibility of causing sparks or fire the explosives shall be removed from the magazine. Explosives removed from a magazine in order for repair shall either be placed in another class appropriate magazine, or placed a safe distance from the magazine where they shall be properly guarded and protected until repairs have been completed, at which time they shall be returned to the magazine.

(9) Explosive materials within a magazine are not to be placed against the interior walls and must be stored so as not to interfere with ventilation when required.

(10) Any person storing explosive materials shall open and inspect the magazine at least every 7 days. This inspection need not be an inventory, but must be sufficient to determine whether there has been unauthorized entry or attempted entry into the magazine, or unauthorized removal of the contents.

(11) Flammables, such as the liquid components of binary products, shall not be stored with other explosives.

(J) Lighting Within Magazines

(1) Battery-activated safety lights or battery-activated safety lanterns may be used in explosives storage magazines.

(2) Electric lighting, including wiring and fixtures, used in any explosives storage magazine must meet the standards prescribed by the National Electrical Code for the conditions present in

the magazine at any time. All electrical switches are to be located outside of the magazine and also meet the standards prescribed by the National Electrical Code.

(3) Light fixtures shall be enclosed to prevent sparks or hot metal from falling on the floor or on materials stored in the magazine.

(4) Interior magazine lights shall be turned off when the magazine is unattended.

(5) Copies of invoices, work orders or similar documents which indicate that the lighting complies with the National Electrical Code must be available for inspection by the Division.

Section 4-2 Classes of Explosive Materials and Examples

For the purposes of this article, there are three classes of explosive materials. These classes, together with the description of explosive materials comprising each class, are as follows:

(A) High Explosives - Explosive materials which can be caused to detonate by means of a detonator when unconfined. Examples include:

(1) Dynamite and detonators;

(2) Detonator-sensitive slurry/water gels and emulsions; and

(3) Mixed binaries.

(B) Low Explosives - Explosive materials which can be caused to deflagrate when confined. Examples include:

(1) Black powder;

(2) Pull wire igniters; and

(3) Safety fuse.

(C) Blasting Agents - Explosives materials consisting of fuel and oxidizer which cannot be detonated by means of a number 8 test detonator when unconfined. Examples include:

(1) Ammonium Nitrate/Fuel Oil mixture (ANFO); and

(2) Non detonator-sensitive slurry/water gels and emulsion products.

Section 4-3 Summary of Storage Requirements

Table 4-3	**Summary of Storage Requirements**
Storage Type	**Classes of Explosive Materials Which May Be Stored Therein**
Type 1 (Permanent)	High Explosives, Low Explosives, Blasting Agents
Type 2 (Portable, Mobile or Fixed)	High Explosives, Low Explosives, Blasting Agents
Type 3 (“Day Box” for Temporary Storage)	High Explosives, Low Explosives, Blasting Agents
Type 4 (Portable, Mobile or Fixed)	Blasting Agents, Low Explosives, Detonators (Original, Closed Cartons of 1.4b, 1.4c And 1.4s)

Type 5 (Portable, Mobile or Fixed)	Blasting Agents

Section 4-4 Storage Magazine Construction by Type

Table 4-4	Storage Magazine Construction By Type				
Construction Features	**Type 1**	**Type 2**	**Type 3**	**Type 4**	**Type 5**
Permanent	X			X	X
Portable or Mobile		X	X	X	X
Bullet-Resistant	X	X			
Fire-Resistant	X	X	X	X	X [(1)]
Theft- Resistant	X	X	X	X	X
Weather- Resistant	X	X	X	X	X
Ventilated	X	X		X	

[(1)] Over the road trucks or semi-trailers used as Type 5 magazines for temporary storage need not be fire resistant.

4-4-1 Type 1 Storage

A Type 1 magazine shall be a permanent structure, e.g., a building, an igloo or Army-type structure, a tunnel, or a dugout. It shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated.

(A) Buildings: All building-type magazines shall be constructed of masonry, wood, metal, or a combination of these materials and shall have no openings except for entrances and ventilation. The ground around building magazines shall slope away for drainage or other adequate drainage shall be provided.

(B) Masonry Wall Construction: Masonry wall construction shall consist of brick, concrete, tile, cement block, or cinder block and shall be not less than 8 inches in thickness. Hollow masonry units used in construction shall have all hollow spaces filled with well-tamped, coarse, dry sand or weak concrete (at least 1 part cement + 8 parts of sand with enough water to dampen the mixture while tamping in place). Interior walls shall be constructed of, or covered with, a non- sparking material.

(C) Fabricated Metal Wall Construction: Metal wall construction shall consist of sectional sheets of steel or aluminum, not less than #14 gauge, securely fastened to a metal framework. Metal wall construction shall be either lined inside with brick, solid cement blocks, hardwood not less than 4 inches thick, or shall have at least a 6-inch sand-fill between interior and exterior walls. Interior walls shall be constructed of, or covered with, a non-sparking material.

(D) Wood Frame Wall Construction: The exterior of outer wood walls shall be covered with steel or aluminum not less than #26 gauge. An inner wall of, or covered with, non-sparking material shall be constructed so as to provide a space of not less than 6 inches between the outer and inner walls. The space shall be filled with coarse, dry sand or weak concrete.

(E) Floors: Floors shall be constructed of, or covered with, a non-sparking material and shall be strong enough to bear the weight of the maximum quantity materials to be stored. Use of pallets covered with a non-sparking material is considered equivalent to a floor constructed of, or covered with, a non-sparking material.

(F) Foundations: Foundations shall be constructed of brick, concrete, cement block, stone, or wood posts. If piers or posts are used in lieu of a continuous foundation, the space under the buildings

shall be enclosed with metal.

(G) Roof: Except for buildings with fabricated metal roofs, the outer roof shall be covered with no less than #26 gauge steel or aluminum fastened to 7/8-inch sheathing.

(H) Bullet-Resistant Ceilings on Roofs: Where it is possible for a bullet to be fired directly through the roof and into the magazine at such an angle that the bullet would strike the explosives within, the magazine shall be protected by one of following methods:

(1) A sand tray with a layer of building paper, plastic, or other nonporous material filled with not less than 4 inches of coarse, dry sand, shall be located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation.

(2) A fabricated metal roof shall be constructed of 3/16-inch thick plate steel lined with 4 inches of hardwood. For each additional 1/16-inch of plate steel, the hardwood lining may be decreased by 1 inch.

(I) Doors: All doors shall be constructed of 1/4-inch plate steel and lined with 3 inches of hardwood. Hinges and hasps shall be attached to the doors by welding, riveting, or bolting (with nuts on the inside of the door). They shall be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.

(J) Locks: Each door shall be equipped with at least one of the following types of locks:

(1) Two mortise locks

(2) Two padlocks fastened in separate hasps and staples

(3) A combination of a mortise lock and a padlock

(4) A mortise lock that requires two keys to open

(5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch in diameter. Padlocks shall be protected with 1/4-inch sheet hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements shall not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(K) Ventilation: Ventilation shall be provided to prevent dampness and heating of stored explosive materials. Ventilation openings shall be screened to prevent the entrance of sparks. Ventilation openings in sidewalls and foundations shall be offset or shielded for bullet-resistance purposes. Magazines having foundation and roof ventilators with the air circulating between the side walls and the floors and between the side walls and the ceiling shall have a wooden lattice lining or equivalent to prevent the packages of explosive materials from being stacked against the side walls and blocking the air circulation.

(L) Exposed Metal: No sparking material shall be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls which might be exposed to contact with explosive materials shall be blind-nailed, countersunk, or covered with a non-sparking latticework or other non-sparking material.

(M) Igloos, Army-Type Structures, Tunnels, & Dugouts: Igloo, army-type structure, tunnel, and dugout magazines shall be constructed of reinforced concrete, masonry, metal, or a combination of these materials. They shall have an earth mound covering of not less than 24 inches on the top, sides,

and rear unless the ceiling or roof meets the bullet-resistant ceiling or roof requirements of this section. Interior walls shall be constructed of, or covered with, a non-sparking material. Magazines of this type shall also be constructed in conformity with the requirements of the floors, doors, locks, ventilation, and exposed metal portions outlined in this section.

4-4-2 Type 2 Storage

A Type 2 magazine shall be a portable or mobile structure such as a box, skid-magazine, trailer, or semi-trailer.

4-4-2-1 Outdoor Type 2 Magazines

Outdoor Type 2 magazines shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated. They shall be supported to prevent direct contact with the ground and, if less than 1 cubic yard in size, shall be securely fastened to a fixed object. The ground around outdoor magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by methods approved by the Division.

(A) Exterior Construction: The exterior and covers or doors shall be constructed of 1/4-inch steel and shall be lined with 2 inches of hardwood. Magazines with top openings shall have lids with water-resistant seals or which overlap the sides by at least 1 inch when in a closed position.

(B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with at least one of the following types of locks:

(1) Two mortise locks

(2) Two padlocks fastened in separate hasps and staples

(3) A combination of a mortise lock and a padlock

(4) A mortise lock that requires two keys to open

(5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(D) Ventilation: Ventilation shall be provided to prevent dampness and heating of stored explosive materials. Ventilation openings shall be screened to prevent the entrance of sparks. Ventilation openings in sidewalls shall be offset or shielded for bullet-resistance purposes. Packages of explosive materials shall not be stacked against the side walls and block the air circulation.

4-4-2-2 Indoor Type 2 Magazines

Indoor Type 2 magazines shall be fire-resistant and theft-resistant if the buildings in which they are stored provide protection from the weather and from bullet penetration. No indoor magazine may be located in a residence or dwelling. The indoor storage of high explosives may not exceed a quantity of 50 pounds.

More than one indoor magazine may be located in the same building if the total quantity of all explosive materials stored does not exceed 50 pounds. Detonators shall be stored in separate magazines.

(A) Exterior Construction: Indoor magazines shall be constructed of wood or metal according to one of the following specifications:

(1) Indoor magazines constructed of wood shall have sides, bottoms, and lids or doors constructed of two-inch wood and shall be well-braced at the corners. The magazines shall be covered on the exterior with sheet metal of not less than #26-gauge. Nails exposed to the interior of magazines shall be countersunk.

(2) Indoor magazines constructed of metal shall have sides, bottom, and lids or doors constructed of at least #12-gauge metal and shall be lined inside with a non-sparking material. Edges of metal covers shall overlap sides at least 1 inch.

(B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with at least one of the following types of locks:

(1) Two mortise locks

(2) Two padlocks fastened in separate hasps and staples

(3) A combination of a mortise lock and a padlock

(4) A mortise lock that requires two keys to open

(5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms, that are locked as provided in this paragraph, may have each door or opening locked with 1 steel padlock (which need not be protected by a steel hood) having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

4-4-3 Alternate Construction Standards for Storage Facilities

It has been determined that a wide range of construction criteria meet the bullet-resistant requirements of ATF Rule 76-18 as published in Bureau Of Alcohol, Tobacco, Firearms, and Explosives, Department Of The Treasury, Publication ATF p 5400.7 (2012) for the construction of storage facilities for explosive materials.

In order to promote standards of safety and security in the storage of explosive materials while allowing the industry a wide latitude in the selection of construction materials, it is held that storage facilities (magazines) that are constructed according to the following minimum specifications are bullet-resistant and meet the requirements of the regulations as set forth in 27 CFR Part 55 (all steel and wood dimensions are actual thicknesses. To meet the concrete block and brick dimensions indicated, the manufacturers' represented thicknesses may be used).

(A) Exterior of 5/8-inch steel, lined with an interior of any type of non-sparking material.

(B) Exterior of 1/2-inch steel, lined with an interior of not less than 3/8-inch plywood.

(C) Exterior of 3/8-inch steel, lined with an interior of 2 inches of hardwood.

(D) Exterior of 3/8-inch steel, lined with an interior of 3 inches of softwood or 2¼ inches of plywood.

(E) Exterior of 1/4-inch steel, lined with an interior of 3 inches of hardwood.

(F) Exterior of 1/4-inch steel, lined with an interior of 5 inches of softwood or 5¼ inches of plywood.

(G) Exterior of 1/4-inch steel, lined with an intermediate layer of 2 inches of hardwood and an interior lining of 1½ inches of plywood.

(H) Exterior of 3/16-inch steel, lined with an interior of 4 inches of hardwood.

(I) Exterior of 3/16-inch steel, lined with an interior of 7 inches of softwood or 6¾ inches of plywood.

(J) Exterior of 3/16-inch steel, lined with an intermediate layer of 3 inches of hardwood and an interior lining of 3/4-inch of plywood.

(K) Exterior of 1/8-inch steel, lined with an interior of 5 inches of hardwood.

(L) Exterior of 1/8-inch steel, lined with an interior of 9 inches of softwood.

(M) Exterior of 1/8-inch steel, lined with an intermediate layer of 4 inches of hardwood and an interior lining of 3/4-inch plywood.

(N) Exterior of any type of fire-resistant material which is structurally sound, lined with an intermediate layer of 4 inches of solid concrete block, or 4 inches of solid brick or 4 inches of solid concrete; and, an interior lining of 1/2-inch plywood placed securely against the masonry lining.

(O) Standard 8-inch concrete block with voids filled with well-tamped sand/cement mixture.

(P) Standard 8-inch solid brick.

(Q) Exterior of any type of fire-resistant material which is structurally sound, lined with an intermediate 6-inch space filled with well-tamped dry sand or well-tamped sand/cement mixture.

(R) Exterior of 1/8-inch steel, lined with a first intermediate layer of 3/4-inch plywood, a second intermediate layer of 3⅝ inches of well-tamped dry sand or sand/cement mixture and an interior lining of 3/4-inch plywood.

(S) Second intermediate layer of 3⅝ inches well tamped dry sand or sand/cement mixture, a third intermediate layer of 3/4-inch plywood, and a fourth intermediate layer of two inches of hardwood or #14 gauge steel and an interior lining of 3/4-inch plywood.

(T) 8-inch thick solid concrete.

4-4-4 Type 3 Storage

A Type 3 magazine shall be a “day-box” or other portable magazine. It shall be fire-resistant, weather-resistant, and theft-resistant. A Type 3 magazine shall be constructed of #12-gauge metal lined with either 1/2-inch plywood or 1/2-inch Masonite-type hardboard. Doors shall overlap sides by at least 1 inch. Hinges and hasps shall be attached by welding, riveting or bolting (with nuts on the inside of the door). A single lock having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter shall be sufficient for locking purposes. Explosive materials may not be left unattended in Type 3 magazines, but

must be removed to either a Type 1 or 2 magazine for unattended storage.

4-4-5 Type 4 Storage

A Type 4 magazine shall be a building, igloo or army-type structure, tunnel, dugout, box, trailer, or a semi-trailer or other mobile magazine.

4-4-5-1 Outdoor Type 4 Magazines

Outdoor Type 4 magazines shall be fire-resistant, weather-resistant, theft-resistant, ventilated and shall be at least 1 cubic yard in size, or securely fasted to a fixed object. The ground around outdoor magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by other methods approved by the Division.

(A) Construction: Outdoor magazines shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. Foundation shall be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used in lieu of a continuous foundation, the space under the buildings shall be enclosed with fire-resistant material. The walls and floors shall be constructed of, or covered with, a non-sparking material or lattice work. The doors or covers shall be metal or solid wood covered with metal.

(B) Hinges and Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with at least one of the following types of locks:

(1) 2 mortise locks

(2) 2 padlocks fastened in separate hasps and staples

(3) A combination of a mortise lock and a padlock

(4) A mortise lock that requires two keys to open

(5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or a bar that cannot be actuated from the outside.

(D) Ventilation: Ventilation shall be provided to prevent dampness and heating of stored explosive materials. Ventilation openings shall be offset or shielded and screened to prevent the entrance of sparks. The packages of explosive materials shall not be stacked against the side walls and block the air circulation.

4-4-5-2 Indoor Type 4 Magazines

Indoor magazines shall be fire-resistant and theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine may be located in a residence or dwelling. The indoor storage of low explosives may not exceed a quantity of 50 pounds. More than one indoor magazine may be located in the same building if the total quantity of all

explosive materials stored does not exceed 50 pounds. Detonators that will not mass detonate shall be stored in separate magazines and the total number of detonators may not exceed 5,000.

(A) Construction: Indoor magazines shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. The walls and floors shall be constructed of, or covered with, a non-sparking material. The doors or covers shall be metal or solid wood covered with metal.

(B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with at least one of the following types of locks:

(1) 2 mortise locks

(2) 2 padlocks fastened in separate hasps and staples

(3) A combination of a mortise lock and a padlock

(4) A mortise lock that requires two keys to open

(5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms, that are locked as provided in this paragraph, may have each door or opening locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

4-4-6 Type 5 Storage

A Type 5 magazine shall be a building, igloo or army-type structure, tunnel, dugout, bin, box, trailer, or a semitrailer or other mobile facility.

4-4-6-1 Outdoor Type 5 Magazines

Outdoor Type 5 magazines shall be weather-resistant, fire-resistant and theft-resistant. Over-the-road trucks or semi-trailers used as Type 5 magazines for temporary storage need not be fire-resistant. The ground around magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Division.

(A) Construction: The doors or covers shall be constructed of solid wood or metal.

(B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with 1 padlock having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Indoor magazines located in secure rooms, that

are locked as provided in this paragraph, may have each door or opening locked with 1 steel padlock (which need not be protected by a steel hood) having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock or bar that cannot be actuated from the outside.

4-4-6-2 Indoor Type 5 Magazines

Indoor Type 5 magazines shall be theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine may be located in a residence or dwelling. Indoor magazines containing quantities of blasting agents in excess of 50 pounds shall be subject to the American Table of Distances in Section 4-5-1 of this subpart.

(A) Construction: The doors or covers shall be constructed of wood or metal.

(B) Hinges and Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with 1 padlock having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter.

Indoor magazines located in secure rooms that are locked as provided in this paragraph may have each door or opening locked with 1 steel padlock (which need not be protected by a steel hood) having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock or bar that cannot be actuated from the outside.

Section 4-5 Location of Magazines

(A) Outdoor magazines in which high explosives are stored shall be located no closer to inhabited buildings, passenger railways, public highways or other magazines in which high explosives are stored than the minimum distances specified in the American Table of Distances for Storage of Explosive Materials in Table 4-5-1.

(B) Outdoor magazines in which low explosives are stored shall be located no closer to inhabited buildings, passenger railways, public highways or other magazines in which explosives are stored than the minimum distances specified in the American Table of Distances for Storage of Low Explosives in Table 4-5-2. The distances shown therein may not be reduced by the presence of barricades.

(C) Outdoor magazines in which blasting agents are stored shall be located no closer to inhabited buildings, passenger railways or public highways than the minimum distances specified in the American Table of Distances for Storage of Explosive Materials in Table 4-5-1.

(D) Ammonium nitrate and magazines in which blasting agents are stored shall be located no closer to magazines in which high explosives or other blasting agents are stored than the minimum distances specified in the American Table of Distances for the Separation of Ammonium Nitrate and Blasting Agents in Table 4-5-3. However, the minimum distances for magazines in which explosives and blasting agents are stored from inhabited buildings, passenger railways or public highways may not be less than the distances specified in the American Table of Distances for Storage of Explosive Materials in Table 4-5-1.

Table 4-5-1		American Table of Distances for Storage of Explosive Materials							
Quantity of Explosive Materials [1,2,3,4]		Distances in Feet							
		Inhabited Buildings [9]		Public Highways with Traffic Volume of less than 3,000 Vehicles/Day [11]		Passenger Railways-Public Highways with Traffic Volume of more than 3,000 Vehicles/Day [10, 11]		Separation of Magazines [12]	
Pounds Over	Pounds Not Over	Barricaded [6,7,8]	Unbarricaded	Barricaded [6,7,8]	Unbarricaded	Barricaded [6,7,8]	Unbarricaded	Barricaded [6,7,8]	Unbarricaded
0	5	70	140	30	60	51	102	6	12
5	10	90	180	35	70	64	128	8	16
10	20	110	220	45	90	81	162	10	20
20	30	125	250	50	100	93	186	11	22
30	40	140	280	55	110	103	206	12	24
40	50	150	300	60	120	110	220	14	28
50	75	170	340	70	140	127	254	15	30
75	100	190	380	75	150	139	278	16	32
100	125	200	400	80	160	150	300	18	36
125	150	215	430	85	170	159	318	19	38
150	200	235	470	95	190	175	350	21	42
200	250	255	510	105	210	189	378	23	46
250	300	270	540	110	220	201	402	24	48
300	400	295	590	120	240	221	442	27	54
400	500	320	640	130	260	238	476	29	58
500	600	340	680	135	270	253	506	31	62
600	700	355	710	145	290	266	532	32	64
700	800	375	750	150	300	278	556	33	66
800	900	390	780	155	310	289	578	35	70
900	1,000	400	800	160	320	300	600	36	72
1,000	1,200	425	850	165	330	318	636	39	78
1,200	1,400	450	900	170	340	336	672	41	82
1,400	1,600	470	940	175	350	351	702	43	86
1,600	1,800	490	980	180	360	366	732	44	88
1,800	2,000	505	1,010	185	370	378	756	45	90
2,000	2,500	545	1,090	190	380	408	816	49	98
2,500	3,000	580	1,160	195	390	432	864	52	104
3,000	4,000	635	1,270	210	420	474	948	58	116
4,000	5,000	685	1,370	225	450	513	1,026	61	122
5,000	6,000	730	1,460	235	470	546	1,092	65	130
6,000	7,000	770	1,540	245	490	573	1,146	68	136
7,000	8,000	800	1,600	250	500	600	1,200	72	144
8,000	9,000	835	1,670	255	510	624	1,248	75	150
9,000	10,000	865	1,730	260	520	645	1,290	78	156
10,000	12,000	875	1,750	270	540	687	1,374	82	164
12,000	14,000	885	1,770	275	550	723	1,446	87	174
14,000	16,000	900	1,800	280	560	756	1,512	90	180
16,000	18,000	940	1,880	285	570	786	1,572	94	188
18,000	20,000	975	1,950	290	580	813	1,626	98	196
20,000	25,000	1,055	2,000	315	630	876	1,752	105	210
25,000	30,000	1,130	2,000	340	680	933	1,866	112	224
30,000	35,000	1,205	2,000	360	720	981	1,962	119	238
35,000	40,000	1,275	2,000	380	760	1,026	2,000	124	248
40,000	45,000	1,340	2,000	400	800	1,068	2,000	129	258
45,000	50,000	1,400	2,000	420	840	1,104	2,000	135	270
50,000	55,000	1,460	2,000	440	880	1,140	2,000	140	280
55,000	60,000	1,515	2,000	455	910	1,173	2,000	145	290
60,000	65,000	1,565	2,000	470	940	1,206	2,000	150	300
65,000	70,000	1,610	2,000	485	970	1,236	2,000	155	310
70,000	75,000	1,655	2,000	500	1,000	1,263	2,000	160	320
75,000	80,000	1,695	2,000	510	1,020	1,293	2,000	165	330
80,000	85,000	1,730	2,000	520	1,040	1,317	2,000	170	340
85,000	90,000	1,760	2,000	530	1,060	1,344	2,000	175	350
90,000	95,000	1,790	2,000	540	1,080	1,368	2,000	180	360
95,000	100,000	1,815	2,000	545	1,090	1,392	2,000	185	370
100,000	110,000	1,835	2,000	550	1,100	1,437	2,000	195	390
110,000	120,000	1,855	2,000	555	1,110	1,479	2,000	205	410
120,000	130,000	1,875	2,000	560	1,120	1,521	2,000	215	430
130,000	140,000	1,890	2,000	565	1,130	1,557	2,000	225	450
140,000	150,000	1,900	2,000	570	1,140	1,593	2,000	235	470
150,000	160,000	1,935	2,000	580	1,160	1,629	2,000	245	490
160,000	170,000	1,965	2,000	590	1,180	1,662	2,000	255	510
170,000	180,000	1,990	2,000	600	1,200	1,695	2,000	265	530
180,000	190,000	2,010	2,010	605	1,210	1,725	2,000	275	550
190,000	200,000	2,030	2,030	610	1,220	1,755	2,000	285	570
200,000	210,000	2,055	2,055	620	1,240	1,782	2,000	295	590
210,000	230,000	2,100	2,100	635	1,270	1,836	2,000	315	630
230,000	250,000	2,155	2,155	650	1,300	1,890	2,000	335	670
250,000	275,000	2,215	2,215	670	1,340	1,950	2,000	360	720
275,000	300,000	2,275	2,275	690	1,380	2,000	2,000	385	770

Table: American Table of Distances for Storage of Explosive Materials as Revised and Approved by the Institute of Makers of Explosives – June 1991

Table 4-5-2	Table of Distance for the Storage of Low Explosives			
Quantity of Explosives (In Pounds)		Distance in Feet		
Over	Not Over	From Inhabited Buildings	From Public Railways and Highways	From Above Ground Magazine
0	1,000	75	75	50
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	375	375	250
200,000	300,000	450	450	300

Table: Department of Defense Ammunition and Explosives Standards, Table 5–4.1 Extract; 4145.27 M, March 1969

Table 4-5-3		Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents[1,6]		
Donor Weight		Minimum Separation Distance of Acceptor when Barricaded[2] (ft.)		
Pounds Over	Pounds Not Over	Ammonium Nitrate[3]	Blasting Agent[4]	Minimum Thickness of Artificial Barricades[5] (in.)
	100	3	11	12
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,000	6,000	11	40	15
6,000	8,000	12	43	20
8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30
40,000	45,000	22	79	35
45,000	50,000	23	83	35
50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40
80,000	90,000	30	108	40
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

Table: National Fire Protection Association (NFPA) Official Standard No. 492, 1968

Explanatory Notes Essential to the Application of the American Table of Distances for Storage of Explosive Materials

NOTE 1 "Explosive materials" means explosives, blasting agents and detonators.

NOTE 2 "Explosives" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. For quantity and distance purposes, detonating cord of 50 grains per foot should be calculated as equivalent to 8 lbs. of high explosives per 1,000 feet. Heavier or lighter core loads should be rated proportionately.

NOTE 3 "Blasting agents" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive provided that the finished product as mixed for use or shipment, cannot be detonated by means of a No.8 test blasting cap when unconfined.

NOTE 4 "Detonator" means any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, electronic detonators**,** blasting caps for use with safety fuses, detonating cord delay connectors, and non-electric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires. All types of detonators in strengths through No.8 cap should be rated at 1 1/2 lbs. of explosives per 1,000 caps. For strengths higher than No.8 cap consult the manufacturer.

NOTE 5 "Magazine" means any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.

NOTE 6 "Natural Barricade" means natural features of the ground such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

NOTE 7 "Artificial Barricade" means an artificial mound or wall of earth of a minimum thickness of three feet.

NOTE 8 "Barricaded" means the effective screening of a building containing explosive materials from the magazine or other building, railway, or highway by a natural or an artificial barrier. A straight line from the top of any sidewall of the building containing explosive materials to the eave line of any magazine or other building or to a point twelve feet above the center of a railway or highway shall pass through such barrier.

NOTE 9 "Inhabited Building" means a building regularly occupied in whole or part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.

NOTE 10 "Railway" means any steam, electric, or other railroad or railway which carries passengers for hire.

NOTE 11 "Highway" means any public street, public alley, or public road.

NOTE 12 When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways and highways, and, in addition, they should be separated from each other by not less than the distances shown for "Separation of Magazines," except that the quantity of explosive materials contained in detonator magazines shall govern in regard to the spacing of said detonator magazines from magazines containing other explosive materials. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then such two or more magazines, as a group, must be considered as one magazine, and the total quantity of explosive materials stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group, and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways, and highways.

NOTE 13 Storage in excess of 300,000 lbs. of explosive materials, in one magazine is generally not required for commercial enterprises.

NOTE 14 This Table applies only to the manufacture and permanent storage of commercial explosive materials. It is not applicable to transportation of explosives or any handling or temporary storage necessary or incident thereto. It is not intended to apply to bombs, projectiles, or other heavily encased explosives.

NOTE 15 When a manufacturing building on an explosive materials plant site is designed to contain explosive materials, such building shall be located from inhabited buildings, public highways and passenger railways in accordance with the American Table of Distances based on the maximum quantity of explosive materials permitted to be in the building at one time.

American Table of Distances

The American Table of Distances applies to the manufacture and permanent storage of ***commercial*** explosive materials. The distances specified are those measured from the explosive materials storage facility to the inhabited building, highway or passenger railway, irrespective of property lines.

The American Table of Distances covers all ***commercial*** explosive materials, including, but not limited to, high explosives, blasting agents, detonators, initiating systems and explosives materials in process. The Table is not designed to be altered or adjusted to accommodate varying explosive characteristics such as blast effect, weight strength, density, bulk strength, detonation velocity, etc.

The American Table of Distances should not be used to determine safe distances for blasting work, the firing of explosive charges for testing or quality control work, or the open detonation of waste explosive materials. The American Table of Distances may be utilized as a guide for developing distances for the unconfined, open burning of waste explosive materials where the probability of transition from burning to high order detonation is improbable.

Notes to Table of Recommended Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents

NOTE 1 Recommended separation distances to prevent explosion of ammonium nitrate and ammonium nitrate-based blasting agents by propagation from nearby stores of high explosives or blasting agents referred to in the Table as the "donor." Ammonium nitrate, by itself, is not considered to be a donor when applying this Table. Ammonium nitrate, ammonium nitrate-fuel oil or combinations thereof are acceptors. If Stores of ammonium nitrate are located within the sympathetic detonation distance of explosives or blasting agents, one-half the mass of the ammonium nitrate should be included in the mass of the donor.

NOTE 2 When the ammonium nitrate and/or blasting agent is not barricaded, the distances shown in the Table shall be multiplied by six. These distances allow for the possibility of high velocity metal fragments from mixers, hoppers, truck bodies, sheet metal structures, metal containers, and the like which may enclose the "donor." Where storage is in bullet-resistant magazines is recommended for explosives or where the storage is protected by a bullet-resistant wall, distances and barricade thicknesses in excess of those prescribed in the American Table of Distances are not required.

NOTE 3 The distances in the Table apply to ammonium nitrate and ammonium nitrate based materials that show "negative" (-) result in the UN Test Series 2 Gap Test and show "positive" (+) result in the UN Test Series 1 Gap Test. Ammonium nitrate and ammonium nitrate based materials that are DOT hazard Class 1 sensitive shall be stored at separation distances determined by the American Table of Distances.

NOTE 4 These distances apply to blasting agents which pass the insensitivity test prescribed in regulations of the U.S. Department of Transportation and the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

NOTE 5 Earth, or sand dikes, or enclosures filled with the prescribed minimum thickness of earth or sand are acceptable artificial barricades. Natural barricades, such as hills or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the "donor" when the trees are bare of leaves, are also acceptable.

NOTE 6 For determining the distances to be maintained from inhabited buildings, passenger railways, and public highways, use the American Table of Distances for Storage of Explosives Materials on pages 58 and 59.

*For construction of bullet-resistant magazines see Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Publication ATF P 5400.7 (9/00), *ATF-Explosives Law and Regulations.*

ARTICLE 5 TRANSPORTATION OF EXPLOSIVES

Section 5-1 General Requirements

(A) Transportation of explosives, blasting agents, and blasting supplies on public highways, railways, and airways shall be in accordance with the provisions of Title 42 Article 20 C.R.S. and any regulations promulgated pursuant thereto and Title 49 CFR Parts 171-179 and Parts 390-397, Motor Carriers.

(B) Requirements for the transportation of explosives, blasting agents and blasting supplies by motorized vehicle or conveyance on job sites shall be:

(1) No person shall smoke, carry matches or any other flame-producing device or carry firearms or loaded cartridges while in or near a motor vehicle or conveyance transporting explosives.

(2) No person shall drive, load or unload a vehicle or conveyance transporting explosives in a careless or reckless manner.

(3) Vehicles or conveyances transporting explosives, blasting agents or blasting supplies shall not be taken inside a garage or shop for repairs or servicing.

(4) Vehicles or conveyances used for transporting explosives shall be equipped to carry the load without difficulty and shall be in good mechanical condition.

(5) A motor vehicle or conveyance used for transporting explosives shall be given the following inspection prior to the transportation to determine that it is in proper condition for the safe transportation of explosives:

(i) Fire extinguishers shall be filled and in proper working order;

(ii) All electrical wiring shall be completely protected and securely fastened to prevent short-circuiting;

(iii) Chassis, motor, pan and underside of body shall be completely free of excess oil and grease;

(iv) Fuel tank and fuel line shall be secure and have no leaks;

(v) Brakes, lights, horn, windshield wipers and steering apparatus shall function properly;

(vi) Tires shall be checked for proper inflation and defects; and

(vii) The vehicle shall be in proper condition in every other respect and acceptable for handling explosives.

(6) All vehicles or conveyances used for transporting explosives shall have tight floors, and any exposed spark-producing metal on the inside of the body shall be covered with wood or other non-sparking materials to prevent contact with packages of explosives.

(7) Packages of explosives or blasting agents shall not be loaded above the sides of an open-body vehicle or conveyance.

(8) Explosives shall not be transported with other materials or cargoes in the same compartment. In no case shall flammable materials be carried on the same vehicle as explosives, with the exception of desensitizing agents.

(9) Each vehicle or conveyance used for transportation of explosives shall be equipped with at least one charged fire extinguisher each with an extinguisher rating of at least 4-A:10B:C. Extinguishers shall be located where they will be accessible for immediate use.

(10) Explosives shall be transferred from a disabled vehicle or conveyance to another vehicle or conveyance only when proper and qualified supervision is provided. Local fire departments and police departments shall be notified if a transfer occurs in a congested area. In remote areas, they shall be notified if appropriate.

(11) A motorized vehicle or conveyance which contains explosives or detonators shall not be parked under any of the following circumstances:

(i) On or within 5 feet of the traveled portion of a public street or highway; or

(ii) Within 300 feet of a bridge, tunnel, building, or place where people work, assemble, or congregate, except for brief periods when the necessities of operation require the vehicle or conveyance to be parked and make it impracticable to park the vehicle or conveyance in any other place.

(12) A motorized vehicle or conveyance transporting explosives, detonators, or blasting agents shall not be left unattended.

(13) A motorized vehicle or conveyance shall be deemed attended only when the driver or other attendant is physically on or in the vehicle or conveyance, or has the vehicle or conveyance within the driver or attendant's field of vision and can reach the vehicle or conveyance quickly and without any kind of interference; attended also means the driver or attendant is awake, alert, and not engaged in any other duties or activities which may divert his/her attention from the vehicle or conveyance.

(14) Detonators may not be transported in the same vehicle or conveyance with other explosives unless:

(i) The detonators and explosives are placed in separate locked Type 2 magazines secured within the body of the vehicle or conveyance;

(ii) The detonators and explosives are placed in a suitable locked container and separated by 4 inches of hardwood and the detonators are totally enclosed or confined by the hardwood construction;

(iii) The detonators and explosives are placed in separate locked containers or container compartments constructed in accordance with the Institute of Makers of Explosives Safety Library Publication No. 22, "IME Standard for the Safe Transportation of Detonators in a Vehicle with Other Explosives"; or

(iv) The detonators and explosives are placed in separate locked Type 3 magazines.

(C) Requirements for the transportation of explosives, blasting agents and blasting supplies to blasting areas by non-motorized means shall be:

(1) Explosives and blasting agents shall be carried in day boxes, original containers or shall be placed in bags or containers that are water-resistant and constructed of non-sparking and nonconductive material.

(2) Detonators shall be wrapped in suitable padding and carried in separate bags or containers from other explosives.

ARTICLE 6 USE OF EXPLOSIVE MATERIALS

Section 6-1 General Requirements

(A) While explosives are being handled or used, smoking, matches or any other source of fire or flame shall not be within 50 feet of the blast site.

(B) No person shall handle explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs. This rule does not apply to persons taking prescription drugs and/or narcotics as directed by a physician providing such use shall not endanger the worker or others.

(C) When blasting is done in populated or residential areas or in close proximity to a structure, railway, or highway or any other installation that may be damaged, the following precautions shall be taken:

(1) The blast shall be covered, before firing, with a mat or material that is capable of preventing fragments from being thrown;

(2) The blast shall be loaded in compliance with the Table of Scaled Distance (Table 6-10) or be monitored by a seismograph; and

(3) All persons within the blast area shall be given reasonable notification prior to blasting operations and informed as to the type of warning signal that will be given prior to the blast.

(D) Blasters conducting blasting operations shall take every reasonable precaution, including but not limited to warning signals, flags and barricades to insure the safety of the general public and workers.

(E) Surface blasting operations shall be conducted during periods of daylight, when the blast area is clearly visible. Blasting operations conducted after periods of daylight shall be approved by the Division and local law enforcement agency prior to each blast. Approval shall only be granted if such approval serves the safety of the general public.

(F) The blaster shall perform all required notification to and obtain all required permits from local jurisdictions or authorities, including, but not limited to, the County Sheriff, local fire districts and fire departments before beginning blasting operations.

(G) Whenever blasting operations are subject to federal and , state ~~and local~~ rules, the higher standard shall apply.

(H) Whenever blasting is being conducted in the vicinity of gas, electric, water, fire alarm, telephone, telegraph, steam utilities or transportation corridors, the blaster shall notify the appropriate transportation or utility representatives at least 24 hours in advance of blasting, specifying the location and intended time of such blasting.

(I) The blaster shall suspend all blasting operations and remove all persons from the blast site during the approach and progress of an electrical storm.

(J) No fire shall be fought where the fire is in imminent danger of contact with explosives. All employees shall be removed to a safe area and the fire area guarded against intruders.

(K) Detonators or other explosives shall never be carried in pockets of clothing.

(L) Detonators shall not be inserted in explosive materials that do not have a cap well without first

making a hole in the cartridge with a non-sparking punch of proper size, or the appropriate pointed handle of a cap crimper.

(M) The detonator shall be secured within the primer so that no tension is placed on the leg wires, safety fuse, shock tube, plastic tubing or detonating cord at the point of entry into the detonator.

(N) The detonator shall be fully inserted into the primer cartridge or booster and shall not protrude from the cartridge.

(O) Cast primers and boosters shall not be used if the hole is too small for the detonator, and attempting to enlarge the hole in a cast primer or booster shall not be permissible.

(P) Primers are not to be prepared in a magazine or near large quantities of explosive materials.

(Q) Explosives and blasting agents shall be kept separated from detonators until the charge is placed.

(R) Only non-sparking metallic slitters may be used for opening fiberboard cases.

(S) Cartridges or packages of explosives showing signs of discoloration or deterioration must be carefully set aside and properly disposed of in accordance with manufacturer's recommendations.

(T) No explosive material shall be abandoned or left in any location for any reason, nor left in such a manner that they may easily be obtained by children or other unauthorized persons. All unused explosives shall be returned to proper storage facilities.

(U) A record of each blast shall be kept. All records, including seismograph reports, shall be retained at least five years, be available for inspection by the Division, and contain at least the following minimum data, as applicable:

(1) Person for whom blasting operations are conducted

(2) Name, permit number, and signature of the blaster

(3) Exact location or address of the blast, date and time of detonation

(4) Type of material blasted

(5) Number of holes, burden and spacing

(6) Diameter and depth of holes

(7) Types of explosives used

(8) Amount and type of explosive loaded in each borehole or used in each charge

(9) Total amount of each explosive used

(10) Maximum amount of explosives and holes detonated within 8 milliseconds

(11) Method of firing and type of circuit

(12) Direction, distance in feet, and identification of the nearest dwelling, house, public building, school, church, commercial or institutional building neither owned nor leased by the person or company conducting the blasting

(13) Weather conditions

(14) Type and height or length of stemming

(15) A statement as to whether mats or protection against flyrock were used

(16) Type of delay caps used and delay periods used

(17) The person taking the seismograph reading shall accurately indicate exact location of the seismograph if used and shall show the distance of the seismograph from the blast

(18) Seismograph records, where required, which shall include:

(i) Name of person and firm analyzing the seismograph record; and

(ii) Seismograph reading.

(19) Sketch of blast pattern including number of holes, burden and spacing distance, delay pattern, and if decking is used, a hole profile.

Section 6-2 Drilling and Loading

(A) Procedures that permit safe and efficient loading shall be established before the loading of explosive materials is started.

(B) All boreholes shall be sufficiently large to admit freely the insertion of the cartridges of explosives.

(C) Tamping shall be done only with wooden rods or with approved plastic tamping poles without exposed metal parts, but non-sparking metal connectors may be used for jointed poles. Violent tamping shall be avoided. The primer shall never be tamped.

(D) No boreholes shall be loaded except those to be fired in the next round of blasting. After loading, all remaining explosive materials shall be immediately returned to magazines or day boxes.

(E) No explosives or blasting agents shall be left unattended on a blast site.

(F) Drilling shall not be started until all remaining butts of old boreholes are examined for unexploded charges, and if any are found, they shall be refired or removed before work proceeds.

(G) No person shall be allowed to deepen boreholes that have contained explosives or blasting agents.

(H) Drilling shall not be conducted where there is a danger of intersecting a loaded borehole or misfired explosive material.

(I) Equipment, machines and all tools not used for loading explosives into boreholes shall be removed from the immediate location of boreholes being loaded with explosives. Equipment shall not be operated within 50 feet of loaded boreholes except when equipment is needed to add cover or mats.

(J) Loaded boreholes shall not be left unattended.

(K) The Type I permittee shall maintain an accurate, up-to-date record of explosives, blasting agents and all blasting supplies used in a blast and shall keep an accurate running inventory of all explosives and blasting agents stored on the operation.

(L) Pneumatic loading of blasting agents into blast holes primed with electric detonators or other static-sensitive initiation systems shall conform to the following requirements:

(1) A positive grounding device for the equipment shall be used to prevent the accumulation of static electricity.

(2) A semi-conductive hose shall be used.

(3) A qualified person shall evaluate all systems to assure that they will adequately dissipate static under potential field conditions.

(M) Primers shall be made up immediately prior to placing the primer in the borehole.

(N) Dropping or pushing a primer or any explosive with a lighted fuse attached into a borehole is prohibited.

(O) Detonators shall not be loaded into a hot hole or exposed to temperatures above 150° F unless specifically designed and approved by the manufacturer for higher temperatures.

Section 6-3 Electric Initiation of Blasts

(A) Electric detonators may be used for blasting operations in congested districts, or on highways, or adjacent to highways open to traffic, except where sources of extraneous electricity make such use dangerous.

(B) Electric detonator wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.

(C) Signs shall be posted warning against the use of mobile radio transmitters on all adjacent highways and roads.

(D) Mobile radio transmitters that are less than 100 feet away from electric detonators shall be de-energized and effectively locked when the detonators are not in the original containers.

(E) Electric detonators shall be used in compliance with the recommendations of IME with regard to blasting in the vicinity of radio transmitters as stipulated in Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps), IME Safety Library Publication No. 20, December 2011.

(F) Precautions in accordance with the recommendations of IME with regard to blasting in the vicinity of radio transmitters as stipulated in Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps), IME Safety Library Publication No. 20, December 2011 shall be taken to prevent accidental discharge of electric detonators from current induced by radar, cellular telephones, radio transmitters, battery contact, lightning, adjacent power lines, static electricity, dust storms, blowing snow or other sources of extraneous electricity.

(G) Before adopting any system of electrical firing, the blaster shall conduct a thorough survey for extraneous currents, and all dangerous currents shall be eliminated before any holes are loaded.

(H) In any single blast using electric detonators, all detonators shall be of the same style or function and be of the same manufacture.

(I) Electric blasting shall be carried out by using blasting circuits or power circuits, in accordance with the electric detonator manufacturer’s recommendations.

(J) The firing line shall be checked with an approved testing device at the terminals before being connected to the blasting machine or other power source.

(K) The circuit, including all detonators, shall be tested with an approved testing device before being connected to the firing line.

(L) When firing a circuit of electric detonators, care shall be exercised to ensure that an adequate quantity of delivered current is available, in accordance with the manufacturer's recommendation.

(M) Connecting wires and lead wires shall be insulated single solid wires of sufficient current- carrying capacity and shall not be less than #20 gauge (American wire gauge) solid core insulated wire.

(N) Firing line or leading wires shall be solid single wires of sufficient current carrying capacity, and shall be not less than #14 gauge (American wire gauge) solid core insulated wire. Bus wires depend on the size of the blast, but #14 gauge (American wire gauge) copper is recommended.

(O) The ends of lead wires which are to be connected to a firing device shall be shorted by twisting them together or otherwise connecting them before they are connected to the leg wires or connecting wires, and they shall be kept in the possession of the person who is doing the loading until loading is completed and the leg wires attached. Lead wires shall not be attached to the firing device until the blaster is ready to fire the shot and must be attached by the blaster.

(P) The ends of the leg wires on electric detonators shall be shorted in a similar manner and not separated until all holes are loaded and the loader is ready to connect the leg wires to the connecting wires or lead wires.

(Q) When firing electrically, the insulation on all firing lines shall be adequate and in good condition.

(R) A power circuit used for firing electric detonators shall not be grounded.

(S) When firing from a power circuit, the firing switch shall be locked in the open or "off" position at all times, except when firing. It shall be so designed that the firing lines to the cap circuit are automatically short-circuited when the switch is in the 'off' position. Keys to this switch shall be entrusted only to the blaster.

(T) Blasting machines shall be in good condition and the efficiency of the machine shall be tested periodically to make certain that it can deliver power at its rated capacity.

(U) When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric detonators used.

(V) The number of electric detonators connected to a blasting machine shall not be in excess of its rated capacity. A series or circuit shall contain no more detonators than the limits recommended by the manufacturer of the electric detonators in use.

(W) The blaster shall be in charge of the blasting machines, and no other person shall connect the leading wires to the machine.

(X) Blasters, when testing circuits to charged holes, shall use only blasting testers especially designed for this purpose.

(Y) In electrical firing, only the person making leading wire connections shall fire the shot. All connections shall be made from the borehole back to the source of firing current, and the lead line wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

(Z) After firing an electric blast from a blasting machine, the leading wires shall be immediately disconnected from the machine and short-circuited.

(AA) When electric detonators have been used, workers shall not return to misfired holes for at least thirty minutes.

Section 6-4 Safety Fuse Initiation of Blasts

(A) A safety fuse that is deteriorated or damaged in any way shall not be used.

(B) The hanging of safety fuse on nails or other projections which will cause a sharp bend to be formed in the fuse is prohibited.

(C) Before assembling fuse detonators and safety fuse, a short length shall be cut from the end of the supply reel so as to assure a fresh cut end in each fuse detonator.

(D) Only cap crimpers specifically designed for the purpose of crimping caps shall be used for attaching fuse detonators to safety fuse. Crimpers shall be kept in good repair and accessible for use.

(E) No fuse detonators and safety fuse shall be assembled, or primers made up, in any magazine or near any possible source of ignition or initiation.

(F) The assembly of fuse detonators, safety fuse and making of primers shall only be done in a place selected for this purpose and at least 100 feet away from any storage magazine.

(G) The burning rate of the safety fuse in use at any time shall be measured, posted in conspicuous locations, and brought to the attention of all workers concerned with blasting.

(H) New rolls of fuse shall be tested for burn rate prior to use and all partial rolls shall be tested at least every 30 days. A record of the burn rate shall be kept by the permittee.

(I) The length of safety fuse shall be in accordance with the manufacturer's recommendations. In no case shall the length of fuse be less than 3 feet and shall not have a burn time of less than 120 seconds at the time of initiation.

(J) Lighting of safety fuse shall be done with hot wire lighters, pull-wire lighters, thermalite connectors, or igniter cord and thermalite connectors.

(K) Matches, cigarette lighters, cigarettes, pipes, cigars or other unsafe means shall not be used to ignite safety fuse.

(L) Igniters shall be used in accordance with the manufacturer's recommendations and shall not be attached to a safety fuse until the charge is at the blast site and the crew is fully prepared to light the charge.

(M) At least two persons shall be present when fuse detonator and safety fuse blasting is done by hand-lighting methods.

(N) When blasting with safety fuses, consideration shall be given to the length and burning rate of the safety fuse and shall be used in accordance with the manufacturer's recommendations. A sufficient time of not less than 120 seconds, with a margin of safety, shall always be provided for the blaster to reach a place of safety.

(O) No more than 12 safety fuses shall be lit by each blaster when hand lighting devices are used.

However, when two or more safety fuses in a group are lit as one by means of igniter cord or other similar fuse-lighting devices, they may be considered as one fuse.

(P) Fuse detonators and safety fuse shall not be used for firing mud cap charges unless charges are separated sufficiently to prevent one charge from dislodging other shots in the blast.

(Q) Only sufficient primers for one day's use shall be made up at a time.

(R) Any loose cartridges of explosives, detonators, primers and assembled fuse detonators and safety fuse unused at the end of the shift shall be returned to their respective and separate magazines and locked up.

(S) Safety fuse shall not be used in blasting operations in populated areas, public areas, on highways or adjacent to roads open to traffic.

(T) When the fuse lighter has been ignited, the blaster shall assume initiation of the safety fuse has occurred.

(U) If the safety fuse does not show evidence of initiation, the blaster shall not attempt any further initiation and retreat to a safe location for at least one hour.

(V) When safety fuse is used, workers shall not return to a misfire for at least one hour.

(W) If explosives are suspected of burning, all persons in the endangered area shall move to a safe location and no one shall return to the area for at least one hour after signs of burning have ceased.

Section 6-5 Non-electric Initiation of Blasts

(A) Blasters shall be familiar with and follow the manufacturer's warnings and instructions, especially hook-up and safety precautions.

(B) Operations shall be discontinued during the approach and progress of electrical storms.

(C) Non-electric leads shall not be held during firing.

(D) Primary initiators shall not be attached to the round or shot until after all the connections have been made and the blasting area has been cleared.

(E) Non-electric delay connectors shall not be exposed to excessive impact, friction, flame, electrical discharge, static electricity or lightning.

(F) Delay detonators shall not be disassembled from the plastic connector block, nor shall the delay detonators be used without the block.

(G) Shock tube connections shall be at right angles to detonating cord.

(H) Connections with other initiation devices shall be secured in a manner that provides for uninterrupted propagation.

(I) Factory made units shall be used as assembled and shall not be cut except that a single splice is permitted on the lead-in trunkline during dry conditions.

(J) No tool shall be used to pry on any component containing a detonator, nor shall any tool be used to open, fasten or clean out any connector containing a detonating device.

(K) Care shall be taken to ensure that a vehicle is not driven over the tubing, connectors or any surface delay component.

(L) In multiple row blasts, the initiation system shall not be connected from row to row until all drilling and loading has been completed. In single row blasts, the components shall not be connected from hole to hole until all drilling and loading has been completed.

(M) A safety line consisting of trunkline or other non-electric tubing shall be connected to the last hole in each row and shall extend beyond the area of cover in a covered or matted blast and shall be used to check for complete detonation of each row.

(N) Before firing the shot, the blaster shall visually inspect and verify that all connections in the initiation system are made in accordance with the manufacturer's recommendations.

Section 6-6 Use of Detonating Cord

(A) Care shall be taken to select a detonating cord consistent with the type and physical condition of the borehole and stemming and the type of explosives used.

(B) Detonating cord shall be handled and used with the same respect and care given other explosives.

(C) If using a detonating type cord for blasting, the double-trunkline or loop systems shall be used.

(D) In multiple-row blasts, the trunkline layout shall be designed so that the detonation can reach each blast hole from at least two directions.

(E) All detonating cord knots shall be tight and all connections shall be kept at right angles to the trunklines.

(F) The line of detonating cord extending out of a borehole or from a charge shall be cut from the supply spool before loading the remainder of the bore hole or placing additional charges.

(G) Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking-up.

(H) Detonating cord connections shall be made in accordance with the manufacturer's recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry.

(I) Detonating cord shall be cut with a sharp knife, razor blade or cutters designed for use with detonating cord. Scissors or plier type cutters shall not be used.

(J) All detonating cord trunklines and branch lines shall be free of loops, sharp kinks, or angles that direct the cord back toward the oncoming line of detonation.

(K) All detonating cord connections shall be inspected before firing the blast.

(L) When detonating cord millisecond-delay connectors or short-interval-delay electric detonators are used with detonating cord, the practice shall conform strictly to the manufacturer's recommendations.

(M) When connecting a detonator to detonating cord, the detonator shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the detonator containing the explosive charge pointed in the direction in which the detonation is to proceed.

(N) When initiating detonating cord with fuse detonators and safety fuse, two fuse detonators shall be required.

(O) Detonators for firing the trunkline shall not be brought to the loading area nor attached to the detonating cord until the area has been cleared for the blast.

Section 6-7 Electronic Initiation of Blasts

(A) Permittees shall be trained in the manufacturer's procedures for use of electronic detonators and shall follow the manufacturer's warnings and instructions, especially hook-up and safety precautions.

(B) Test equipment and blasting machines designed for use with electric detonators shall not be used with electronic detonators.

(C) Manufacturer's recommended practices shall be followed to protect electronic detonators from electromagnetic, radio frequency or other electrical interference sources.

(D) Electronic detonators shall only be fired with the equipment and procedures recommended by the manufacturer.

(E) Electric detonators and electronic detonators shall not be used in the same blast, even when made by the same manufacturer, unless the manufacturer approves such use.

(F) Test equipment and blasting machines that are designed for electronic detonators shall not be used with electric detonators.

(G) Electronic detonator wires, connectors, coupling devices, shock tube or other components shall be protected from mechanical abuse and damage.

(H) Electronic detonators of different types and/or versions shall not be used in the same blast, even if made by the same manufacturer, unless such use is approved by the manufacturer.

(I) Equipment or electronic detonators that appear to be damaged or poorly maintained shall not be used.

(J) Only blasting machines, testers, or instruments that are specifically designed for the electronic detonator system shall be used.

(K) Never mix or use electronic detonators and equipment made by different manufacturers.

(L) The handling or use of electronic detonators shall be discontinued during the approach and progress of an electrical storm. Personnel must be withdrawn from the blast area and moved to a safe location.

(M) Electronic detonator systems shall not be exposed to or used in operational temperature and pressure ranges outside those specified by the manufacturer.

(N) Electronic detonators shall never be tested or programmed in a booster, cartridge or other explosive component (primer assembly) before it has been deployed in the borehole or otherwise loaded for final use.

(O) An electronic detonator shall not be held while it is being tested or programmed.

Section 6-8 Firing the Blast

(A) It shall be the duty of the blaster to determine the time of blasting. The blaster shall conduct all blasting operations and no shot shall be fired without the blaster's presence and approval.

(B) All blasting in congested areas or in close proximity to a structure, railway, highway or any other installation where the blasting may cause injury or damage by flying rock shall be covered with blasting mats or other protective material before firing.

(C) All persons within the blasting area shall be notified of the time of the blast and moved to a safe distance or under sufficient cover. Guards shall be posted to prevent entry into the blast area.

(D) All surplus explosive materials shall be removed to a safe location before blasting.

(E) Flaggers shall be safely posted on highways that pass through the danger zone so as to stop traffic during blasting operations.

(F) Guards shall be posted around the perimeter of the blasting area to prevent unauthorized entry into the blast area. Either visual or verbal communication must be possible between guards.

(G) Before the blast is fired, the warning signal shall be given by the blaster in charge or the individual designated by the blaster in charge.

(H) An inspection of the blast area to determine if all charges have detonated shall be done by the blaster before guards and flaggers are cleared by the blaster to leave their posts.

Section 6-9 Misfires

(A) The blaster shall provide proper safeguards for excluding all unauthorized persons from the danger zone if a misfire is found.

(B) No other work shall be performed except what is necessary to remove the hazard of the misfire and only those employees necessary to perform the work shall remain in the danger zone.

(C) Explosives shall not be extracted from a hole that has misfired unless it is impossible or hazardous to detonate any unexploded explosive materials by insertion of an additional primer.

(D) If there are any misfires while using fuse detonators and safety fuse, all employees shall remain away from the charge for at least one hour. Misfires shall be handled under the direction of the person in charge of the blasting. All fuses shall be carefully traced and a search made for the unexploded charges.

(E) When electric detonators have been used, workers shall not return to the blast area for at least 30 minutes unless the manufacturer recommends additional time before returning to the blast area. All wires shall be carefully traced and a search made for unexploded charges.

(F) When a completely non-electric initiation system, other than safety fuse, has been used, all employees shall remain away from the blast area for at least 15 minutes. All shock tubes shall be traced and a search made for unexploded charges.

(G) When electronic detonators have been used, workers shall not return to the blast area for at least 30 minutes unless the manufacturer recommends additional time before returning to the blast area.

(H) If explosives are suspected of burning in a hole, all persons in the endangered area shall move to

a safe location and no one shall return to the hole for at least one hour after evidence of combustion ceases.

(I) No drilling, digging or picking shall be permitted until all missed holes have been detonated or the blaster in charge has approved that work can proceed.

(J) Explosive materials recovered from misfires shall not be reused and shall be disposed of in the manner recommended by the manufacturer.

Section 6-10 Blasting Vibration and Air Over-Pressure Standards

(A) In all blasting operations, blasters shall use one of the following methods to monitor or control the intensity of motion in the ground at the nearest dwelling, house, school, church, commercial or occupied building. These limits do not apply to property owned, leased or contracted by the blaster's company or property on which the owner provides a voluntary written waiver from these restrictions.

(1) Option 1 - Frequency Versus Particle Velocity graph. A blasting operation shall have the option to use the graph shown in Figure 6-10 to limit peak particle velocity based upon the frequency of the blast vibration. Allowable vibrations fall below the limits indicated by the central lines; non-allowable vibrationsNon-Allowable Vibrations lie above the lines. Seismographs shall meet the following requirements:

(i) Monitoring instruments shall have a flat frequency response between 2 and 250Hz for particle velocity.

(ii) The digitizing sampling rate for peak particle measurements shall be at least 1,024 samples per second.

(iii) Seismographs shall be capable of performing a self-test of velocity transducers and printed event records shall indicate whether or not the sensor test was successful.

(iv) Monitoring instruments shall be capable of recording particle velocities with intensities ranging from 0.02 to 5.0 inches per second.

(v) Monitoring systems shall be calibrated by a service center approved by the manufacturer within at least two years of the time of use. Certificates documenting date of calibration, issued by the approved service center, shall be kept by the user.

(vi) Monitoring systems shall be capable of printing hard-copy reports showing the date and time of monitoring, the maximum peak particle velocity (PPV) measurements, and plotted PPV-time waveform plots.

(vii) For all blasts with a scaled distance less than 100 ft/lb$^{0.5}$, seismographs monitoring motion shall be set to trigger at a level of 0.05 in/s.

The following equation shall be applied when calculating the scaled distance.

$$D_S = \frac{D}{\sqrt{W}}$$

Where: Ds = Scaled distance (ft/lb$^{0.5}$)

D = Distance to the nearest structure (ft)

W = Maximum weight of explosive detonated within any 8 millisecond window (lb)

(viii) Vibration analysis results must be presented in comparison with the RI 8507, adopted by United States Bureau of Mines (USBM) and as shown in Figure 6-10.

(ix) If a valid vibration record showing compliance with the MAPV limits shown in figure 6-10 is not available for inspection, the maximum charge weight per delay (W) must conform to the scaled distance limitations as prescribed in Option 2.

FIGURE 6-10

Option 1: Particle Velocity Versus Frequency

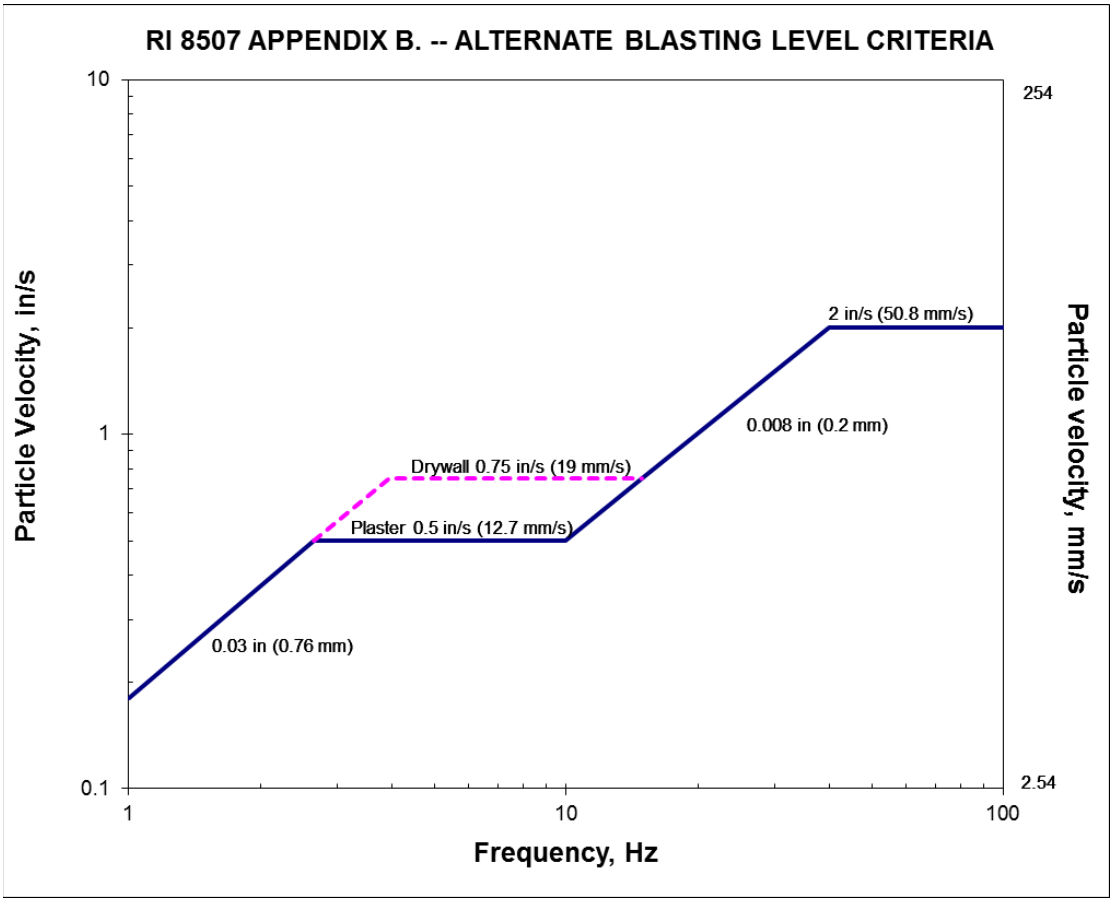

Table: U.S. Bureau of Mines RI 8507, 2009

(2) Option 2 Scaled Distance – when seismic monitoring is not performed, the maximum weight of the explosive detonating within any 8-millisecond time period shall not exceed the amount allowed by a calculation using the scaled distance factors given in Scaled Distance column of Table 6-10.

The following equation shall be applied when utilizing the scaled distance calculations to

control blast-induced vibration.

$$W = \left(\frac{D}{D_s}\right)^2$$

Where: Ds = Scaled distance ($ft/lb^{0.5}$)

D = Distance to the nearest structure (ft)

W = Weight of explosive detonated within any 8 millisecond window (lb)

Example Maximum Charge Weight per Delay (W) Calculation:

Given: Ds = 55 ($ft/lb^{0.5}$)

D = 500 ft.

therefore

$W = (500 / 55)^2 = 82.6$ lb

Table 6-10	**Blasting Vibration and Air Over-Pressure**
Distance From Blast (Ft)	**Scaled Distance Factor Units Are $Ft/Lb^{0.5}$**
0 to 300	50
301 to 5000	
5001 and Greater	65

(B) Air over-pressure (air blast) limitation: Air over-pressure at the nearest dwelling house, school, church, or otherwise occupied buildings shall not exceed 133 dB (0.0129 psi). Measuring air over-pressure is not required for all blasting operations. However, due to complaints or other circumstances, the Division may require blasters to monitor air over-pressure. All instruments used to measure air over-pressure compliance shall:

(1) Employ linear microphones with a flat frequency response between 2 and 200 Hz

(2) Have a digital sampling rate of at least 1024 samples per second; and

(3) Be capable of measuring air over-pressure from 120 to 140 dB-Linear (0.0029 to 0.029 psi).

ARTICLE 7 AVALANCHE MITIGATION

Section 7-1 General Requirements

(A) The use of explosives and blasting agents for avalanche mitigation shall comply with this article unless explosives are used in compliance with Article 6.

(B) The requirements of this article shall only be applicable to the use of explosives for avalanche mitigation. The use of explosives for other purposes, such as demolition, site clearing or construction shall be in compliance with Article 6.

(C) Explosives and blasting agents shall not be stored, kept, assembled, combined to form armed charges, or had in any inhabited areas, structures or buildings except in compliance with this Article or Article 4.

(D) Only blasters shall supervise the assembly, arming of explosive components, and detonation of explosive charges.

(E) Each avalanche mitigation blasting crew or team shall consist of a blaster and at least one assistant trained as applicable per Section 7-2. The crew may consist of two blasters, but only one shall act as the blaster in charge.

(F) Untrained personnel may accompany the blasting crew for training purposes but shall only participate in actual firing of charges for completion of training in accordance with Section 7-2(B)(1)(iii)(a)(3).

(G) The blaster in charge of each crew or team shall be responsible for all decisions made regarding preparation and placement of charges.

(H) Blasting operations shall be conducted during periods of daylight with personnel guarding the area, or when the area has been closed. Nighttime blasting operations shall be approved by the Division, and approval shall only be granted if such approval serves the safety of the general public.

(I) The blaster in charge shall pre-plan the escape route and all crew members shall understand the plan before initiating the charge.

(J) No person shall accept or be given a job assignment that is beyond the individual's ability, training, or qualifications.

(K) Cold temperatures, high winds, and heavy snowfall are conditions that should be anticipated in avalanche mitigation blasting. These conditions shall be considered in determining a person's physical ability, training, and qualifications for conducting safe blasting operations and in the management of safe blasting operations.

(L) Operations utilizing hanging or dangling charges must have a hang cord entanglement safety procedure.

Section 7-2 Training Requirements

(A) Type II Avalanche Mitigation permit applicants shall submit a training program for personnel involved in the use, storage and transportation of explosives to the Division. The Division shall approve the training program prior to issuance of the permit.

(B) The training program shall include at least the following for each personnel type:

(1) Blaster in Training:

(i) A minimum of 8 hours of classroom education and a written examination to include the following:

(a) Explosives Regulations of the Division

(b) Explosives Regulations of the Division and federal requirements for the storage of explosives and magazine locations, inventory procedures, and magazine access

(c) Safety procedures for explosives and blasting agents used within the company, including the properties and classification of each type of explosive, and consequences of the unsafe use of explosives

(d) Explosives Regulations of the Division for preparing, handling, and using hand charges to include:

(1) Hand charge assembly procedures for both field arming and make-up room arming;

(2) Crimping procedures;

(3) Transportation to blast site by skiing or aerial tramways for both field armed charges and make-up room armed charges;

(4) Use of igniters and determining successful initiation of fuse;

(5) Misfire procedures;

(6) Procedures for clearing and guarding the blasting area; and

(7) Deployment of initiated hand charges.

(e) Hazard training for cornice control operations

(f) Hang cord entanglement safety procedures

(g) Hazard training for avalauncher operations

(h) Record keeping procedures, including:

(1) Records of transactions;

(2) Explosive inventory record keeping;

(3) Explosive use and route log record keeping; and

(4) Misfire documentation.

(ii) Simulated Field Training for Hand Charges

(a) During weather conditions typical to avalanche mitigation and under the supervision of a blaster, the trainee shall:

(1) Attend demonstration with simulated components;

(2) Attach igniters to fuse without a detonator and successfully ignite fuse not less than 5 times;

(3) Attach igniters to fuse without a detonator and twice simulate an unsuccessful attempt to light the fuse and follow the procedures for a misfire;

(4) Attach igniters to fuse with a detonator and successfully ignite and deploy the detonator and fuse assembly not less than 5 times; and

(5) When training occurs at operations not utilizing a pre-manufactured detonator and safety fuse assembly, assemble detonator and fuse, attach igniters to fuse with detonator and successfully initiate and deploy the detonator and fuse assembly not less than 5 times.

(iii) Field Experience Training for Hand Charges

(a) Under the supervision of a blaster, the trainee shall:

(1) Accompany a blasting crew on 5 routes or the deployment of not less than 20 charges as an observer;

(2) Accompany a blaster, as an assistant only, for the initiation and deployment of not less than 20 charges; and

(3) Accompany a blaster and initiate and deploy not less than 20 charges under the direct supervision of the blaster.

(iv) Avalauncher Operator

(a) Trainee shall complete 8 hours classroom and field training before becoming an avalauncher operator. This training shall include:

(1) Operating instructions for each type of avalauncher used;

(2) Procedures on performing preventive maintenance inspections;

(3) Procedures on assembly of charges;

(4) Procedures for checking the elevation, aiming, and pressure settings of the avalauncher;

(5) Procedures for test firing the avalauncher;

(6) Procedures for loading charges in the avalauncher;

(7) Procedures for clearing and guarding the target area;

(8) Emergency procedures; and

(9) Requirements for securing the equipment.

(b) Qualifications for avalauncher operator shall be:

(1) One year experience as a blaster in charge;

(2) Must have assisted on the avalauncher crew not less than five times; and

(3) Must load and fire the avalauncher under the supervision of a qualified operator not less than 10 times.

(2) Howitzer Operator

(i) All Howitzer operations shall be conducted in accordance with the provisions of The Avalanche Artillery Users of North America Committee (AAUNAC) Standard (Revised May 16, 2012).

(3) Requirements for Annual Refresher Training

(i) All blasters shall attend a minimum of 4 hours of refresher training at the beginning of each season.

(a) Classroom training shall include:

(1) Review of operation techniques such as throwing techniques, air blasting, dangling charges, hang cord entanglement safety procedures, cornice blasting, avalauncher and howitzer procedures;

(2) Review of assembly and transportation procedures; and

(3) Review of snow safety program.

(b) Field training shall include:

(1) Review of initiation techniques;

(2) Review of misfire procedures; and

(3) A walk through of storage and make-up facilities.

(ii) Annual refresher training may count towards the 16-hour requirement of Section 3.6(N) of these rules when the refresher training program is specifically approved by the Division.

Section 7-3 Make-up Room Requirements

(A) Location of Make-up Rooms

(1) Make-up rooms shall not be located in buildings or structures that are at any time open to the public.

(B) Construction of Make-up Rooms

(1) The interior of the make-up room shall be finished and equipped to the following minimum standards:

(i) Walls shall be constructed of, or covered with, a non-sparking material. Nails or screws shall be countersunk, blind nailed or covered;

(ii) Floors shall be constructed of, or covered with, a non-sparking material;

(iii) The building and make-up room shall be well ventilated, and the ventilation system shall

discharge to the outside from the make-up room;

(iv) The make-up table shall be constructed of non-sparking, nonconductive material; and

(v) The make-up table shall be located away from the area where explosives are kept before and after assembly.

(2) The building in which the make-up room is located shall be theft-resistant and secured by at least one steel padlock having at least 5 tumblers and a case hardened shackle at least 3/8-inch in diameter. The door shall have hinges and hasps attached so that they cannot be removed from the outside when in the closed position with the lock in place.

(C) Make-up Room Restrictions

(1) Heating units shall be explosion proof, dust-proof and not depend on a combustion process when properly designed and located. National Electric Code-rated explosion-proof and dust-proof heating units may be located inside make-up rooms.

(2) Temperature control devices must be sufficiently designed to prevent overheating of make-up rooms where explosives are stored.

(3) Lighting fixtures shall be National Electric Code explosion-proof rated fixtures and all wiring shall be in sealed conduit.

(4) Electric control switches shall be located outside the make-up room.

(5) Electrical outlet boxes are not permissible inside the make-up room.

(6) Smoking, matches, open flames or flame or spark producing devices shall not be permitted inside the make-up room.

(7) Flammable liquids or flammable compressed gases shall not be stored or had in the make-up room.

(8) Occupancy of the make-up room shall be restricted to authorized and trained personnel when explosives are present.

(9) A make-up room shall not be used for the unattended storage of armed charges.

(10) Explosives stored inside the make-up room must be stored in at least a Type 2 storage magazine suitable for indoor storage.

(D) Make-up Room Housekeeping

(1) The make-up room shall be kept clean and orderly.

(2) Metal tools shall not be used or stored in the make-up room.

(3) Brooms used in the make-up room shall be made of non-sparking materials.

(4) Sweepings and empty explosive material containers shall be disposed of as recommended by the manufacturer.

(5) The make-up room shall be cleaned and all explosives materials shall be removed before any repairs are made to the make-up room.

(6) The make-up table or bench shall be cleaned regularly and shall be kept free of any materials or tools not used in the assembly of the charges.

Section 7-4 Use of Explosives

(A) General Requirements

(1) While explosives are being handled or used, smoking, matches, or any other source of fire or flame shall not be within 50 feet of the blast site.

(2) No person shall handle explosives while under the influence of intoxicating liquors, narcotics or other controlled substances. This rule does not apply to persons taking prescription drugs and/or narcotics as directed by a physician, providing such use shall not influence the blaster's ability to conduct safe blasting operations.

(3) Blasters conducting blasting operations shall take every reasonable precaution, including but not limited to warning signals, flags and barricades to insure the safety of the general public and workers.

(4) The blaster shall suspend all blasting operations and remove all persons from the blast site during the approach and progress of an electrical storm.

(5) No fire shall be fought where the fire is in imminent danger of contact with explosives. All employees shall be removed to a safe area and the fire area guarded against intruders.

(B) Explosives

(1) Explosives shall have a shelf life of at least 1 operating season in the storage facilities in which they will be stored.

(2) Blasting caps must be at least a No. 6 cap and no larger than a No. 8 cap except when recommended by the explosives manufacturer for a particular explosive used within a specific application.

(3) Detonator and safety fuse assemblies manufactured with thermalite connectors shall not be used for avalanche mitigation operations.

(4) Detonating cord used for initiating primers must be at least a 25-grain cord.

(5) Explosive materials chosen must have excellent water resistance and be capable of detonation in cold temperatures.

(6) Explosive materials that are damaged, show signs of deterioration, or have misfired shall not be used.

(7) Detonators and other explosive materials, with the exception of fuse igniters, shall never be carried in pockets of clothing.

(8) Should cartridges or packages of explosive materials show signs of discoloration or deterioration, such explosive materials must be carefully set aside and properly disposed of according to the manufacturer's recommendations.

(9) Only non-sparking metallic slitters may be used for opening fiberboard cases.

(10) No explosive material shall be abandoned or left in any location for any reason, nor left in such a manner that they may easily be obtained by children or other unauthorized persons.

All unused explosives shall be returned to the proper storage facilities.

(11) A record of each blast shall be completed and signed by the Type I permittee acting as the blaster in charge. All records shall be retained at least five years, shall be available for inspection by the Division, and shall contain at least the following data:

(i) Name of company or contractor;

(ii) Date, time and location of route;

(iii) Name, permit number and signature of blaster-in-charge of the route;

(iv) Number of charges used on each route;

(v) Names of employees on each route;

(vi) Types of explosives used;

(vii) Total amount of each explosive received and used;

(viii) Method of initiation;

(ix) Type of blasting (hand charge, cornice control, avalauncher);

(x) Weather conditions; and

(xi) Statement noting any misfires, the location of misfires, steps taken to recover or refire any misfires, and the date the misfire was found and disposed of.

(C) Hand Charges

(1) Safety Fuse

(i) Safety fuse that is deteriorated or damaged in any way shall not be used.

(ii) The hanging of safety fuse on nails or other projections which will cause a sharp bend to be formed in the fuse is prohibited.

(iii) Pre-manufactured detonator and fuse assemblies shall be used in accordance with the manufacturer's requirements.

(iv) Before assembling fuse detonators and safety fuse, a minimum of 1 inch shall be cut from the end of the supply reel so as to assure a fresh cut end in each fuse detonator.

(v) The burning rate of the safety fuse in use at any time shall be measured, posted in conspicuous locations, and brought to the attention of all workers concerned with blasting.

(vi) New rolls of safety fuse shall be tested for burn rate prior to use and all partial rolls shall be tested at least every 30 days. A record of the burn rate shall be kept by the Type II permittee.

(vii) Only a bench or hand-held cap crimpers designed for the purpose of crimping fuse detonators shall be used for attaching fuse detonators to safety fuse. Crimpers shall be kept in good repair and accessible for use.

(viii) No fuse detonators and fuse shall be assembled, or primers made up, in any magazine or near any possible source of initiation.

(ix) Assembly of fuse detonators and safety fuse and pre-arming of charges shall only be done in a warm, dry, well-lit make-up room.

(x) Any loose cartridges of explosives, detonators, and assembled fuse detonators and safety fuse unused at the end of the shift shall be returned to their respective and separate magazines and locked up.

(xi) Detonators, fuse detonator and fuse assemblies, armed charges or safety fuse igniters shall not be carried into nor stored in any magazine containing cartridge high explosives.

(xii) Detonators shall not be inserted in the explosives without first making a hole in the cartridge of proper size using a tool designed for that purpose.

(2) Arming of Charges With Detonators

(i) Cast primers and boosters shall not be used if the hole is too small for the detonator, and attempting to enlarge the hole in a cast primer or booster shall not be permissible.

(ii) The detonator shall be secured within the primer so that no tension is placed on the safety fuse at the point of entry into the detonator.

(iii) The detonator shall be fully inserted into the primer cartridge or booster and shall not protrude from the cartridge.

(iv) After the fuse detonator and safety fuse assembly is inserted, the explosive contains a sensitive detonator and is then vulnerable to premature detonation, therefore delaying the arming of a charge until just before tossing the charge should be standard procedure when wind and/or temperatures are not severe.

(v) When arming the charge at the blast site the blaster shall:

(a) Insure that the fuse detonator is installed on the correct length of fuse prior to transporting to blast sites;

(b) Place detonators in adequate protective padding or shields before placing in approved avalanche mitigation packs;

(c) Place detonators and explosives in separate approved avalanche mitigation packs while transporting to the blast site;

(d) Safety fuse igniters shall not be placed inside the pack when it contains explosives or detonators, but shall be carried in a separate pack;

(e) Insure that the detonator is secured to the charge before attaching fuse igniter.

(vi) Depending on weather condition, the charges may be armed in a make-up room as follows:

(a) All fuse detonators shall be installed on the required length of safety fuse before the explosive cartridges or primers are brought to the make-up area;

(b) Fuse detonator and safety fuse assemblies shall be secured correctly to each type of explosive charge being used;

(c) Fuse detonator and safety fuse assemblies shall not be attached to explosive charges until just before the time of distribution to patrol personnel;

(d) Each hand charge shall be placed in an area separate from the assembly area immediately after assembly is completed; and

(e) Distribution of hand charges into approved mitigation packs shall take place away from the assembly area.

(3) Initiation of Hand Charges

(i) The length of safety fuse shall be in accordance with manufacturer's recommendations, and shall be 3 feet in length or have a burn time of not less 120 seconds at the time of initiation.

(ii) The lighting of fuse shall be done with hot-wire lighters or pull-wire lighters.

(iii) Matches, cigarette lighters, cigarettes, pipes, cigars or other unsafe means shall not be used to ignite fuse.

(iv) Igniters shall be used in accordance with manufacturer's recommendations and shall not be attached to a safety fuse until the charge is at the blast site and the crew is fully prepared to initiate the charge.

(v) At least two persons shall be present when fuse detonators and safety fuse blasting is done by hand lighting methods.

(vi) When blasting with safety fuses, consideration shall be given to the length and burning rate of the safety fuse, and safety fuse shall be used in accordance with manufacturer's recommendations. A sufficient time of not less than 120 seconds, with a margin of safety, shall always be provided for the blaster to reach a place of safety.

(vii) When the fuse lighter has been placed on the fuse, the blaster shall assume initiation of the safety fuse has occurred.

(viii) If the safety fuse does not show evidence of initiation after the fuse lighter has been ignited, the blaster shall not attempt any further initiation of the charge but adequately mark the charge and retreat with the blasting crew to a safe distance for not less than 1 hour.

(ix) After waiting at least 1 hour, the blaster shall:

(a) Determine that initiation failed and ignite the uninitiated charge; or

(b) Determine that the initiation was successful and dispose of the misfired explosive charge with a secondary charge.

(4) Use of Detonating Cord

(i) Detonating cord shall be handled and used with the same respect and care given other explosives.

(ii) All detonating cord knots shall be tight and all connections shall be kept at right angles.

(iii) Detonating cord shall be handled and used with care to avoid damaging or severing the cord.

(iv) Detonating cord connections shall be made in accordance with approved and recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry.

(v) Detonating cord shall be cut with a sharp knife, razor blade, or cutters designed for use with detonating cord. Scissors or plier type cutters shall not be used.

(vi) All detonating cord connections shall be inspected before firing the blast.

(vii) When connecting a detonator to detonating cord, the detonator shall be taped or otherwise attached securely along the side of the end of the detonating cord with the end of the detonator containing the explosive charge pointed in the direction in which the detonation is to proceed.

(viii) Two fuse detonators shall be required for the initiation of detonating cord with fuse detonator and safety fuse.

(ix) Detonators shall not be attached to the detonating cord until the area has been cleared for the blast.

(5) Avalanche Mitigation Packs

(i) Mitigation packs shall be constructed of material that is water-resistant, non-sparking and non-conductive.

(ii) Mitigation packs shall have sufficient individual compartments to separate hand charges or explosive components from tools or other equipment or supplies that may be carried in the pack.

(iii) Tools or other equipment shall not be placed in compartments containing explosives.

(iv) Each compartment used for hand charges or explosive components shall have an independent means of closure.

(v) Mitigation packs shall be inspected daily for holes, faulty compartments or closures and explosive residue. Packs shall not be used until adequately repaired or cleaned.

(vi) Mitigation packs shall not be left unattended, or used for storing explosives. All explosive material shall be returned to the approved storage facility at the end of individual mitigation routes.

(vii) Individual mitigation team members shall not carry more than 35 pounds of explosives material in avalanche mitigation packs.

(D) Avalauncher and Launcher

(1) All personnel assigned to work on an avalauncher or launcher crew shall be trained in the following:

(i) All operating instructions;

(ii) Safety precautions;

(iii) Emergency procedures; and

(iv) Securing requirements for equipment.

(2) All equipment shall be in good working condition and maintained as recommended by the manufacturer.

(3) The components of projectile assemblies shall not be interchanged and shall be assembled and used in accordance with the manufacturer's instructions.

(4) All projectiles shall be inspected before transporting them to the firing location. Such inspection shall include:

(i) Cast explosives for cracks, dents, fractures and smooth nose surface;

(ii) Cap wells should be clear of obstructions and debris and centered and straight for proper alignment of the cap; and

(iii) Fin assembly should be inspected for properly-functioning components and safety items, including pressures plate, pressure plate arming wire, bore rider pin, safety pin, magnet and firing pin.

(5) Defective projectiles shall not be used and shall be disposed of or returned to the manufacturer.

(6) Safety devices or components shall not be removed.

(7) If explosives are not at least 20 feet from the avalauncher/launcher during firing procedures, they shall be kept in a closed Type 3 magazine.

(8) The transport safety pin shall not be removed until just prior to inserting the projectile into the barrel.

(9) Avalaunchers/Launchers must be fired with compressed nitrogen gas only.

(10) Avalaunchers/Launchers shall be connected to the compressed nitrogen source through a satisfactory pressure regulator.

(11) The pressure regulator shall be set to limit the launch pressure to the maximum recommended by the manufacturer.

(12) The first round fired in a mitigation mission shall be a test fire to test the proper functioning of the launcher without a projectile.

(13) The blaster in charge, trained assistants, and blasters in training shall be the only personnel within 100 feet of the avalauncher/launcher during loading and firing.

(E) Misfires

(1) An explosive charge or any part of an explosive charge that fails to detonate after initiation shall be considered a misfire.

(2) If a misfire occurs, the blaster shall note the location of the misfired explosive and shall not approach the misfired explosive for at least 1 hour.

(3) Explosives which are aflame or emitting smoke shall not be approached for at least 1 hour after evidence of combustion ceases.

(4) The area shall remain guarded or closed until a search of the area has been done and the misfire hazard is removed or the blaster-in-charge pronounces the area safe.

(5) Misfires shall be handled by the blaster-in-charge and only those employees necessary to remove the hazard and the area shall remain guarded.

(6) Impact to explosive materials shall be avoided when searching for nonvisible misfired charges.

(7) A misfired armed charge shall be disposed of where it is found with a secondary charge.

Section 7-5 Transportation

(A) Transportation of explosives, blasting agents, and blasting supplies on public highways, railways, and airways shall be in accordance with the provisions of title 42 Article 20 C.R.S., any regulations promulgated pursuant thereto and Title 49 CFR Parts 171-179 and Parts 390-397, Motor Carriers.

(B) Requirements for the transportation of explosives, blasting agents and blasting supplies by motorized vehicles on job sites shall be:

(1) No person shall smoke, carry matches or any other flame-producing device or carry firearms or loaded cartridges while in or near a motor vehicle transporting explosives.

(2) No person shall drive, load or unload a vehicle transporting explosives in a careless or reckless manner.

(3) Vehicles transporting explosives, blasting agents or blasting supplies shall not be taken inside a garage or shop for repairs or servicing.

(4) Vehicles used for transporting explosives shall be equipped to carry the load without difficulty and shall be in good mechanical condition.

(5) A motor vehicle used for transporting explosive materials shall be inspected prior to loading to determine that it is in proper condition for the safe transportation of explosive materials.

(6) All cargo areas of vehicles used for transporting explosive materials shall have tight floors and any exposed spark-producing metal on the inside of the cargo area shall be covered with wood or other non-sparking materials to prevent contact with packages of explosive materials.

(7) Packages of explosive materials shall not be loaded above the sides of an open-body vehicle.

(8) Explosive materials shall not be transported with other materials or cargoes in the same compartment. In no case shall flammable materials be carried on the same vehicle as explosive materials.

(9) A motorized vehicle which contains explosive materials shall not be parked under any of the following circumstances:

(i) On or within 5 feet of the traveled portion of a public street or highway;

(ii) On private property; or

(iii) Within 300 feet of a bridge, tunnel, building, or place where people work, assemble, or congregate.

(10) A motorized vehicle transporting explosive materials shall not be left unattended.

(11) A motorized vehicle shall be deemed attended only when the driver or other attendant is physically on or in the vehicle or conveyance or has the vehicle within the driver's or attendant's field of vision and can reach the vehicle or conveyance quickly and without any kind of interference; attended also means the driver or attendant is awake, alert and not engaged in any other duties or activities which may divert his/her attention from the vehicle.

(12) Detonators may not be transported in the same vehicle with other explosives unless:

(i) The detonators and explosives are placed in separate locked Type 2 magazines secured within the body of the vehicle or conveyance;

(ii) The detonators and explosives are placed in suitable locked containers and separated by 4 inches of hardwood, and the detonators are totally enclosed or confined by the hardwood construction; or

(iii) The detonators and explosives are placed in separate locked containers or container compartments constructed in accordance with the IME Safety Library Publication No. 22, "IME Standard for the Safe Transportation of Detonators in a Vehicle with Other Explosives"; or

(iv) The detonators and explosives are placed in separate locked Type 3 magazines.

(C) Requirements for the transportation of explosives on passenger tramways when the public is present shall be:

(1) Explosives shall not be transported in the same enclosed passenger tramway carrier with the public.

(2) Transportation of explosives on non-enclosed passenger tramways shall require the following:

(i) Explosives shall be attended at all times;

(ii) Warning signs indicating that explosives are currently being transported on the tramway and passengers may ride the tramway at their own discretion shall be clearly posted at the tramway entrance;

(iii) Passengers shall not be allowed to ride the passenger tramway in the opposing direction of the explosives;

(iv) A minimum distance of 200 feet shall be maintained in front of and behind the chair transporting explosives and chairs transporting the public;

(v) The amount of explosives being transported shall not exceed50 pounds per carrier; and

(vi) Nothing in Section 7-5(C)(2) is intended to limit liabilities as set forth in the Colorado Ski Safety Act (C.R.S. 33-44-101 thru 114).

ARTICLE 8 GEOPHYSICAL RESEARCH

Section 8-1 General Requirements

(A) Seismic Blasting shall conform to the requirements of Articles 4, 5 and 6 of these regulations for the storage and transportation of all explosive materials, for the preparation of charges, for the loading of charges and for the detonation of charges.

(B) Surface charges, above-surface charges, and armed charges loaded in seismic drill holes less

than 20 feet in depth shall not be left unattended.

(C) Charges which have not been armed may be left unattended in holes less than 20 feet deep provided that:

(1) The hole has been loaded such that the charge has been anchored, cannot be removed and is capped with a hole plug;

(2) The charge does not exceed an amount that would cause damage to persons or property on the surface if accidentally detonated; and

(3) The backfill material in the loaded hole is a continuous column from the charge to the collar of the drill hole. Any drill holes in which the backfill material has bridged and the hole has not been fully backfilled shall not be left unattended.

(D) Armed or unarmed charges loaded in seismic drill holes greater than 20 feet deep may be left unattended provided that:

(1) The hole has been loaded such that the charge has been anchored, cannot be removed and legwires have been made inaccessible and capped with a hole plug;

(2) The charge does not exceed an amount that would cause damage to persons or property on the surface if accidentally detonated; and

(3) The backfill material in the loaded hole is a continuous column from the charge to the collar of the drill hole. Any drill holes in which the backfill material has bridged and the hole has not been fully backfilled shall not be left unattended.

(E) Armed and unarmed charges that are loaded in inhabited areas shall not be left unattended.

(F) Blasting signs shall be posted on roads and trails leading to the blast site.

ARTICLE 9 BLACK POWDER EXPLOSIVES

Section 9-1 General Requirements

(A) Black powder shall be stored in shipping containers as required by regulations of the U.S. Department of Transportation, 49 CFR, Section 173.60, as currently published.

(B) Black powder intended for personal use shall be sold and stored according to the Uniform Fire Code (sections 77.202, 77.203, and 77.203a).

ARTICLE 10 ALTERNATE METHODS AND EMERGENCY VARIANCES

Section 10-1 Alternate Methods or Procedures

(A) The permittee, on specific approval by the Division as provided by this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in these regulations.

(B) The Division may approve an alternate method or procedure, subject to stated conditions, when found that:

(1) Good cause is shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Division or hinder the effective administration of these regulations.

(C) Where the permittee desires to employ an alternate method or procedure, the permittee shall submit a written application to the Division. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons for it.

(D) Alternate methods or procedures may not be employed until the application is approved by the Division.

(E) The permittee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application.

(F) Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Division, the effective administration of this article is hindered by the continuation of the authorization.

(G) As used in this paragraph, alternate methods or procedures include alternate construction or equipment.

Section 10-2 Emergency Variances from Requirements

(A) The Division may approve construction, equipment, and methods of operation other than as specified in this part, where it is found that an emergency exists and the proposed variations from the specified requirements are necessary and the proposed variations:

(1) Will afford security and protection that are substantially equivalent to those prescribed in these regulations;

(2) Will not hinder the effective administration of these regulations; and

(3) Will not be contrary to any provisions of law.

(B) Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions and limitations set forth in the approval of the application.

(C) Failure to comply in good faith with the procedures, conditions and limitations shall automatically terminate the authority for the variations and the permittee shall fully comply with the prescribed requirements of regulations from which the variations were authorized.

(D) Authority for any variation may be withdrawn when, in the judgment of the Division, the effective administration of these regulations is hindered by the continuation of the variation.

(E) Where the permittee desires to employ an emergency variation, the permittee shall submit a written application to the Division.

(F) The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Corrective action may then be taken concurrent with the filing of the application and notification of the Division via telephone.

Section 10-3 Retention of Approved Variations

(A) The permittee shall retain, as part of his records available for examination by the Division, any application approved by the Division under this section.

ARTICLE 11 ENFORCEMENT

Section 11-1 Enforcement Program

The Division provides these regulations to assist operators with maintaining safe use, manufacture, possession, sale, storage, transport, or disposal of explosives materials or blasting agents. When circumstances regarding regulated explosives materials or blasting agents are found to be not in compliance with these regulations, the Division will pursue enforcement actions against the operator.

The enforcement process will include requiring the permittee to make repairs and/or upgrades, provide records, and complete other actions necessary to come back into compliance. During and following the enforcement process, the Director will continue to assist the operator to remain in compliance. The enforcement process may include monetary penalties up to $1,000 per violation per day according to statute (C.R.S. 8-20-104) if the enforcement obligations are not implemented according to the required schedule.

Section 11-1-1 Notice of Violation

(A) A notice of violation (NOV) may be issued when a regulated party is found to be out of compliance with these regulations (7 C.C.R. 1101-9) and/or statutes (C.R.S. 8-20, 9-6 and 9-7). The notice of violation may include fines and/or an order to cease explosives-related operations until all violations are satisfactorily corrected.

(B) Within 10 working days after an NOV has been issued, the person issued the NOV may file a written request with the Division for an informal conference regarding the NOV. Upon receipt of the request, the Division shall provide the alleged violator with notice of the date, time and place of the informal conference. During the conference, the alleged violator and Division personnel may present information and arguments regarding the allegations and requirements of the NOV.

(C) Within 20 days after the informal conference, the Division shall uphold, modify, or strike the allegations within the NOV in the form of a settlement agreement or an enforcement order.

(D) If the alleged violator fails to timely request an informal conference, the terms of the NOV become a binding enforcement order not subject to further review.

Section 11-1-2 Enforcement Order

(A) An enforcement order may be issued when the violations included within an NOV are not resolved within the prescribed time frame or the schedule set forth in a settlement agreement is not met.

(B) An enforcement order may include increased fines up to $1,000 per violation for each day of violation. In addition, the enforcement order may include shut-down of the explosives-related operation, suspension and/or revocation of an explosives permit.

(C) An alleged violator may appeal the enforcement order to the Division for a hearing under C.R.S. 24-4-105. The Division shall then issue a final decision which is subject to judicial review under C.R.S. 24-4-106.

COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT

DIVISION OF OIL AND PUBLIC SAFETY

EXPLOSIVES REGULATIONS

7 C.C.R. 1101-9

Effective: May 1, 2019

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ARTICLE 1 GENERAL PROVISIONS

Section 1-1 Basis and Purpose

These regulations are promulgated to establish rules for the use, manufacture, possession, sale, storage, transport, or disposal of explosives materials or blasting agents in the interest of the life, health, and safety of employees and the general public, as well as the protection of property.

To this end, a procedure for the granting of explosives permits is contained herein whereby the opportunity to use, manufacture, possess, sell, store, transport, or dispose of explosives materials is restricted to such permittees and conditioned upon satisfactory continued compliance with these rules and regulations. Failure to comply with these rules and regulations subjects the permittee to suspension, denial, or revocation of the permit.

Adoption of these rules and regulations is intended to greatly clarify the Division of Oil and Public Safety requirements pertaining to the use of explosive materials, to ease the burden on the permittee where interpretation has been necessary, and to better incorporate the numerous requirements from other governmental agencies. These rules and regulations provide for uniformity of compliance and elimination of numerous areas of confusion and duplication in an effort to better serve and protect the public.

Section 1-2 Statutory Authority

The amendments to these regulations are created pursuant to Section 9-7-105, C.R.S. (2004) of the Colorado Revised Statutes. All prior rules for explosive materials are hereby repealed.

Section 1-3 Effective Date

These amended regulations shall be effective on May 1, 2019. The previous versions of these regulations were effective on December 1, 2018, March 10, 2015, and January 1, 2009.

Section 1-4 Scope

These rules and regulations shall apply to the use, manufacture, purchase, possession, sale, storage, transportation, and disposal of explosive materials in the State of Colorado by any individual, corporation, company, firm, partnership, association, or state or local government agency.

These rules and regulations shall not apply to:

(A) The shipment, transportation, and handling of military explosives by the Armed Forces of the United States or the State Militia.

(B) The normal and emergency operations of any government law enforcement agency including all departments, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties and functions.

(C) Explosives in the forms prescribed by the official United States Pharmacopoeia or the National Formulary and used in medicines and medicinal agents.

(D) Explosive materials while in the course of transportation by for-hire commercial carriers via railroad, water, highway, or air when the explosive materials are moving under the jurisdiction of, and in conformity with, regulations adopted by any Federal Department or Agency.

(E) The components for hand loading rifle, pistol, and shotgun ammunition and/or rifle, pistol, and shotgun ammunition.

(F) The manufacture, sale and use (public display) of pyrotechnics commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes.

(G) Gasoline, fertilizers, installed propellant/powder-actuated safety devices or propellant/powder-actuated power tools.

(H) The use and storage of model rocket motors containing a propellant weight of 62.5 grams or less and which produce less than 17.92 pound seconds of total impulse.

No permit shall be required for the occasional purchase of explosives by a person for normal agricultural purposes where such person is known by the seller of such explosives, and a record is kept of such transactions by the seller, including the specific purpose for which such explosives will be used, the location of the purposed use, the signature of the purchaser, and the certification of the seller as to his personal knowledge of the purchaser. Violation of this record requirement shall cause the seller's permit to be canceled. A permit is required for any manufacturing, storage, dealing, or non-agricultural use of explosives as outlined in Article 3 of this regulation.

No person, firm, partnership, or corporation whose possession of explosive materials is for the purpose of underground mining, surface or underground metal mining, or surface or underground coal mining and whose use and storage is subject to regulation by the provisions of 30 Code of Federal Regulations (CFR) - Parts 56, 57, 75 or 77 shall be subject to the provisions of the Explosives Act, Sections 9-7-101, et seq., Colorado Revised Statutes (C.R.S.).

No person, firm, partnership, or corporation whose possession, use, or storage of explosive materials is subject to regulation by the provisions of Colorado Mining Law, Sections 34-21-104 and 34-21-110, C.R.S. shall be subject to the provisions of the Explosives Act, Sections 9-7-101, et seq., C.R.S.

A permit issued by the Division of Oil and Public Safety shall be required for the possession, use, or storage of explosives in mining operations whose use and storage is not subject to the provisions of 30 CFR - Parts 56, 57, 75 or 77 or Colorado Mining Law, Sections 34-21-104 and 34-21-110, C.R.S.

Except as noted in the foregoing, the Division of Oil and Public Safety may approve or disapprove the location for, and limit the quantity of, explosives or blasting agents which may be loaded, unloaded, reloaded, stored, or temporarily retained at any facility within the State of Colorado.

The Division of Oil and Public Safety may issue an explosive permit for continued use for a period of time not to exceed 36 months.

Section 1-5 Definitions

The following publications and codes are hereby incorporated by this reference:

- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), U.S. Department of Justice, Publication ATF P 5400.7, ATF- Explosives Law and Regulations (2012) – Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 99 New York Avenue, NE; Washington, DC 20226. https://www.atf.gov

- Title 49 CFR - Parts 100-177 (inclusive) https://www.govinfo.gov Parts 390-397 U.S. Department of Transportation (Revised September 27, 2012) – US DOT FMCSA, 1200 New Jersey Avenue, SE; Washington, DC 80590. https://www.fmcsa.dot.gov

- National Electric Code (NEC), 2017 Edition, National Fire Protection Association (NFPA) – NFPA (NEC), 1 Batterymarch Park, Quincy, MA 02169. https://catalog.nfpa.org

- Institute of Makers of Explosives (IME) Safety Library Publication No. 22 (February 2007) – IME, 1212 New York Avenue, NW, Suite 650; Washington, DC 20005. https://www.ime.org

- Institute Of Makers Of Explosives (IME) Safety Library Publication No. 20 (December 2011) - IME, 1212 New York Avenue, NW, Suite 650; Washington, DC 20005. https://www.ime.org

- The Avalanche Artillery Users of North America Committee (AAUNAC) Training Standard (Revised May 16, 2012) – AAUNAC, PO Box 8095, 8920 South Collins Road; Alta, UT 84092

These rules incorporate the editions and revisions specified. Subsequent editions and revisions have not been incorporated by this reference. The publications incorporated by this reference may be examined and a copy of them may be obtained upon request and payment of the cost of reproduction during regular business hours from the Colorado Department of Labor and Employment, Division of Oil and Public Safety, 633 17th Street, Suite 500, Denver, CO 80202, and may also be inspected at the state depository libraries.

The following words when used in these rules and regulations shall mean:

AIR OVERPRESSURE, OVERPRESSURE: The airborne shock wave or acoustic transient generated by an explosive.

AMERICAN TABLE OF DISTANCES: A quantity-distance table prepared and approved by the Institute of the Makers of Explosives, for storage of explosive materials to determine safe distances from inhabited buildings, public highways, passenger railways, and other stored explosive materials. See Section 4.6 of these regulations.

AMMONIUM NITRATE: The ammonium salt of nitric acid represented by the formula NH_4NO_3.

APPROVED STORAGE FACILITY (APPROVED MAGAZINE): A facility for the storage of explosives materials conforming to the requirements of these rules and regulations.

ATTEND(ED): The physical presence of an authorized person within the field of vision of explosives or the use of explosives.

AUTHORIZED, APPROVED, OR APPROVAL: Terms which mean approved, approval, or authorized by the Division.

AUTHORIZED PERSON: A person approved or assigned by the management to perform a specific type of duty or duties or to be at a specific location or locations at the job site.

ARMED CHARGE: An explosive cartridge that contains a detonator.

ARTIFICIAL BARRICADE: An artificial mound, berm, or wall of earth of a minimum thickness of 3 feet, or any other approved barricade that offers equivalent protection.

AVALAUNCHER: A compressed gas explosives delivery system designed for avalanche hazard mitigation.

BARRICADED: The effective screening of a building or magazine containing explosive materials from another magazine or building, railway, or highway by a natural or artificial barrier. A straight line from the top of any sidewall of the building or magazine containing explosives materials to the eave line of any magazine or building or to a point 12 feet above the center of a railway or highway shall pass through the barrier.

BINARY (TWO-COMPONENT) EXPLOSIVE: A blasting explosive formed by the mixing or combining of two precursor chemicals, (e.g., ammonium nitrate and nitromethane).

BLACK POWDER: A deflagrating or low explosive compound of an intimate mixture of sulfur, charcoal and an alkali nitrate (usually potassium or sodium nitrate).

BLAST AREA: Area of the blast within the influence of flying rock missiles, gases, vibration, and concussion.

BLASTER: A Type I permitted individual who is permitted by the Division to possess and control the use of explosives.

BLASTER IN CHARGE: A Type I permittee who is in charge of and responsible for the loading or preparing of the explosives charges, and either physically initiates the charge or is physically present when the charge is initiated at a specific job site. This individual is in charge of the planning of the blast at a specific job site, the supervision of all persons assisting on the blast and all persons in training, and is responsible for the inventory, inventory records, and blast records for the blast.

BLASTING AGENT: An explosive material which meets prescribed criteria for insensitivity to initiation.

For storage, Title 27, CFR, Section 55.11, defines a blasting agent as any material or mixture consisting of fuel and oxidizer intended for blasting, not otherwise defined as an explosive provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 Blasting Cap when unconfined (Bureau of Alcohol, Tobacco, Firearms, and Explosives Regulation).

For transportation, Title 49 CFR defines a blasting agent as a material designed for blasting which has been tested and found to be so insensitive that there is very little probability of accidental initiation to explosion or transition from deflagration to detonation (US Department of Transportation Regulation).

BLASTING MAT: A mat of woven steel, wire, rope, scrap tires, or other suitable material or construction to cover blast holes for the purpose of preventing flying rock missiles.

BLAST PATTERN, DRILL PATTERN: The plan of the drill holes laid out for blasting; an expression of the burden distance, the spacing distance and their relationship to each other.

BLAST SITE: Area where explosive material is handled during blasting operations, including the perimeter of blast holes and a distance of 50 feet in all directions from explosive charges, loaded boreholes or boreholes to be loaded.

BOOSTER: An explosive charge, usually of high detonation velocity and detonation pressure, designed to be used in the initiation sequence between an initiator or primer and the main charge.

BOREHOLE, BLAST HOLE, DRILL HOLE: A hole drilled in the material to be blasted, for the purpose of containing an explosive charge.

BULK MIX: A mass of explosive material prepared for use in bulk form without packaging.

BULK MIX DELIVERY EQUIPMENT: Equipment (usually a motor vehicle with or without a mechanical delivery device) which transports explosive material in bulk form for mixing and/or loading directly into blast holes.

BULLET-RESISTANT: Magazine walls or doors of construction resistant to penetration of a bullet of 150-grain M2 ball ammunition having a nominal muzzle velocity of 2,700 feet per second fired from a .30 caliber rifle from a distance of 100 feet perpendicular to the wall or door.

When a magazine ceiling or roof is required to be bullet-resistant, the ceiling or roof shall be constructed of materials comparable to the side walls or of other materials which will withstand penetration of the bullet described above when fired at an angle of 45 degrees from perpendicular.

Tests to determine bullet resistance shall be conducted on test panels or empty magazines which shall resist penetration of 5 out of 5 shots placed independently of each other in an area of at least 3 feet by 3 feet. Examples of construction that meet this definition are given in Article 4 as alternate construction standards for Type 1 and Type 2 magazines.

BULLET-SENSITIVE EXPLOSIVE MATERIAL: Explosive material that can be detonated by 150 grain M2 ball ammunition having a nominal muzzle velocity of 2,700 feet per second when the bullet is fired from a .30 caliber rifle at a distance of not more than 100 feet and the test material, at a temperature of 70-75 degrees Fahrenheit, is placed against a backing material of 2 inch steel plate.

BURDEN: The distance from the borehole and the nearest free face, or the distance between boreholes measured perpendicular to the spacing. Also, the total amount to be blasted by a given hole, which is usually measured in cubic yards or tons.

BUS WIRE: Expendable heavy gauge bare copper wire used to connect detonators or series of detonators in parallel.

CHARGE-PER-DELAY: Any charges firing within any 8-millisecond time period are considered to have a cumulative effect on vibration and air over-pressure effects. Therefore, the maximum charge-per-delay (w) is the maximum weight of all charges firing within any 8-millisecond (ms) time period from the time a blast starts until the time it ends. For example, if two 10-lb charges fire at 100 ms and one 15-lb charge fires at 105 ms, the maximum charge-per-delay (w) for this time period would be 35 lbs.

COLLAR: The mouth or opening of a borehole.

CONNECTING WIRE: Wire used to extend the firing line or leg wires in the electric blasting circuit.

CONTROL: To directly exercise authority or dominating influence over the use, manufacture, acquisition, purchase, sale, distribution, storage, transportation, or disposal of explosive materials.

CORNICE: An overhanging mass of windblown snow or ice, usually located near a sharp terrain break.

DATE-SHIFT CODE: A code, required by federal regulation (ATF), applied by manufacturers to the outside shipping containers, and, in many instances, to the immediate containers of explosive materials to aid in their identification and tracing. The code indicates the date, work shift and plant of manufacture.

DAY BOX: A portable magazine for the temporary and attended storage of explosives. Day boxes shall meet construction requirements of a Type 3 magazine.

DEALER: Any person engaged in the business of distributing explosive material at wholesale or retail.

DECK: An explosive charge that is separated from other charges in the blast hole by stemming or an air cushion.

DEFLAGRATION: An explosive reaction, such as rapid combustion, that moves through an explosive material at a velocity less than the speed of sound in the material.

DENSITY: The mass of an explosive per unit volume, usually expressed in grams per cubic centimeter or pounds per cubic foot.

DETONATING CORD: A flexible cord containing a center core of high explosives, which may be used to initiate other high explosives.

DETONATION: An explosive reaction that moves through an explosive material at a velocity greater than the speed of sound in the material.

DETONATOR: Any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, electronic detonators, blasting caps for use with safety fuses, detonating cord delay connectors, and non-electric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires.

DIVISION: The Director of the Division of Oil and Public Safety of the Department of Labor and Employment or any designees thereof which may include certain employees of the Division of Oil and Public Safety or other persons.

DOWN LINE: A line of detonating cord or plastic tubing in a blast hole which transmits detonation from the trunkline or surface delay system down the hole to the primer.

ELECTRIC DETONATOR: A detonator designed for and capable of initiation by means of an electric current.

ELECTRONIC DETONATORS: A detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.

EMULSION: An explosive material containing substantial amounts of oxidizers dissolved in water droplets surrounded by an immiscible fuel, or droplets of an immiscible fuel surrounded by water containing substantial amounts of oxidizer.

EXPLOSIVE: Any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

EXPLOSIVE MATERIALS: These include explosives, blasting agents, and detonators. The term includes but is not limited to dynamite and other high explosives; slurries, emulsions, and water gels, black powder, initiating explosives, propellant rockbreaking cartridges (such as Rockrackers™), detonators (blasting caps), safety fuses, squibs, detonating cord, igniter cord, and igniters. Binary explosives (such as Kinepak™ or Execon™), sold in two or more components, are considered an explosive material requiring a Division explosives permit.

EXPLOSIVE OILS: Liquid explosive sensitizers for explosive materials (.e.g., nitroglycerin, ethylene glycol dinitrate and metriol trinitrate).

EXTRANEOUS ELECTRICITY: Electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter a blasting circuit. It includes stray current, static electricity, electromagnetic waves, and time varying electric and magnetic fields.

FIRE EXTINGUISHER RATING: A rating set forth in the National Fire Code which may be identified on an extinguisher by a number (5, 20, 70, etc.) indicating the extinguisher's relative effectiveness, followed by a letter (A, B, C, etc.) indicating the class or classes of fires for which the extinguisher has been found to be effective.

FIRE-RESISTANT: Construction designed to provide reasonable protection against fire. For exterior walls or magazine constructed of wood, this shall mean fire resistance equivalency provided by sheet metal of not less than #26 gauge.

FIRING LINE: The wire(s) connecting the electrical power source with the electric or electronic blasting circuit.

FLYROCK: Dirt, mud, stone, fragmented rock or other material that is propelled from the blast site by the force of an explosion.

FREE FACE: A rock surface exposed to air or water which provides room for expansion upon fragmentation.

FUSE (SAFETY): A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to a cut end. A fuse detonator is usually attached to that end, although safety fuse may be used without a detonator to ignite material such as deflagrating explosives.

FUSE DETONATOR, BLASTING CAP: A detonator which is initiated by a safety fuse or used in an avalauncher round; also referred to as an ordinary blasting cap. Also see detonator.

FUSE LIGHTERS: Pyrotechnic devices for the rapid and certain lighting of safety fuse.

FUEL: A substance which may react with oxygen to produce combustion.

GRAINS: In the avoirdupois system of weight measurement, 7,000 7000 grains are equivalent to one standard, 16-ounce pound (0.45 kg). A grain is 0.0648 grams in both the avoirdupois and troy systems.

GROUND VIBRATION: Shaking the ground by elastic waves emanating from a blast; usually measured in inches per second of particle velocity.

HARDWOOD: Red Oak, White Oak, Hard Maple, Ash, or Hickory, free from loose knots, wind shakes, or similar defects.

HIGH EXPLOSIVES: Explosives which are characterized by a very high rate of reaction, high pressure development and the presence of a detonation wave, including, but not limited to, dynamite, detonating cord, cast boosters, detonators, cap-sensitive slurry, emulsion, or water gels, and mixed binaries.

HOWITZER: A military cannon that delivers projectiles at medium muzzle velocity at low or high trajectories.

INHABITED AREA OR BUILDING: A building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage, and use of explosive materials.

INSPECTOR: An Inspector of the Division.

INITIATION: The start of deflagration or detonation in an explosive material.

INITIATION SYSTEM: Combination of explosive devices and accessories (detonators, wire, cord, etc.) designed to convey a signal and initiate an explosive charge.

LAWFUL POSSESSOR: A Type II permittee who has legally purchased or acquired explosive materials.

LOADING DENSITY: The weight of explosive, expressed as pounds per foot or kilograms per meter of borehole.

LOW EXPLOSIVES: Explosives which are characterized by deflagration or a low rate of reaction and the development of low pressure.

MAGAZINE: Any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.

MAGAZINE DISTANCE: Shall mean the minimum distance permitted between any two storage magazines which is expected to prevent propagation of an explosion from one magazine to another from a blast.

MAKE-UP ROOM: A room located inside an uninhabited building which shall be used for the assembly of cap and fuse or for the arming of explosive charges used in avalanche mitigation work.

MANUFACTURER: Any individual, corporation, company, firm, partnership, association, or state or local government agency engaged in the business of manufacturing explosive materials for the purpose of sale, distribution or for his own use.

MASS DETONATION: When a unit or any part or quantity of explosive material detonates and causes all or a substantial part of the remaining material to detonate.

MISFIRE: A blast that fails to detonate completely after an attempt at initiation. This term is also used to describe the explosive material itself that has failed to detonate as planned.

MOTOR VEHICLE: A vehicle, machine, tractor, semi-trailer or other conveyance propelled or drawn by mechanical power. Does not include vehicles operated exclusively on rail.

NATURAL BARRICADE: Natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

NON-ELECTRIC DETONATOR: A detonator that does not require the use of electric energy to function.

OXIDIZER OR OXIDIZING MATERIAL: A substance, such as nitrite, that readily yields oxygen or other oxidizing substances to promote the combustion of organic matter or other fuel.

PERMANENT STORAGE MAGAZINE: Type 1 magazines or Type 2, Type 4, or Type 5 magazines that have been at the same location for longer than 90 days.

PARTICLE BOARD: A composition board made of small pieces of wood that have been bonded together.

PARTICLE VELOCITY: A measure of the intensity of ground vibration, specifically the velocity of motion of the ground particles as they are excited by the wave energy.

PERMITTEE: Any user, purchaser, manufacturer, dealer, storer, disposer, or transporter of explosives for a lawful purpose, who has obtained a permit from the Division.

PERSON: Any individual, corporation, company, firm, partnership, association, or state or local government agency.

PETN: Pentaerythritol tetranitrate.

PLACARDS: Division of Transportation Approved Title 49 CFR signs placed on vehicles transporting hazardous materials (including explosive materials) indicating the nature of the cargo.

PLYWOOD: Exterior construction-grade plywood.

POSSESS: The physical possession of explosives on one's person, or in the person's vehicle, magazine or building.

POWDER: A common synonym for explosive materials.

POWDER FACTOR: The amount of explosives used per unit of blasted material (see Loading Density).

PRIMER: A unit, package, or cartridge of explosives used to initiate other explosives or blasting agents, which contains either a detonator or a detonating cord to which a detonator designed to initiate the detonating cord is attached.

PROPELLANT/POWDER-ACTUATED POWER DEVICE: Any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

PUBLIC CONVEYANCE: Any railroad car, streetcar, ferry, cab, bus, aircraft, or other vehicle carrying passengers for hire.

PUBLIC HIGHWAY: Shall mean any public street, alley, or road.

PUBLIC HIGHWAY DISTANCE: Shall mean the minimum distance permitted between a public highway and an explosives magazine.

PUBLIC PLACE: A place which the public or a substantial number of the public has access, and includes but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities.

PURCHASER: A Type II permittee who acquires explosives.

PYROTECHNICS, FIREWORKS: Any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects.

RAILWAY: Any steam, electric, or other type of railroad or railway.

RESPONSIBLE PERSON: A Type I permitted individual who is directly responsible for a Type II permittee's compliance with the provisions of the Explosives Act, 9-7, C.R.S., and any rules and regulations promulgated thereunder.

SAFETY FUSE: A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to a cut end. A fuse detonator is usually attached to that end, although safety fuse may be used without a detonator to ignite material such as deflagrating explosives.

SCALED DISTANCE (D_S): A factor relating similar blast effects from various weight charges of explosive material at various distances. Scaled Distances referring to blasting effects are obtained by dividing the distance of concern by a fractional power of the charge weight per delay of the explosive materials.

SECURED STORAGE: An area which is protected from weather and is theft-resistant and in compliance with the uniform fire code.

SEISMOGRAPH: An instrument that is useful in monitoring blasting operations for recording records

ground vibration. Particle velocity, displacement or acceleration is generally measured and recorded in three mutually-perpendicular directions.

SEMI-CONDUCTIVE HOSE: A hose used for pneumatic conveying of explosive materials, having an electrical resistance high enough to limit flow of stray electric currents to safe levels yet not so high as to prevent drainage of static electric charges to ground. A hose of not more than 2 megohms resistance over its entire length and of not less than 1,000 ohms per foot (3280 ohms per meter) meets this requirement.

SENSITIVITY: A physical characteristic of an explosive material classifying its ability to be initiated upon receiving an external impulse, such as heat impact, shock, friction, static electricity, stray current or other influence which can cause explosive decomposition.

SHALL: Means that the rule establishes a minimum standard which is mandatory.

SHOCK TUBE: A small diameter plastic tube containing reactive material used for initiating detonators. It contains only a limited amount of reactive material such that the energy that is transmitted through the tube by means of a detonation wave is guided through and confined within the walls of the tube.

SITE: Area where active blasting is taking place or the location of explosives storage magazines.

SLURRY/WATER GEL: An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener.

SMALL ARMS AMMUNITION: Any cartridge for a shotgun, rifle, pistol, or revolver, and cartridges for propellant-actuated power device and industrial guns. Military-type ammunition containing explosive bursting charges, or any incendiary, tracer, spotting, or pyrotechnic projectile is excluded from this definition.

SOFTWOOD: Douglas Fir, or other wood of equal bullet-resistance, free of loose knots, wind shakes, or similar defects.

SPACING: The distance between boreholes. In bench blasting, the distance is measured parallel to the free face and perpendicular to the burden.

STATIC ELECTRICITY: Electric charge at rest on a person or object. It is most often produced by the contact and separation of dissimilar insulating materials.

STEMMING: Inert material placed in a borehole on top of or between separate charges of explosive material, used for the purpose of confining explosive materials or to separate charges of explosive material in the same borehole.

STEEL: General purpose (hot or cold rolled) low carbon steel, such as specification ASTM A366 or equivalent.

STORAGE: The safekeeping of explosives in unattended magazines.

TEMPORARY STORAGE MAGAZINE: A Type 1, Type 2, Type 4, or Type 5 magazine that is at a location for a period not to exceed 90 days.

THEFT-RESISTANT: Construction designed to deter illegal entry into facilities used for the storage of explosive material.

TWO-COMPONENT: See binary explosive.

TRANSPORTATION: The conveyance or carrying of explosives from one place to another by means of a motorized vehicle or device.

TYPE I EXPLOSIVES PERMIT: A permit issued by the Division to individuals who possess and control explosive materials during the use, manufacture, acquisition, purchase, sale, distribution, storage, transportation, or disposal of explosives materials.

TYPE II EXPLOSIVES PERMIT: A permit issued by the Division to corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies involved in the use, purchase, sale, manufacture, transportation, acquisition, distribution or disposal of explosives materials.

TYPE III EXPLOSIVES PERMIT: A permit issued by the Division to corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies for the storage of explosives in approved magazines.

WEATHER-RESISTANT: Construction designed to offer reasonable protection against weather.

U.S. DEPARTMENT OF TRANSPORTATION EXPLOSIVE CLASSIFICATIONS FOR THE TRANSPORTATION OF EXPLOSIVES:

Division 1.1: Explosives that have a mass explosion hazard

Division 1.2: Explosives that have a projection hazard but not a mass explosion hazard

Division 1.3: Explosives that have a fire hazard and either a minor blast hazard or minor projection hazard or both, but not a mass explosion hazard

Division 1.4: Explosives that present minor explosion hazard

Division 1.5: Very insensitive explosives that have a mass explosion hazard, but are so insensitive that there is little probability of initiation or of transition from burning to detonation under normal conditions of transport (Blasting Agents)

ARTICLE 2 GENERAL REQUIREMENTS

Section 2-1 Miscellaneous Requirements

(A) No person shall sell, display, or expose for sale an explosive or blasting agent on any public way or public place.

(B) No person shall sell, deliver, or give possession and control of explosives materials to any person not in possession of a valid permit except an authorized for-hire commercial carrier transporting between two valid permittees.

(C) No person shall sell, purchase, store, transport, use or otherwise possess or control any explosive material without the authorization of the lawful possessor of the explosive material. The lawful possessor shall file a written list of authorized Type I permittees with the Division and shall notify the Division of any changes in writing.

(D) Any theft or loss of explosives or blasting agents, whether from a storage magazine or area, a vehicle in which they are being transported, or from a site where they are being used, or from any other location, shall immediately (but in no event later than 24 hours) be reported by the person having control of such explosives or blasting agents to the local sheriff or local police, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the Division.

(E) All individuals, corporations, companies, firms, partnerships, associations, or state or local government agencies conducting an operation or activity requiring the use, possession, purchase, sale, manufacturing, storage, acquisition, distribution, transportation or disposal of any explosive materials shall:

(1) Obtain a permit from the Division prior to conducting such operation or activity and shall be responsible for the results and any other consequences of any loading and firing of the explosive materials; and

(2) NOT delegate either performance of the blast or accountability for such performance to another person(s).

(F) The Division, Public Safety Section and local law enforcement authority shall be notified immediately by the permittee of any accident, explosion, fire, or misuse of explosives which occurs in connection with the use, manufacture, possession, sale, transportation, storage or disposal of explosives that results in the loss of life, personal injury, or damage to any property.

(G) The Division may inspect the site where any accident, explosion, fire, misuse, theft or loss of explosives occurred.

(H) A Division representative may enter during normal business hours, without advance notice, the premises of any permittee, including places of storage or use, for the purpose of inspecting or examining any records or documents required under these regulations and any explosives material used or stored at the premises.

(I) All corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies conducting blasting operations shall have a certificate of liability insurance, be named as an also insured on another liability insurance policy, or shall have obtained a signed release of liability for damages from blasting operations from all parties who may be potentially affected by blasting operations. The U.S. Forest Service (USFS) should be notified prior to all blasting activities that occur on USFS land.

ARTICLE 3 EXPLOSIVES PERMIT

Section 3-1 Basic Legal Obligations

(A) Except as specifically allowed by these regulations, it is unlawful for any person to use, possess and control, manufacture, purchase, sell, store, transport, or dispose of any explosive material without possessing a valid permit from the Division (18-12-109 (2) and 9-7-101, et seq., C.R.S.).

Section 3-2 General Requirements

(A) Permits issued under these rules and regulations shall be dated and numbered. Each permit will indicate class of permit, and shall be valid for up to 36 months after the date of issue unless revoked or suspended by the Division, and shall be renewed on or before the expiration date. The application for renewal of permits shall be made to the Division prior to the renewal date to avoid possible lapse of said permit. The Division shall send a notice a minimum of 60 days prior to the expiration date. The failure of the permittee to receive timely notice from the Division shall not excuse the permittee's requirement to submit a renewal application not less than 30 days prior to the expiration date.

(B) Upon notice from the Division or any law enforcement agency having jurisdiction, a person using, manufacturing, purchasing, selling, storing, transporting, disposing, or otherwise in possession and control of any explosives without a permit shall immediately surrender any and all such explosives to the Division or to the law enforcement agency designated by the Division.

(C) The Division shall require, as a condition precedent to the original issuance of any explosives permit, fingerprinting and criminal history record checks for every individual applicant. Fingerprints shall be submitted on forms provided to the applicant by the Division. If a Type I permit holder submits a complete application for renewal, fingerprint cards are not required unless requested by the Division. As a condition precedent to renewal of any explosives permit for an individual, a criminal background check is required.

(D) No person shall withhold information or make any false statement or fictitious oral or written statement or furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining or retaining an explosives permit.

(E) No person shall knowingly make any false entry in any record that a permittee is required to keep pursuant to these regulations.

(F) When a permit has expired and has not been renewed, the applicable County Sheriff's Department shall be notified by the Division, and the Type II permittee must turn over any remaining explosives which the permittee is in possession of directly to the Division or the law enforcement agency designated by the Division, or in the presence of the Division or the law enforcement agency designated by the Division, surrender control of all remaining explosives which the permittee is in possession of to a valid Type II permittee.

(G) All permittees shall take every reasonable precaution to protect their permits from loss, theft, defacement, destruction, or unauthorized duplication. The loss or theft of any permit shall be reported immediately to the local law enforcement agency and to the Division.

Section 3-3 Revocation, Suspension, or Denial of Explosives Permits

(A) The Division shall not issue a permit to any person who:

(1) Is under 21 years of age;

(2) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(3) Is currently charged with, or has a charge pending for a crime punishable by imprisonment for a term exceeding 1 year;

(4) Is a fugitive from justice;

(5) Has been convicted of a crime involving the illegal distribution of marijuana, any depressant or stimulant drug, or narcotic drug, perjury, fraud, false swearing, or bomb threats;

(6) Has been adjudicated developmentally disabled, mentally unstable, mentally ill or insane, or to be incompetent due to any mental disability or disease;

(7) Has been discharged from the armed forces under dishonorable conditions;

(8) Is an alien, other than an alien who is lawfully admitted for permanent residence or an alien who has obtained either a letter of clearance or letter of restoration of explosives privileges from the ATF; or

(9) Having been a citizen of the United States, has renounced citizenship.

(B) The Division shall deny or revoke and not renew the permit of any person who is currently charged with, has a charge pending or has been convicted of any of the following offenses:

(1) A crime punishable by imprisonment for a term exceeding 1 year;

(2) A crime involving the illegal distribution of marijuana, any depressant or stimulant drug, or narcotic drug, bomb threats, perjury, fraud, or false swearing, including making a false affidavit or statement under oath to the Division in an application or report; or

(3) A crime relating to use, manufacturing, sale, transportation, possession, or disposal of explosives.

(C) The Division may revoke and not renew the permit of any person when the violation of any law or regulation relating to explosive material or the misuse of explosive materials results in loss of life or serious injury to any person.

(D) A permit may be denied, suspended, or revoked by the Division because of, but not limited to the following:

(1) Unlawful use of, or addiction to, alcohol, narcotics or illegal drugs;

(2) Failure to exercise reasonable safeguards resulting in hazard to life, health, or property;

(3) Failure to show legitimate use for a permit;

(4) Failure to show sufficient proof of training or prior experience with explosives;

(5) Non-compliance with an order issued by the Division within the time specified in such order;

(6) Proof that the permittee or applicant advocates, or knowingly belongs to any organization or group that advocates the violent overthrow of, or violent action against any federal, state, or local government or institution;

(7) Failure to comply with the Colorado Explosives Act, these regulations and Bureau of Alcohol,

Tobacco, Firearms and Explosives (ATF), U.S. Department of Justice, Publication ATF P 5400.7, ATF- Explosives Law and Regulations (2012);

(8) Giving false information or a misrepresentation being willfully made to the Division and its investigators or inspectors to obtain or maintain a permit;

(9) Making a false affidavit or statement under oath to the Division in an application or report; or

(10) Other factors which, at the discretion of the Division, indicate an unfitness to hold an explosive permit in compliance with state and federal law and these regulations.

(E) The Division shall revoke the permit of any person adjudicated to be mentally unstable, mentally ill or insane, or to be incompetent due to any mental disability or disease. The Division shall not renew the permit until the person has been legally restored to competency.

Section 3-4 Procedure on Revocation, Suspension, or Denial of Explosives Permit

(A) In any case where the Division denies or suspends a permit, the Division shall notify the applicant or permittee in writing. Said notice shall state the reason for denial, or suspension, and state that, upon receiving a written request, a hearing shall be scheduled.

(B) Upon notice of the revocation or suspension of any permit, the former permittee shall immediately surrender to the Division the permit and all copies thereof. In addition, the former permittee must surrender control of all explosive material in his/her possession to the Division or the law enforcement agency designated by the Division, or in the presence of the Division or the law enforcement agency designated by the Division surrender control of all explosive material in his/her possession to a valid Type II permittee until a final determination on the charges is made.

(C) The period of denial, suspension, or revocation shall be within the sound discretion of the Division.

(D) Any person whose permit has been denied, suspended, or revoked under Section 3.3 may apply to the Division for a hearing in order to seek relief.

(1) The hearing shall be conducted by the Division or an Administrative Law Judge with the Division of Administrative Hearings on behalf of the Division in accordance with the procedures of 24-4-105 C.R.S.

(2) The Division may grant the relief requested in the hearing if the Division determines that

i. The applicant is in compliance with all federal regulations; and

ii. The circumstances regarding the denial, suspension, or revocation, and the applicant's record and reputation are such that the granting of such relief is not contrary to public safety.

(E) Any person aggrieved by a decision or order of the Division may seek judicial review pursuant to the provisions of 24-4-106 C.R.S.

(F) Any person who has been denied a permit may not reapply to the Division for an explosives permit within one year of the decision, unless exception is made by the Division and the applicant establishes a substantial change in circumstances to indicate fitness to hold an explosive permit in accordance with the requirements of these regulations, State and Federal law.

(G) In case of revocation or suspension of a permit, the Division shall notify all vendors of explosives of such revocation or suspension (24-4-104 C.R.S.).

Section 3-5 Permit Types and Classifications

Permits are separated according to type. A permit may have more than one designated classification; however, for each and every classification requested, the applicant must show legitimate use and qualifications.

3-5-1 Type I Explosives Permit

(A) All individuals who possess and control explosive materials shall have a valid Type I Explosives Permit issued by the Division.

(B) The requirements of permitting a Type I permittee shall be:

(1) An individual who possesses and controls explosive materials during the use, transportation, storage, distribution, manufacturing, sale, acquisition, or purchase of explosive materials.

(2) An individual who makes any or all of the following decisions:

(i) Decides total quantity of explosives used;

(ii) Decides borehole size, spacing, or depth;

(iii) Decides quantity of explosives in each borehole or charge;

(iv) Decides initiation system to be used;

(v) Decides timing delays to be used.

(3) An individual who directly supervises all personnel assisting in the use of explosives and supervises all personnel in training.

(4) An individual who shall also be physically present during the use of explosives, at the point of initiation when a charge is detonated and either initiates the detonation or gives the order to initiate the detonation of the charge.

(C) The classification of permits the applicant may apply for shall be:

(1) Construction

(i) Applicant must also apply for a Type I transporter permit, or provide to the Division a written plan documenting the manner in which explosives shall be legally transported to and from construction sites.

(2) Construction Limited

(i) Applicant may use or possess class 1.4 or 1.5 explosives or binary products only.

(3) Possession

(i) An individual who possesses explosive materials during the storage, distribution, component assembly, manufacturing, sale, acquisition or purchase of explosive materials. This endorsement does not allow an individual to exercise responsibilities as described in 3-5-1 (B) (2) through (4).

(ii) The requirement listed in 3-5-1(D)(3) does not apply to this classification.

(4) Quarry Operations

(5) Avalanche Mitigation

(6) Geophysical Research

(7) Transporter

(i) Applicant must submit a copy of his/her Commercial Driver's License with the Hazardous Material Endorsement included on it.

(ii) Required for the transportation of explosive materials and blasting agents in quantities required to be placarded across or over roads within the state.

(8) Well Perforation

(9) Manufacturer

(10) Special (special use or possession and control as described on the permit, including but not limited to fabrication, research and development, rock-breaker cartridges, demolition, law enforcement, unexploded ordnance disposal, purchasing agent, sales agent,.)

(D) Type I permittee qualifications

(1) The Type I permittee shall be able to understand and give written and oral orders.

(2) The Type I permittee shall be qualified by reason of training, knowledge, and experience in the field of using, transporting, possessing, storing and handling of explosives, and have a working knowledge of state, federal and local laws and regulations which pertain to explosives.

(3) The Type I permit applicant shall be required to submit proof of not less than one year of explosives experience or on the job training in explosives specific to at least one classification of permit. Avalanche mitigation applicants must meet training requirements as defined in Section 7-2.

(4) The Type I permit applicant shall be required to submit proof of not less than six months of explosive experience or on-the-job training in explosives specific to each additional classification of permit applied for.

(5) The Type I permittee shall be knowledgeable and competent in the use of each type of blasting method and initiation system used.

(6) A Type I permit applicant for a transportation classification permit only shall have a valid commercial driver's license with a hazardous materials endorsement and experience in the transportation of explosive materials for a period of not less than ninety days.

(E) Type I permit limitations

(1) A Type I permit shall be limited to possession and control of explosives while authorized by the Type II permittee(s) for whom the Type I permittee is employed or otherwise associated.

(2) The Type I permit shall be placed on inactive status by the Division upon notification in accordance with Section 3-9(D) that the Type I permittee is no longer authorized to possess and control explosives for a Type II permittee.

(3) Upon receipt of written notification by a Type II permittee of authorization and the return of the original Type I permit card, the Division shall return the Type I permit to active status and issue an updated permit card reflecting the change in employment or association.

(4) An active status Type I permit card shall be carried by the Type I permittee at all times when using, transporting, or possessing explosives.

3-5-2 Type II Explosives Permit

(A) Corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies involved in the use, purchase, sale, manufacture, transportation, or disposal of explosives shall have a valid Type II Explosives Permit.

(B) Only one Type II permit shall be required of any corporation, company, partnership, firm, individual operating a business, association, or state or local government agency, and may be issued for all or any of the following classifications:

(1) CLASSIFICATION AS A MANUFACTURER OF EXPLOSIVES authorizes the possession, manufacture, and purchase of materials required in the process of manufacturing the finished product. A corporation, company, partnership, firm, individual operating a business, association, or state or local government agency that combines compounds to manufacture an explosive is engaged in the business of manufacturing explosives and shall be responsible for compliance with the provisions of 9-6-105 C.R.S., the Explosives Act, 9-7-101, et seq. C.R.S., and any rules and regulations promulgated thereunder.

(2) CLASSIFICATION AS A DEALER OF EXPLOSIVES authorizes the purchase, possession, and resale of explosives or blasting agents. A dealer permit is required of jobbers, wholesalers, distributors, dealers, and retailers, whether or not they physically handle, store, or have possession of the explosives or blasting agents. This permit is also required for all nonresidents who desire to sell explosives within the State of Colorado.

(3) CLASSIFICATION AS A PURCHASER OF EXPLOSIVES authorizes the purchase or acquisition and possession of explosives and blasting agents.

(4) CLASSIFICATION AS A PURCHASER LIMITED authorizes the purchase or acquisition and possession of 1.4 and 1.5 classes of explosives and binary products.

(5) CLASSIFICATION AS A USER OF EXPLOSIVES authorizes the possession and use of explosives and blasting agents by a corporation, company, partnership, firm, individual operating a business, association, or state or local government agency conducting an operation or activity which requires the use of such materials. User permits shall be issued for the following types of operations:

(i) Construction

(a) Applicant must also apply for a Type II transportation permit, or provide to the Division a written plan documenting the manner in which explosives shall be legally transported to and from construction sites.

(ii) Construction Limited

(a) Applicant's use and possession of explosives is limited to 1.4 and 1.5 classes of explosives and binary products.

(iii) Quarry Operations

(iv) Avalanche Mitigation

(v) Geophysical Research

(vi) Well Perforation

(vii) Manufacturer

(viii) Special (special use or possession and control as described on the permit, including but not limited to fabrication, research and development, rock-breaker cartridges, demolition, law enforcement, unexploded ordnance disposal, purchasing agent, , sales agent, etc.)

(6) A TRANSPORTATION permit authorizes the transportation of explosive materials and blasting agents in quantities that are required to be placarded across or over roads within the state when such transportation is in compliance with federal, state and local transportation laws and regulations.

(i) A copy of a Hazardous Materials Transport Permit issued by the Public Utilities Commission (PUC) shall be submitted with the application.

3-5-3 Type III Storage Permit

(A) Corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies that store explosives shall have a valid Type III permit.

(B) Storage permits shall be issued to those persons who have approved storage magazine sites.

(C) Approval by the Division of a permanent storage magazine site shall include a site inspection by a Division representative. Written notification of the location of the permanent storage magazine site shall be made to the applicable fire district or department.

(D) Approval by the Division of temporary magazine sites shall be made for a period not to exceed 90 days upon written notification to the Division as to the location of the magazine site, the type(s) and supplier of the magazines being utilized, the type and quantity of explosives being stored and proof of written notification of the location of the storage magazine to the applicable fire district or department and county sheriff.

(E) An inspection shall be required at each permanent storage magazine site, including any added permanent storage magazine sites, prior to the renewal of the Type III permit.

Section 3-6 Permit Application

(A) Application for each type of original permit or renewal shall be made on forms available from the Division and shall provide the following information:

(1) The name and address of the applicant

(2) Front and reverse side copies of applicant’s driver’s license

(3) The reason for desiring to use, purchase, sell, store, manufacture, transport or dispose of explosives

(4) The applicant’s citizenship, if the applicant is an individual

(5) If the Type II applicant is a partnership, the names and addresses of the Type I permitted partners and their citizenship

(6) If the Type II or Type III permit applicant is a corporation, company, firm, association or state or local government agency, the names and addresses of the Type I permitted owner(s), manager(s) or other designated individual thereof, and their citizenship

(7) Where application for a Type II explosives permit is made in the name of a corporation, company, partnership, association, state or local government agency or firm, the application shall be signed by the permitted owner(s), partner(s), manager(s) or other designated individual(s) who will have access to explosive materials and be directly responsible for compliance with the provisions of the Explosives Act, 9-7-101, et seq. C.R.S., and any rules and regulations promulgated thereunder

(8) The name(s) of the valid Type II permittee the Type I permit applicant is employed by or associated with, and for whom the applicant will possess and control explosive materials

(9) Evidence that the Type I applicant is sufficiently trained and experienced in the use, transportation, storage, purchase, sale, disposal or manufacturing of explosives

(10) Such other pertinent information as the Division shall require to effectuate the purpose of these regulations

(B) Application forms may be obtained from the Division.

(C) The submission of an application shall be a certification by the Type I permit applicant that the applicant, or Type I permittee acting as the responsible person for the Type II or Type III permit applicant, has read, understands and accepts these regulations and shall comply with all requirements of these regulations.

(D) Payment of the application fee for a period of 36 months, according to the following list, must accompany each application for a permit.

Type I Explosives Permit:	$110.00
Type II Explosives Permit:	$225.00
Type III Explosives Permit:	$375.00

(E) A check or money order for the fee shall be made payable to the Division and submitted to the address provided on the application.

(F) The applicant may be asked to supply additional information requested by the Division in order to verify statements in an application or in order to facilitate a Division inquiry prior to the issuance or renewal of a permit.

(G) Each Type II application for a manufacturer or dealer permit shall be accompanied by a copy of the applicant's current federal license issued by The Bureau of Alcohol, Tobacco, Firearms and Explosives.

(H) The Type II application for a manufacturer or dealer permit shall list the location(s) in Colorado where explosives will be manufactured or from where explosives will be sold. This shall not be required for the manufacturers of binary explosives.

(I) A valid Type I permit shall be held by at least one of the individual owners, partners, managers or other designated individual for each classification of use requested on the Type II Explosives Permit application.

(J) Each application for an original Type II permit or a renewal permit shall be accompanied by a list of valid Type I permittees authorized to possess and control explosives on behalf of the Type II permittee. The Division shall be notified of any changes of such Type I permittees.

(K) An application for a Type III storage permit shall include the location of all storage facilities and types of magazines to be utilized.

(L) Each application for a Type II permit to purchase shall have a list of Type I permittees authorized to order and receive explosives on behalf of the purchaser. The list of Type I permittees authorized to order and receive explosives on behalf of the purchaser shall be provided to dealers prior to the purchase of explosives.

(M) In addition to the application form, all new Type I applicants, all Type I applicants requesting a change in classification of their permit, and all Type I applicants who have not renewed their permit within 60 days after expiration will be required to obtain a score of not less than 90% on a written examination prepared and administered by the Division. A Type I applicant failing the examination may retake the examination at any time. A Type I applicant failing the examination a second time must wait for a period of at least 14 days before retaking the exam.

(N) All Type I applicants renewing their permits are required to obtain a score of not less than 90% on a written examination prepared and administered by the Division every 3 years or provide proof of 16 hours attendance during the previous 3 years in a training course approved by the Division.

(O) The Division shall obtain a photograph of Type I permit applicants.

(P) Upon receipt of an incomplete application or an application requiring additional information, the applicant will be notified of the deficiency or additional requirements. If the deficiency is not corrected or if the Division does not receive the additional information within 180 days following the date of notification, the application shall be considered abandoned and the Division shall not retain the application.

(Q) Upon receipt of a completed Type I application the applicant will be sent an exam notification. If the Type I permit applicant fails to complete the exam within 180 days of the exam notification, the application shall be considered abandoned and the Division shall not retain the application.

(R) A Type I renewal applicant must complete the exam, if required, within 180 days of the date of the renewal notification letter sent by the Division. Should the renewal applicant fail to complete the exam within 180 days of the date of the renewal letter, the application shall be considered abandoned and the Division shall not retain the application.

Section 3-7 Protection and Exhibition of Permits

Permittees shall take every reasonable precaution to protect their permits from loss, theft, defacement, destruction or unauthorized duplication.

The loss or theft of any permit shall be reported immediately to the local law enforcement agency and to the Division.

Permits, or copies thereof, shall be exhibited in conformity with the following provisions:

(A) Manufacturer - the permit shall be posted at the facility where explosives or blasting agents are manufactured. Manufacturing permits for bulk mix trucks shall be posted in the office of the permittee.

(B) Dealer- the permit shall be posted in the office at the location where explosives or blasting agents are sold.

(C) Purchaser - the permit or a copy of the permit must be displayed at magazine/warehouse where explosives or blasting agents are received and stored.

(D) User - the permit shall be posted in the main office of explosives operations.

(E) Storage - a copy of the permit must be displayed at the office, warehouse, or in at least one magazine where explosives or blasting agents are received for storage.

(F) A Type I permit card shall be carried by the Type I permittee at all times when using, transporting, or possessing explosives and presented to representatives of the Division and law enforcement officials, upon request, along with valid personal identification.

Section 3-8 Records of Transactions

All permittees shall keep a complete record of all transactions in, or operations involving explosives for five years following the year in which the transactions or operations involving explosives or blasting agents occurred. The permittees must retain copies thereof and furnish such copies to the Division during normal business hours upon request. When the permittee is employed by another person who holds a valid permit, the records of the employer shall be deemed to satisfy these record-keeping requirements.

3-8-1 Manufacturer

The records of a person having a permit to manufacture explosives or blasting agents shall include the following information:

(A) Amount and kinds manufactured.

(B) Amounts and kinds acquired for manufacture.

(C) Names and addresses of the persons from whom acquired and dates on which acquired.

(D) Amount and kinds sold or otherwise disposed of.

(E) Names, addresses and permit numbers of persons to whom sold or otherwise disposed of and dates of the sales or other dispositions.

(F) Amounts and kinds on hand at each location at the end of each day on which there are transactions or operations.

(G) The records kept in accordance with Section 6-1(U) shall meet the record requirements for the manufacture of binary products.

3-8-2 Dealer

The records of a person having a permit for dealer shall include the following information:

(A) Amounts and kinds acquired.

(B) Names and addresses of persons from whom acquired and dates on which acquired.

(C) Amounts and kinds sold or otherwise disposed of.

(D) Names, addresses, and permit numbers of persons to whom sold or otherwise disposed of and the dates of sales or other dispositions. This requirement shall not apply to the sale of smokeless powder.

3-8-3 Type II Permit

A person holding a Type II permit to use explosives or blasting agents shall maintain a record of all explosive material transactions including a daily inventory record of all explosives received, removed from, or returned to each storage magazine in accordance with Section 4-1(F)(6) of these regulations, and records completed by Type I permittees in accordance with Section 6-1(U) and Section 7-4(B)(11).

3-8-4 Type I Permit

Type I permittees shall complete and sign records of explosives used in accordance with Section 6-1(U) or Section 7-4(B)(11) of these regulations.

Section 3-9 Permit Changes

The Division shall be notified immediately when:

(A) There is a change in the permittee's permanent address.

(B) There is a change in the name of a permittee, or a change in the Type I permitted owner(s), manager(s), or other designated individual(s) acting as the responsible person of any Type II or Type III permittee.

(C) The location of an explosives storage facility is changed or added and the address of the new location shall be provided.

(D) There is a change in the Type II permitted employer or association for whom the Type I permittee will possess and control explosive materials.

(E) There is a change in the Type I permitted individuals authorized to possess and control explosives on behalf of a Type II permittee.

(F) A Type I Permit holder is currently charged with, has a pending charge of or has been convicted of any of the offenses listed in 3-3 (B) 1-3.

Section 3-10 Explosives Sales to Permittees

(A) When an order for explosives is placed by a purchaser, the dealer shall request proper authorization and identification from the purchaser and shall record the purchaser's permit number on the sales record.

(B) The purchaser shall provide to the dealer a list of Type I permittees authorized to order and receive explosives on behalf of the purchaser. A dealer shall not distribute explosive materials to a company or individual on the order of a person who does not appear on the most current list of authorized Type I permittees, and if the person does appear on the list, the dealer shall verify the identity of such person.

(C) The authorized Type I permittee who physically receives the purchased explosives shall present his permit and proper identification to the dealer. The receiver of the explosives shall sign a receipt documenting the explosives received with his legal signature and permit number.

(D) All such receipts shall be retained by the dealer for not less than 5 years from the date of purchase.

(E) The dealer shall keep a record of all explosives purchased and sold as required by federal regulations.

(F) Any package containing any explosive or blasting agent that is sold or is delivered for shipment by a dealer shall be properly labeled in accordance with 9-6-105 C.R.S. to indicate its explosive classification.

ARTICLE 4 STORAGE OF EXPLOSIVE MATERIALS

Section 4-1 General Requirements

(A) All explosive materials, special industrial explosive materials, and any newly developed and unclassified explosive materials shall be kept in magazines which meet the requirements as defined in these regulations, unless they are in the process of manufacture, being physically handled in the operating process, being used, or being transported to a place of storage or use. Refer to Section 4-3 for a summary of storage requirements.

(B) High explosives shall not be stored unattended outdoors, or in any building or structure, except in a Type 1 or Type 2 magazine.

(C) Detonators that will not mass detonate (1.4s and 1.4b classification) and are in the original and closed shipping container may also be stored in a Type 4 magazine.

(D) The requirements for the storage of binary explosives shall be:

(1) Storage of the flammable liquid component of a binary explosive shall be in secure storage that complies with the uniform fire code.

(2) Storage of the powder component of a binary explosive shall be in secure storage.

(3) Liquid and powder components shall not be stored together.

(E) Detonators shall not be stored in the same magazine in which other explosives are kept or stored except under the following circumstances:

(1) In a Type 1 or Type 2 magazine, detonators may be stored with delay devices, electric squibs, safety fuse, igniters, and igniter cord.

(2) In a Type 4 magazine, detonators that will not mass detonate (1.4s and 1.4b classification) may be stored with electric squibs, safety fuse, igniters, and igniter cord.

(F) Inventory and Responsibility

(1) Magazines shall be in the charge of a valid permittee at all times who shall be held responsible for the enforcement of all safety precautions.

(2) All explosives shall be accounted for at all times.

(3) Explosives not being used shall be kept in a locked magazine and the keys or combinations to the locks shall be unavailable to persons not holding a valid Type I permit.

(4) The Type II permittee shall maintain an inventory and use record of all explosive materials.

(5) Type I permittees shall record any receipt, removal, or return of explosives materials on inventory records within the magazine or at one central location on the business premises provided that transactions for each magazine are kept separate.

(6) The inventory records shall be maintained on forms approved by the Division and shall include:

(i) Type of explosive material product

(ii) Manufacturer's name or brand name

(iii) Identifying or date shift code

(iv) Amounts received, removed from or returned to the magazine

(v) The signature of the permittee receiving, removing or returning explosive materials

(vi) Total quantity remaining on hand

(7) Explosive materials shall be physically counted at least monthly.

(8) Explosive materials sold and received in individual unit quantities shall be inventoried as individual units.

(9) Explosive materials sold and received as pounds shall be inventoried as pounds when in unopened cases, and as individual cartridges or units when in opened cases.

(10) The Federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the Division, and local law enforcement agencies shall be notified immediately of any loss, theft, or unauthorized entry into a magazine.

(G) Surrounding Area

(1) The land surrounding a magazine shall be kept clear of trash, dried grass, leaves or trees (except for live trees more than 10 feet tall) for a distance of at least 25 feet. Living foliage used to stabilize the earthen coverings of a magazine need not be removed.

(2) Any other combustible materials shall not be stored within 50 feet of magazines.

(3) Smoking, matches or an open flame shall not be permitted:

(i) In any magazine;

(ii) Within 50 feet of any outdoor magazine; or

(iii) Within any room containing an indoor magazine.

(4) Firearms shall not be permitted inside of, or within 50 feet of magazines.

(5) The premises on which all outdoor magazines are located shall be posted with signs with the words "DANGER—KEEP OUT" in letters at least 3 inches high. Signs shall be posted to warn any person approaching the magazine of the hazard, but shall be located so that a bullet passing through the sign will not strike the magazines.

(6) All normal access routes to outdoor explosives storage sites shall be posted with a sign with the words "DANGER- NEVER FIGHT FIRES ON THIS SITE. CALL _____" in letters at least 2 inches high. An emergency contact number shall be written on the sign.

(7) Indoor magazines shall be visibly marked with the words "DANGER – KEEP FIRE AWAY."

(H) Temporary storage at a site for blasting operations shall be located away from neighboring inhabited buildings, railways, highways, and other magazines in accordance with the American Table of Distances (see Section 4-5).

(I) Storage Within Magazines

(1) Packages of explosive materials shall be laid flat with top side up. Corresponding grades and brands shall be stored together in such a manner that brands and grade marks show. All stocks shall be stored so as to be easily counted and checked. Packages of explosives shall be stacked in a stable manner. When any kind of explosive is removed from a magazine for use, the oldest of that particular kind shall always be taken first.

(2) Packages of explosives requiring impact or potentially spark producing methods to open or to close shall not be opened or closed in a magazine, nor within 50 feet of a magazine or in close proximity to other explosive materials.

(3) Tools used for opening packages of explosives shall be constructed of non-sparking materials.

(4) Opened packages of explosives shall be securely closed before being returned to a magazine.

(5) Magazines shall not be used for the storage of any metal tools nor any commodity except explosives; however, this restriction shall not apply to the storage of blasting agents and non-metal blasting supplies.

(6) Magazine floors shall be regularly swept, kept clean, dry, and free of grit, paper, empty used packages, and rubbish. Brooms and other cleaning utensils shall not have any spark-producing metal parts. Sweepings from floors of magazines shall be properly disposed of. Magazine floors stained with nitroglycerin shall be cleaned according to instructions of the manufacturer.

(7) When any explosive has deteriorated to an extent that it is in an unstable or dangerous condition, or if nitroglycerin leaks from any explosives, then the person in possession of such explosives shall immediately proceed to destroy such explosives in accordance with the instructions of the manufacturer. Only Type I permittees experienced in the destruction of explosive materials shall be allowed to do the work of destroying explosives.

(8) When magazines need inside repairs, all explosives shall be removed and the floors cleaned. In making outside repairs, if there is a possibility of causing sparks or fire the explosives shall be removed from the magazine. Explosives removed from a magazine in order for repair shall either be placed in another class appropriate magazine, or placed a safe distance from the magazine where they shall be properly guarded and protected until repairs have been completed, at which time they shall be returned to the magazine.

(9) Explosive materials within a magazine are not to be placed against the interior walls and must be stored so as not to interfere with ventilation when required.

(10) Any person storing explosive materials shall open and inspect the magazine at least every 7 days. This inspection need not be an inventory, but must be sufficient to determine whether there has been unauthorized entry or attempted entry into the magazine, or unauthorized removal of the contents.

(11) Flammables, such as the liquid components of binary products, shall not be stored with other explosives.

(J) Lighting Within Magazines

(1) Battery-activated safety lights or battery-activated safety lanterns may be used in explosives storage magazines.

(2) Electric lighting, including wiring and fixtures, used in any explosives storage magazine must meet the standards prescribed by the National Electrical Code for the conditions present in

the magazine at any time. All electrical switches are to be located outside of the magazine and also meet the standards prescribed by the National Electrical Code.

(3) Light fixtures shall be enclosed to prevent sparks or hot metal from falling on the floor or on materials stored in the magazine.

(4) Interior magazine lights shall be turned off when the magazine is unattended.

(5) Copies of invoices, work orders or similar documents which indicate that the lighting complies with the National Electrical Code must be available for inspection by the Division.

Section 4-2 Classes of Explosive Materials and Examples

For the purposes of this article, there are three classes of explosive materials. These classes, together with the description of explosive materials comprising each class, are as follows:

(A) High Explosives - Explosive materials which can be caused to detonate by means of a detonator when unconfined. Examples include:

(1) Dynamite and detonators;

(2) Detonator-sensitive slurry/water gels and emulsions; and

(3) Mixed binaries.

(B) Low Explosives - Explosive materials which can be caused to deflagrate when confined. Examples include:

(1) Black powder;

(2) Pull wire igniters; and

(3) Safety fuse.

(C) Blasting Agents - Explosives materials consisting of fuel and oxidizer which cannot be detonated by means of a number 8 test detonator when unconfined. Examples include:

(1) Ammonium Nitrate/Fuel Oil mixture (ANFO); and

(2) Non detonator-sensitive slurry/water gels and emulsion products.

Section 4-3 Summary of Storage Requirements

Table 4-3	**Summary of Storage Requirements**
Storage Type	**Classes of Explosive Materials Which May Be Stored Therein**
Type 1 (Permanent)	High Explosives, Low Explosives, Blasting Agents
Type 2 (Portable, Mobile or Fixed)	High Explosives, Low Explosives, Blasting Agents
Type 3 (“Day Box” for Temporary Storage)	High Explosives, Low Explosives, Blasting Agents
Type 4 (Portable, Mobile or Fixed)	Blasting Agents, Low Explosives, Detonators (Original, Closed Cartons of 1.4b, 1.4c And 1.4s)

Type 5 (Portable, Mobile or Fixed)	Blasting Agents

Section 4-4 Storage Magazine Construction by Type

Table 4-4	Storage Magazine Construction By Type				
Construction Features	**Type 1**	**Type 2**	**Type 3**	**Type 4**	**Type 5**
Permanent	X			X	X
Portable or Mobile		X	X	X	X
Bullet-Resistant	X	X			
Fire-Resistant	X	X	X	X	X [(1)]
Theft- Resistant	X	X	X	X	X
Weather- Resistant	X	X	X	X	X
Ventilated	X	X		X	

[(1)] Over the road trucks or semi-trailers used as Type 5 magazines for temporary storage need not be fire resistant.

4-4-1 Type 1 Storage

A Type 1 magazine shall be a permanent structure, e.g., a building, an igloo or Army-type structure, a tunnel, or a dugout. It shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated.

(A) Buildings: All building-type magazines shall be constructed of masonry, wood, metal, or a combination of these materials and shall have no openings except for entrances and ventilation. The ground around building magazines shall slope away for drainage or other adequate drainage shall be provided.

(B) Masonry Wall Construction: Masonry wall construction shall consist of brick, concrete, tile, cement block, or cinder block and shall be not less than 8 inches in thickness. Hollow masonry units used in construction shall have all hollow spaces filled with well-tamped, coarse, dry sand or weak concrete (at least 1 part cement + 8 parts of sand with enough water to dampen the mixture while tamping in place). Interior walls shall be constructed of, or covered with, a non- sparking material.

(C) Fabricated Metal Wall Construction: Metal wall construction shall consist of sectional sheets of steel or aluminum, not less than #14 gauge, securely fastened to a metal framework. Metal wall construction shall be either lined inside with brick, solid cement blocks, hardwood not less than 4 inches thick, or shall have at least a 6-inch sand-fill between interior and exterior walls. Interior walls shall be constructed of, or covered with, a non-sparking material.

(D) Wood Frame Wall Construction: The exterior of outer wood walls shall be covered with steel or aluminum not less than #26 gauge. An inner wall of, or covered with, non-sparking material shall be constructed so as to provide a space of not less than 6 inches between the outer and inner walls. The space shall be filled with coarse, dry sand or weak concrete.

(E) Floors: Floors shall be constructed of, or covered with, a non-sparking material and shall be strong enough to bear the weight of the maximum quantity materials to be stored. Use of pallets covered with a non-sparking material is considered equivalent to a floor constructed of, or covered with, a non-sparking material.

(F) Foundations: Foundations shall be constructed of brick, concrete, cement block, stone, or wood posts. If piers or posts are used in lieu of a continuous foundation, the space under the buildings

shall be enclosed with metal.

(G) Roof: Except for buildings with fabricated metal roofs, the outer roof shall be covered with no less than #26 gauge steel or aluminum fastened to 7/8-inch sheathing.

(H) Bullet-Resistant Ceilings on Roofs: Where it is possible for a bullet to be fired directly through the roof and into the magazine at such an angle that the bullet would strike the explosives within, the magazine shall be protected by one of following methods:

(1) A sand tray with a layer of building paper, plastic, or other nonporous material filled with not less than 4 inches of coarse, dry sand, shall be located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation.

(2) A fabricated metal roof shall be constructed of 3/16-inch thick plate steel lined with 4 inches of hardwood. For each additional 1/16-inch of plate steel, the hardwood lining may be decreased by 1 inch.

(I) Doors: All doors shall be constructed of 1/4-inch plate steel and lined with 3 inches of hardwood. Hinges and hasps shall be attached to the doors by welding, riveting, or bolting (with nuts on the inside of the door). They shall be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.

(J) Locks: Each door shall be equipped with at least one of the following types of locks:

(1) Two mortise locks

(2) Two padlocks fastened in separate hasps and staples

(3) A combination of a mortise lock and a padlock

(4) A mortise lock that requires two keys to open

(5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch in diameter. Padlocks shall be protected with 1/4-inch sheet hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements shall not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(K) Ventilation: Ventilation shall be provided to prevent dampness and heating of stored explosive materials. Ventilation openings shall be screened to prevent the entrance of sparks. Ventilation openings in sidewalls and foundations shall be offset or shielded for bullet-resistance purposes. Magazines having foundation and roof ventilators with the air circulating between the side walls and the floors and between the side walls and the ceiling shall have a wooden lattice lining or equivalent to prevent the packages of explosive materials from being stacked against the side walls and blocking the air circulation.

(L) Exposed Metal: No sparking material shall be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls which might be exposed to contact with explosive materials shall be blind-nailed, countersunk, or covered with a non-sparking latticework or other non-sparking material.

(M) Igloos, Army-Type Structures, Tunnels, & Dugouts: Igloo, army-type structure, tunnel, and dugout magazines shall be constructed of reinforced concrete, masonry, metal, or a combination of these materials. They shall have an earth mound covering of not less than 24 inches on the top, sides,

and rear unless the ceiling or roof meets the bullet-resistant ceiling or roof requirements of this section. Interior walls shall be constructed of, or covered with, a non-sparking material. Magazines of this type shall also be constructed in conformity with the requirements of the floors, doors, locks, ventilation, and exposed metal portions outlined in this section.

4-4-2 Type 2 Storage

A Type 2 magazine shall be a portable or mobile structure such as a box, skid-magazine, trailer, or semi-trailer.

4-4-2-1 Outdoor Type 2 Magazines

Outdoor Type 2 magazines shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated. They shall be supported to prevent direct contact with the ground and, if less than 1 cubic yard in size, shall be securely fastened to a fixed object. The ground around outdoor magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by methods approved by the Division.

(A) Exterior Construction: The exterior and covers or doors shall be constructed of 1/4-inch steel and shall be lined with 2 inches of hardwood. Magazines with top openings shall have lids with water-resistant seals or which overlap the sides by at least 1 inch when in a closed position.

(B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with at least one of the following types of locks:

(1) Two mortise locks

(2) Two padlocks fastened in separate hasps and staples

(3) A combination of a mortise lock and a padlock

(4) A mortise lock that requires two keys to open

(5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(D) Ventilation: Ventilation shall be provided to prevent dampness and heating of stored explosive materials. Ventilation openings shall be screened to prevent the entrance of sparks. Ventilation openings in sidewalls shall be offset or shielded for bullet-resistance purposes. Packages of explosive materials shall not be stacked against the side walls and block the air circulation.

4-4-2-2 Indoor Type 2 Magazines

Indoor Type 2 magazines shall be fire-resistant and theft-resistant if the buildings in which they are stored provide protection from the weather and from bullet penetration. No indoor magazine may be located in a residence or dwelling. The indoor storage of high explosives may not exceed a quantity of 50 pounds.

More than one indoor magazine may be located in the same building if the total quantity of all explosive materials stored does not exceed 50 pounds. Detonators shall be stored in separate magazines.

(A) Exterior Construction: Indoor magazines shall be constructed of wood or metal according to one of the following specifications:

(1) Indoor magazines constructed of wood shall have sides, bottoms, and lids or doors constructed of two-inch wood and shall be well-braced at the corners. The magazines shall be covered on the exterior with sheet metal of not less than #26-gauge. Nails exposed to the interior of magazines shall be countersunk.

(2) Indoor magazines constructed of metal shall have sides, bottom, and lids or doors constructed of at least #12-gauge metal and shall be lined inside with a non-sparking material. Edges of metal covers shall overlap sides at least 1 inch.

(B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with at least one of the following types of locks:

(1) Two mortise locks

(2) Two padlocks fastened in separate hasps and staples

(3) A combination of a mortise lock and a padlock

(4) A mortise lock that requires two keys to open

(5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms, that are locked as provided in this paragraph, may have each door or opening locked with 1 steel padlock (which need not be protected by a steel hood) having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

4-4-3 Alternate Construction Standards for Storage Facilities

It has been determined that a wide range of construction criteria meet the bullet-resistant requirements of ATF Rule 76-18 as published in Bureau Of Alcohol, Tobacco, Firearms, and Explosives, Department Of The Treasury, Publication ATF p 5400.7 (2012) for the construction of storage facilities for explosive materials.

In order to promote standards of safety and security in the storage of explosive materials while allowing the industry a wide latitude in the selection of construction materials, it is held that storage facilities (magazines) that are constructed according to the following minimum specifications are bullet-resistant and meet the requirements of the regulations as set forth in 27 CFR Part 55 (all steel and wood dimensions are actual thicknesses. To meet the concrete block and brick dimensions indicated, the manufacturers' represented thicknesses may be used).

(A) Exterior of 5/8-inch steel, lined with an interior of any type of non-sparking material.

(B) Exterior of 1/2-inch steel, lined with an interior of not less than 3/8-inch plywood.

(C) Exterior of 3/8-inch steel, lined with an interior of 2 inches of hardwood.

(D) Exterior of 3/8-inch steel, lined with an interior of 3 inches of softwood or 2¼ inches of plywood.

(E) Exterior of 1/4-inch steel, lined with an interior of 3 inches of hardwood.

(F) Exterior of 1/4-inch steel, lined with an interior of 5 inches of softwood or 5¼ inches of plywood.

(G) Exterior of 1/4-inch steel, lined with an intermediate layer of 2 inches of hardwood and an interior lining of 1½ inches of plywood.

(H) Exterior of 3/16-inch steel, lined with an interior of 4 inches of hardwood.

(I) Exterior of 3/16-inch steel, lined with an interior of 7 inches of softwood or 6¾ inches of plywood.

(J) Exterior of 3/16-inch steel, lined with an intermediate layer of 3 inches of hardwood and an interior lining of 3/4-inch of plywood.

(K) Exterior of 1/8-inch steel, lined with an interior of 5 inches of hardwood.

(L) Exterior of 1/8-inch steel, lined with an interior of 9 inches of softwood.

(M) Exterior of 1/8-inch steel, lined with an intermediate layer of 4 inches of hardwood and an interior lining of 3/4-inch plywood.

(N) Exterior of any type of fire-resistant material which is structurally sound, lined with an intermediate layer of 4 inches of solid concrete block, or 4 inches of solid brick or 4 inches of solid concrete; and, an interior lining of 1/2-inch plywood placed securely against the masonry lining.

(O) Standard 8-inch concrete block with voids filled with well-tamped sand/cement mixture.

(P) Standard 8-inch solid brick.

(Q) Exterior of any type of fire-resistant material which is structurally sound, lined with an intermediate 6-inch space filled with well-tamped dry sand or well-tamped sand/cement mixture.

(R) Exterior of 1/8-inch steel, lined with a first intermediate layer of 3/4-inch plywood, a second intermediate layer of 3⅝ inches of well-tamped dry sand or sand/cement mixture and an interior lining of 3/4-inch plywood.

(S) Second intermediate layer of 3⅝ inches well tamped dry sand or sand/cement mixture, a third intermediate layer of 3/4-inch plywood, and a fourth intermediate layer of two inches of hardwood or #14 gauge steel and an interior lining of 3/4-inch plywood.

(T) 8-inch thick solid concrete.

4-4-4 Type 3 Storage

A Type 3 magazine shall be a “day-box” or other portable magazine. It shall be fire-resistant, weather-resistant, and theft-resistant. A Type 3 magazine shall be constructed of #12-gauge metal lined with either 1/2-inch plywood or 1/2-inch Masonite-type hardboard. Doors shall overlap sides by at least 1 inch. Hinges and hasps shall be attached by welding, riveting or bolting (with nuts on the inside of the door). A single lock having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter shall be sufficient for locking purposes. Explosive materials may not be left unattended in Type 3 magazines, but

must be removed to either a Type 1 or 2 magazine for unattended storage.

4-4-5 Type 4 Storage

A Type 4 magazine shall be a building, igloo or army-type structure, tunnel, dugout, box, trailer, or a semi-trailer or other mobile magazine.

4-4-5-1 Outdoor Type 4 Magazines

Outdoor Type 4 magazines shall be fire-resistant, weather-resistant, theft-resistant, ventilated and shall be at least 1 cubic yard in size, or securely fasted to a fixed object. The ground around outdoor magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by other methods approved by the Division.

(A) Construction: Outdoor magazines shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. Foundation shall be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used in lieu of a continuous foundation, the space under the buildings shall be enclosed with fire-resistant material. The walls and floors shall be constructed of, or covered with, a non-sparking material or lattice work. The doors or covers shall be metal or solid wood covered with metal.

(B) Hinges and Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with at least one of the following types of locks:

(1) 2 mortise locks

(2) 2 padlocks fastened in separate hasps and staples

(3) A combination of a mortise lock and a padlock

(4) A mortise lock that requires two keys to open

(5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or a bar that cannot be actuated from the outside.

(D) Ventilation: Ventilation shall be provided to prevent dampness and heating of stored explosive materials. Ventilation openings shall be offset or shielded and screened to prevent the entrance of sparks. The packages of explosive materials shall not be stacked against the side walls and block the air circulation.

4-4-5-2 Indoor Type 4 Magazines

Indoor magazines shall be fire-resistant and theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine may be located in a residence or dwelling. The indoor storage of low explosives may not exceed a quantity of 50 pounds. More than one indoor magazine may be located in the same building if the total quantity of all

explosive materials stored does not exceed 50 pounds. Detonators that will not mass detonate shall be stored in separate magazines and the total number of detonators may not exceed 5,000.

(A) Construction: Indoor magazines shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. The walls and floors shall be constructed of, or covered with, a non-sparking material. The doors or covers shall be metal or solid wood covered with metal.

(B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with at least one of the following types of locks:

(1) 2 mortise locks

(2) 2 padlocks fastened in separate hasps and staples

(3) A combination of a mortise lock and a padlock

(4) A mortise lock that requires two keys to open

(5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms, that are locked as provided in this paragraph, may have each door or opening locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

4-4-6 Type 5 Storage

A Type 5 magazine shall be a building, igloo or army-type structure, tunnel, dugout, bin, box, trailer, or a semitrailer or other mobile facility.

4-4-6-1 Outdoor Type 5 Magazines

Outdoor Type 5 magazines shall be weather-resistant, fire-resistant and theft-resistant. Over-the-road trucks or semi-trailers used as Type 5 magazines for temporary storage need not be fire-resistant. The ground around magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Division.

(A) Construction: The doors or covers shall be constructed of solid wood or metal.

(B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with 1 padlock having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Indoor magazines located in secure rooms, that

are locked as provided in this paragraph, may have each door or opening locked with 1 steel padlock (which need not be protected by a steel hood) having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock or bar that cannot be actuated from the outside.

4-4-6-2 Indoor Type 5 Magazines

Indoor Type 5 magazines shall be theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine may be located in a residence or dwelling. Indoor magazines containing quantities of blasting agents in excess of 50 pounds shall be subject to the American Table of Distances in Section 4-5-1 of this subpart.

(A) Construction: The doors or covers shall be constructed of wood or metal.

(B) Hinges and Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with 1 padlock having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter.

Indoor magazines located in secure rooms that are locked as provided in this paragraph may have each door or opening locked with 1 steel padlock (which need not be protected by a steel hood) having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock or bar that cannot be actuated from the outside.

Section 4-5 Location of Magazines

(A) Outdoor magazines in which high explosives are stored shall be located no closer to inhabited buildings, passenger railways, public highways or other magazines in which high explosives are stored than the minimum distances specified in the American Table of Distances for Storage of Explosive Materials in Table 4-5-1.

(B) Outdoor magazines in which low explosives are stored shall be located no closer to inhabited buildings, passenger railways, public highways or other magazines in which explosives are stored than the minimum distances specified in the American Table of Distances for Storage of Low Explosives in Table 4-5-2. The distances shown therein may not be reduced by the presence of barricades.

(C) Outdoor magazines in which blasting agents are stored shall be located no closer to inhabited buildings, passenger railways or public highways than the minimum distances specified in the American Table of Distances for Storage of Explosive Materials in Table 4-5-1.

(D) Ammonium nitrate and magazines in which blasting agents are stored shall be located no closer to magazines in which high explosives or other blasting agents are stored than the minimum distances specified in the American Table of Distances for the Separation of Ammonium Nitrate and Blasting Agents in Table 4-5-3. However, the minimum distances for magazines in which explosives and blasting agents are stored from inhabited buildings, passenger railways or public highways may not be less than the distances specified in the American Table of Distances for Storage of Explosive Materials in Table 4-5-1.

Table 4-5-1		American Table of Distances for Storage of Explosive Materials							
Quantity of Explosive Materials [1,2,3,4]		Distances in Feet							
		Inhabited Buildings [9]		Public Highways with Traffic Volume of less than 3,000 Vehicles/Day [11]		Passenger Railways-Public Highways with Traffic Volume of more than 3,000 Vehicles/Day [10, 11]		Separation of Magazines [12]	
Pounds Over	Pounds Not Over	Barricaded [6,7,8]	Unbarricaded	Barricaded [6,7,8]	Unbarricaded	Barricaded [6,7,8]	Unbarricaded	Barricaded [6,7,8]	Unbarricaded
0	5	70	140	30	60	51	102	6	12
5	10	90	180	35	70	64	128	8	16
10	20	110	220	45	90	81	162	10	20
20	30	125	250	50	100	93	186	11	22
30	40	140	280	55	110	103	206	12	24
40	50	150	300	60	120	110	220	14	28
50	75	170	340	70	140	127	254	15	30
75	100	190	380	75	150	139	278	16	32
100	125	200	400	80	160	150	300	18	36
125	150	215	430	85	170	159	318	19	38
150	200	235	470	95	190	175	350	21	42
200	250	255	510	105	210	189	378	23	46
250	300	270	540	110	220	201	402	24	48
300	400	295	590	120	240	221	442	27	54
400	500	320	640	130	260	238	476	29	58
500	600	340	680	135	270	253	506	31	62
600	700	355	710	145	290	266	532	32	64
700	800	375	750	150	300	278	556	33	66
800	900	390	780	155	310	289	578	35	70
900	1,000	400	800	160	320	300	600	36	72
1,000	1,200	425	850	165	330	318	636	39	78
1,200	1,400	450	900	170	340	336	672	41	82
1,400	1,600	470	940	175	350	351	702	43	86
1,600	1,800	490	980	180	360	366	732	44	88
1,800	2,000	505	1,010	185	370	378	756	45	90
2,000	2,500	545	1,090	190	380	408	816	49	98
2,500	3,000	580	1,160	195	390	432	864	52	104
3,000	4,000	635	1,270	210	420	474	948	58	116
4,000	5,000	685	1,370	225	450	513	1,026	61	122
5,000	6,000	730	1,460	235	470	546	1,092	65	130
6,000	7,000	770	1,540	245	490	573	1,146	68	136
7,000	8,000	800	1,600	250	500	600	1,200	72	144
8,000	9,000	835	1,670	255	510	624	1,248	75	150
9,000	10,000	865	1,730	260	520	645	1,290	78	156
10,000	12,000	875	1,750	270	540	687	1,374	82	164
12,000	14,000	885	1,770	275	550	723	1,446	87	174
14,000	16,000	900	1,800	280	560	756	1,512	90	180
16,000	18,000	940	1,880	285	570	786	1,572	94	188
18,000	20,000	975	1,950	290	580	813	1,626	98	196
20,000	25,000	1,055	2,000	315	630	876	1,752	105	210
25,000	30,000	1,130	2,000	340	680	933	1,866	112	224
30,000	35,000	1,205	2,000	360	720	981	1,962	119	238
35,000	40,000	1,275	2,000	380	760	1,026	2,000	124	248
40,000	45,000	1,340	2,000	400	800	1,068	2,000	129	258
45,000	50,000	1,400	2,000	420	840	1,104	2,000	135	270
50,000	55,000	1,460	2,000	440	880	1,140	2,000	140	280
55,000	60,000	1,515	2,000	455	910	1,173	2,000	145	290
60,000	65,000	1,565	2,000	470	940	1,206	2,000	150	300
65,000	70,000	1,610	2,000	485	970	1,236	2,000	155	310
70,000	75,000	1,655	2,000	500	1,000	1,263	2,000	160	320
75,000	80,000	1,695	2,000	510	1,020	1,293	2,000	165	330
80,000	85,000	1,730	2,000	520	1,040	1,317	2,000	170	340
85,000	90,000	1,760	2,000	530	1,060	1,344	2,000	175	350
90,000	95,000	1,790	2,000	540	1,080	1,368	2,000	180	360
95,000	100,000	1,815	2,000	545	1,090	1,392	2,000	185	370
100,000	110,000	1,835	2,000	550	1,100	1,437	2,000	195	390
110,000	120,000	1,855	2,000	555	1,110	1,479	2,000	205	410
120,000	130,000	1,875	2,000	560	1,120	1,521	2,000	215	430
130,000	140,000	1,890	2,000	565	1,130	1,557	2,000	225	450
140,000	150,000	1,900	2,000	570	1,140	1,593	2,000	235	470
150,000	160,000	1,935	2,000	580	1,160	1,629	2,000	245	490
160,000	170,000	1,965	2,000	590	1,180	1,662	2,000	255	510
170,000	180,000	1,990	2,000	600	1,200	1,695	2,000	265	530
180,000	190,000	2,010	2,010	605	1,210	1,725	2,000	275	550
190,000	200,000	2,030	2,030	610	1,220	1,755	2,000	285	570
200,000	210,000	2,055	2,055	620	1,240	1,782	2,000	295	590
210,000	230,000	2,100	2,100	635	1,270	1,836	2,000	315	630
230,000	250,000	2,155	2,155	650	1,300	1,890	2,000	335	670
250,000	275,000	2,215	2,215	670	1,340	1,950	2,000	360	720
275,000	300,000	2,275	2,275	690	1,380	2,000	2,000	385	770

Table: American Table of Distances for Storage of Explosive Materials as Revised and Approved by the Institute of Makers of Explosives – June 1991

Table 4-5-2	Table of Distance for the Storage of Low Explosives			
Quantity of Explosives (In Pounds)		Distance in Feet		
Over	Not Over	From Inhabited Buildings	From Public Railways and Highways	From Above Ground Magazine
0	1,000	75	75	50
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	375	375	250
200,000	300,000	450	450	300

Table: Department of Defense Ammunition and Explosives Standards, Table 5–4.1 Extract; 4145.27 M, March 1969

Table 4-5-3		Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents[1,6]		
Donor Weight		Minimum Separation Distance of Acceptor when Barricaded[2] (ft.)		
Pounds Over	Pounds Not Over	Ammonium Nitrate[3]	Blasting Agent[4]	Minimum Thickness of Artificial Barricades[5] (in.)
	100	3	11	12
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,000	6,000	11	40	15
6,000	8,000	12	43	20
8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30
40,000	45,000	22	79	35
45,000	50,000	23	83	35
50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40
80,000	90,000	30	108	40
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

Table: National Fire Protection Association (NFPA) Official Standard No. 492, 1968

Explanatory Notes Essential to the Application of the American Table of Distances for Storage of Explosive Materials

NOTE 1 "Explosive materials" means explosives, blasting agents and detonators.

NOTE 2 "Explosives" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. For quantity and distance purposes, detonating cord of 50 grains per foot should be calculated as equivalent to 8 lbs. of high explosives per 1,000 feet. Heavier or lighter core loads should be rated proportionately.

NOTE 3 "Blasting agents" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive provided that the finished product as mixed for use or shipment, cannot be detonated by means of a No.8 test blasting cap when unconfined.

NOTE 4 "Detonator" means any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, electronic detonators**,** blasting caps for use with safety fuses, detonating cord delay connectors, and non-electric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires. All types of detonators in strengths through No.8 cap should be rated at 1 1/2 lbs. of explosives per 1,000 caps. For strengths higher than No.8 cap consult the manufacturer.

NOTE 5 "Magazine" means any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.

NOTE 6 "Natural Barricade" means natural features of the ground such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

NOTE 7 "Artificial Barricade" means an artificial mound or wall of earth of a minimum thickness of three feet.

NOTE 8 "Barricaded" means the effective screening of a building containing explosive materials from the magazine or other building, railway, or highway by a natural or an artificial barrier. A straight line from the top of any sidewall of the building containing explosive materials to the eave line of any magazine or other building or to a point twelve feet above the center of a railway or highway shall pass through such barrier.

NOTE 9 "Inhabited Building" means a building regularly occupied in whole or part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.

NOTE 10 "Railway" means any steam, electric, or other railroad or railway which carries passengers for hire.

NOTE 11 "Highway" means any public street, public alley, or public road.

NOTE 12 When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways and highways, and, in addition, they should be separated from each other by not less than the distances shown for "Separation of Magazines," except that the quantity of explosive materials contained in detonator magazines shall govern in regard to the spacing of said detonator magazines from magazines containing other explosive materials. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then such two or more magazines, as a group, must be considered as one magazine, and the total quantity of explosive materials stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group, and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways, and highways.

NOTE 13 Storage in excess of 300,000 lbs. of explosive materials, in one magazine is generally not required for commercial enterprises.

NOTE 14 This Table applies only to the manufacture and permanent storage of commercial explosive materials. It is not applicable to transportation of explosives or any handling or temporary storage necessary or incident thereto. It is not intended to apply to bombs, projectiles, or other heavily encased explosives.

NOTE 15 When a manufacturing building on an explosive materials plant site is designed to contain explosive materials, such building shall be located from inhabited buildings, public highways and passenger railways in accordance with the American Table of Distances based on the maximum quantity of explosive materials permitted to be in the building at one time.

American Table of Distances

The American Table of Distances applies to the manufacture and permanent storage of ***commercial*** explosive materials. The distances specified are those measured from the explosive materials storage facility to the inhabited building, highway or passenger railway, irrespective of property lines.

The American Table of Distances covers all ***commercial*** explosive materials, including, but not limited to, high explosives, blasting agents, detonators, initiating systems and explosives materials in process. The Table is not designed to be altered or adjusted to accommodate varying explosive characteristics such as blast effect, weight strength, density, bulk strength, detonation velocity, etc.

The American Table of Distances should not be used to determine safe distances for blasting work, the firing of explosive charges for testing or quality control work, or the open detonation of waste explosive materials. The American Table of Distances may be utilized as a guide for developing distances for the unconfined, open burning of waste explosive materials where the probability of transition from burning to high order detonation is improbable.

Notes to Table of Recommended Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents

NOTE 1 Recommended separation distances to prevent explosion of ammonium nitrate and ammonium nitrate-based blasting agents by propagation from nearby stores of high explosives or blasting agents referred to in the Table as the "donor." Ammonium nitrate, by itself, is not considered to be a donor when applying this Table. Ammonium nitrate, ammonium nitrate-fuel oil or combinations thereof are acceptors. If Stores of ammonium nitrate are located within the sympathetic detonation distance of explosives or blasting agents, one-half the mass of the ammonium nitrate should be included in the mass of the donor.

NOTE 2 When the ammonium nitrate and/or blasting agent is not barricaded, the distances shown in the Table shall be multiplied by six. These distances allow for the possibility of high velocity metal fragments from mixers, hoppers, truck bodies, sheet metal structures, metal containers, and the like which may enclose the "donor." Where storage is in bullet-resistant magazines is recommended for explosives or where the storage is protected by a bullet-resistant wall, distances and barricade thicknesses in excess of those prescribed in the American Table of Distances are not required.

NOTE 3 The distances in the Table apply to ammonium nitrate and ammonium nitrate based materials that show "negative" (-) result in the UN Test Series 2 Gap Test and show "positive" (+) result in the UN Test Series 1 Gap Test. Ammonium nitrate and ammonium nitrate based materials that are DOT hazard Class 1 sensitive shall be stored at separation distances determined by the American Table of Distances.

NOTE 4 These distances apply to blasting agents which pass the insensitivity test prescribed in regulations of the U.S. Department of Transportation and the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

NOTE 5 Earth, or sand dikes, or enclosures filled with the prescribed minimum thickness of earth or sand are acceptable artificial barricades. Natural barricades, such as hills or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the "donor" when the trees are bare of leaves, are also acceptable.

NOTE 6 For determining the distances to be maintained from inhabited buildings, passenger railways, and public highways, use the American Table of Distances for Storage of Explosives Materials on pages 58 and 59.

*For construction of bullet-resistant magazines see Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Publication ATF P 5400.7 (9/00), *ATF-Explosives Law and Regulations.*

ARTICLE 5 TRANSPORTATION OF EXPLOSIVES

Section 5-1 General Requirements

(A) Transportation of explosives, blasting agents, and blasting supplies on public highways, railways, and airways shall be in accordance with the provisions of Title 42 Article 20 C.R.S. and any regulations promulgated pursuant thereto and Title 49 CFR Parts 171-179 and Parts 390-397, Motor Carriers.

(B) Requirements for the transportation of explosives, blasting agents and blasting supplies by motorized vehicle or conveyance on job sites shall be:

(1) No person shall smoke, carry matches or any other flame-producing device or carry firearms or loaded cartridges while in or near a motor vehicle or conveyance transporting explosives.

(2) No person shall drive, load or unload a vehicle or conveyance transporting explosives in a careless or reckless manner.

(3) Vehicles or conveyances transporting explosives, blasting agents or blasting supplies shall not be taken inside a garage or shop for repairs or servicing.

(4) Vehicles or conveyances used for transporting explosives shall be equipped to carry the load without difficulty and shall be in good mechanical condition.

(5) A motor vehicle or conveyance used for transporting explosives shall be given the following inspection prior to the transportation to determine that it is in proper condition for the safe transportation of explosives:

(i) Fire extinguishers shall be filled and in proper working order;

(ii) All electrical wiring shall be completely protected and securely fastened to prevent short-circuiting;

(iii) Chassis, motor, pan and underside of body shall be completely free of excess oil and grease;

(iv) Fuel tank and fuel line shall be secure and have no leaks;

(v) Brakes, lights, horn, windshield wipers and steering apparatus shall function properly;

(vi) Tires shall be checked for proper inflation and defects; and

(vii) The vehicle shall be in proper condition in every other respect and acceptable for handling explosives.

(6) All vehicles or conveyances used for transporting explosives shall have tight floors, and any exposed spark-producing metal on the inside of the body shall be covered with wood or other non-sparking materials to prevent contact with packages of explosives.

(7) Packages of explosives or blasting agents shall not be loaded above the sides of an open-body vehicle or conveyance.

(8) Explosives shall not be transported with other materials or cargoes in the same compartment. In no case shall flammable materials be carried on the same vehicle as explosives, with the exception of desensitizing agents.

(9) Each vehicle or conveyance used for transportation of explosives shall be equipped with at least one charged fire extinguisher each with an extinguisher rating of at least 4-A:10B:C. Extinguishers shall be located where they will be accessible for immediate use.

(10) Explosives shall be transferred from a disabled vehicle or conveyance to another vehicle or conveyance only when proper and qualified supervision is provided. Local fire departments and police departments shall be notified if a transfer occurs in a congested area. In remote areas, they shall be notified if appropriate.

(11) A motorized vehicle or conveyance which contains explosives or detonators shall not be parked under any of the following circumstances:

(i) On or within 5 feet of the traveled portion of a public street or highway; or

(ii) Within 300 feet of a bridge, tunnel, building, or place where people work, assemble, or congregate, except for brief periods when the necessities of operation require the vehicle or conveyance to be parked and make it impracticable to park the vehicle or conveyance in any other place.

(12) A motorized vehicle or conveyance transporting explosives, detonators, or blasting agents shall not be left unattended.

(13) A motorized vehicle or conveyance shall be deemed attended only when the driver or other attendant is physically on or in the vehicle or conveyance, or has the vehicle or conveyance within the driver or attendant's field of vision and can reach the vehicle or conveyance quickly and without any kind of interference; attended also means the driver or attendant is awake, alert, and not engaged in any other duties or activities which may divert his/her attention from the vehicle or conveyance.

(14) Detonators may not be transported in the same vehicle or conveyance with other explosives unless:

(i) The detonators and explosives are placed in separate locked Type 2 magazines secured within the body of the vehicle or conveyance;

(ii) The detonators and explosives are placed in a suitable locked container and separated by 4 inches of hardwood and the detonators are totally enclosed or confined by the hardwood construction;

(iii) The detonators and explosives are placed in separate locked containers or container compartments constructed in accordance with the Institute of Makers of Explosives Safety Library Publication No. 22, "IME Standard for the Safe Transportation of Detonators in a Vehicle with Other Explosives"; or

(iv) The detonators and explosives are placed in separate locked Type 3 magazines.

(C) Requirements for the transportation of explosives, blasting agents and blasting supplies to blasting areas by non-motorized means shall be:

(1) Explosives and blasting agents shall be carried in day boxes, original containers or shall be placed in bags or containers that are water-resistant and constructed of non-sparking and nonconductive material.

(2) Detonators shall be wrapped in suitable padding and carried in separate bags or containers from other explosives.

ARTICLE 6 USE OF EXPLOSIVE MATERIALS

Section 6-1 General Requirements

(A) While explosives are being handled or used, smoking, matches or any other source of fire or flame shall not be within 50 feet of the blast site.

(B) No person shall handle explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs. This rule does not apply to persons taking prescription drugs and/or narcotics as directed by a physician providing such use shall not endanger the worker or others.

(C) When blasting is done in populated or residential areas or in close proximity to a structure, railway, or highway or any other installation that may be damaged, the following precautions shall be taken:

(1) The blast shall be covered, before firing, with a mat or material that is capable of preventing fragments from being thrown;

(2) The blast shall be loaded in compliance with the Table of Scaled Distance (Table 6-10) or be monitored by a seismograph; and

(3) All persons within the blast area shall be given reasonable notification prior to blasting operations and informed as to the type of warning signal that will be given prior to the blast.

(D) Blasters conducting blasting operations shall take every reasonable precaution, including but not limited to warning signals, flags and barricades to insure the safety of the general public and workers.

(E) Surface blasting operations shall be conducted during periods of daylight, when the blast area is clearly visible. Blasting operations conducted after periods of daylight shall be approved by the Division and local law enforcement agency prior to each blast. Approval shall only be granted if such approval serves the safety of the general public.

(F) The blaster shall perform all required notification to and obtain all required permits from local jurisdictions or authorities, including, but not limited to, the County Sheriff, local fire districts and fire departments before beginning blasting operations.

(G) Whenever blasting operations are subject to federal and state rules, the higher standard shall apply.

(H) Whenever blasting is being conducted in the vicinity of gas, electric, water, fire alarm, telephone, telegraph, steam utilities or transportation corridors, the blaster shall notify the appropriate transportation or utility representatives at least 24 hours in advance of blasting, specifying the location and intended time of such blasting.

(I) The blaster shall suspend all blasting operations and remove all persons from the blast site during the approach and progress of an electrical storm.

(J) No fire shall be fought where the fire is in imminent danger of contact with explosives. All employees shall be removed to a safe area and the fire area guarded against intruders.

(K) Detonators or other explosives shall never be carried in pockets of clothing.

(L) Detonators shall not be inserted in explosive materials that do not have a cap well without first

making a hole in the cartridge with a non-sparking punch of proper size, or the appropriate pointed handle of a cap crimper.

(M) The detonator shall be secured within the primer so that no tension is placed on the leg wires, safety fuse, shock tube, plastic tubing or detonating cord at the point of entry into the detonator.

(N) The detonator shall be fully inserted into the primer cartridge or booster and shall not protrude from the cartridge.

(O) Cast primers and boosters shall not be used if the hole is too small for the detonator, and attempting to enlarge the hole in a cast primer or booster shall not be permissible.

(P) Primers are not to be prepared in a magazine or near large quantities of explosive materials.

(Q) Explosives and blasting agents shall be kept separated from detonators until the charge is placed.

(R) Only non-sparking metallic slitters may be used for opening fiberboard cases.

(S) Cartridges or packages of explosives showing signs of discoloration or deterioration must be carefully set aside and properly disposed of in accordance with manufacturer's recommendations.

(T) No explosive material shall be abandoned or left in any location for any reason, nor left in such a manner that they may easily be obtained by children or other unauthorized persons. All unused explosives shall be returned to proper storage facilities.

(U) A record of each blast shall be kept. All records, including seismograph reports, shall be retained at least five years, be available for inspection by the Division, and contain at least the following minimum data, as applicable:

(1) Person for whom blasting operations are conducted

(2) Name, permit number, and signature of the blaster

(3) Exact location or address of the blast, date and time of detonation

(4) Type of material blasted

(5) Number of holes, burden and spacing

(6) Diameter and depth of holes

(7) Types of explosives used

(8) Amount and type of explosive loaded in each borehole or used in each charge

(9) Total amount of each explosive used

(10) Maximum amount of explosives and holes detonated within 8 milliseconds

(11) Method of firing and type of circuit

(12) Direction, distance in feet, and identification of the nearest dwelling, house, public building, school, church, commercial or institutional building neither owned nor leased by the person or company conducting the blasting

(13) Weather conditions

(14) Type and height or length of stemming

(15) A statement as to whether mats or protection against flyrock were used

(16) Type of delay caps used and delay periods used

(17) The person taking the seismograph reading shall accurately indicate exact location of the seismograph if used and shall show the distance of the seismograph from the blast

(18) Seismograph records, where required, which shall include:

(i) Name of person and firm analyzing the seismograph record; and

(ii) Seismograph reading.

(19) Sketch of blast pattern including number of holes, burden and spacing distance, delay pattern, and if decking is used, a hole profile.

Section 6-2 Drilling and Loading

(A) Procedures that permit safe and efficient loading shall be established before the loading of explosive materials is started.

(B) All boreholes shall be sufficiently large to admit freely the insertion of the cartridges of explosives.

(C) Tamping shall be done only with wooden rods or with approved plastic tamping poles without exposed metal parts, but non-sparking metal connectors may be used for jointed poles. Violent tamping shall be avoided. The primer shall never be tamped.

(D) No boreholes shall be loaded except those to be fired in the next round of blasting. After loading, all remaining explosive materials shall be immediately returned to magazines or day boxes.

(E) No explosives or blasting agents shall be left unattended on a blast site.

(F) Drilling shall not be started until all remaining butts of old boreholes are examined for unexploded charges, and if any are found, they shall be refired or removed before work proceeds.

(G) No person shall be allowed to deepen boreholes that have contained explosives or blasting agents.

(H) Drilling shall not be conducted where there is a danger of intersecting a loaded borehole or misfired explosive material.

(I) Equipment, machines and all tools not used for loading explosives into boreholes shall be removed from the immediate location of boreholes being loaded with explosives. Equipment shall not be operated within 50 feet of loaded boreholes except when equipment is needed to add cover or mats.

(J) Loaded boreholes shall not be left unattended.

(K) The Type I permittee shall maintain an accurate, up-to-date record of explosives, blasting agents and all blasting supplies used in a blast and shall keep an accurate running inventory of all explosives and blasting agents stored on the operation.

(L) Pneumatic loading of blasting agents into blast holes primed with electric detonators or other static-sensitive initiation systems shall conform to the following requirements:

(1) A positive grounding device for the equipment shall be used to prevent the accumulation of static electricity.

(2) A semi-conductive hose shall be used.

(3) A qualified person shall evaluate all systems to assure that they will adequately dissipate static under potential field conditions.

(M) Primers shall be made up immediately prior to placing the primer in the borehole.

(N) Dropping or pushing a primer or any explosive with a lighted fuse attached into a borehole is prohibited.

(O) Detonators shall not be loaded into a hot hole or exposed to temperatures above 150° F unless specifically designed and approved by the manufacturer for higher temperatures.

Section 6-3 Electric Initiation of Blasts

(A) Electric detonators may be used for blasting operations in congested districts, or on highways, or adjacent to highways open to traffic, except where sources of extraneous electricity make such use dangerous.

(B) Electric detonator wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.

(C) Signs shall be posted warning against the use of mobile radio transmitters on all adjacent highways and roads.

(D) Mobile radio transmitters that are less than 100 feet away from electric detonators shall be de-energized and effectively locked when the detonators are not in the original containers.

(E) Electric detonators shall be used in compliance with the recommendations of IME with regard to blasting in the vicinity of radio transmitters as stipulated in Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps), IME Safety Library Publication No. 20, December 2011.

(F) Precautions in accordance with the recommendations of IME with regard to blasting in the vicinity of radio transmitters as stipulated in Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps), IME Safety Library Publication No. 20, December 2011 shall be taken to prevent accidental discharge of electric detonators from current induced by radar, cellular telephones, radio transmitters, battery contact, lightning, adjacent power lines, static electricity, dust storms, blowing snow or other sources of extraneous electricity.

(G) Before adopting any system of electrical firing, the blaster shall conduct a thorough survey for extraneous currents, and all dangerous currents shall be eliminated before any holes are loaded.

(H) In any single blast using electric detonators, all detonators shall be of the same style or function and be of the same manufacture.

(I) Electric blasting shall be carried out by using blasting circuits or power circuits, in accordance with the electric detonator manufacturer’s recommendations.

(J) The firing line shall be checked with an approved testing device at the terminals before being connected to the blasting machine or other power source.

(K) The circuit, including all detonators, shall be tested with an approved testing device before being connected to the firing line.

(L) When firing a circuit of electric detonators, care shall be exercised to ensure that an adequate quantity of delivered current is available, in accordance with the manufacturer's recommendation.

(M) Connecting wires and lead wires shall be insulated single solid wires of sufficient current- carrying capacity and shall not be less than #20 gauge (American wire gauge) solid core insulated wire.

(N) Firing line or leading wires shall be solid single wires of sufficient current carrying capacity, and shall be not less than #14 gauge (American wire gauge) solid core insulated wire. Bus wires depend on the size of the blast, but #14 gauge (American wire gauge) copper is recommended.

(O) The ends of lead wires which are to be connected to a firing device shall be shorted by twisting them together or otherwise connecting them before they are connected to the leg wires or connecting wires, and they shall be kept in the possession of the person who is doing the loading until loading is completed and the leg wires attached. Lead wires shall not be attached to the firing device until the blaster is ready to fire the shot and must be attached by the blaster.

(P) The ends of the leg wires on electric detonators shall be shorted in a similar manner and not separated until all holes are loaded and the loader is ready to connect the leg wires to the connecting wires or lead wires.

(Q) When firing electrically, the insulation on all firing lines shall be adequate and in good condition.

(R) A power circuit used for firing electric detonators shall not be grounded.

(S) When firing from a power circuit, the firing switch shall be locked in the open or "off" position at all times, except when firing. It shall be so designed that the firing lines to the cap circuit are automatically short-circuited when the switch is in the 'off' position. Keys to this switch shall be entrusted only to the blaster.

(T) Blasting machines shall be in good condition and the efficiency of the machine shall be tested periodically to make certain that it can deliver power at its rated capacity.

(U) When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric detonators used.

(V) The number of electric detonators connected to a blasting machine shall not be in excess of its rated capacity. A series or circuit shall contain no more detonators than the limits recommended by the manufacturer of the electric detonators in use.

(W) The blaster shall be in charge of the blasting machines, and no other person shall connect the leading wires to the machine.

(X) Blasters, when testing circuits to charged holes, shall use only blasting testers especially designed for this purpose.

(Y) In electrical firing, only the person making leading wire connections shall fire the shot. All connections shall be made from the borehole back to the source of firing current, and the lead line wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

(Z) After firing an electric blast from a blasting machine, the leading wires shall be immediately disconnected from the machine and short-circuited.

(AA) When electric detonators have been used, workers shall not return to misfired holes for at least thirty minutes.

Section 6-4 Safety Fuse Initiation of Blasts

(A) A safety fuse that is deteriorated or damaged in any way shall not be used.

(B) The hanging of safety fuse on nails or other projections which will cause a sharp bend to be formed in the fuse is prohibited.

(C) Before assembling fuse detonators and safety fuse, a short length shall be cut from the end of the supply reel so as to assure a fresh cut end in each fuse detonator.

(D) Only cap crimpers specifically designed for the purpose of crimping caps shall be used for attaching fuse detonators to safety fuse. Crimpers shall be kept in good repair and accessible for use.

(E) No fuse detonators and safety fuse shall be assembled, or primers made up, in any magazine or near any possible source of ignition or initiation.

(F) The assembly of fuse detonators, safety fuse and making of primers shall only be done in a place selected for this purpose and at least 100 feet away from any storage magazine.

(G) The burning rate of the safety fuse in use at any time shall be measured, posted in conspicuous locations, and brought to the attention of all workers concerned with blasting.

(H) New rolls of fuse shall be tested for burn rate prior to use and all partial rolls shall be tested at least every 30 days. A record of the burn rate shall be kept by the permittee.

(I) The length of safety fuse shall be in accordance with the manufacturer's recommendations. In no case shall the length of fuse be less than 3 feet and shall not have a burn time of less than 120 seconds at the time of initiation.

(J) Lighting of safety fuse shall be done with hot wire lighters, pull-wire lighters, thermalite connectors, or igniter cord and thermalite connectors.

(K) Matches, cigarette lighters, cigarettes, pipes, cigars or other unsafe means shall not be used to ignite safety fuse.

(L) Igniters shall be used in accordance with the manufacturer's recommendations and shall not be attached to a safety fuse until the charge is at the blast site and the crew is fully prepared to light the charge.

(M) At least two persons shall be present when fuse detonator and safety fuse blasting is done by hand-lighting methods.

(N) When blasting with safety fuses, consideration shall be given to the length and burning rate of the safety fuse and shall be used in accordance with the manufacturer's recommendations. A sufficient time of not less than 120 seconds, with a margin of safety, shall always be provided for the blaster to reach a place of safety.

(O) No more than 12 safety fuses shall be lit by each blaster when hand lighting devices are used.

However, when two or more safety fuses in a group are lit as one by means of igniter cord or other similar fuse-lighting devices, they may be considered as one fuse.

(P) Fuse detonators and safety fuse shall not be used for firing mud cap charges unless charges are separated sufficiently to prevent one charge from dislodging other shots in the blast.

(Q) Only sufficient primers for one day's use shall be made up at a time.

(R) Any loose cartridges of explosives, detonators, primers and assembled fuse detonators and safety fuse unused at the end of the shift shall be returned to their respective and separate magazines and locked up.

(S) Safety fuse shall not be used in blasting operations in populated areas, public areas, on highways or adjacent to roads open to traffic.

(T) When the fuse lighter has been ignited, the blaster shall assume initiation of the safety fuse has occurred.

(U) If the safety fuse does not show evidence of initiation, the blaster shall not attempt any further initiation and retreat to a safe location for at least one hour.

(V) When safety fuse is used, workers shall not return to a misfire for at least one hour.

(W) If explosives are suspected of burning, all persons in the endangered area shall move to a safe location and no one shall return to the area for at least one hour after signs of burning have ceased.

Section 6-5 Non-electric Initiation of Blasts

(A) Blasters shall be familiar with and follow the manufacturer's warnings and instructions, especially hook-up and safety precautions.

(B) Operations shall be discontinued during the approach and progress of electrical storms.

(C) Non-electric leads shall not be held during firing.

(D) Primary initiators shall not be attached to the round or shot until after all the connections have been made and the blasting area has been cleared.

(E) Non-electric delay connectors shall not be exposed to excessive impact, friction, flame, electrical discharge, static electricity or lightning.

(F) Delay detonators shall not be disassembled from the plastic connector block, nor shall the delay detonators be used without the block.

(G) Shock tube connections shall be at right angles to detonating cord.

(H) Connections with other initiation devices shall be secured in a manner that provides for uninterrupted propagation.

(I) Factory made units shall be used as assembled and shall not be cut except that a single splice is permitted on the lead-in trunkline during dry conditions.

(J) No tool shall be used to pry on any component containing a detonator, nor shall any tool be used to open, fasten or clean out any connector containing a detonating device.

(K) Care shall be taken to ensure that a vehicle is not driven over the tubing, connectors or any surface delay component.

(L) In multiple row blasts, the initiation system shall not be connected from row to row until all drilling and loading has been completed. In single row blasts, the components shall not be connected from hole to hole until all drilling and loading has been completed.

(M) A safety line consisting of trunkline or other non-electric tubing shall be connected to the last hole in each row and shall extend beyond the area of cover in a covered or matted blast and shall be used to check for complete detonation of each row.

(N) Before firing the shot, the blaster shall visually inspect and verify that all connections in the initiation system are made in accordance with the manufacturer's recommendations.

Section 6-6 Use of Detonating Cord

(A) Care shall be taken to select a detonating cord consistent with the type and physical condition of the borehole and stemming and the type of explosives used.

(B) Detonating cord shall be handled and used with the same respect and care given other explosives.

(C) If using a detonating type cord for blasting, the double-trunkline or loop systems shall be used.

(D) In multiple-row blasts, the trunkline layout shall be designed so that the detonation can reach each blast hole from at least two directions.

(E) All detonating cord knots shall be tight and all connections shall be kept at right angles to the trunklines.

(F) The line of detonating cord extending out of a borehole or from a charge shall be cut from the supply spool before loading the remainder of the bore hole or placing additional charges.

(G) Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking-up.

(H) Detonating cord connections shall be made in accordance with the manufacturer's recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry.

(I) Detonating cord shall be cut with a sharp knife, razor blade or cutters designed for use with detonating cord. Scissors or plier type cutters shall not be used.

(J) All detonating cord trunklines and branch lines shall be free of loops, sharp kinks, or angles that direct the cord back toward the oncoming line of detonation.

(K) All detonating cord connections shall be inspected before firing the blast.

(L) When detonating cord millisecond-delay connectors or short-interval-delay electric detonators are used with detonating cord, the practice shall conform strictly to the manufacturer's recommendations.

(M) When connecting a detonator to detonating cord, the detonator shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the detonator containing the explosive charge pointed in the direction in which the detonation is to proceed.

(N) When initiating detonating cord with fuse detonators and safety fuse, two fuse detonators shall be required.

(O) Detonators for firing the trunkline shall not be brought to the loading area nor attached to the detonating cord until the area has been cleared for the blast.

Section 6-7 Electronic Initiation of Blasts

(A) Permittees shall be trained in the manufacturer's procedures for use of electronic detonators and shall follow the manufacturer's warnings and instructions, especially hook-up and safety precautions.

(B) Test equipment and blasting machines designed for use with electric detonators shall not be used with electronic detonators.

(C) Manufacturer's recommended practices shall be followed to protect electronic detonators from electromagnetic, radio frequency or other electrical interference sources.

(D) Electronic detonators shall only be fired with the equipment and procedures recommended by the manufacturer.

(E) Electric detonators and electronic detonators shall not be used in the same blast, even when made by the same manufacturer, unless the manufacturer approves such use.

(F) Test equipment and blasting machines that are designed for electronic detonators shall not be used with electric detonators.

(G) Electronic detonator wires, connectors, coupling devices, shock tube or other components shall be protected from mechanical abuse and damage.

(H) Electronic detonators of different types and/or versions shall not be used in the same blast, even if made by the same manufacturer, unless such use is approved by the manufacturer.

(I) Equipment or electronic detonators that appear to be damaged or poorly maintained shall not be used.

(J) Only blasting machines, testers, or instruments that are specifically designed for the electronic detonator system shall be used.

(K) Never mix or use electronic detonators and equipment made by different manufacturers.

(L) The handling or use of electronic detonators shall be discontinued during the approach and progress of an electrical storm. Personnel must be withdrawn from the blast area and moved to a safe location.

(M) Electronic detonator systems shall not be exposed to or used in operational temperature and pressure ranges outside those specified by the manufacturer.

(N) Electronic detonators shall never be tested or programmed in a booster, cartridge or other explosive component (primer assembly) before it has been deployed in the borehole or otherwise loaded for final use.

(O) An electronic detonator shall not be held while it is being tested or programmed.

Section 6-8 Firing the Blast

(A) It shall be the duty of the blaster to determine the time of blasting. The blaster shall conduct all blasting operations and no shot shall be fired without the blaster's presence and approval.

(B) All blasting in congested areas or in close proximity to a structure, railway, highway or any other installation where the blasting may cause injury or damage by flying rock shall be covered with blasting mats or other protective material before firing.

(C) All persons within the blasting area shall be notified of the time of the blast and moved to a safe distance or under sufficient cover. Guards shall be posted to prevent entry into the blast area.

(D) All surplus explosive materials shall be removed to a safe location before blasting.

(E) Flaggers shall be safely posted on highways that pass through the danger zone so as to stop traffic during blasting operations.

(F) Guards shall be posted around the perimeter of the blasting area to prevent unauthorized entry into the blast area. Either visual or verbal communication must be possible between guards.

(G) Before the blast is fired, the warning signal shall be given by the blaster in charge or the individual designated by the blaster in charge.

(H) An inspection of the blast area to determine if all charges have detonated shall be done by the blaster before guards and flaggers are cleared by the blaster to leave their posts.

Section 6-9 Misfires

(A) The blaster shall provide proper safeguards for excluding all unauthorized persons from the danger zone if a misfire is found.

(B) No other work shall be performed except what is necessary to remove the hazard of the misfire and only those employees necessary to perform the work shall remain in the danger zone.

(C) Explosives shall not be extracted from a hole that has misfired unless it is impossible or hazardous to detonate any unexploded explosive materials by insertion of an additional primer.

(D) If there are any misfires while using fuse detonators and safety fuse, all employees shall remain away from the charge for at least one hour. Misfires shall be handled under the direction of the person in charge of the blasting. All fuses shall be carefully traced and a search made for the unexploded charges.

(E) When electric detonators have been used, workers shall not return to the blast area for at least 30 minutes unless the manufacturer recommends additional time before returning to the blast area. All wires shall be carefully traced and a search made for unexploded charges.

(F) When a completely non-electric initiation system, other than safety fuse, has been used, all employees shall remain away from the blast area for at least 15 minutes. All shock tubes shall be traced and a search made for unexploded charges.

(G) When electronic detonators have been used, workers shall not return to the blast area for at least 30 minutes unless the manufacturer recommends additional time before returning to the blast area.

(H) If explosives are suspected of burning in a hole, all persons in the endangered area shall move to

a safe location and no one shall return to the hole for at least one hour after evidence of combustion ceases.

(I) No drilling, digging or picking shall be permitted until all missed holes have been detonated or the blaster in charge has approved that work can proceed.

(J) Explosive materials recovered from misfires shall not be reused and shall be disposed of in the manner recommended by the manufacturer.

Section 6-10 Blasting Vibration and Air Over-Pressure Standards

(A) In all blasting operations, blasters shall use one of the following methods to monitor or control the intensity of motion in the ground at the nearest dwelling, house, school, church, commercial or occupied building. These limits do not apply to property owned, leased or contracted by the blaster's company or property on which the owner provides a voluntary written waiver from these restrictions.

(1) Option 1 - Frequency Versus Particle Velocity graph. A blasting operation shall have the option to use the graph shown in Figure 6-10 to limit peak particle velocity based upon the frequency of the blast vibration. Allowable vibrations fall below the limits indicated by the central lines; non-allowable vibrationsNon-Allowable Vibrations lie above the lines. Seismographs shall meet the following requirements:

(i) Monitoring instruments shall have a flat frequency response between 2 and 250Hz for particle velocity.

(ii) The digitizing sampling rate for peak particle measurements shall be at least 1,024 samples per second.

(iii) Seismographs shall be capable of performing a self-test of velocity transducers and printed event records shall indicate whether or not the sensor test was successful.

(iv) Monitoring instruments shall be capable of recording particle velocities with intensities ranging from 0.02 to 5.0 inches per second.

(v) Monitoring systems shall be calibrated by a service center approved by the manufacturer within at least two years of the time of use. Certificates documenting date of calibration, issued by the approved service center, shall be kept by the user.

(vi) Monitoring systems shall be capable of printing hard-copy reports showing the date and time of monitoring, the maximum peak particle velocity (PPV) measurements, and plotted PPV-time waveform plots.

(vii) For all blasts with a scaled distance less than 100 ft/lb$^{0.5}$, seismographs monitoring motion shall be set to trigger at a level of 0.05 in/s.

The following equation shall be applied when calculating the scaled distance.

$$D_S = \frac{D}{\sqrt{W}}$$

Where: Ds = Scaled distance (ft/lb$^{0.5}$)

D = Distance to the nearest structure (ft)

W = Maximum weight of explosive detonated within any 8 millisecond window (lb)

(viii) Vibration analysis results must be presented in comparison with the RI 8507, adopted by United States Bureau of Mines (USBM) and as shown in Figure 6-10.

(ix) If a valid vibration record showing compliance with the MAPV limits shown in figure 6-10 is not available for inspection, the maximum charge weight per delay (W) must conform to the scaled distance limitations as prescribed in Option 2.

FIGURE 6-10

Option 1: Particle Velocity Versus Frequency

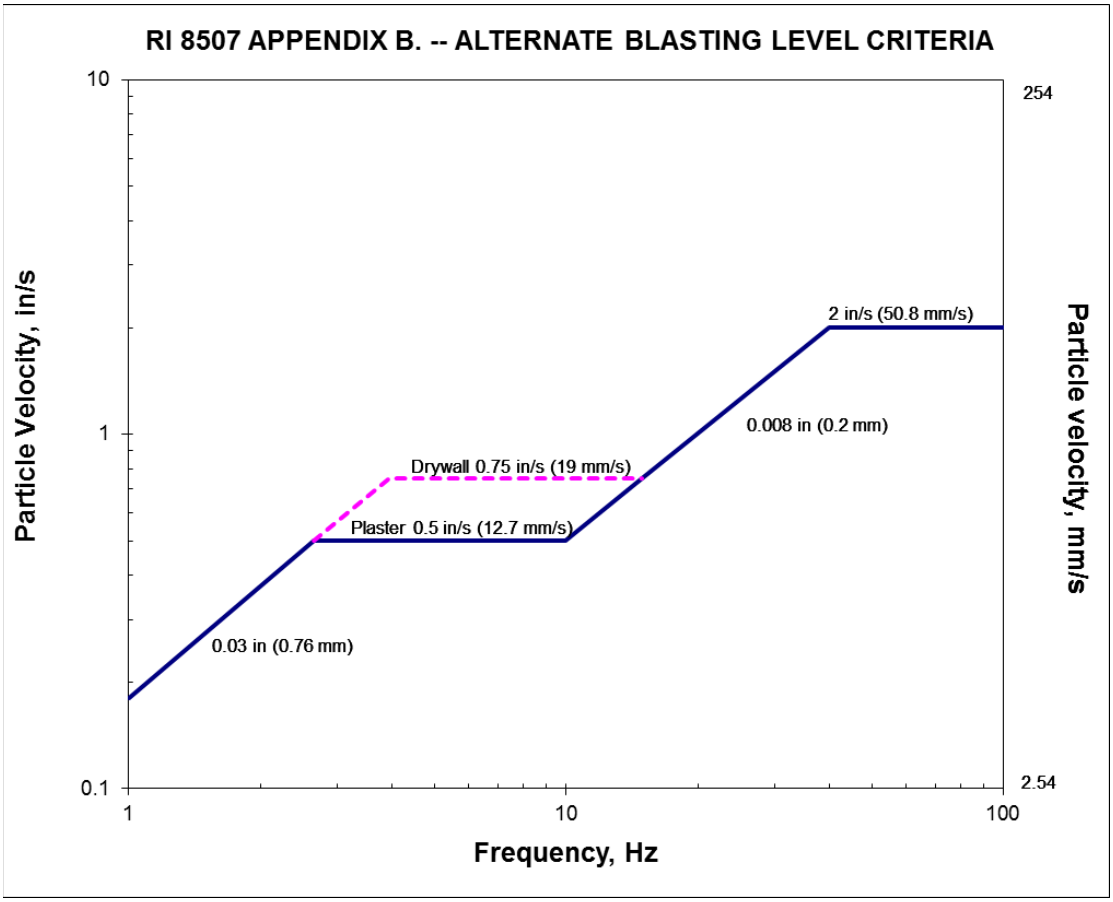

Table: U.S. Bureau of Mines RI 8507, 2009

(2) Option 2 Scaled Distance – when seismic monitoring is not performed, the maximum weight of the explosive detonating within any 8-millisecond time period shall not exceed the amount allowed by a calculation using the scaled distance factors given in Scaled Distance column of Table 6-10.

The following equation shall be applied when utilizing the scaled distance calculations to

control blast-induced vibration.

$$W = \left(\frac{D}{D_s}\right)^2$$

Where: Ds = Scaled distance ($ft/lb^{0.5}$)

D = Distance to the nearest structure (ft)

W = Weight of explosive detonated within any 8 millisecond window (lb)

Example Maximum Charge Weight per Delay (W) Calculation:

Given: Ds = 55 ($ft/lb^{0.5}$)

D = 500 ft.

therefore

$W = (500 / 55)^2 = 82.6$ lb

Table 6-10	**Blasting Vibration and Air Over-Pressure**
Distance From Blast (Ft)	**Scaled Distance Factor Units Are $Ft/Lb^{0.5}$**
0 to 300	50
301 to 5000	
5001 and Greater	65

(B) Air over-pressure (air blast) limitation: Air over-pressure at the nearest dwelling house, school, church, or otherwise occupied buildings shall not exceed 133 dB (0.0129 psi). Measuring air over-pressure is not required for all blasting operations. However, due to complaints or other circumstances, the Division may require blasters to monitor air over-pressure. All instruments used to measure air over-pressure compliance shall:

(1) Employ linear microphones with a flat frequency response between 2 and 200 Hz

(2) Have a digital sampling rate of at least 1024 samples per second; and

(3) Be capable of measuring air over-pressure from 120 to 140 dB-Linear (0.0029 to 0.029 psi).

ARTICLE 7 AVALANCHE MITIGATION

Section 7-1 General Requirements

(A) The use of explosives and blasting agents for avalanche mitigation shall comply with this article unless explosives are used in compliance with Article 6.

(B) The requirements of this article shall only be applicable to the use of explosives for avalanche mitigation. The use of explosives for other purposes, such as demolition, site clearing or construction shall be in compliance with Article 6.

(C) Explosives and blasting agents shall not be stored, kept, assembled, combined to form armed charges, or had in any inhabited areas, structures or buildings except in compliance with this Article or Article 4.

(D) Only blasters shall supervise the assembly, arming of explosive components, and detonation of explosive charges.

(E) Each avalanche mitigation blasting crew or team shall consist of a blaster and at least one assistant trained as applicable per Section 7-2. The crew may consist of two blasters, but only one shall act as the blaster in charge.

(F) Untrained personnel may accompany the blasting crew for training purposes but shall only participate in actual firing of charges for completion of training in accordance with Section 7-2(B)(1)(iii)(a)(3).

(G) The blaster in charge of each crew or team shall be responsible for all decisions made regarding preparation and placement of charges.

(H) Blasting operations shall be conducted during periods of daylight with personnel guarding the area, or when the area has been closed. Nighttime blasting operations shall be approved by the Division, and approval shall only be granted if such approval serves the safety of the general public.

(I) The blaster in charge shall pre-plan the escape route and all crew members shall understand the plan before initiating the charge.

(J) No person shall accept or be given a job assignment that is beyond the individual's ability, training, or qualifications.

(K) Cold temperatures, high winds, and heavy snowfall are conditions that should be anticipated in avalanche mitigation blasting. These conditions shall be considered in determining a person's physical ability, training, and qualifications for conducting safe blasting operations and in the management of safe blasting operations.

(L) Operations utilizing hanging or dangling charges must have a hang cord entanglement safety procedure.

Section 7-2 Training Requirements

(A) Type II Avalanche Mitigation permit applicants shall submit a training program for personnel involved in the use, storage and transportation of explosives to the Division. The Division shall approve the training program prior to issuance of the permit.

(B) The training program shall include at least the following for each personnel type:

(1) Blaster in Training:

(i) A minimum of 8 hours of classroom education and a written examination to include the following:

(a) Explosives Regulations of the Division

(b) Explosives Regulations of the Division and federal requirements for the storage of explosives and magazine locations, inventory procedures, and magazine access

(c) Safety procedures for explosives and blasting agents used within the company, including the properties and classification of each type of explosive, and consequences of the unsafe use of explosives

(d) Explosives Regulations of the Division for preparing, handling, and using hand charges to include:

(1) Hand charge assembly procedures for both field arming and make-up room arming;

(2) Crimping procedures;

(3) Transportation to blast site by skiing or aerial tramways for both field armed charges and make-up room armed charges;

(4) Use of igniters and determining successful initiation of fuse;

(5) Misfire procedures;

(6) Procedures for clearing and guarding the blasting area; and

(7) Deployment of initiated hand charges.

(e) Hazard training for cornice control operations

(f) Hang cord entanglement safety procedures

(g) Hazard training for avalauncher operations

(h) Record keeping procedures, including:

(1) Records of transactions;

(2) Explosive inventory record keeping;

(3) Explosive use and route log record keeping; and

(4) Misfire documentation.

(ii) Simulated Field Training for Hand Charges

(a) During weather conditions typical to avalanche mitigation and under the supervision of a blaster, the trainee shall:

(1) Attend demonstration with simulated components;

(2) Attach igniters to fuse without a detonator and successfully ignite fuse not less than 5 times;

(3) Attach igniters to fuse without a detonator and twice simulate an unsuccessful attempt to light the fuse and follow the procedures for a misfire;

(4) Attach igniters to fuse with a detonator and successfully ignite and deploy the detonator and fuse assembly not less than 5 times; and

(5) When training occurs at operations not utilizing a pre-manufactured detonator and safety fuse assembly, assemble detonator and fuse, attach igniters to fuse with detonator and successfully initiate and deploy the detonator and fuse assembly not less than 5 times.

(iii) Field Experience Training for Hand Charges

(a) Under the supervision of a blaster, the trainee shall:

(1) Accompany a blasting crew on 5 routes or the deployment of not less than 20 charges as an observer;

(2) Accompany a blaster, as an assistant only, for the initiation and deployment of not less than 20 charges; and

(3) Accompany a blaster and initiate and deploy not less than 20 charges under the direct supervision of the blaster.

(iv) Avalauncher Operator

(a) Trainee shall complete 8 hours classroom and field training before becoming an avalauncher operator. This training shall include:

(1) Operating instructions for each type of avalauncher used;

(2) Procedures on performing preventive maintenance inspections;

(3) Procedures on assembly of charges;

(4) Procedures for checking the elevation, aiming, and pressure settings of the avalauncher;

(5) Procedures for test firing the avalauncher;

(6) Procedures for loading charges in the avalauncher;

(7) Procedures for clearing and guarding the target area;

(8) Emergency procedures; and

(9) Requirements for securing the equipment.

(b) Qualifications for avalauncher operator shall be:

(1) One year experience as a blaster in charge;

(2) Must have assisted on the avalauncher crew not less than five times; and

(3) Must load and fire the avalauncher under the supervision of a qualified operator not less than 10 times.

(2) Howitzer Operator

(i) All Howitzer operations shall be conducted in accordance with the provisions of The Avalanche Artillery Users of North America Committee (AAUNAC) Standard (Revised May 16, 2012).

(3) Requirements for Annual Refresher Training

(i) All blasters shall attend a minimum of 4 hours of refresher training at the beginning of each season.

(a) Classroom training shall include:

(1) Review of operation techniques such as throwing techniques, air blasting, dangling charges, hang cord entanglement safety procedures, cornice blasting, avalauncher and howitzer procedures;

(2) Review of assembly and transportation procedures; and

(3) Review of snow safety program.

(b) Field training shall include:

(1) Review of initiation techniques;

(2) Review of misfire procedures; and

(3) A walk through of storage and make-up facilities.

(ii) Annual refresher training may count towards the 16-hour requirement of Section 3.6(N) of these rules when the refresher training program is specifically approved by the Division.

Section 7-3 Make-up Room Requirements

(A) Location of Make-up Rooms

(1) Make-up rooms shall not be located in buildings or structures that are at any time open to the public.

(B) Construction of Make-up Rooms

(1) The interior of the make-up room shall be finished and equipped to the following minimum standards:

(i) Walls shall be constructed of, or covered with, a non-sparking material. Nails or screws shall be countersunk, blind nailed or covered;

(ii) Floors shall be constructed of, or covered with, a non-sparking material;

(iii) The building and make-up room shall be well ventilated, and the ventilation system shall

discharge to the outside from the make-up room;

(iv) The make-up table shall be constructed of non-sparking, nonconductive material; and

(v) The make-up table shall be located away from the area where explosives are kept before and after assembly.

(2) The building in which the make-up room is located shall be theft-resistant and secured by at least one steel padlock having at least 5 tumblers and a case hardened shackle at least 3/8-inch in diameter. The door shall have hinges and hasps attached so that they cannot be removed from the outside when in the closed position with the lock in place.

(C) Make-up Room Restrictions

(1) Heating units shall be explosion proof, dust-proof and not depend on a combustion process when properly designed and located. National Electric Code-rated explosion-proof and dust-proof heating units may be located inside make-up rooms.

(2) Temperature control devices must be sufficiently designed to prevent overheating of make-up rooms where explosives are stored.

(3) Lighting fixtures shall be National Electric Code explosion-proof rated fixtures and all wiring shall be in sealed conduit.

(4) Electric control switches shall be located outside the make-up room.

(5) Electrical outlet boxes are not permissible inside the make-up room.

(6) Smoking, matches, open flames or flame or spark producing devices shall not be permitted inside the make-up room.

(7) Flammable liquids or flammable compressed gases shall not be stored or had in the make-up room.

(8) Occupancy of the make-up room shall be restricted to authorized and trained personnel when explosives are present.

(9) A make-up room shall not be used for the unattended storage of armed charges.

(10) Explosives stored inside the make-up room must be stored in at least a Type 2 storage magazine suitable for indoor storage.

(D) Make-up Room Housekeeping

(1) The make-up room shall be kept clean and orderly.

(2) Metal tools shall not be used or stored in the make-up room.

(3) Brooms used in the make-up room shall be made of non-sparking materials.

(4) Sweepings and empty explosive material containers shall be disposed of as recommended by the manufacturer.

(5) The make-up room shall be cleaned and all explosives materials shall be removed before any repairs are made to the make-up room.

(6) The make-up table or bench shall be cleaned regularly and shall be kept free of any materials or tools not used in the assembly of the charges.

Section 7-4 Use of Explosives

(A) General Requirements

(1) While explosives are being handled or used, smoking, matches, or any other source of fire or flame shall not be within 50 feet of the blast site.

(2) No person shall handle explosives while under the influence of intoxicating liquors, narcotics or other controlled substances. This rule does not apply to persons taking prescription drugs and/or narcotics as directed by a physician, providing such use shall not influence the blaster's ability to conduct safe blasting operations.

(3) Blasters conducting blasting operations shall take every reasonable precaution, including but not limited to warning signals, flags and barricades to insure the safety of the general public and workers.

(4) The blaster shall suspend all blasting operations and remove all persons from the blast site during the approach and progress of an electrical storm.

(5) No fire shall be fought where the fire is in imminent danger of contact with explosives. All employees shall be removed to a safe area and the fire area guarded against intruders.

(B) Explosives

(1) Explosives shall have a shelf life of at least 1 operating season in the storage facilities in which they will be stored.

(2) Blasting caps must be at least a No. 6 cap and no larger than a No. 8 cap except when recommended by the explosives manufacturer for a particular explosive used within a specific application.

(3) Detonator and safety fuse assemblies manufactured with thermalite connectors shall not be used for avalanche mitigation operations.

(4) Detonating cord used for initiating primers must be at least a 25-grain cord.

(5) Explosive materials chosen must have excellent water resistance and be capable of detonation in cold temperatures.

(6) Explosive materials that are damaged, show signs of deterioration, or have misfired shall not be used.

(7) Detonators and other explosive materials, with the exception of fuse igniters, shall never be carried in pockets of clothing.

(8) Should cartridges or packages of explosive materials show signs of discoloration or deterioration, such explosive materials must be carefully set aside and properly disposed of according to the manufacturer's recommendations.

(9) Only non-sparking metallic slitters may be used for opening fiberboard cases.

(10) No explosive material shall be abandoned or left in any location for any reason, nor left in such a manner that they may easily be obtained by children or other unauthorized persons.

All unused explosives shall be returned to the proper storage facilities.

(11) A record of each blast shall be completed and signed by the Type I permittee acting as the blaster in charge. All records shall be retained at least five years, shall be available for inspection by the Division, and shall contain at least the following data:

(i) Name of company or contractor;

(ii) Date, time and location of route;

(iii) Name, permit number and signature of blaster-in-charge of the route;

(iv) Number of charges used on each route;

(v) Names of employees on each route;

(vi) Types of explosives used;

(vii) Total amount of each explosive received and used;

(viii) Method of initiation;

(ix) Type of blasting (hand charge, cornice control, avalauncher);

(x) Weather conditions; and

(xi) Statement noting any misfires, the location of misfires, steps taken to recover or refire any misfires, and the date the misfire was found and disposed of.

(C) Hand Charges

(1) Safety Fuse

(i) Safety fuse that is deteriorated or damaged in any way shall not be used.

(ii) The hanging of safety fuse on nails or other projections which will cause a sharp bend to be formed in the fuse is prohibited.

(iii) Pre-manufactured detonator and fuse assemblies shall be used in accordance with the manufacturer's requirements.

(iv) Before assembling fuse detonators and safety fuse, a minimum of 1 inch shall be cut from the end of the supply reel so as to assure a fresh cut end in each fuse detonator.

(v) The burning rate of the safety fuse in use at any time shall be measured, posted in conspicuous locations, and brought to the attention of all workers concerned with blasting.

(vi) New rolls of safety fuse shall be tested for burn rate prior to use and all partial rolls shall be tested at least every 30 days. A record of the burn rate shall be kept by the Type II permittee.

(vii) Only a bench or hand-held cap crimpers designed for the purpose of crimping fuse detonators shall be used for attaching fuse detonators to safety fuse. Crimpers shall be kept in good repair and accessible for use.

(viii) No fuse detonators and fuse shall be assembled, or primers made up, in any magazine or near any possible source of initiation.

(ix) Assembly of fuse detonators and safety fuse and pre-arming of charges shall only be done in a warm, dry, well-lit make-up room.

(x) Any loose cartridges of explosives, detonators, and assembled fuse detonators and safety fuse unused at the end of the shift shall be returned to their respective and separate magazines and locked up.

(xi) Detonators, fuse detonator and fuse assemblies, armed charges or safety fuse igniters shall not be carried into nor stored in any magazine containing cartridge high explosives.

(xii) Detonators shall not be inserted in the explosives without first making a hole in the cartridge of proper size using a tool designed for that purpose.

(2) Arming of Charges With Detonators

(i) Cast primers and boosters shall not be used if the hole is too small for the detonator, and attempting to enlarge the hole in a cast primer or booster shall not be permissible.

(ii) The detonator shall be secured within the primer so that no tension is placed on the safety fuse at the point of entry into the detonator.

(iii) The detonator shall be fully inserted into the primer cartridge or booster and shall not protrude from the cartridge.

(iv) After the fuse detonator and safety fuse assembly is inserted, the explosive contains a sensitive detonator and is then vulnerable to premature detonation, therefore delaying the arming of a charge until just before tossing the charge should be standard procedure when wind and/or temperatures are not severe.

(v) When arming the charge at the blast site the blaster shall:

(a) Insure that the fuse detonator is installed on the correct length of fuse prior to transporting to blast sites;

(b) Place detonators in adequate protective padding or shields before placing in approved avalanche mitigation packs;

(c) Place detonators and explosives in separate approved avalanche mitigation packs while transporting to the blast site;

(d) Safety fuse igniters shall not be placed inside the pack when it contains explosives or detonators, but shall be carried in a separate pack;

(e) Insure that the detonator is secured to the charge before attaching fuse igniter.

(vi) Depending on weather condition, the charges may be armed in a make-up room as follows:

(a) All fuse detonators shall be installed on the required length of safety fuse before the explosive cartridges or primers are brought to the make-up area;

(b) Fuse detonator and safety fuse assemblies shall be secured correctly to each type of explosive charge being used;

(c) Fuse detonator and safety fuse assemblies shall not be attached to explosive charges until just before the time of distribution to patrol personnel;

(d) Each hand charge shall be placed in an area separate from the assembly area immediately after assembly is completed; and

(e) Distribution of hand charges into approved mitigation packs shall take place away from the assembly area.

(3) Initiation of Hand Charges

(i) The length of safety fuse shall be in accordance with manufacturer's recommendations, and shall be 3 feet in length or have a burn time of not less 120 seconds at the time of initiation.

(ii) The lighting of fuse shall be done with hot-wire lighters or pull-wire lighters.

(iii) Matches, cigarette lighters, cigarettes, pipes, cigars or other unsafe means shall not be used to ignite fuse.

(iv) Igniters shall be used in accordance with manufacturer's recommendations and shall not be attached to a safety fuse until the charge is at the blast site and the crew is fully prepared to initiate the charge.

(v) At least two persons shall be present when fuse detonators and safety fuse blasting is done by hand lighting methods.

(vi) When blasting with safety fuses, consideration shall be given to the length and burning rate of the safety fuse, and safety fuse shall be used in accordance with manufacturer's recommendations. A sufficient time of not less than 120 seconds, with a margin of safety, shall always be provided for the blaster to reach a place of safety.

(vii) When the fuse lighter has been placed on the fuse, the blaster shall assume initiation of the safety fuse has occurred.

(viii) If the safety fuse does not show evidence of initiation after the fuse lighter has been ignited, the blaster shall not attempt any further initiation of the charge but adequately mark the charge and retreat with the blasting crew to a safe distance for not less than 1 hour.

(ix) After waiting at least 1 hour, the blaster shall:

(a) Determine that initiation failed and ignite the uninitiated charge; or

(b) Determine that the initiation was successful and dispose of the misfired explosive charge with a secondary charge.

(4) Use of Detonating Cord

(i) Detonating cord shall be handled and used with the same respect and care given other explosives.

(ii) All detonating cord knots shall be tight and all connections shall be kept at right angles.

(iii) Detonating cord shall be handled and used with care to avoid damaging or severing the cord.

(iv) Detonating cord connections shall be made in accordance with approved and recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry.

(v) Detonating cord shall be cut with a sharp knife, razor blade, or cutters designed for use with detonating cord. Scissors or plier type cutters shall not be used.

(vi) All detonating cord connections shall be inspected before firing the blast.

(vii) When connecting a detonator to detonating cord, the detonator shall be taped or otherwise attached securely along the side of the end of the detonating cord with the end of the detonator containing the explosive charge pointed in the direction in which the detonation is to proceed.

(viii) Two fuse detonators shall be required for the initiation of detonating cord with fuse detonator and safety fuse.

(ix) Detonators shall not be attached to the detonating cord until the area has been cleared for the blast.

(5) Avalanche Mitigation Packs

(i) Mitigation packs shall be constructed of material that is water-resistant, non-sparking and non-conductive.

(ii) Mitigation packs shall have sufficient individual compartments to separate hand charges or explosive components from tools or other equipment or supplies that may be carried in the pack.

(iii) Tools or other equipment shall not be placed in compartments containing explosives.

(iv) Each compartment used for hand charges or explosive components shall have an independent means of closure.

(v) Mitigation packs shall be inspected daily for holes, faulty compartments or closures and explosive residue. Packs shall not be used until adequately repaired or cleaned.

(vi) Mitigation packs shall not be left unattended, or used for storing explosives. All explosive material shall be returned to the approved storage facility at the end of individual mitigation routes.

(vii) Individual mitigation team members shall not carry more than 35 pounds of explosives material in avalanche mitigation packs.

(D) Avalauncher and Launcher

(1) All personnel assigned to work on an avalauncher or launcher crew shall be trained in the following:

(i) All operating instructions;

(ii) Safety precautions;

(iii) Emergency procedures; and

(iv) Securing requirements for equipment.

(2) All equipment shall be in good working condition and maintained as recommended by the manufacturer.

(3) The components of projectile assemblies shall not be interchanged and shall be assembled and used in accordance with the manufacturer's instructions.

(4) All projectiles shall be inspected before transporting them to the firing location. Such inspection shall include:

(i) Cast explosives for cracks, dents, fractures and smooth nose surface;

(ii) Cap wells should be clear of obstructions and debris and centered and straight for proper alignment of the cap; and

(iii) Fin assembly should be inspected for properly-functioning components and safety items, including pressures plate, pressure plate arming wire, bore rider pin, safety pin, magnet and firing pin.

(5) Defective projectiles shall not be used and shall be disposed of or returned to the manufacturer.

(6) Safety devices or components shall not be removed.

(7) If explosives are not at least 20 feet from the avalauncher/launcher during firing procedures, they shall be kept in a closed Type 3 magazine.

(8) The transport safety pin shall not be removed until just prior to inserting the projectile into the barrel.

(9) Avalaunchers/Launchers must be fired with compressed nitrogen gas only.

(10) Avalaunchers/Launchers shall be connected to the compressed nitrogen source through a satisfactory pressure regulator.

(11) The pressure regulator shall be set to limit the launch pressure to the maximum recommended by the manufacturer.

(12) The first round fired in a mitigation mission shall be a test fire to test the proper functioning of the launcher without a projectile.

(13) The blaster in charge, trained assistants, and blasters in training shall be the only personnel within 100 feet of the avalauncher/launcher during loading and firing.

(E) Misfires

(1) An explosive charge or any part of an explosive charge that fails to detonate after initiation shall be considered a misfire.

(2) If a misfire occurs, the blaster shall note the location of the misfired explosive and shall not approach the misfired explosive for at least 1 hour.

(3) Explosives which are aflame or emitting smoke shall not be approached for at least 1 hour after evidence of combustion ceases.

(4) The area shall remain guarded or closed until a search of the area has been done and the misfire hazard is removed or the blaster-in-charge pronounces the area safe.

(5) Misfires shall be handled by the blaster-in-charge and only those employees necessary to remove the hazard and the area shall remain guarded.

(6) Impact to explosive materials shall be avoided when searching for nonvisible misfired charges.

(7) A misfired armed charge shall be disposed of where it is found with a secondary charge.

Section 7-5 Transportation

(A) Transportation of explosives, blasting agents, and blasting supplies on public highways, railways, and airways shall be in accordance with the provisions of title 42 Article 20 C.R.S., any regulations promulgated pursuant thereto and Title 49 CFR Parts 171-179 and Parts 390-397, Motor Carriers.

(B) Requirements for the transportation of explosives, blasting agents and blasting supplies by motorized vehicles on job sites shall be:

(1) No person shall smoke, carry matches or any other flame-producing device or carry firearms or loaded cartridges while in or near a motor vehicle transporting explosives.

(2) No person shall drive, load or unload a vehicle transporting explosives in a careless or reckless manner.

(3) Vehicles transporting explosives, blasting agents or blasting supplies shall not be taken inside a garage or shop for repairs or servicing.

(4) Vehicles used for transporting explosives shall be equipped to carry the load without difficulty and shall be in good mechanical condition.

(5) A motor vehicle used for transporting explosive materials shall be inspected prior to loading to determine that it is in proper condition for the safe transportation of explosive materials.

(6) All cargo areas of vehicles used for transporting explosive materials shall have tight floors and any exposed spark-producing metal on the inside of the cargo area shall be covered with wood or other non-sparking materials to prevent contact with packages of explosive materials.

(7) Packages of explosive materials shall not be loaded above the sides of an open-body vehicle.

(8) Explosive materials shall not be transported with other materials or cargoes in the same compartment. In no case shall flammable materials be carried on the same vehicle as explosive materials.

(9) A motorized vehicle which contains explosive materials shall not be parked under any of the following circumstances:

(i) On or within 5 feet of the traveled portion of a public street or highway;

(ii) On private property; or

(iii) Within 300 feet of a bridge, tunnel, building, or place where people work, assemble, or congregate.

(10) A motorized vehicle transporting explosive materials shall not be left unattended.

(11) A motorized vehicle shall be deemed attended only when the driver or other attendant is physically on or in the vehicle or conveyance or has the vehicle within the driver's or attendant's field of vision and can reach the vehicle or conveyance quickly and without any kind of interference; attended also means the driver or attendant is awake, alert and not engaged in any other duties or activities which may divert his/her attention from the vehicle.

(12) Detonators may not be transported in the same vehicle with other explosives unless:

(i) The detonators and explosives are placed in separate locked Type 2 magazines secured within the body of the vehicle or conveyance;

(ii) The detonators and explosives are placed in suitable locked containers and separated by 4 inches of hardwood, and the detonators are totally enclosed or confined by the hardwood construction; or

(iii) The detonators and explosives are placed in separate locked containers or container compartments constructed in accordance with the IME Safety Library Publication No. 22, "IME Standard for the Safe Transportation of Detonators in a Vehicle with Other Explosives"; or

(iv) The detonators and explosives are placed in separate locked Type 3 magazines.

(C) Requirements for the transportation of explosives on passenger tramways when the public is present shall be:

(1) Explosives shall not be transported in the same enclosed passenger tramway carrier with the public.

(2) Transportation of explosives on non-enclosed passenger tramways shall require the following:

(i) Explosives shall be attended at all times;

(ii) Warning signs indicating that explosives are currently being transported on the tramway and passengers may ride the tramway at their own discretion shall be clearly posted at the tramway entrance;

(iii) Passengers shall not be allowed to ride the passenger tramway in the opposing direction of the explosives;

(iv) A minimum distance of 200 feet shall be maintained in front of and behind the chair transporting explosives and chairs transporting the public;

(v) The amount of explosives being transported shall not exceed50 pounds per carrier; and

(vi) Nothing in Section 7-5(C)(2) is intended to limit liabilities as set forth in the Colorado Ski Safety Act (C.R.S. 33-44-101 thru 114).

ARTICLE 8 GEOPHYSICAL RESEARCH

Section 8-1 General Requirements

(A) Seismic Blasting shall conform to the requirements of Articles 4, 5 and 6 of these regulations for the storage and transportation of all explosive materials, for the preparation of charges, for the loading of charges and for the detonation of charges.

(B) Surface charges, above-surface charges, and armed charges loaded in seismic drill holes less

than 20 feet in depth shall not be left unattended.

(C) Charges which have not been armed may be left unattended in holes less than 20 feet deep provided that:

(1) The hole has been loaded such that the charge has been anchored, cannot be removed and is capped with a hole plug;

(2) The charge does not exceed an amount that would cause damage to persons or property on the surface if accidentally detonated; and

(3) The backfill material in the loaded hole is a continuous column from the charge to the collar of the drill hole. Any drill holes in which the backfill material has bridged and the hole has not been fully backfilled shall not be left unattended.

(D) Armed or unarmed charges loaded in seismic drill holes greater than 20 feet deep may be left unattended provided that:

(1) The hole has been loaded such that the charge has been anchored, cannot be removed and legwires have been made inaccessible and capped with a hole plug;

(2) The charge does not exceed an amount that would cause damage to persons or property on the surface if accidentally detonated; and

(3) The backfill material in the loaded hole is a continuous column from the charge to the collar of the drill hole. Any drill holes in which the backfill material has bridged and the hole has not been fully backfilled shall not be left unattended.

(E) Armed and unarmed charges that are loaded in inhabited areas shall not be left unattended.

(F) Blasting signs shall be posted on roads and trails leading to the blast site.

ARTICLE 9 BLACK POWDER EXPLOSIVES

Section 9-1 General Requirements

(A) Black powder shall be stored in shipping containers as required by regulations of the U.S. Department of Transportation, 49 CFR, Section 173.60, as currently published.

(B) Black powder intended for personal use shall be sold and stored according to the Uniform Fire Code (sections 77.202, 77.203, and 77.203a).

ARTICLE 10 ALTERNATE METHODS AND EMERGENCY VARIANCES

Section 10-1 Alternate Methods or Procedures

(A) The permittee, on specific approval by the Division as provided by this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in these regulations.

(B) The Division may approve an alternate method or procedure, subject to stated conditions, when found that:

(1) Good cause is shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Division or hinder the effective administration of these regulations.

(C) Where the permittee desires to employ an alternate method or procedure, the permittee shall submit a written application to the Division. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons for it.

(D) Alternate methods or procedures may not be employed until the application is approved by the Division.

(E) The permittee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application.

(F) Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Division, the effective administration of this article is hindered by the continuation of the authorization.

(G) As used in this paragraph, alternate methods or procedures include alternate construction or equipment.

Section 10-2 Emergency Variances from Requirements

(A) The Division may approve construction, equipment, and methods of operation other than as specified in this part, where it is found that an emergency exists and the proposed variations from the specified requirements are necessary and the proposed variations:

(1) Will afford security and protection that are substantially equivalent to those prescribed in these regulations;

(2) Will not hinder the effective administration of these regulations; and

(3) Will not be contrary to any provisions of law.

(B) Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions and limitations set forth in the approval of the application.

(C) Failure to comply in good faith with the procedures, conditions and limitations shall automatically terminate the authority for the variations and the permittee shall fully comply with the prescribed requirements of regulations from which the variations were authorized.

(D) Authority for any variation may be withdrawn when, in the judgment of the Division, the effective administration of these regulations is hindered by the continuation of the variation.

(E) Where the permittee desires to employ an emergency variation, the permittee shall submit a written application to the Division.

(F) The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Corrective action may then be taken concurrent with the filing of the application and notification of the Division via telephone.

Section 10-3 Retention of Approved Variations

(A) The permittee shall retain, as part of his records available for examination by the Division, any application approved by the Division under this section.

ARTICLE 11 ENFORCEMENT

Section 11-1 Enforcement Program

The Division provides these regulations to assist operators with maintaining safe use, manufacture, possession, sale, storage, transport, or disposal of explosives materials or blasting agents. When circumstances regarding regulated explosives materials or blasting agents are found to be not in compliance with these regulations, the Division will pursue enforcement actions against the operator.

The enforcement process will include requiring the permittee to make repairs and/or upgrades, provide records, and complete other actions necessary to come back into compliance. During and following the enforcement process, the Director will continue to assist the operator to remain in compliance. The enforcement process may include monetary penalties up to $1,000 per violation per day according to statute (C.R.S. 8-20-104) if the enforcement obligations are not implemented according to the required schedule.

Section 11-1-1 Notice of Violation

(A) A notice of violation (NOV) may be issued when a regulated party is found to be out of compliance with these regulations (7 C.C.R. 1101-9) and/or statutes (C.R.S. 8-20, 9-6 and 9-7). The notice of violation may include fines and/or an order to cease explosives-related operations until all violations are satisfactorily corrected.

(B) Within 10 working days after an NOV has been issued, the person issued the NOV may file a written request with the Division for an informal conference regarding the NOV. Upon receipt of the request, the Division shall provide the alleged violator with notice of the date, time and place of the informal conference. During the conference, the alleged violator and Division personnel may present information and arguments regarding the allegations and requirements of the NOV.

(C) Within 20 days after the informal conference, the Division shall uphold, modify, or strike the allegations within the NOV in the form of a settlement agreement or an enforcement order.

(D) If the alleged violator fails to timely request an informal conference, the terms of the NOV become a binding enforcement order not subject to further review.

Section 11-1-2 Enforcement Order

(A) An enforcement order may be issued when the violations included within an NOV are not resolved within the prescribed time frame or the schedule set forth in a settlement agreement is not met.

(B) An enforcement order may include increased fines up to $1,000 per violation for each day of violation. In addition, the enforcement order may include shut-down of the explosives-related operation, suspension and/or revocation of an explosives permit.

(C) An alleged violator may appeal the enforcement order to the Division for a hearing under C.R.S. 24-4-105. The Division shall then issue a final decision which is subject to judicial review under C.R.S. 24-4-106.

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 02/14/2019

Effective date

02/14/2019

BASIS AND PURPOSE FOR RULE 4

The purpose of Rule 4 is to specify the rights, responsibilities, and duties of licensees; specify certain duties of licensees related to permitting access to the Division of information, records, and premises controlled by the licensee; require licensees to maintain sufficient financial reserves; establish restrictions on the use of shills and proposition players; require that certain information be publicly posted; direct the licensee to prohibit certain conduct; and establish procedures for patron disputes, dissolution of corporations, transfers of interests and terminations of licensee employment or licensure. The statutory basis for Rule 4 is found in sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-301, C.R.S., and 44-30-502, C.R.S., 44-30-510, C.R.S., 44-30-528, C.R.S., and 44-30-833, C.R.S.

RULE 4 RIGHTS AND DUTIES OF LICENSEES

30-420 Transfers of interest.

Except as provided in Rule 4.5, no person may sell, lease, purchase, convey, or acquire an interest in a retail, operator, associated equipment supplier, manufacturer or distributor licensee, or business without the prior approval of the Commission. *30-420 temp. 7/1/93, perm. 8/30/93; Amended 11/30/03, Amended 2/14/14; Amended 2/14/2019*

BASIS AND PURPOSE FOR RULE 12

The purpose of Rule 12 is to establish a procedure for the testing and approval by the Commission of gaming devices and equipment, to establish requirements for the gaming devices and equipment to be used in limited gaming in Colorado, and to establish procedures for the storage of gaming devices and equipment in compliance with section 44-30-302 (2), C.R.S. The statutory basis for Rule 12 is found in sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., and 44-30-806, C.R.S.

RULE 12 GAMING DEVICES AND EQUIPMENT

30-1244 Progressive slot machine games defined.

(2) A progressive jackpot on a single slot machine game or on two or more slot machine games within a Colorado licensed retail establishment may be transferred to another progressive slot machine game(s) within the licensed establishment in the event of a malfunction or replacement or for some other good reason as approved by the Director or the Director's designee. If a transfer occurs, the progressive jackpot liability transfer must be immediately documented and the liability maintained by the licensee offering the progressive jackpot until the progressive transfer is completed. *Amended 11/30/14*

(3) The progressive slot machine game must be linked to a meter showing the payoff that is visible to all players who are playing the game which may potentially win the progressive amount. This meter is the progressive jackpot meter. *Amended 11/30/14*

Records must be maintained that support the current amount shown on a progressive jackpot meter. The Licensee must establish control procedures which provide supporting documents to explain and/or reconcile any increase, reduction, or discontinuance of a progressive jackpot amount offered for patron play at a licensed retail establishment. The records and documents must be retained in accordance to the records retention requirements set forth in 30-1607. (30-1244(3) amended perm. 10/30/99) *Effective 11/30/14*

(4) Linked progressive slot machine games. Each progressive slot machine game on any link must have the same probability of hitting the combination that will award the progressive jackpot. A variance of no greater than .005% from the median odds for all games on a link will be acceptable. If the progressive link is configured with mixed maximum wagers, the odds of winning the progressive award(s) must be proportioned to the amount wagered. *Amended 11/30/14*

(a) (Repealed effective 12/15/14) *Amended 11/30/14*

(Former paragraphs 30-1244 (4)(b) through (4)(s) were relocated and renumbered to 30-1244 (15)(a) through (15)(r), effective 12/15/2014). *Amended 11/30/14*

(5) Normal mode of progressive slot machine games.

(a) During the normal mode of progressive slot machine games, the progressive controller must continuously monitor each game and apply the configured rate of progression to the progressive jackpot. The advertised progressive jackpot must account for, and reflect, the total contribution of all valid wagers placed. *Amended 11/30/14*

(b) A multi game slot machine must not apply any wagers from any non-progressive game to any progressive award. All progressive awards that can be won by a game must be displayed by the slot machine any time the game is displayed on the slot machine. *Amended 11/30/14*

Note to publisher: Paragraph (5)(c) should remain a part of this regulation.

(6) The licensee offering the progressive must establish key control procedures to prevent unauthorized access to the progressive controller. *Amended 11/30/14*

(13) Cash requirements. Unless the Commission has approved the payment of prizes by annuity and except for the cash requirements for multi-link systems as defined in 30-1244.25 (2), a licensee who offers a progressive slot machine game for play must maintain a minimum cash reserve as prescribed in the Internal Control Minimum Procedures established by the Division to ensure the licensee has cash available to pay all progressive liabilities. Manufacturers who enter into an agreement to place non multi-link progressive awards in casinos must maintain funds in a bank or other financial institution in Colorado, which is chartered by the State of Colorado or any other state or the United States Government, equal to the amount of these awards. *Amended 11/30/14, Amended 3/30/16*

Note to publisher: Paragraph (14) of regulation 30-1244 should remain a part of this regulation.

30-1244.25 Multi-Link / Wide Area Progressive (WAP) Systems.

(1) Multi-link systems are the collection of hardware, software, and associated equipment used to link and monitor progressive slot machine games across telecommunication lines between two or more Colorado licensed retail establishments. In addition to the above requirements for linked progressive slot machine games, multi-link systems must comply with the following: *Effective 11/30/14*

Note to publisher: Sub-paragraphs (a) – (c), and (e) – (s), should remain a part of regulation 30-1244.25 (1).

(d) All meter reading data must be obtained in an online, automated fashion. When requested to do so, the system must return meter readings on all devices attached to the system within ten minutes (or within a time frame determined and

approved by the Division, where the person operating the multi-link system provides the Division supporting data, indicating that total meter acquisition is taking longer than ten minutes) of the meter acquisition request. This limitation shall not apply to the length of time it takes the central monitoring system to calculate and print reports, but rather only to the time it takes to gather data used for such process. Manual reading of meter values may not be substituted for these requirements. *Amended 11/30/14*

(2) Cash requirements for multi-link systems: *Effective 11/30/14*

Note to publisher: Sub-paragraphs (2)(a)(i) – (a)(iii), should remain a part of regulation 30-1244.25 (2).

(b) *Note to publisher: The opening paragraph, and sup-paragraph (2)(b)(i) should remain a part of regulation 30-1244.25 (2)*

(ii) The present value of the aggregate remaining balance of the periodic payments owed on all jackpots won by patrons on the multi-link system(s). With commission approval, persons authorized to operate a multi-link system can purchase U.S. Government backed fixed-income instruments (i.e., “treasury strips”) or U.S. Agency Securities to fund the jackpots paid over multiple years.

These amounts must be maintained for each multi-link progressive jackpot.

30-1257 Definition of component parts.

(1) A component part of a slot machine is a part (including equipment, system, or device) which performs an essential function in the operation of the slot machine. Essential function includes, but is not limited to, the acceptance of wagers; the payout of awards; the determination of the outcome of the game; the capture, transmission, or storage of electronic game information; and security. Some examples of component parts are: hoppers, coin acceptors, microprocessors and related circuitry, programmed media storage devices, note acceptors, ticket printers, and any other parts the Division determines are component parts. *Effective 04/30/2007*; *Amended 11/30/14*

(2) A component part does not include those parts which, if removed, do not impair the essential function of a slot machine, such as light bulbs, lamps, buttons, switches, speakers, wires, cabinets, decorative glass, batteries, fuses, screws, bolts, nuts, brackets, hinges, locks, springs, handles, pay table glass, video display units, stepper motors, reel strips, and power supplies. *Effective 04/30/2007*

(3) Associated equipment is a device, piece of equipment or system used remotely or directly in connection with gaming or any game. This term includes a device, piece of equipment, or system used to monitor, collect, or report gaming transactions data or to calculate adjusted gross proceeds and gaming taxes. Some examples of associated equipment include multi-link progressive systems, slot monitoring systems, gaming systems, and any other systems, software or hardware the Division determines are associated equipment. *Effective 11/30/14; 30-1257 (1.5) amended temp 5/26/16, amended perm 8/14/16;30-1257 (1.5) renumbered as 30-1257 (3) effective 2/14/19*

(4) All slot machine component parts and associated equipment must be kept secured. *Effective 04/30/2007; Amended 11/30/14; 30-1257 (3) renumbered as 30-1257 (4) effective 2/14/19*.

30-1258 Manufacturers and distributors of component parts and associated equipment.

(1) Manufacturers and distributors of the component parts of a slot machine must obtain a Colorado manufacturer or distributor license, as required by the Limited Gaming Act of 1991, before selling or distributing slot machine components in Colorado. This rule does not require a manufacturer or distributor who supplies component parts to a licensed manufacturer or distributor of slot machines to obtain a license, provided those parts are installed by a licensed manufacturer or distributor. All component parts used in slot machines in Colorado must be approved by the Division. *30-1258 9/30/97; Amended 2/14/19.*

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Tracking number: 2018-00634

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Gaming - Rules promulgated by Gaming Commission

on 12/20/2018

1 CCR 207-1

GAMING REGULATIONS

The above-referenced rules were submitted to this office on 12/20/2018 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.

January 03, 2019 11:22:15

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Oil and Gas Conservation Commission

CCR number

2 CCR 404-1

Rule title

2 CCR 404-1 PRACTICE AND PROCEDURE 1 - eff 02/14/2019

Effective date

02/14/2019

RULES AND REGULATIONS

DEFINITIONS
(100 Series)

CHILD CARE CENTER means a child care center as defined in § 26-6-102(5), C.R.S., that is in operation at the time of the pre-application notice pursuant to Rule 305.a.(4). A child care center will include any associated outdoor play areas adjacent to or directly accessible from the center and is fenced or has natural barriers, such as hedges or stationary walls, at least four (4) feet high demarcating its boundary.

HIGH OCCUPANCY BUILDING UNIT means:

- any School, Nursing Facility as defined in § 25.5-4-103(14), C.R.S., Hospital, Life Care Institutions as defined in § 12-13-101, C.R.S., or Correctional Facility as defined in § 17-1-102(1.7), C.R.S., provided the facility or institution regularly serves 50 or more persons; or

- an operating Child Care Center as defined in § 26-6-102(1.5), C.R.S.

SCHOOL means any operating Public School as defined in § 22-7-703(4), C.R.S., including any Charter School as defined in § 22-30.5-103(2), C.R.S., or § 22-30.5-502(6), C.R.S., or Private School as defined in § 22-30.5-103(6.5), C.R.S.

SCHOOL FACILITY means any discrete facility or area, whether indoor or outdoor, associated with a school, that students use commonly as part of their curriculum or extracurricular activities. A school facility is either adjacent to or owned by the school or school governing body, and the school or school governing body has the legal right to use the school facility at its discretion. The definition includes Future School Facility.

SCHOOL GOVERNING BODY means the school district board or board of directors for public schools or the board of trustees, board of directors, or any other body or person charged with administering a private school or group of private schools, or any body or person responsible for administering or operating a child care center. A school governing body may delegate its rights under these rules, in writing, to a superintendent or other staff member, or to a principal or senior administrator of a school that is in proximity to the proposed oil and gas location.

FUTURE SCHOOL FACILITY means a school facility that is not yet built, but that the school or school governing body plans to build and use for students and staff within three years of the date the school or school governing body receives a pre-application notice pursuant to Rule 305.a.(4). In order to be considered a future school facility, the following requirements must be satisfied:

- For public, non-charter schools, the school governing body must affirm the nature, timing, and location of the future school facility in writing; or
- For charter schools, the school must have been approved by the appropriate school district or the State Charter School Institute, § 22-30.5-505, C.R.S., at the time it receives a pre-application notice pursuant to Rule 305.a.(4), and the school governing body must affirm the nature, timing, and location of the future school facility in writing; or
- For private schools, the school governing body must be registered with the Office of the Colorado Secretary of State at the time it receives a pre-application notice pursuant to Rule 305.a.(4), and must provide documentation proving its registration with the Office of the Colorado Secretary of State, its tax exempt status, and its submitted plans to the relevant local government building and planning office.

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

(3) **Information Requirements.**

The Form 2A requires the following information:

U. **Schools and Child Care Centers.** If the proposed oil and gas location is subject to the notice requirements of Rule 305.a.(4), then the following information will be attached or included:

i. **Facilities Map.** A map or scaled aerial image depicting the oil and gas location boundary and proposed and existing wells and production facilities in proximity to any surrounding school facility or child care center; and

ii. A statement indicating whether the school governing body requested consultation and whether, after consultation, the school governing body and operator reached agreement regarding identification of a school facility or child care center.

305. FORM 2 AND 2A APPLICATION PROCEDURES

a. **Pre-application notifications.**

(1) Urban Mitigation Area Notice to Local Government. For proposed Oil and Gas Locations within an Urban Mitigation Area, an Operator shall notify the local government in writing that it intends to apply for an Oil and Gas Location Assessment. The operator will provide a Notice of Intent to Conduct Oil and Gas Operations to the Local Governmental Designee in those jurisdictions that have designated an LGD or to the local government planning departments in jurisdictions that have not designated an LGD no less than 30 days before the operator submits a Form 2A, Oil and Gas Location Assessment, to the Director. The notice shall include a general description of the proposed Oil and Gas Facilities, the location of the proposed Oil and Gas Facilities, the anticipated date operations (by calendar quarter and year) will commence, and that an additional notice pursuant to Rule 305.c. will be sent by the Operator. This notice shall serve as an invitation to the local government to engage in discussions with the Operator regarding proposed operations and timing, local government jurisdictional requirements, and opportunities to collaborate regarding site development. A local government may waive its right to notice under this provision at any time by providing written notice to an Operator and the Director. The notice requirement of this subpart does not apply to local governments that received notice and accepted the offer to consult pursuant to Rule 305A.a.

(2) Exception Zone and Buffer Zone Setback Notice to the Surface Owner and Building Unit Owners. For Oil and Gas Locations proposed within the Exception Zone or Buffer Zone Setback, Operators shall notify the Surface Owner and the owners of all Building Units that a permit to conduct Oil and Gas Operations is being sought no less than 30 days before the operator submits the Form 2A, Oil and Gas Location Assessment, to the Director. The Operator may rely on the county assessor tax records to identify the persons entitled to receive the Notice. Notice shall include the following:

A. The Operator's contact information;

B. The location and a general description of the proposed Well or Oil and Gas Facilities;

C. The anticipated date operations will commence (by calendar quarter and year);

D. The Local Governmental Designee's (LGD) contact information;

E. Notice that the Building Unit owner may request a meeting to discuss the proposed operations by contacting the LGD or the Operator; and

F. A "Notice of Comment Period" will be sent pursuant to Rule 305.c. when the public comment period commences.

(3) Large UMA Facility Notice to Proximate Local Governments. For a proposed Large UMA Facility, an operator shall notify any home rule or statutory city, town, territorial charter city, combined city and county, or county (for purposes of this section "Proximate Local Governments") within 1,000 feet of the proposed site that a permit to construct a Large UMA Facility is being sought not less than 45 days prior to submitting a Form 2A, Oil and Gas Location Assessment, to the Director. A local government may waive its right to notice under this provision at any time by providing written notice to the operator and the Director.

A. The Notice shall include the following: the operator's contact information; a description of the location and a general description of the proposed Large UMA Facility; and state that the Proximate Local Government may provide comments as provided in Rule 305.d.

B. The Director will respond in writing to any Proximate Local Government comments regarding specific best management practices reasonably related to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy for the proposed Large UMA Facility.

(4) **Notice to School, Child Care Center, and School Governing Body.**

A. An operator will notify any relevant school or child care center, and school governing body, of a proposed oil and gas location within one-thousand, three hundred, twenty (1,320) feet or less from:

i. The property line of a parcel currently owned by the school, child care center, or school governing body as identified through county assessor records;

ii. The property line of a parcel considered a future school facility as identified on the final approved plat that may be obtained from the planning department of the relevant local government; or

iii. What reasonably appears to be a school facility (regardless of property ownership) based on the operator's review of current aerial maps that show surface development or surveys of the area.

B. The operator will provide a pre-application Notice of Intent to Conduct Oil and Gas Operations to the principal or senior administrator of the school and to all applicable school governing bodies no less than 30 days before the operator submits the Form 2A, Oil and Gas Location Assessment, to the Director.

C. The Notice will include:

i. The operator's contact information;

ii. The location and general description of the proposed oil and gas location, including the School Facilities Map as required under Rule 303.b.(3)U;

iii. The Local Governmental Designee's (LGD) contact information;

iv. The anticipated date, by calendar year and quarter, that construction will begin and the expected schedule of drilling and completion activities;

v. Whether the operator anticipates the proposed wells or production facilities will be subject to the mitigation measures in Rule 604.c.;

vi. Whether the oil and gas location, wells, or production facilities are subject to a memorandum of understanding or other agreement with, or approval from, the relevant local government regarding location;

vii. Notice that the school governing body for the school facility or child care center may request a consultation to discuss the proposed operations by contacting the operator, and that the Director may be invited to any meeting. A school or child care center may delegate the consultation process to the principal or senior administrator of the school or child care center in proximity to the oil and gas location; and

viii. Notice that the school, child care center, or school governing body may submit comments regarding the proposed oil and gas location to the Commission as part of the Rule 305.d. public comment period.

D. A school governing body may waive the right to notice for it and all schools within the area subject to the school governing body's oversight under this provision at any time by providing written notice to the operator and the Director.

306. CONSULTATION AND MEETING PROCEDURES. Following the notifications provided for in Rule 305.c, an Operator shall comply with the following consultation and meeting procedures:

306.e. **Meetings with Building Unit Owners Within a Buffer Zone Setback.**

(1) **Meetings with Building Unit Owners**. An Operator shall be available to meet with Building Unit owners who received an OGLA Notice or a Buffer Zone Notice pursuant to Rule 305.c. and requested a meeting regarding the proposed Oil and Gas Location. Operators shall also be available to meet with such Building Unit owners if requested to do so by the Local Governmental Designee and such meetings shall comply with Rule 306.b.(3). Such informational meetings may be held on an individual basis, in small groups, or in larger community meetings.

(2) **Information provided by operator**. When meeting with Building Unit owners or their appointed agent(s) pursuant to subsection (1), above, the Operator shall provide the following information: the date construction is anticipated to begin; the anticipated duration of pad construction, drilling and completion activities; the types of equipment anticipated to be present on the Location; and the operator's interim and final reclamation obligation. In addition, the Operator shall present a description and diagram of the proposed Oil and Gas Location that includes the dimensions of the Location and the anticipated layout of production or injection facilities, pipelines, roads and any other areas to be used for oil and gas operations. The Operator and Building Unit owners shall be encouraged to discuss potential concerns associated with Oil and Gas Operations, such as security, noise, light, odors, dust, and traffic, and shall provide information on

proposed or recommended Best Management Practices or mitigation measures to eliminate, minimize or mitigate those issues.

(3) **Waiver.** The Building Unit owner or agent may waive, permanently or otherwise, the foregoing meeting requirements. Any such waiver shall be in writing, signed by the owner or agent, and shall be submitted by the Building Unit owner or agent to the operator and the Director.

(4) **Mitigation Measures.** Operators will consider all legitimate concerns related to public health, safety, and welfare raised during informational meetings or in written comments and, in consultation with the Director and Local Governmental Designee if the LGD so requests, will add relevant and appropriate Best Management Practices or mitigation measures as Conditions of Approval into the Form 2A and any associated Form 2s.

(5) **Operator Certification.** The Director shall not approve a Form 2A, Oil and Gas Location Assessment, until the operator certifies it has complied with the meeting requirements of this Rule 306.e.

f. **Final reclamation consultation.** In preparing for final reclamation and plugging and abandonment, the operator shall use its best efforts to consult in good faith with the affected Surface Owner (or the tenant when the Surface Owner has requested that such consultation be made with the tenant). Such good faith consultation shall allow the Surface Owner (or appointed agent) the opportunity to provide comments concerning preference for timing of such operations and all aspects of final reclamation, including, but not limited to, the desired final land use and seed mix to be applied.

g. **Tenants.** Operators shall have no obligation to consult with tenant farmers, lessees, or any other party that may own or have an interest in any crops or surface improvements that could be affected by the proposed operation unless the Surface Owner appoints such person as its agent for such purposes. Nothing shall prevent the Surface Owner from including a tenant in any consultation, whether or not appointed as the Surface Owner's agent.

h. **School, Child Care Center, and School Governing Body.** The operator will offer to consult with the school governing body that received notice pursuant to Rule 305.a.(4). During the consultation, the school governing body may identify additional discrete facilities or areas it considers a school facility or child care center, and the operator will provide information regarding best management practices, operations, traffic management, and phases of development for the proposed oil and gas location. The operator and school governing body are encouraged to share information regarding operations and mitigation to attempt agreement regarding school facility and child care center setbacks.

503. ALL OTHER PROCEEDINGS COMMENCED BY FILING AN APPLICATION

b. Applications to the Commission may be filed by the following applicants:

(1) For purposes of applications for the creation of drilling units, applications for additional wells within existing drilling units, other applications for modifications to existing drilling unit orders, or applications for exceptions to Rule 318, only those owners within the proposed drilling unit, or within the existing drilling unit to be affected by the application, may be applicants.

(2) For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., or applications for unitization made pursuant to §34-60-118, C.R.S., only those owners within the proposed unit to be pooled or unitized may be applicants.

(3) For purposes of seeking an order finding violation, only the Director may be an applicant.

(4) For purposes of seeking a variance from the Commission, only the operator, mineral owner, surface owner or tenant of the lands which will be affected by such variance, other state agencies, any local government within whose jurisdiction the affected operation is located, or any person who may be directly and adversely affected or aggrieved if such variance is not granted, may be an applicant.

(5) For purposes of seeking a hearing pursuant to Rules 216.f.(4), 303.c.(2), 303.j.(2), or 604.a.(6)A only the operator seeking approval of the Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, may be the applicant.

(6) For purposes of seeking a hearing on approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, under Rule 305.e.(2), only the following may be the applicant:

A. The operator;

B. The surface owner, solely to raise alleged noncompliance with Commission rules or statute, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and

C. The relevant local government, provided that the hearing will be conducted in similar fashion as is specified in Rules 508.j, 508.k, and 508.l with respect to a public issues hearing. It will be the burden of the local government to bring forward evidence sufficient for the Commission to make the preliminary findings specified in Rule 508.j at the outset of such hearing

(7) For purposes of seeking a hearing on provisions related to measurement pursuant to Rule 328 or 329, only the mineral interest owner may be the applicant.

(8) For purposes of seeking a hearing for an order limiting surface density pursuant to Rule 1202.d.(5), only the operator will be the applicant.

(9) For purposes of seeking a hearing on a school facility or child care center setback determination pursuant to Rule 604.a.(6)B, only the operator or school governing body may be the applicant.

(10) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (8) above, only those who have demonstrated that they would be directly and adversely affected or aggrieved by a Commission ruling, and that any injury or threat of injury sustained would be entitled to legal protection under the Act may be an applicant.

SAFETY REGULATIONS

604. SETBACK AND MITIGATION MEASURES FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS

a. **Setbacks.** Effective August 1, 2013:

(1) **Exception Zone Setback.** No Well or Production Facility shall be located five hundred (500) feet or less from a Building Unit except as provided in Rules 604.a.(1) A and B, and 604.b.

A. Urban Mitigation Areas. The Director shall not approve a Form 2A or associated Form 2 proposing to locate a Well or a Production Facility within an Exception Zone Setback in an Urban Mitigation Area unless:

i. the Operator submits a waiver from each Building Unit Owner within five hundred (500) feet of the proposed Oil and Gas Location with the Form 2A or associated Form 2, or obtains a variance pursuant to Rule 502; and

ii. the Operator certifies it has complied with Rules 305.a, 305.c., and 306.e.; and

iii. the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable; or

iv. the Oil and Gas Location is approved as part of a Comprehensive Drilling Plan pursuant to Rule 216.

B. Non-Urban Mitigation Area Locations. Except as provided in subsection 604.b., below, the Director shall not approve a Form 2 or Form 2A proposing to locate a Well or a Production Facility within an Exception Zone Setback not in an Urban Mitigation Area unless the Operator certifies it has complied with Rules 305.a., 305.c., and 306.e., and the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable.

(2) **Buffer Zone Setback.** No Well or Production Facility shall be located one thousand (1,000) feet or less from a Building Unit until the Operator certifies it has complied with Rule 305.a., 305.c., and 306.e. and the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures as necessary to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife.

(3) **High Occupancy Buildings**. No Well or Production Facility shall be located one thousand (1,000) feet or less from a High Occupancy Building Unit without Commission approval following Application and Hearing. Designated Setback Location and Exception Zone Setback mitigation measures pursuant to Rule 604.c. shall be required for Oil and Gas Locations within one thousand (1,000) feet of a High Occupancy Building, unless the Commission determines otherwise. Provided that this paragraph does not apply to a

school facility or child care center, because the school facility and child care center setback is governed by Rule 604.a.(6).

(4) **Designated Outside Activity Areas.** No Well or Production Facility shall be located three hundred fifty (350) feet or less from the boundary of a Designated Outside Activity Area. The Commission, in its discretion, may establish a setback of greater than three hundred fifty (350) feet based on the totality of circumstances. Designated Setback Location mitigation measures pursuant to Rule 604.c. shall be required for Oil and Gas Locations within one thousand (1,000) feet of a Designated Outside Activity Area, unless the Commission determines otherwise.

(5) **Maximum Achievable Setback**. If the applicable setback would extend beyond the area on which the Operator has a legal right to locate the Well or Production Facilities, the Operator may seek a variance under Rule 502.b. to reduce the setback to the maximum achievable distance.

(6) **School Facility and Child Care Center Setback.**

A. No well or production facility will be located one-thousand (1,000) feet or less from a school facility or child care center, unless:

i. The relevant school governing body agrees in writing to the location of the proposed well or production facility, in which circumstance the Director may approve the Form 2, Application for Permit to Drill, or Form 2A, Oil and Gas Location Assessment; or

ii. The Commission authorizes the Director to approve a Form 2, Application for Permit to Drill, or Form 2A, Oil and Gas Location Assessment, following application and a hearing held at a location reasonably proximate to the lands affected by the application. The Commission may allow a well or production facility within one-thousand (1,000) feet or less from a school facility or child care center if the Commission determines that potential locations outside the applicable setback are technically infeasible or economically impracticable and sufficient mitigation measures are in place to protect public health, safety, and welfare. The operator will file an application with the Commission requesting the hearing and demonstrate, to the Commission's satisfaction, that potential locations outside the applicable setback are technically infeasible or economically impracticable.

B. Mitigation measures pursuant to Rule 604.c.(1-4) will be required for all oil and gas locations subject to the school facility or child care center setback.

C. If the operator and school governing body disagree as to whether a proposed well or production facility is one-thousand (1,000) feet or less from a school facility or child care center, the operator or school governing body may file an application with the Commission requesting a hearing to determine the matter. At the hearing, the operator must demonstrate that the well or production facility is more than one-thousand (1,000) feet from any school facility or child care center.

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Tracking number: 2018-00401

Opinion of the Attorney General rendered in connection with the rules adopted by the

Oil and Gas Conservation Commission

on 12/18/2018

2 CCR 404-1

PRACTICE AND PROCEDURE

The above-referenced rules were submitted to this office on 12/20/2018 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.

January 03, 2019 11:20:59

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-2

Rule title

4 CCR 723-2 RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES 1 - eff 02/14/2019

Effective date

02/14/2019

High Cost Support Mechanism and High Cost Administration Fund

Basis, Purpose, and Statutory Authority

The basis and purpose of these rules is to establish the process used by the Commission to implement and the provisions of the high cost support mechanism while remaining consistent with the relevant rules and orders of the FCC.

The statutory authority for the promulgation of these rules is found at §§ 40-3-102, 40-15-208(2)(a), 40-15-502, and 40-2-108, C.R.S.

2840. Applicability.

Rules 2840 through 2869 govern the operation of the Colorado High Cost Support Mechanism (HCSM) and the Colorado High Cost Administration Fund and shall apply to all providers of intrastate telecommunications services.

2841. Definitions.

The following definitions apply only in the context of rules 2840 through 2869:

(a) "Administrator" means the Commission, or a designee employed by the Commission, pursuant to § 40-15-208(3), C.R.S., that performs the administrative functions of the HCSM under the direction of the Commission.

(b) “Broadband deployment account” means the account held by the Commission for broadband deployment purposes consistent with § 40-15-509.5(3), C.R.S.

(c) “Broadband network” has the same meaning as set forth in § 40-15-102(3.7), C.R.S.

(d) "Colorado High Cost Administration Fund" (Fund) means the fund created in the state treasury for the purpose of reimbursing the Commission acting as Administrator for its expenses incurred in the administration of the HCSM.

(e) "Geographic area" means a Commission-defined area of land which can be smaller than an incumbent provider's wire center serving area included wholly within the incumbent’s wire center boundaries.

(f) "Geographic support area" means a geographic area where the Commission has determined that the furtherance of universal basic service requires that support be provided by the HCSM.

(g) "High Cost Support Mechanism" (HCSM) means the mechanism created by Colorado statute for the support of universal service for basic local exchange service within a rural Colorado, high-cost geographic support area and provide access to broadband service in unserved areas pursuant to §§ 40-15-208 and 40-15-509.5, C.R.S.

(h) "Intrastate proxy cost" means that portion of proxy cost that is jurisdictionally applicable to the provision of intrastate supported services. Pursuant to § 40-15-108, C.R.S., the intrastate proxy cost is produced by applying the separation factors of 47 C.F.R., Part 36, to the estimated investments and expenses produced by the Commission approved Proxy Cost Model.

(i) "Proxy cost" means a per access line estimate of the cost required to compensate a provider for the provisioning of specific supported services and features based upon the level of investment calculated by the Commission-approved Proxy Cost Model.

(j) "Proxy cost model" means a model which produces a per access line estimate of the reasonable, required level of investment and expenses in a particular geographic area (i.e., wire center basis) for a defined set of telephone services and features assuming least-cost efficient engineering and design criteria and technology-neutral deployment of current state-of-the-art technology, and using the current local exchange network topology and the total number of access lines in each area.

(k) "Retail revenues" means the gross revenues associated with contribution levels to the HCSM from the sale of intrastate telecommunications pre-paid and post-paid services to end-use customers. Intrastate telecommunications services may include, but are not limited to, all types of local exchange service; non-basic, vertical, or discretionary services, also known as advanced features, such as call waiting, call forwarding, and caller identification, or premium services such as voicemail; listing services; directory assistance service; wireless and other cellular telephone and paging services; mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll free service; 900 service and other informational services; toll service; private line service; special access service; special arrangements; special assemblies; CENTREX, Centron, and Centron-like services; ISDN, IAD and other multi-line services; video and/or teleconferencing services; satellite telecommunications service; the resale of intrastate telecommunications services; payphone services; any services regulated by the Commission under § 40-15-305(2), C.R.S.; and such other services as the Commission may by order designate from time to time as equivalent or similar to the services listed above. Revenues associated with the sale of video services other than video conferencing identified in § 40-15-401(1)(a), C.R.S., shall not be considered a part of retail revenues associated with contribution levels.

2842. Incorporation by Reference.

References in rules 2840 through 2869 to Parts 32, 36, 54, 64, and 69, are references to rules issued by the FCC and have been incorporated by reference, as identified in rule 2008.

2843. General.

The HCSM shall be coordinated with the Federal Universal Service Fund (USF), as described by regulations found at 47 C.F.R. § 36 and § 54 and any other Universal Service Support Mechanism that may be adopted by the FCC pursuant to 47 U.S.C. 254 of the Communications Act, as amended by § 101 of the Telecommunications Act of 1996.

(a) The HCSM shall operate on a calendar-year basis. The Commission shall, by November 30 of each year, adopt a budget for the HCSM including the:

(I) estimated quarterly contributions that may be collected through a rate element assessment by each telecommunications provider;

(II) estimated quarterly amount of the HCSM money collected from which distributions are to be made for the following calendar year; and

(III) estimated quarterly amount of administrative costs to administer the HCSM program.

2844. Specific Services and Features Supported by the HCSM.

The HCSM supports basic service, as defined in rule 2307, in rural, high cost areas and provides access to broadband service through broadband networks in unserved areas. In addition, the HCSM supports access to 9-1-1 service and such other elements, functions, services, standards or levels necessary to attain Commission-prescribed service-quality standards or other criteria established pursuant to statute or Commission rule.

2845. Contributors; Reporting Requirements; Rate Element Calculation; Application of Rate Element to Customer Billings; and Remittance of Contributions.

(a) Contributors. The high cost support mechanism shall be supported through a neutral assessment on all telecommunications providers in Colorado.

(I) Revenues associated with the sale of cable services identified in § 40-15-401(1)(a), C.R.S., other than video conferencing, shall not be considered when determining a provider's assessment.

(b) Process for determining the HCSM rate element.

(I) Contributor reporting requirements. Each provider shall provide to the Administrator a verified accounting of its gross retail revenues, and such other revenues, and uncollectibles as the Administrator shall request for purposes of determining contributions and disbursements under these rules. The accounting shall be submitted using the form identified as the HCSM Worksheet available from the Commission or on its website. The completed HCSM Worksheet shall be submitted to the Administrator twice a year. The HCSM Worksheet shall be due March 31, of each year, containing data for the prior calendar year. The HCSM Worksheet shall be due September 1, of each year, containing data for the six-month period from January 1 through June 30 for the current calendar year.

(II) Rate element calculation. The HCSM rate element shall be maintained at the existing rate of 2.6 percent until July 1, 2023 and applied through a neutral assessment on all telecommunications providers in Colorado.

(III) On or after July 1, 2023, the Commission may reduce the rate element factor so that the amount of money collected shall not exceed $25 million for calendar year 2024. The Commission shall issue an order reducing the HCSM rate element at least 15 days prior to the reduction's effective date and shall post notice of the rate element on the Commission's website.

(c) Application of the rate element to telecommunications providers. The HCSM rate element shall be assessed upon all providers in Colorado. Telecommunications providers may, at their option, apply the rate element to the retail revenues of each provider's end users as a line item on the monthly bill. For those telecommunications providers opting to apply the rate element to their end user customers, the location of the telecommunication service delivery shall be used to determine whether the HCSM rate element applies where an end user service location receiving the bill and an end user service location receiving the service differ.

(d) Remittance of contributions. All telecommunications providers shall be responsible for remitting quarterly to the HCSM according to the following procedure:

(I) Each quarter, or as necessary, the Administrator shall issue an invoice instructing each contributor to remit its HCSM contribution to the HCSM escrow account.

(II) The HCSM contributions shall be remitted as directed by the Administrator no more than 30 days after the end of each quarter. If the amount owed is not remitted by that date, the Administrator shall bill the provider a late payment charge equal to one percent per month of the late amount. If the provider establishes a history of making late contributions, the Commission may initiate an appropriate process to ascertain and implement proper corrective measures including, but not limited to, withholding future support from the HCSM and/or penalties pursuant to §§ 40-7-101, C.R.S., et seq.

(III) Reconciliation. The Administrator shall review each EP's HCSM account transactions. The review shall reconcile HCSM contributions, receipts, and other projected account transactions to the actual HCSM entitlement, as provided in paragraph 2848(f). The Administrator shall analyze any deviation between the estimated amount and the verifiable contribution amount. Adjustments to the standard quarterly transaction amount or any other reconcilable adjustments will be performed in a subsequent quarter.

(e) Continuing customer education. For those telecommunications service providers opting to apply the rate element to their end user customers, in the first billing cycle of the third quarter of each calendar year, each provider that is collecting the rate element (also known as the "Colorado Universal Service Charge") from its end users shall provide to each of its customers, by message directly printed on the bill, by bill insert, or by separate first-class mail, or any combination of these alternatives, the continuing customer education material as may be ordered by the Commission.

2846. Support through the HCSM.

(a) The Commission shall, by order, establish geographic areas throughout the state. Such geographic areas may be revised at the discretion of the Commission.

(b) Through December 31, 2018, HCSM support amounts shall be provided consistent with prior Commission orders. Beginning on January 1, 2019, support shall be allocated and provided on a quarterly basis and by the end of the month following the previous quarter.

(I) Each rural telecommunications provider, both wireline and wireless, that received support as of January 1, 2017, will continue to receive the same level of support on a quarterly basis for the period of January 1, 2019 through December 1, 2023 by averaging the payments received for calendar years 2015 and 2016, consistent with § 40-15-208(4), C.R.S.

(II) The Commission shall allocate to the broadband deployment account the following percentages of the total amount of HCSM money collected minus the Commission's administrative costs and distributions to rural telecommunications providers, both wireline and wireless, consistent with § 40-15-208(2)(a)(IV), C.R.S. and subparagraph 2846(b)(I):

(A) in 2019 – 60 percent;

(B) in 2020 – 70 percent;

(C) in 2021 – 80 percent;

(D) in 2022 – 90 percent; and

(E) in 2023 – 100 percent.

(III) The non-rural incumbent local exchange carrier will receive the balance of the remaining quarterly collections after distributions required by § 40-15-208(2)(a)(IV) and (4), C.R.S.

(c) The Administrator will arrange payments to be made within 30 days of the last day of each quarter.

(d) For years 2019 through 2023, distributions of HCSM shall not be based on effective competition determinations as defined by rule 2205 or § 40-15-207, C.R.S.

2847. Administration.

The HCSM shall operate under the direction of an Administrator, which shall be the Commission or its designee.

(a) The Commission may engage a third-party entity who meets the criteria in this rule to perform such duties of the Administrator as the Commission may, from time to time, deem necessary or convenient. The Commission shall select the entity using Colorado State Government contracting procedures. Until such time as an entity has been engaged, or during times when the entity is not available to fulfill its duties, the Commission shall act as the Administrator.

(I) The third-party entity shall meet all of the following criteria:

(A) be neutral and impartial;

(B) not be a party in any matter before the Commission, nor advocate specific positions before the Commission in any telecommunications service matter;

(C) not be a member in a trade association that advocates positions before the Commission;

(D) not be an affiliate of any provider of telecommunications services;

(E) not issue a majority of its debt to, nor derive a majority of its revenues from, nor hold stock in any provider(s) of telecommunications services. This prohibition also applies to any affiliates of the third-party entity; and

(F) not have a Board of Directors that includes members with direct financial interests in entities that contribute to or receive support from the HCSM.

(b) The reasonable expenses incurred in the administration of the HCSM, including administrative costs incurred in association with broadband service, shall be a cost of the HCSM and shall be paid from the funds contributed to the HCSM, consistent with § 40-15-208(2)(a)(VI)(3)(a), C.R.S.

(c) The Administrator shall determine the amount each telecommunications provider must pay into the HCSM and determine the disbursement each rural telecommunications provider, both wireline and wireless, may receive from the HCSM.

(d) The Administrator shall engage and determine the compensation for such professional and technical assistance as may, in its judgment, be necessary for the proper administration of the fund.

(e) If the Commission has delegated such duties, the third-party entity shall have access to the books of accounts of all providers to the limited extent necessary to verify the intrastate retail revenues and other information used in determining contributions and disbursements from the HCSM.

(f) The Administrator will develop appropriate forms to be used by all providers for reporting information as required by rule 2845. Forms will be made available on the Commission's website and at the offices of the Commission.

(g) The Commission shall perform an annual review of HCSM fund recipients. One purpose of this review shall be a verification of continued eligibility. Another purpose shall be a verification of the receipt by each rural telecommunications provider, both wireline and wireless, of the funds to which each provider is entitled and is projected to receive from the HCSM. Subject to such reviews, the Administrator will recommend any required adjustments to HCSM contribution methods, distributions, necessary rule changes and other relevant items that shall be considered in connection with the HCSM.

(h) The Administrator and the Fund may operate on a fiscal year from July 1 to June 30 of the succeeding year.

(i) An independent external auditor chosen by the Commission shall periodically, at its discretion, audit the Fund and associated HCSM records, including both collections and disbursements from the Fund. The costs for conducting audits shall be included in the computation of HCSM requirements.

(j) An annual report of the Fund prepared by the Administrator shall be filed with the Commission by December 1 of each year. A copy of the Administrator's annual report shall be provided to the Legislative Audit Committee and be posted on the Commission's website. This report shall summarize the preceding fiscal year's activity and include the following:

(I) A record of the total cost of administration of the HCSM; and

(II) The most recent audit report.

(k) A written annual report of the HCSM, prepared by the Administrator, shall be submitted to the committees of reference in the Senate and House of Representatives that are assigned to hear telecommunications issues, in accordance with § 24-1-136, C.R.S., by December 1 of each year. A copy of the Administrator's annual report of the HCSM shall be provided to the Legislative Audit Committee and posted on the Commission's website. The report shall account for the operation of the HCSM during the preceding calendar year and include the following information, at a minimum:

(I) the total amount of money the Commission collected through a rate element assessment collected by each provider for which distributions were made;

(II) the total amount of money distributed to each provider and to the broadband deployment fund from the HCSM;

(III) the basis on which the distribution to providers was calculated;

(IV) as to each provider receiving a distribution, the amount received by geographic support area and the type of customer, the way in which the benefit of the distribution was applied or accounted for; and

(V) the estimated contributions to be collected through a rate element assessment by each telecommunications provider, and the proposed total amount of the HCSM from which distributions are to be made for the following calendar year.

2848. Plan for Elimination of Regulatory Obligations in Unsupported Areas.

(a) Consistent with the plan requirement in § 40-15-208(5), C.R.S. and projected HCSM distribution reductions to non-rural incumbent carriers for basic service, for each year listed, effective January 1 of each year through December 31 of the same year, the Commission provides HCSM support for basic service to non-rural incumbent carriers for the following wire center serving areas.

(I) 2019 supported wire center serving areas: Debeque, Yampa, Aguilar, Mesa Verde, Deckers, Hot Sulphur Springs, Mancos, Oak Creek, Meeker, Elbert, Limon, Minturn, Keenesburg, New Castle, Fairplay, Silverton, Del Norte, Kremmling, and Walsenburg.

(II) 2020 supported wire center serving areas: Debeque, Yampa, Aguilar, Mesa Verde, Deckers, Hot Sulphur Springs, Mancos, Oak Creek, Meeker, Elbert, Limon, Minturn, Keenesburg, and New Castle.

(III) 2021 supported wire center service areas: Debeque, Yampa, Aguilar, Mesa Verde, Deckers, Hot Sulphur Springs, Mancos, Oak Creek, and Meeker.

(IV) 2022 supported wire center serving areas: Debeque, Yampa, Aguilar, Mesa Verde, Deckers, and Hot Sulphur Springs.

(b) The obligations imposed in §§ 40-15-401(1)(b)(IV) and 40-15-502(5)(b) and (6)(a), C.R.S. are not applicable in any wire center serving area not listed for the corresponding year as of January 1 each year.

(c) The plan described in paragraphs (a) and (b) above is based on a forecast that HCSM surcharge collections will be approximately $31.5 million for 2019, $29 million for 2020, $26.8 million for 2021, and $24.7 million for 2022.

(d) No later than September 1 each year, the HCSM Administrator will provide the Commission with an update on actual contributions for the first six months of the year compared to estimated projections. Subject to such reviews, the Administrator may, but need not, recommend any required adjustments to the subsequent year's wire centers defined in subsection(a) above to be implemented through a variance process consistent with 4 CCR 723-1-1003.

(e) The HCSM administrator shall post actual collection amounts quarterly on the Commission's website no later than 45 days following each quarter. On or before February 15 of each year, the HCSM administrator shall provide actual collection amounts for the preceding year on the Commission website.

(f) A request for variance, consistent with 4 CCR 723-1-1003, may be filed to revise the supported wire center areas subject to regulation set forth in paragraph (a), provided actual contributions presented by the HCSM Administrator periodically each year, as required in paragraphs (d) and (e), vary from the projections set forth in paragraph (c) by ten percent.

(g) Effective January 1, 2023, no wire center serving area shall be funded for basic service by the HCSM and obligations imposed in §§ 40-15-401(1)(b)(IV) and 40-15-502(5)(b) and (6)(a), C.R.S. are eliminated.

2849. Enforcement.

(a) Holder of a CPCN. A provider holding a CPCN issued by the Commission that fails to make timely reports or to pay, in a timely manner, its contribution when it is due and payable under these rules, may, after notice and opportunity for hearing, have its CPCN revoked as provided in Article 6, Title 40, C.R.S., be denied interconnection to the public switched network, and/or have other appropriate remedies imposed upon them by the Commission.

(b) Uncertificated provider. If a provider does not hold a CPCN from the Commission and fails to make timely reports or payment of its contribution, the provider may be subject to a Commission action including but not limited to a formal complaint:

(I) to the FCC seeking an order directing the delinquent provider to make the payment or for further appropriate remedies;

(II) for an action for damages in an appropriate court; or

(III) for other appropriate remedies.

(c) Any provider that disputes the requirement that it pay into the HCSM shall:

(I) post a bond in an amount determined by the Commission pending the resolution of that dispute; and

(II) repay all other providers with interest (at a rate determined by the Commission) in the event the Commission determines that the provider should have been paying into the fund.

2850. – 2869. [Reserved].

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Office of the Attorney General

Tracking number: 2018-00397

Opinion of the Attorney General rendered in connection with the rules adopted by the

Public Utilities Commission

on 12/20/2018

4 CCR 723-2

RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES

The above-referenced rules were submitted to this office on 12/21/2018 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.

January 03, 2019 11:23:13

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Laboratory Services Division

CCR number

5 CCR 1005-2

Rule title

5 CCR 1005-2 TESTING FOR ALCOHOL AND OTHER DRUGS 1 - eff 02/14/2019

Effective date

02/14/2019

[Publication Instructions for the title block: Insert "Colorado" if permitted by the Secretary of State's Office, and insert adopted and effective dates.]

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Laboratory Services Division

TESTING FOR ALCOHOL AND OTHER DRUGS

5 CCR 1005-2

Adopted by the Board of Health on December 19, 2018; effective February 14, 2019.

[Publication Instructions: Replace entire body of text with revised rule below]

Part 1. General

1.1 Purpose and Scope

This rule establishes minimum standards for certification and approval of entities and processes used for alcohol and drug testing. This rule is applicable to: samples taken from subjects driving under the influence, driving while impaired, driving with excessive alcohol content; vehicular assaults and vehicular homicides involving an operator while under the influence of alcohol or one or more drugs or both; the testing of samples of blood or other bodily substances from the bodies of pilots in command, motorboat or sailboat operators in command, or drivers and pedestrians suspected of being impaired by alcohol and/or drugs who die within four hours after involvement in a crash involving a motor vehicle, a motorboat, a sailboat or an aircraft; and consumption of alcohol by underage persons and records related thereto.

1.2 The Colorado department of public health and environment has determined that results obtained from the certified EBAT instrument are scientifically accurate, precise, and analytically reliable when the certified EBAT instrument is properly operated as described in this rule. Recommendations made to the state board of health are evidence-based through analytic testing and evaluation conducted by the department.

1.3 Evidential Breath Alcohol Testing (EBAT) certified facilities, instructors and operators will operate under Parts 2 through 4 of these rules and regulations. All approved EBAT facilities and certified instructors and operators performing direct evidential breath alcohol testing must comply with all applicable requirements in this rule.

1.4 Testing of blood alcohol, blood drug, urine drug and postmortem samples operate under Parts 5 through 9 of these rules and regulations. All certified forensic toxicology laboratories performing testing in the categories of blood alcohol, blood drug, urine drug and postmortem testing must comply with all applicable requirements in this rule.

1.5 Definitions

"Analytical Non-Conformance" – refers to a result that has been reported by the certified laboratory that exceeds its established criteria of acceptability resulting in repeat analysis requiring amended reporting.

“Appropriate Clinical or Public Safety Facility” – provides for the health and safety of a person whose blood is collected (subject) and meets the following criteria: 1) provide for the washing or cleansing of hands of the blood collection personnel, 2) provide a comfortable chair for the subject with arm supports to assure the elbow remains straight and both arms are accessible to the blood collection personnel, 3) take precautions to assure the subject does not fall out of the chair, 4) provide for cot or other reclining surfaces for subjects who prefer to lie down or who have adverse response to the blood collection procedures, 5) provide for the adverse response to blood collection by providing procedures and equipment for subjects who become faint, nauseous, vomit, bleed excessively, or convulse including the provision of drinking water, and 6) provide for the cleaning and disinfection of the blood collection area.

“Approved Facility” – any location that meets the requirements of these regulations and which is approved by the Department to house the certified EBAT instrumentation.

“Certification” – the official approval by the Department of an Evidential Breath Alcohol Test (EBAT) instrument, instructor, operator, or forensic toxicology laboratory to function under these rules and regulations.

“Certified EBAT Instructor” – an employee of a law enforcement agency or the Colorado Department of Public Health and Environment who meets the requirements of Section 2.2 *et seq.* of these regulations.

“Certified EBAT Instrument” – the instrumentation approved for use by the Department for performing evidential breath alcohol testing in approved facilities by certified instructors and operators in order to determine the alcohol content in a subject’s breath for evidentiary purposes as identified in Section 42-4-1301, C.R.S.

“Certified EBAT Operator” – an employee of law enforcement agency or the Colorado Department of Public Health and Environment who meets the requirements of Section 2.1 *et seq.* of these regulations.

“Certified Laboratory” – a forensic toxicology laboratory certified by the Department to perform analytical testing of bodily fluids for alcohol or other drugs in the categories of blood alcohol, blood drug, urine drug or postmortem testing.

“Department” – refers to The Colorado Department of Public Health and Environment, Laboratory Services Division.

“Discovery Packet” – refers to records requested for litigation purposes that include sufficient material to allow independent review by a qualified toxicologist. The records must include when applicable, but are not limited to; the request of analysis, chain of custody documents, test subject analytical data, calibration, standard, quality control data from the subject analytic run, limits of quantitation (LOQ), limits of detection (LOD), analyst curriculum vitae (CV), and the standard operating procedure used during the analysis.

“DUI” – refers to the term Driving Under the Influence of alcohol and/or other drugs as defined by Section 42-4-1301(1)(f), C.R.S.

“DUI Packet” – refers to the documentation produced by the certified EBAT instrument that must be included by the certified EBAT instructor or operator. This must include but is not limited to the following; the completed subject EBAT, and any Exception Messages which may have been encountered during the subject test attempts.

“DWAI” – refers to the term Driving While Ability Impaired by alcohol and/or other drugs as defined by Section 42-4-1301(1)(g), C.R.S.

“Evidential” or “Evidentiary” – refers to a sample which, when tested, gives rise to test results that are sufficiently reliable to be admissible as evidence in a court of law.

“Evidential Breath Alcohol Test (EBAT)” – is an evidentiary breath alcohol test performed using a certified evidential breath alcohol testing instrument approved by the Department as described by Section 42-4-1301, C.R.S.

“Exception Message” – is the term used for a report generated by the certified EBAT instrument whenever an Evidential Breath Alcohol Test (EBAT) is unable to be successfully completed.

“Internal Standard” – refers to a reference material that has similar chemical and physical properties to the analyte being measured and is added at a known concentration to a sample prior to testing.

“Key Management” – refers to personnel designated as top management and additional personnel who do not have laboratory wide authority but are “key” to the laboratory providing testing services which may include the laboratory director, technical personnel or any other designated qualified individual who has supervisory responsibilities for the scientific aspects of the laboratory.

“Laboratory Director” – the individual meeting the qualification requirements specified in Part 5 and Part 9 of these rules who is responsible for the overall operation and results reported by the laboratory.

“Limit of Detection (LOD)” – the lowest concentration or amount of an analyte that can be reliably shown to be present or measured under defined conditions and is derived by adding three standard deviations to the true value of the blank.

“Limit of Quantitation (LOQ)” – the concentration at which quantitative results can be reported with a high degree of confidence and is derived by adding ten standard deviations to the true value of the blank or administratively defined in terms of the lowest concentration of the lowest calibrator used in the analytic run.

“Proficiency Testing (PT)” – The evaluation of unknown specimens which determines target alcohol or drug values for those unknown specimens that is manufactured by a provider accredited to the International Standards Organization (ISO/IEC 17043). A single evaluation is commonly referred to as a PT event.

“Representative of a Certified Laboratory” – any employee of a certified laboratory or a courier employed by or contracted by the certified laboratory to transport specimens for the certified laboratory.

“Satisfactory PT Performance” – results scored from an individual PT event that meet or exceed the minimum score allowable to be considered passing.

“Successful PT Performance” – ongoing satisfactory PT performance in multiple PT events that meet or exceed the minimum score allowable to be considered passing.

“Tampering” – to meddle with the certified EBAT instrument especially for the purpose of altering test results, damaging or misusing the instrument either by intentional or unintentional means.

“Technical Personnel” - individuals who are engaged in any aspect of the testing of samples and reporting of results under the supervision of the laboratory director or the laboratory director’s designee.

"Unsatisfactory PT Performance" – results scored from an individual PT event that are scored below the minimum allowable to be considered passing.

"Unsuccessful PT Performance" – two consecutive unsatisfactory individual PT events or 2 out of 3 unsatisfactory individual PT events that are scored below the minimum allowable to be considered passing.

Part 2 Certification Requirements for Operators and Instructors Performing Evidential Breath Alcohol Testing (EBAT)

2.1 Operators seeking initial EBAT certification or EBAT recertification by the department must meet the following criteria:

2.1.1 To initially be certified as an EBAT operator an individual must:

2.1.1.1 Be currently employed by a law enforcement agency or the Department, and

2.1.1.2 Attend and successfully complete the Department's eight (8) hour EBAT operator certification course, and

2.1.1.3 Successfully complete the Department's EBAT operator comprehensive practical, and

2.1.1.4 Successfully pass the Department's EBAT operator exam with a score of 80% or greater.

2.1.1.5 Upon successful completion of the Department's operator certification course, the certified EBAT operator will be issued an instrument access card by the department that may only be used by the certified EBAT operator to whom it was issued.

2.1.2 To maintain active certification status, a certified EBAT operator must complete the following recertification requirements:

2.1.2.1 Successfully perform and complete a recertification EBAT within a 180-day period, and

2.1.2.2 Annually – Successfully complete the Department's certified EBAT operator recertification refresher course.

2.1.2.3 Upon successful completion of the Department's operator recertification requirements, the certified EBAT operator card's active status will be updated and available for use during the next certification period.

2.1.3 The certified EBAT operator card issued by the Department may serve as evidence of certification.

2.2 If the certified EBAT operator fails to meet the EBAT recertification requirements found in this part, the Department will;

2.2.1 Decertify the EBAT operator, and

2.2.2 Deactivate the EBAT operator certification card used to access the certified EBAT instrument, and

2.2.3 Maintain the EBAT operator in an inactive status until the EBAT operator certification requirements found in Part 2.1 are met.

2.3 Instructors seeking initial EBAT certification or EBAT recertification by the Department must meet the following criteria:

2.3.1 To initially be certified as an EBAT instructor an individual must:

2.3.1.1 Be currently employed by a law enforcement agency or the Department, and

2.3.1.2 Be a currently certified EBAT operator in active status, and

2.3.1.3 Attend and successfully complete the Department's sixteen (16) hour EBAT instructor certification course, and

2.3.1.4 Successfully complete the Department's EBAT instructor comprehensive practical, and

2.3.1.5 Successfully pass the Department's EBAT instructor exam with a score of 80% or greater.

2.3.1.6 Upon successful completion of the Department's instructor certification course, the certified EBAT instructor will be issued an instrument access card that may only be used by the certified EBAT instructor to whom it was issued.

2.3.2 To maintain active status, a certified EBAT instructor must complete the following recertification requirements:

2.3.2.1 Biennially - Participate in teaching, at minimum, one EBAT operator certification course, and

2.3.2.2 Annually - Successfully complete the Department's certified EBAT instructor recertification refresher course.

2.3.3 A certified EBAT instructor in active status is also recognized as a certified EBAT operator and may perform testing.

2.3.4 The certified EBAT instructor card issued by the Department may also serve as evidence of certification.

2.4 For any certified EBAT instructor that does not meet the EBAT recertification requirements found in this part the Department will;

2.4.1 Decertify the EBAT instructor, and

2.4.2 Deactivate the EBAT instructor certification card, used to access to the certified EBAT instrument, and

2.4.3 Maintain the EBAT instructor in an inactive status until one of the following three recertification criteria are met:

2.4.3.1 Within 30-days after expiration of the EBAT instructor certification expiration date, the inactive instructor must successfully complete a recertification evidential breath alcohol test to regain an active status as a certified EBAT

operator. The certified EBAT operator must meet the requirements found at Part 2.1.2 in order to maintain certification, or,

2.4.3.2 After 30-days from expiration of the EBAT instructor certification expiration date, the inactive instructor must meet the EBAT operator certification requirements found at Part 2.1, or

2.4.3.3 The EBAT instructor meets the requirements found at Part 2.3 of the rule.

2.5 EBAT instructors or operators returning from active military service may reactivate their certification status by completing the following:

2.5.1 Provide documentation of active duty status to the Department, (period of absence must not exceed 2 years), and

2.5.2 Successfully pass the EBAT instructor or operator certification test with a score of 80% or greater, and

2.5.3 Successfully perform and complete a recertification EBAT.

2.5.4 Upon successful completion of the recertification requirements in this Part, the certified EBAT instructor or operator card will be updated to an active status and become available for use during the next certification period.

2.5.5 The certified EBAT instructor or operator must meet the requirements found in this Part in order to maintain an active certification status.

Part 3 Requirements for Evidential Breath Alcohol Testing (EBAT) Facilities

3.1 Standards for approval of permanent, temporary and mobile Evidential Breath Alcohol Testing (EBAT) facilities.

3.1.1 Evidential Breath Alcohol Test(s) must be conducted only in facilities that have been approved by the Department.

3.1.2 Department standards for approval of EBAT facilities are specified in Part 3 of this rule.

3.1.3 EBAT facilities meeting the standards of performance as specified in Part 3 of this rule may be approved.

3.1.4 Onsite Inspections of permanent, temporary and mobile EBAT facilities must be performed prior to initial approval and once per calendar year thereafter by Department personnel.

3.1.4.1 Facility inspection reports will be sent by the Department to the facility within 15 days of the inspection date.

3.1.4.2 When deficiencies are cited in a facility inspection report, a plan of correction must be received by the Department for review and approval within 15 days of receipt of the facility inspection report by the agency.

3.1.5 Initial approval – permanent, temporary, and mobile EBAT facilities.

3.1.5.1 A facility representative must submit a written request to the Department for initial approval of an EBAT facility. The request will be in the form and manner required by the Department and must include:

3.1.5.1.1 Acknowledgement from the facility representative that the requirements found in Part 3 have been reviewed prior to requesting approval.

3.1.5.1.2 Documentation from a certified electrician verifying the power to the certified EBAT instrument is on its own dedicated power circuit.

3.1.5.1.3 Verification from the facility representative that a dedicated and active data and phone line are installed and available for communications by the certified EBAT instrument.

3.1.5.2 Upon receipt of the initial facility approval request, Department personnel will schedule an onsite inspection to verify compliance with the requirements found in Part 3 prior to approval.

3.1.6 The Department will perform an onsite inspection at an EBAT facility when any of the following occur:

3.1.6.1 The EBAT facility is seeking initial approval, or

3.1.6.2 The approved EBAT facility requests relocation of the certified EBAT instrument either temporarily or permanently within the facility, or

3.1.6.3 A new EBAT facility is being constructed that will house the certified EBAT instrument, or

3.1.6.4 A complaint is received by the Department that requires an onsite inspection to verify compliance.

3.2 Evidential Breath Alcohol Testing (EBAT) facility requirements

3.2.1 Instrument power requirements

3.2.1.1 Alternating current (AC) line voltage of 120 volts, 60 hertz (Hz) grounded outlet on a dedicated circuit.

3.2.1.2 20 ampere maximum circuit breaker.

3.2.1.3 Voltage 120 +/- 12v (108v – 132v).

3.2.1.4 Grounded outlet.

3.2.1.5 An adequate surge protection device must be placed between the EBAT instrumentation and the grounded outlet.

3.2.2 Facility environmental requirements

3.2.2.1 The temperature of the room where the EBAT instrumentation is operated must be maintained between (15.0 – 32.2) degrees Centigrade.

3.2.2.2 The relative humidity of the room where the EBAT instrumentation is operated must be maintained between (5% - 70%).

3.2.2.3 The EBAT instrumentation room must have adequate lighting.

3.2.2.4 The area around and under the EBAT instrumentation must be free of dust, dirt and kept orderly.

3.2.2.5 The EBAT instrumentation must be placed on a solid and adequate work surface.

3.2.2.6 The room where the EBAT instrumentation is located must receive adequate ventilation.

3.2.2.7 The ventilation to the room where the EBAT instrumentation is located must prevent automobile emissions from being introduced.

3.2.2.8 The room where the EBAT instrumentation is located must not be used to store cleaning compounds or volatile chemicals.

3.2.2.9 The room where the EBAT instrumentation is located must remain secure and not readily accessible to unauthorized personnel.

3.2.3 EBAT facility documents

3.2.3.1 The EBAT instrument calibration certificate must be posted next to the instrument.

3.2.3.2 The EBAT instrument Exception Message guide must be posted next to the instrument.

3.2.3.3 Corrective actions taken by the certified EBAT instructor or operator are appropriate and timely when Exception Messages are encountered.

3.2.3.4 The EBAT instrumentation records applicable to the agency must be retained by the approved facility for a minimum of 5 years.

3.2.4 EBAT instrumentation

3.2.4.1 The approved facility must have available an adequate supply of mouth pieces.

3.2.4.2 The approved facility must have available an adequate supply of standard simulator solution issued by the Department.

3.2.4.3 The standard simulator solution is changed as needed and correctly by a certified EBAT instructor.

3.2.4.4 EBAT instrumentation and supplies must be properly maintained, stored and available to authorized personnel.

3.2.4.5 The EBAT instrumentation is being operated in the location it was approved for within the approved facility.

Part 4 Evidential Breath Alcohol Testing (EBAT) - Collection and Testing Procedures

4.1 This part establishes the minimum standards for collection and testing of evidential breath alcohol samples that include:

4.1.1 A certified EBAT instructor or operator to perform the test that is in an active status meeting the requirements found in Part 2, and

4.1.2 An approved EBAT facility where the test is to be conducted meeting the requirement found in Part 3, and

4.1.3 A certified EBAT instrument used to perform the test.

4.1.3.1 Evidential breath specimens must be analyzed using a certified EBAT instrument approved for use by the Department. Certification of the EBAT instrument will be based on scientific standards of performance established by the Department.

4.1.3.2 The Department must certify each EBAT instrument initially and annually thereafter.

4.1.3.3 The Department will issue a certificate for each certified EBAT instrument after initial certification and after each annual certification. The certificate will reflect the certified EBAT instrument serial number and the inclusive dates for the certification period.

4.1.3.4 Every EBAT sequence must include an assayed reference standard(s) with a known ethanol concentration of 0.100 grams of alcohol/210 liters of breath that brackets the subject's breath samples. The assayed reference standard(s) target value(s) is 0.100 grams of alcohol/210 liters of breath and must fall within a range of (0.090 – 0.110 grams of alcohol/210 liters of breath).

4.1.3.4.1 The results of the assayed reference standard(s) must agree with each other within ±10% during the calibration checks.

4.1.3.4.2 If the correlation between calibration checks is not within ±10%, the instrument will discontinue the test sequence and print a "No Calibration Correlation" Exception Message.

4.1.3.5 For each EBAT, the results of the two subject samples must agree with each other within 0.020 grams of alcohol/210 liters of breath.

4.1.3.5.1 If the 0.020 grams of alcohol/210 liters of breath correlation is not obtained with the subject samples, the instrument will discontinue the test sequence and print a "No .02 Agreement" Exception Message.

4.1.3.5.2 When a "No .02 Agreement" Exception Message is obtained, the certified EBAT instructor or operator must repeat the 20-minute deprivation period prior to retesting the subject.

4.1.3.6 The two subject breath samples must meet the minimum measurement requirements in order to obtain a result. Samples not meeting the minimum sample requirements may result in an "Invalid Sample" Exception Message.

4.1.3.6.1 If an "Invalid Sample" Exception Message is obtained, the certified EBAT instructor or operator must repeat the 20-minute deprivation period prior to retesting the subject.

4.2 Pre-Analytic EBAT requirements include:

4.2.1 Unless otherwise provided by law, at the request of the subject, the subject must be given a choice of which type of evidential chemical test (evidential breath or blood alcohol) they prefer to take to determine the alcohol concentration in their body, or the choice to refuse either evidential chemical test. Nothing in this rule is intended to exempt or exonerate an individual from the penalties proscribed in Sections 42-4-1301.1 and 42-4-1301.2, C.R.S., or any other relevant law, for the failure to submit to such test.

4.2.2 Ensure the certified EBAT instrument is in the “Ready” mode. If the certified EBAT instrument is in “Not Ready” mode, wait until the instrument completes the warm-up period prior initiating any testing.

4.2.3 Completion of a 20-minute deprivation period must be conducted at the approved EBAT facility by a certified EBAT instructor or operator that is in an active status that must include;

4.2.3.1 Removal of any foreign material from the subject’s mouth cavity that is not permanent in nature, prior to starting the 20-minute deprivation period, and

4.2.3.2 Depriving the subject access to foreign material that may be introduced into the mouth cavity during the 20-minute deprivation period, and

4.2.3.3 Observing the subject for signs of belching, regurgitation, or intake of any foreign material into the mouth cavity during the 20-minute deprivation period. If such observations occur, the 20-minute deprivation period must be repeated under the same conditions prior to testing.

4.2.4 Entry of the certified EBAT instructor or operator information into the certified EBAT instrument.

4.2.5 Entry of the arresting officer information into the certified EBAT instrument.

4.2.6 Entry of the subject information into the certified EBAT instrument to include the start time of the 20-minute deprivation period.

4.3 Analytic EBAT requirements include:

4.3.1 Providing the subject instruction for delivery of a breath sample that contains end-expiratory air from the lungs.

4.3.2 Starting the test sequence and following the test instructions displayed by the certified EBAT instrument.

4.3.3 Providing a clean mouthpiece with each breath sample provided by the subject.

4.3.4 Observing the subject through completion of the second breath sample to look for signs of belching, regurgitation, or intake of any foreign material into the mouth cavity. If such observations occur, the test sequence must be discontinued by the certified EBAT instructor or operator and another 20-minute deprivation period must be repeated under the same conditions prior to retesting.

4.3.5 Removal of the subject from the area in close proximity to the certified EBAT instrument during the two-minute period between breath samples in order to prevent tampering of the instrument during the test sequence.

4.4 Post-Analytic EBAT requirements include:

4.4.1 The certified EBAT instructor or operator must sign the completed EBAT report attestation statement indicating the test was performed in compliance with the procedures set forth by the Department and as prescribed by this rule.

4.4.2 The certified EBAT instructor or operator must review the final report(s) for completeness.

4.4.3 The certified EBAT instructor or operator must include all printouts generated by the certified EBAT instrument to include any associated Exception Message(s) (if applicable) that may have been encountered during the subject test attempt(s).

4.4.4 All printouts generated from the certified EBAT instrument for the subject must be included in the DUI packet as defined in Part 1.5.

4.4.5 All certified EBAT instrumentation records must be retained for a minimum of 5-years by either the certified EBAT facility or the Department as applicable.

Part 5. Certification Requirements for Forensic Toxicology Laboratories

5.1 Laboratory Analysis of Blood, Urine and Post Mortem Specimens

5.1.1 Laboratories must be certified by the Department to provide analysis. Participation in the Forensic Toxicology Laboratory certification program is based upon either: successful onsite annual inspection for non-accredited labs, or, ongoing accreditation status for accredited labs, in addition to successful proficiency testing performance in the category or categories the laboratory is certified in and ongoing compliance with Parts 5 through 9 of this rule.

5.1.2 Laboratories seeking certification that are accredited by a nationally or internationally recognized accreditation organization that includes the scope of forensic toxicology may elect to forgo the annual onsite inspection as long as accreditation remains active, and, the biennial inspection performed by the accrediting organization includes review of the specialty of toxicology.

5.1.3 Accredited laboratories requesting certification from the Department must provide the Department a copy of the accrediting organizations most recent and final biennial inspection report within 30-days of receipt of accreditation in the scope of forensic toxicology in addition to, any accepted plan of correction submitted to the accrediting organization by the laboratory.

5.1.4 The Department will perform an onsite inspection of an accredited laboratory in the event that the specialty of toxicology is not reviewed by the accrediting organization during the biennial inspection.

5.1.5 Laboratories certified by the Department who send samples to a reference laboratory for testing, must send those samples to a forensic toxicology laboratory certified by the Department.

5.1.6 Laboratories may be certified to perform tests for one or more of the following categories: blood alcohol, blood drug, urine drug, and postmortem testing.

5.1.7 Laboratories must meet standards of performance as established by these regulations. Standards of performance include; personnel qualifications, standard operating procedure manual, analytical process, proficiency testing, quality assurance, quality

control, laboratory security, chain of custody, specimen retention, space, records, and result reporting.

5.1.8 Laboratory inspections must be performed prior to initial certification and annually thereafter by Department personnel as established by this rule. A laboratory meeting the certification requirements of these regulations will be issued a certificate. Recertification shall be required annually and will be effective each July 1.

5.2 Initial Application

5.2.1 Laboratory Directors requesting certification of their laboratory must submit to the Department a completed application. The application will be in the form and manner required by the Department and includes: laboratory name, laboratory director, facility address, laboratory correspondence information, and analytical categories for which the laboratory requests certification.

5.2.2 The Department will acknowledge the request and provide a copy of this rule to the laboratory.

5.2.3 To be certified, laboratories must demonstrate compliance with all applicable requirements in Parts 5 through 9 and participate in an initial onsite inspection. The onsite inspection may be waived for accredited laboratories so long as the requirements at 5.1.3 are satisfied as determined by the Department at its sole discretion.

5.3 Application for Continued Certification

5.3.1 Annually the Laboratory Director must request to be considered for continued certification by providing a completed application to the Department no later than June 1. The application will be in the form and manner required by the Department and will include: laboratory name, laboratory director, facility address, laboratory correspondence information, analytical categories for which the laboratory requests certification and case load totals.

5.3.2 Laboratories must be recertified annually starting July 1, and certification will be for a period of 1 year.

5.3.3 Laboratories must maintain a listing of all analytical methods used by the laboratory and all analytes tested and reported by the laboratory. The laboratory must provide this listing to the Department.

5.3.4 To maintain certification, laboratories shall meet all applicable requirements found in Parts 5 through 9. Non-accredited laboratories or accredited laboratories identified in 5.1.4 must participate in an annual onsite inspection.

5.4 General Requirements

5.4.1 In addition to the laboratory's application, the laboratory must provide an updated listing of all technical personnel engaged in testing to the Department. The listing will be in the form and manner required by the Department.

5.4.2 Prior to independently analyzing samples, technical personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls). The laboratory must have a system to evaluate and document the competency of technical personnel as specified in Part 9.

5.4.3 The laboratory must notify the Department in writing within thirty days of any changes pertaining to laboratory location and/or key management.

5.4.4 The Laboratory Director is directly responsible for the accuracy of the tests performed, the accuracy of the reports issued, and adherence to the applicable requirements in this rule.

5.4.5 The laboratory must have adequate space, equipment, materials, and use reference materials from a manufacturer accredited to the International Standards Organization (ISO) requirements for certified reference materials and certified reference standards, ISO/IEC 17034 when available.

5.4.6 The laboratory must establish and adhere to written methods of analysis (Standard Operating Procedure (SOP) used to perform the tests reported. Critical elements that must be addressed in the SOP are in Part 9.

5.4.7 The laboratory must demonstrate compliance with these regulations through a successful onsite inspection conducted by Department personnel prior to certification. Certified laboratories will be inspected on an annual announced basis. Certified laboratories may be inspected on an unannounced basis to evaluate complaints.

5.4.8 The laboratory must maintain all records related to analysis for a minimum of 5 years. Records to be maintained include instrument maintenance, calibration, quality control and quality assurance documentation for all analyses performed, specimen processing, test results and test reports of analysis, dates of analysis and the identity of the person performing the analysis. Retained records must be made available for review by Department personnel.

5.4.9 The laboratory must investigate all analytical non-conformances. Whenever subject test results are impacted, further testing using the affected method(s) may not resume until the laboratory has performed a root cause analysis and corrected the non-conformance. All subject tests impacted by the non-conformance must be reviewed by the laboratory director and amended reports issued when necessary. Copies of the non-conformance, root cause analysis and corrective action plan must be provided to the Department upon request.

5.5 Proficiency Testing (PT) requirements for certified forensic toxicology laboratories.

5.5.1 Proficiency Testing (PT) is the evaluation of unknown specimens which determines target values for those unknown specimens and is required for each approved category the laboratory is certified in.

5.5.2 PT material must be obtained from a PT provider that is accredited to the ISO/IEC 17043 standards and can provide appropriate biological specimens that are applicable to the testing the laboratory performs.

5.5.3 Prior to initial certification, the laboratory must at minimum, have successfully participated in one proficiency testing event(s) within the preceding 12 months in the category for which the laboratory seeks certification and must have received a satisfactory score(s) for each of those event(s) as defined in Part 5.

5.5.4 To maintain continued laboratory certification, a laboratory must demonstrate successful PT performance for each category in which the laboratory is certified.

5.5.5 For each approved category of testing, PT samples shall be:

5.5.5.1 Tested for all analytes reported by the laboratory that are present in the PT samples, and

5.5.5.2 Tested by each technical personnel annually, and

5.5.5.3 Tested using approved standard operating procedures, and

5.5.5.4 Tested in the same manner as subject samples, and

5.5.5.5 Reported to the PT provider, and

5.5.5.6 The laboratory must request that the proficiency testing provider provide a consultant copy of their PT survey results to:

Colorado Department of Public Health and Environment
Laboratory Services Division
Certification Program
8100 Lowry Boulevard
Denver, CO 80230-6828

5.5.6 Blood Alcohol Testing

5.5.6.1 A laboratory must demonstrate successful PT performance in a minimum of 3 alcohol PT testing events per year. Each event must consist of a minimum of 4 specimens each. The PT provider will evaluate the results and forward them to the laboratory as well as to the Department.

5.5.6.2 Other forensically significant volatiles, such as acetone, methanol and isopropanol, may be included in one or more PT samples in each of the 3 events. The laboratory must be able to detect any volatile included in the PT samples and must retain documentation of this detection with the PT results.

5.5.6.3 Scoring Criteria for Blood Alcohol Proficiency Testing

5.5.6.3.1 PT results must be returned to the PT provider within the time specified by the PT provider. Results received after the due date will not be scored and will be considered an unsatisfactory performance resulting in a score of 0 for the testing event. The laboratory must contact the PT provider and the Department if extenuating circumstances prevent timely response to a PT event.

5.5.6.3.2 An acceptable blood alcohol PT result is one that falls within +/- 10% of the reported mean.

5.5.6.3.3 The laboratory must investigate any score less than 100% and undertake corrective action as needed. The investigation outcome and corrective action must be provided to the Department upon request.

5.5.5.3.4 The PT results will be reviewed by the Department to determine if successful PT performance has been achieved. If a laboratory has consecutive “Unsatisfactory” evaluations, or achieves an “Unsatisfactory” score in 2 of any 3 consecutive PT events, the

PT performance is deemed “Unsuccessful”. The “Unsuccessful” determination may result in a “Directed Plan of Correction” specified by the Department, or suspension/limitation of certification for the failed analyte.

5.5.7 Urine, Blood and Postmortem Drug Testing

5.5.7.1 For blood drug, urine drug and postmortem screening and confirmation certification, the laboratory must demonstrate successful PT performance.

5.5.7.1.1 For blood drug certification the laboratory must participate in a minimum of two PT events annually that include blood samples.

5.5.7.1.2 For urine drug certification the laboratory must participate in a minimum of two PT events annually that include urine samples.

5.5.7.1.3 For laboratories performing only postmortem forensic toxicology testing the laboratory must participate in a minimum of two PT events annually that include a combination of blood and urine samples and other postmortem matrices when available.

5.5.7.2 Scoring criteria for drug proficiency testing

5.5.7.2.1 PT results must be returned to the PT provider within the time specified by the PT provider. Results received after the due date will not be scored and will be considered an “Unsatisfactory” performance resulting in a score of 0 for the testing event. The laboratory must contact the PT provider and the Department if extenuating circumstances prevent timely response to a PT event.

5.5.7.2.2 All analytes listed and reported (qualitatively and quantitatively) by the laboratory must be analytically tested in the PT challenges in the same manner as subject samples.

5.5.7.2.3 A satisfactory event score is the positive identification and when applicable, quantitation of 80% of the target analytes present with no false positives. Any false positive will result in an “Unsatisfactory” score for the PT event.

5.5.7.2.3.1 Scoring is as follows: if a laboratory only reports an analyte qualitatively, the total possible points for that analyte will be 4 points.

Total points possible:

A. Each possible positive identification is 4 points.
B. Each quantitative result is worth a possible 2 points. Note: quantitative results will be subject to further point restrictions when standard deviation (SD) values are given by the PT provider.

Laboratory’s points:

A. Each correctly identified analyte is 4 points.
B. Each false negative is 0 points (i.e., no qualitative result given).

C. Each quantitative result within 1 standard deviation (SD) is 2 points.
D. Each quantitative result within 2 SD is 1 point.
E. Each quantitative result outside 2 SD is 0 points.
F. Each correctly identified negative specimen is 4 points.
G. Each false positive is minus (-) 25 points and is automatically considered an unsatisfactory event.

Laboratory's Score = (laboratory's points / total possible points) * 100

5.5.7.2.4 Whenever a laboratory receives an unsatisfactory PT event (less than 80%), the laboratory must investigate and undertake corrective action as needed. The investigation outcome and corrective action documentation must be provided to the Department upon request.

5.5.7.2.5 Whenever a quantitative result reported by the laboratory in a PT challenge is considered "Unacceptable" by the PT provider (outside ±2SD or 30% from the mean, whichever is greater), the laboratory must undertake and document corrective action. The corrective action documentation must be retained with the PT results.

5.5.7.2.6 A laboratory will be suspended from a category for "Unsuccessful" PT performance if consecutive "Unsatisfactory" PT events occur, or two out of three consecutive "Unsatisfactory" PT events occur. A laboratory may be reinstated to active status after successful participation in the next PT challenge. Failure to achieve a "Satisfactory" score in the next test event will result in the revocation of the certificate and require two successful PT events before the laboratory may be eligible to reapply for certification. The laboratory may request the PT provider send one extra set of PT samples when suspension status occurs.

5.6 Onsite Laboratory Inspection

5.6.1 Onsite laboratory inspections must be performed prior to initial certification and annually thereafter for non-accredited labs by the Department in accordance with this rule.

5.6.2 The onsite inspection will include a review of the laboratory's practices to ensure compliance with these regulations. Laboratories must demonstrate compliance with all applicable requirements in Parts 5 through 9.

5.6.3 Laboratories will be contacted by the Department to schedule the annual onsite inspection after receipt of the application requesting certification. A letter confirming the inspection date will be sent to the laboratory.

5.6.4 The Department will evaluate compliance with the laboratory certification standards listed in Part 9 during the onsite inspection.

5.6.5 Following the onsite inspection, a written report will be prepared that will list any non-conformances identified. The report should be sent to the laboratory within 30-days of inspection.

5.6.6 Within 30-days of receipt of the inspection report, the laboratory must provide to the Department for review and approval a written plan of correction that addresses each non-conformance listed in the inspection report.

5.6.7 Any requested objective evidence must be provided to the Department within 60-days of receipt of the inspection report. Any items requiring clarification will be resolved by phone or written correspondence.

5.6.8 Identification of non-conformance practices that impact test results or, failure to provide an acceptable plan of correction or, failure to provide adequate objective evidence within the specified timelines, may result in limitation, suspension, revocation or denial of certification. Such action shall be governed by Section 24-4-104, C.R.S.

5.6.9 Upon the laboratory's successful completion of the annual inspection and certification process, the department will issue a certificate. The certificate will include the name and location of the laboratory, the categories the laboratory is certified to perform testing in and the certification period.

5.6.10 The Department will annually publish a list of certified laboratories.

Part 6. Blood Forensic Toxicology – Collection and Testing Requirements

6.1 Blood Specimen Collection

6.1.1 Blood Specimen(s) must be:

6.1.1.1 Collected in the presence of the arresting officer or other responsible person who can authenticate the specimens.

6.1.1.2 Collected and labeled following the instruction provided in the forensic blood collection kit.

6.1.1.3 Collected by venipuncture by a physician, nurse, paramedic, emergency medical technician, medical technologist, or a person who's training and normal duties include collecting blood specimens.

6.1.1.4 Collected only in an appropriate clinical or public safety facility (e.g., hospital, medical clinic, ambulance, police station, fire station or other approved facility). In no event will the collection of blood specimens interfere with the provision of essential medical care to the subject or the ready availability of emergency medical services to the public.

6.1.1.5 Collected using sterile equipment. The skin at the area of puncture must be thoroughly cleansed and disinfected with an aqueous solution of nonvolatile antiseptic. Ethyl alcohol or phenol solutions must not be used as a skin antiseptic.

6.1.1.6 Dispensed or collected directly into two 10ml sterile tubes set to draw a (Nominal 10 ml) volume containing Sodium Fluoride (Nominal 100mg) and Potassium Oxalate (Nominal 20mg) preservative.

6.1.1.7 Properly mixed in accordance with the instructions provided in the forensic blood collection kit.

6.1.1.8 The blood collection tubes must be affixed with a unique identification label that includes the subject name and evidence seal.

6.1.1.9 The specimens must be placed in secured storage until shipped.

6.1.1.10 If shipping is delayed by more than 48-hours, samples must be refrigerated at or below 8 degrees centigrade and not frozen in order to prevent the container(s) from breaking.

6.1.1.11 Whenever possible, specimens should be shipped within 7-days of collection by the law enforcement agency.

6.2 Blood Specimen Testing

6.2.1 One tube of blood must be analyzed for the State's test(s). The State's test(s) must be performed and completed in a reasonable period of time as not to affect the validity of the test(s). Specimens found to be positive on the initial test(s) must be confirmed using a different chemical principle from the initial screening test when available, prior to reporting the results.

6.2.2 In the event that not enough specimen is provided to complete the State's test(s) and the second sample must be used, the laboratory must obtain authorization from the appropriate authority prior to testing.

6.2.3 Any remaining blood specimen must be retained and stored by the certified laboratory at or below 8 degrees Centigrade or frozen in an appropriate container for a period of not less than 12-months from the date of collection unless requested and receipted by a representative of another certified laboratory, acting on behalf of the defendant.

6.2.4 The second blood specimen must be analyzed by a Department certified laboratory when requested by the defendant or defendant's legal counsel. The test(s) must be performed and completed in a reasonable period of time as not to affect the validity of the test(s). Specimens found to be positive on the initial test(s) must be confirmed using a different chemical principle from the initial screening test when available, prior to reporting the results to a court of law.

Part 7. Urine Forensic Toxicology – Collection and Testing Requirements

7.1 Urine Specimen Collection

7.1.1 Urine specimen(s) must be:

7.1.1.1 Collected in the presence of collection personnel who can authenticate the specimen(s).

7.1.1.2 Collected in a clean, sterile container.

7.1.1.3 Affixed with a unique identification label that includes the subject name and evidence seal.

7.1.1.4 The specimens must be placed in secured storage until shipped.

7.1.1.5 If shipping is delayed by more than 48-hours, samples must be refrigerated at or below 8 degrees centigrade in an appropriate container.

7.1.1.6 Whenever possible, specimens should be shipped within 7-days of collection by the law enforcement agency.

7.2 Urine Specimen Testing

7.2.1 The State's test(s) must be performed and completed in a reasonable period of time as not to affect the validity of the test(s). Specimens found to be positive on the initial test(s) must be confirmed using a different chemical principle from the initial screening test when available, prior to reporting the results.

7.2.2 Any remaining urine specimen(s) must be retained by the certified laboratory at or below 8 degrees centigrade in an appropriate container for a period of not less than 12-months unless requested and receipted by a representative from another certified laboratory acting on behalf of the defendant.

7.2.3 Any remaining urine specimen(s) must be analyzed by a Department certified laboratory when requested by the defendant or defendant's legal counsel. The test(s) must be performed and completed in a reasonable period of time as not to affect the validity of the test(s). Specimens found to be positive on the initial test(s) must be confirmed using a different chemical principle from the initial screening test when available, prior to reporting the results to a court of law.

Part 8. Postmortem Forensic Toxicology – Collection and Testing Requirements

8.1 Postmortem Specimen Collection

8.1.1 Collection of specimens from deceased persons conducted per Section 42-4-1304, C.R.S. will be performed by a person whose training and normal duties include the collection of blood or other bodily substances from deceased persons.

8.1.1.1 Any person collecting specimens pursuant to Section 42-4-1304, C.R.S., must be certified by the Department.

8.1.1.2 To become certified, any person collecting specimens pursuant to Section 42-4-1304, C.R.S., will demonstrate in the form and manner required by the Department that they satisfy Rule 8.1.2.

8.1.2 Individuals who collect specimens from deceased persons may be certified by the Department when any of the following requirements are met.

8.1.2.1 A medical provider as defined by Section 12-36-106, C.R.S., licensed to practice medicine in the state of Colorado whose scope of practice and normal duties include the collection of specimens from deceased persons.

8.1.2.1.2 Individuals supervised by a medical provider, as defined in 8.1.2.1, whose scope of practice and normal duties include the collection of specimens from deceased persons.

8.1.2.2 An individual serving as a Colorado county coroner and whose normal duties include the collection of specimens from deceased persons.

8.1.2.2.1 Individuals supervised by a Colorado county coroner, as defined in 8.1.2.2, whose normal duties include the collection of specimens from deceased persons.

8.1.2.3 Emergency medical service providers certified by the Department as defined by Section 25-3.5-203, C.R.S., whose normal duties include the collection of specimens from deceased persons.

8.1.3 No person having custody of the body of the deceased shall perform any internal embalming procedure until a blood and urine specimen to be tested for alcohol, drugs and carbon monoxide concentrations has been taken.

8.1.4 The laboratory must develop and provide detailed guidelines and instructions for the collection of postmortem specimens that include the date and time of collection, the time of the incident and the time of death.

8.1.5 Each specimen should be labeled with the name of the subject from whom the specimens were collected together with other appropriate identification; for example, the medical examiner's case number and/or a unique identification number.

8.1.6 Whenever possible, the amount of specimen collected should be sufficient to allow for analysis of one or more analytes if needed at a later date.

8.2 Postmortem Specimen Testing

8.2.1 Postmortem test(s) must be performed and completed within a reasonable period of time as to not affect the validity of the test(s). Specimens found to be positive on the initial test(s) must be confirmed prior to reporting the results.

8.2.2 Any remaining postmortem specimens must be retained and stored by the certified laboratory at or below 8 degrees centigrade in an appropriate container for a period of not less than 12-months from the date of collection unless requested and receipted by a representative from another certified laboratory for additional testing.

Part 9. DUI and DUID Forensic Toxicology Laboratory Certification Standards

9.1 Personnel

9.1.1 The laboratory must have a Laboratory Director. The Laboratory Director is responsible for the overall operation and administration of the laboratory as well as for assuring compliance with these regulations and the accuracy of the results reported by the laboratory.

9.1.2 The Laboratory Director must meet one of the following qualifications: board certified in clinical pathology by the American Board of Pathology; or certified as a Diplomate by the American Board of Forensic Toxicology (ABFT); or alternatively, have a doctoral degree in one of the natural sciences and at least three years of full-time laboratory experience in forensic toxicology; or a master's degree in one of the natural sciences and at least four years of full-time experience in forensic toxicology; or a bachelor's degree in one of the natural sciences and at least five years full-time experience in forensic toxicology.

9.1.3 The Laboratory Director is ultimately responsible for the supervision of all laboratory operations and personnel and to ensure compliance with the requirements of this rule. The Laboratory Director may delegate supervisory responsibilities to a designee if those responsibilities are designated in writing**.**

9.1.4 The Technical Personnel must have a minimum of an associate degree in a laboratory science or, one year training in an accredited laboratory sciences program and one year documented on-the-job laboratory experience.

9.1.5 The Laboratory Director or designee must ensure policies and procedures to assess the competency of Technical Personnel engaged in testing are established, followed and documented.

9.1.6 Competency assessments must be performed and documented on all new Technical Personnel prior to reporting results; on existing Technical Personnel on an annual basis; and on all Technical Personnel when a method or instrumentation is added or modified by the laboratory prior to reporting subject results. The competency assessments and documentation must be consistent with the laboratory's written training policies and procedures.

9.1.7 The laboratory must maintain documentation of formal education, training, and experience for the Laboratory Director and Technical Personnel.

9.1.8 The laboratory must have a written job description for each position in the laboratory.

9.2 Standard operating procedure manual

9.2.1 The laboratory must have a written procedure manual for the performance of all methods of analytes it reports available for Technical Personnel to follow at all times.

9.2.2 The current Laboratory Director or designee must approve, sign and date each procedure.

9.2.3 The Laboratory Director or designee must approve, initial, and date each change or revision to the procedure.

9.2.4 The laboratory must maintain copies of previous standard operating procedures with effective dates of use for a minimum of 5-years from the date last used.

9.2.5 The Standard Operating Procedure (SOP) manual must include the following criteria and processes for laboratory personnel to follow.

9.2.5.1 Specimen receiving

9.2.5.2 Specimen accessioning

9.2.5.3 Specimen storage

9.2.5.4 Identifying and rejecting unacceptable specimens

9.2.5.5 Recording and reporting discrepancies

9.2.5.6 Security of specimens, aliquots and/or extracts and records

9.2.5.7 Validation of a new or revised method prior to testing specimens to include: accuracy, precision, analytical sensitivity, analytical specificity (interferences), Limit Of Detection (LOD), Limit Of Quantitation (LOQ) and verification of the reportable range

9.2.5.8 Aliquoting specimens to avoid contamination and/or carry-over

9.2.5.9 Sample retention to assure stability for one year

9.2.5.10 Disposal of specimens

9.2.5.11 The theory and principles behind each assay

9.2.5.12 Preparation and identification of reagents, standards, calibrators and controls

9.2.5.13 Special requirements and safety precautions involved in performing assays

9.2.5.14 Frequency and number of control and calibration materials

9.2.5.15 Recording and reporting assay results

9.2.5.16 Protocol and criteria for accepting or rejecting analytical data

9.2.5.17 Procedure to verify the accuracy of the final report

9.2.5.18 Pertinent literature references for each method

9.2.5.19 Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by the Technical Personnel.

9.2.5.20 Acceptability criteria for the results of calibration standards and controls as well as for the comparison between two aliquots or columns.

9.2.5.21 A documented system for reviewing the results of testing calibrators, controls, standards, and subject tests results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results.

9.2.5.22 A documented system for the review, notification and implementation of corrective actions to include, when applicable, contacting the requesting agency.

9.2.5.23 Policies and procedures to follow when specimens are requested for referral and testing by another certified laboratory.

9.3 Proficiency Testing (PT)

9.3.1 The laboratory must have a documented system for timely review and evaluation of all PT results by the Laboratory Director and by all Technical Personnel who participated in the PT event.

9.3.2 The laboratory must maintain a copy of all records and documentation for a minimum of 5 years from the date of the proficiency testing event.

9.4 Quality Assurance and Quality Control

9.4.1 The laboratory must check and document the accuracy of automatic and/or adjustable pipettes and other measuring devices when placed into service and annually thereafter.

9.4.2 The laboratory must clean, maintain, and calibrate, as needed, the analytical balances and in addition, verify the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurements used by the laboratory.

9.4.3 The laboratory must annually verify and document the accuracy of thermometers using a reference thermometer.

9.4.4 The laboratory must record temperatures on all equipment when in use where temperature control is specified in SOP's, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers.

9.4.5 The laboratory must properly label reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date, and the identity of the preparer (when applicable).

9.4.6 The laboratory must avoid mixing different lots of reagents in the same analytical run.

9.4.7 For quantitative analysis, the laboratory must perform and document a calibration curve that has a correlation coefficient of 0.99 or greater using, at a minimum, four calibrators that encompass the reportable range.

9.4.8 If the laboratory uses historical calibration data for an assay, control materials must be included with each batch of specimens tested to verify the validity of the calibration including at or close to the reporting limits. Laboratories may use historical calibration curves only if they have demonstrated and documented the linearity and precision of the curve over time. Calibration must be validated by using control materials with each batch of specimens tested to cover the entire range of the calibration curve.

9.4.9 For qualitative analyses, the laboratory must analyze, at minimum, a negative control and a positive control with each analytical run of samples analyzed.

9.4.10 For quantitative analyses, the laboratory must analyze, at minimum, a negative control and two levels of positive controls that challenge the entire calibration curve.

9.4.11 The laboratory must use control material(s) (when possible) that differs in source, lot number, or concentration from the calibration material used with each analytical run. In instances where the same source must be utilized, separate weighing's or solutions must be used to prepare these controls.

9.4.12 For multi-analyte assays, the laboratory must perform and document calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the analytical run.

9.4.13 The laboratory must analyze at least one control that is made using reference material from an ISO/IEC 17034 accredited manufacturer when available. For quantitative purposes, the control must be within (10% for ethanol and 20% for blood and urine drugs) of the stated assayed value with each analytic run.

9.4.14 The laboratory must analyze an appropriate matrix matched negative and positive control with each analytical run, when available.

9.4.15 The laboratory must analyze calibrators and controls in the same manner as unknowns.

9.4.16 The laboratory must define acceptability criteria for calibration standards and controls for all assays, such that they are within 10% for ethanol and 20% for blood and urine drugs, of the target value.

Note: a slightly wider acceptable value (e.g. +/-25% or +/-30%) for calibrators and controls that approach the Limit Of Quantitation (LOQ) of the assay is permitted.

9.4.17 The laboratory must monitor and document the performance of calibrator and control materials on an ongoing basis to ensure performance does not exceed the laboratory's established criteria of acceptability.

9.4.18 The laboratory must have written criteria to follow when corrective action is required for any unacceptable calibration, control, and standard or instrument performance.

9.4.19 The laboratory must document the corrective actions taken when an unacceptable calibration, control, standard, or other reagent result exceeds the laboratory's criteria of acceptability.

9.4.20 Corrective actions must be documented and reviewed by the Laboratory Director or designee on an ongoing basis to ensure the effectiveness of the actions taken.

9.4.21 The laboratory must maintain records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), Limit Of Detection (LOD), LOQ and verification of the regression model.

9.4.22 Analytical methods must be developed by the laboratory such that screening and confirmation testing can be completed on no more than 5 ml of sample volume.

9.4.23 The analyst must follow the SOP for the tests performed.

9.5 Chain of Custody, Security, and Specimen Retention Facility Space

9.5.1 The laboratory must have a system to document the complete chain of custody of all forensic specimens to include receipt, storage, personnel handling the specimens, external transfers and disposal.

9.5.2 The laboratory must issue instructions to user agencies that include the requirements for specimen types(s), unique identification, and volume.

9.5.3 The laboratory must document the condition of the sample, external package and individual evidence seals.

9.5.4 The laboratory must compare the evidence seals against the corresponding requisition and document any discrepancies. When discrepancies occur, documentation must state how the discrepancy was resolved.

9.5.5 The laboratory must maintain a current list of authorized personnel.

9.5.6 The laboratory must restrict entry into the laboratory only to authorized personnel.

9.5.7 The laboratory must have provisions for securing the laboratory during non-working hours.

9.5.8 The laboratory must secure short and long-term storage areas when not in use.

9.5.9 The laboratory must log in and aliquot specimens in a secure area.

9.5.10 There must be adequate space to perform the analyses in the laboratory.

9.6 Records and Reporting

9.6.1 All instrumentation and analysis records maintained by the testing laboratory must be retained for a period of not less than 5-years.

9.6.2 Prior to reporting results, all specimens that have been identified as positive on an initial screening drug test must be confirmed using a second analytical procedure using a different chemical principle from the initial screening test when available or as applicable.

9.6.3 The laboratory must confirm the identity of an analyte using a different extract of the same specimen than was used for the screening test.

9.6.4 Prior to reporting results, all blood ethanol results must be confirmed using a second GC column where the results from the second column had a significant difference in retention time and a change in elution order of some of the common volatiles from the column utilized in the initial column.

9.6.5 When blood samples are screened for ethanol by head space gas chromatography with flame ionization detection (if applicable), a separate aliquot from the original specimen must be used for confirmation. (e.g. two separate aliquots should be tested for blood alcohol).

9.6.6 For postmortem testing (if applicable), the laboratory must confirm the identity of a drug analyte or alcohol concentration using a second column and a different extract from the same sample, or use a different sample matrix from the same subject when possible.

9.6.7 The laboratory must only report quantitative results that are within the calibration curve.

9.6.8 The laboratory must verify results that are outside the calibration curve in a manner consistent with the laboratory's SOPs.

9.6.9 The laboratory must qualitatively report results below the lowest concentration of calibrator or standard and above the Limit Of Detection (LOD) as a semi-quantitative result. (e.g. less than or greater than X mg/L).

9.6.10 The laboratory must maintain records of testing for at least 5-years to include: accession numbers, specimen type, raw data from the analytical run, controls, subject results, final and/or amended reports, acceptable reference range parameters, identification of Technical Personnel who performed the testing, and date of analysis.

9.6.11 The laboratory's final report must contain the name and location of the laboratory where the testing was performed, name and unique identifier of subject, submitting agency, sample received date, date of report, type of specimen tested, test result, units of measure, and any other information or qualifiers needed for interpretation when applicable to the test method and results being reported, to include any identified and documented discrepancies.

9.6.12 The laboratory must develop an adequate discovery packet that meets the requirements specified in Part 1.5 of these rules and regulations.

9.7 Analytical Process

9.7.1 General Requirements

9.7.1.1 The laboratory must document the conditions of the instruments to include the detector response, tune and validation of new chromatography columns (when applicable).

9.7.1.2 The laboratory must perform and document preventative maintenance as required by the manufacturer.

9.7.1.3 The maintenance records must be readily available to the Technical Personnel.

9.7.1.4 The laboratory must use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available.

9.7.1.5 The laboratory must document the monitoring of the response (area or peak height) of the internal standard to ensure consistency over time of the analytical system.

9.7.1.6 The laboratory must monitor analyses to check for contamination and/or carry-over.

9.7.1.7 The laboratory must have written acceptability criteria for variance between the results when the same analyte is quantified in multiple analyses.

9.7.1.8 The laboratory must evaluate the performance of the instrument after routine and preventative maintenance prior to analyzing subject samples.

9.7.1.9 If the laboratory has written its own software, the laboratory must have documentation that the software's accuracy was verified.

9.7.2 Head Space-Gas Chromatography with Flame Ionization Detection (HS-GC-FID)

9.7.2.1 The laboratory must have established criteria of acceptability not to exceed 10% for variances between the results of the blood ethanol analysis using different aliquots and between different columns.

9.7.3 Gas Chromatography with Mass Spectometery (GC-MS)

9.7.3.1 The laboratory must document the changes of septa as specified in the SOP.

9.7.3.2 The laboratory must document changes and/or replacements of liners as specified in the SOP.

9.7.3.3 The laboratory must have written criteria for an acceptable tune for the mass spectrometer. When the tune is unacceptable, corrective action to include additional maintenance must be documented (if applicable).

9.7.3.4 If the laboratory uses selected ion monitoring, the laboratory must compare ion ratios and retention times between calibrators, controls and samples for identification of an analyte within the same analytical run.

9.7.3.5 If the laboratory uses a library match to qualitatively identify an analyte, the laboratory must compare the relative retention time and mass spectra from a known standard or control run that has been tested on the same instrument before reporting the results.

9.7.4 Immunoassays

9.7.4.1 If the laboratory tests specimens differently from what the manufacturer has approved for the assay, or if the laboratory has modified the test method from the

manufacturer instructions, the laboratory must have documentation of the validation for the modified test method or test system.

9.7.5 Liquid Chromatography with Mass Spectometry or with Tandem Mass Spectometry (LCMS, LCMS/MS)

9.7.5.1 The laboratory must maintain records of the mass spectrometer calibration.

9.7.5.2 The laboratory must confirm the identity of an analyte by LC-MS/MS (screening or quantitation) with at least two transitions in addition to the laboratory's retention time criteria.

9.7.5.3 If the laboratory recycles eluting solvents, it must maintain written acceptability standards for each type of eluting solvent it recycles.

Part 10. Violations and Remedies

10.1 Violations

10.1.1 It is a violation of these rules and regulations to perform EBAT testing without the appropriate certification for the EBAT instrument, operator or instructor.

10.1.2 Violation of these rules and regulations may result in denial, suspension or revocation of certification as described in 10.4.

10.1.3 Generally, a violation will not be cited if:

10.1.3.1 The violation was unavoidable to prevent loss of life, personal injury or severe property damage or there were no feasible alternatives, and provided that proper notification was given to the Department.

10.1.3.2 The violations resulted from matters beyond the control of the facility or laboratory, such as equipment failures that were unavoidable by reasonable quality assurance measures or management controls.

10.2 Complaints

10.2.1 Complaints received by the Department will be investigated to determine if the claim is substantiated or unsubstantiated. Complaints received will be documented and an investigation may include and result in, but is not limited to, the following actions: desk review of documentation requested by the Department from the laboratory, unannounced onsite survey, limitation, suspension, or revocation of the laboratory's certification.

10.3 Right to appeal the denial, suspension or revocation of certification.

10.3.1 Any certified facility, certified laboratory, operator or instructor whose certification is denied, suspended or revoked under these regulations may seek appeal of that determination pursuant to Section 24-4-105, C.R.S.

10.4 Denial, Suspension or Revocation of Certification:

10.4.1 The Department may deny, suspend or revoke the certification of EBAT instrument(s) located in an approved facility, the certification of an instructor, the certification of an operator or the certification of a laboratory for one or more of the following causes:

10.4.1.1 Falsification of data or other deceptive practices including false statements by omission or commission relevant to the certification process.

10.4.1.2 Refusing authorized Department personnel access to the laboratory or facility, or failure to provide requested records to the Department for the purpose of determining compliance with these rules and regulations.

10.4.1.3 Gross incompetence or negligent practice.

10.4.1.4 Willful or repeated violation of any lawful rule, regulation or order of the Department or the Board of Health and its officers.

10.4.1.5 Inadequate space, equipment, personnel or methods utilized for testing.

10.4.1.6 Submission of any test results of another person as those of the subject being evaluated.

10.4.1.7 For a laboratory, failure to successfully participate in proficiency testing.

10.4.1.8 For a laboratory, the receipt of consecutive “Unsatisfactory” evaluations, or achievement of an “Unsatisfactory” score in 2 of any 3 consecutive proficiency testing events.

10.4.1.9 For a laboratory, contact with another laboratory concerning proficiency test results prior to the due date of those results.

10.5 Injunction

10.5.1 The Department may seek an injunction against any entity for failure to comply with these rules and regulations.

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Office of the Attorney General

Tracking number: 2018-00590

Opinion of the Attorney General rendered in connection with the rules adopted by the

Board of Health

on 12/19/2018

5 CCR 1005-2

TESTING FOR ALCOHOL AND OTHER DRUGS

The above-referenced rules were submitted to this office on 12/21/2018 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 27, 2018 13:40:21

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Laboratory Services Division

CCR number

5 CCR 1005-4

Rule title

5 CCR 1005-4 NEWBORN SCREENING AND SECOND NEWBORN SCREENING 1 - eff 02/14/2019

Effective date

02/14/2019

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Laboratory Services Division

NEWBORN SCREENING AND SECOND NEWBORN SCREENING

5 CCR 1005-4

[Publication instruction: update and insert adopted date and effective date. To clearly communicate the header text for TN 2018-00600 and TN 2018-00601 the language for both rule sets is found below.]
Section 1-4 adopted by the Board of Health on December 19, 2018. Effective February 14, 2019.
Section 5 adopted by the Executive Director on December 19, 2018. Effective February 14, 2019.

[Publication instruction: TN 2018-00600 concerns revisions adopted by the Board of Health; TN 2018-00601 concerns rules adopted by the Executive Director. These two tracking numbers were adopted together as HB 18-1006 transferred Executive Director rulemaking authority to the Board of Health. Strike the current rule in its entirety as communicated in TN 2018-00600, insert, after Sections 1 through 4 (adopted by the Board of Health), Section 5 (adopted by the Executive Director). Section 5 text below.]

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SECTION 5: QUALITY CONTROL AND EDUCATION (PROMULGATED BY THE EXECUTIVE DIRECTOR)

5.1 The Laboratory shall have available for review a written quality assurance plan covering testing and reporting initial and second newborn screening specimens.

5.1.1 The written quality assurance plan will include monitoring the positive predictive value of testing.

5.1.1.1 The positive predictive value of testing shall be communicated by the Department to improve the quality of initial and second newborn screening.

5.1.2 The written quality assurance plan will include collecting data on newborns with a screen negative result who are later determined to have a diagnosed condition which was identifiable through screening.

5.2 The Laboratory shall make available educational materials and training concerning initial and second newborn screening specimen collection to all submitting agencies.

5.2.1 The Laboratory shall collect and analyze quality indicators to monitor and inform the newborn screening process including collection and transit of initial newborn screening specimens and unsatisfactory initial newborn screening specimens. The data will be used to implement quality improvement activities.

5.2.1.1 Quality indicators and performance data shall be communicated by the Department to improve the quality of initial and second newborn screening.

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Tracking number: 2018-00601

Opinion of the Attorney General rendered in connection with the rules adopted by the

Executive Director

on 12/19/2018

5 CCR 1005-4

NEWBORN SCREENING AND SECOND NEWBORN SCREENING

The above-referenced rules were submitted to this office on 12/21/2018 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 27, 2018 13:40:53

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Laboratory Services Division

CCR number

5 CCR 1005-4

Rule title

5 CCR 1005-4 NEWBORN SCREENING AND SECOND NEWBORN SCREENING 1 - eff 02/14/2019

Effective date

02/14/2019

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Laboratory Services Division

NEWBORN SCREENING AND SECOND NEWBORN SCREENING

5 CCR 1005-4

[Publication instruction: update and insert adopted date and effective date. To clearly communicate the header text for TN 2018-00600 and TN 2018-00601 the language for both rule sets is found below.]
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SECTION 1: AUTHORITY AND DEFINITIONS

1.1 These rules and regulations are established under the authority contained in Section 25-4-1001 et seq., C.R.S.

1.2 Definitions: The following terms, whenever used in or referred to in these regulations, shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Birthing Facility" means a general hospital or birthing center licensed or certified pursuant to Section 25-1.5-103, C.R.S.

“Department” shall mean the Colorado Department of Public Health and Environment.

“Exceptional circumstances” shall mean circumstances within 364 days after the birth of the child, where the Department, at its sole discretion, may determine that timely collection of a specimen was not feasible, but screening remains appropriate. This includes but is not limited to obtaining specimens for children born outside the United States who relocate to Colorado through the adoption process or a refugee resettlement program.

“Follow-up services” shall mean 1) repeat or confirmatory testing if clinically necessary as determined by the Department, or 2) for newborns that screen positive initially or through repeat or confirmatory testing, referral services to connect newborns to the healthcare system for the purpose of receiving a diagnosis, interventions, or specialty care, as determined by the Department. Follow-up services supported or performed by the Department are intended to facilitate rapid connection of newborns to appropriate care, but are not intended to serve as clinical case management services.

“Initial newborn screening specimen” shall mean, absent exceptional circumstances, a specimen collected from a newborn, between 24 and 48 hours after birth and, to the extent feasible, prior to any blood transfusion.

“Laboratory” shall mean the Colorado Department of Public Health and Environment laboratory.

“Named submitter” shall mean the entity or individual identified on the demographic slip attached to the blood spot card as the submitter of that specimen.

“Newborn” shall mean a child under 28 days of age whose parent(s) or legal guardian(s) have not opted out of newborn blood spot screening. Newborns may be referred to as “neonates.”

“Screen negative” shall mean a result from a screening test that does not indicate the presence of the screened condition.

“Screen positive” shall mean a result from a screening test that indicates some likelihood of the screened condition(s) being present, and therefore requires further investigation or testing of the newborn.

“Second newborn screening specimen” shall mean a specimen collected from a newborn between 8 and 14 days after birth for the purpose of conducting second screening tests.

“Specimen” shall mean any dried blood spots collected, dried, and submitted to the Laboratory for screening.

“Time-critical condition” shall mean a condition identified by the Department that may present with acute symptoms within the first week of life thereby requiring immediate treatment to reduce risk of death or intellectual or other permanent disabilities.

“Time-critical screen positive result” shall mean a positive screening result that suggests a high likelihood of a time-critical condition.

“Time-sensitive condition” shall mean a condition identified by the Department not to be associated with early onset of severe symptoms including death or intellectual or other permanent disabilities.

“Time-sensitive screen positive result” shall mean an initial newborn screening specimen result associated with any risk level for a time-sensitive condition or a moderate risk level for a time-critical condition, thereby allowing time for collection and testing of a second newborn screening specimen.

“Unsatisfactory specimen” shall mean a specimen for which all tiers of testing performed within the Laboratory could not be completed for any reason, such as the quality of the specimen or the amount of specimen provided.

SECTION 2: NEWBORN SCREENING REQUIREMENTS FOR NAMED SUBMITTERS

2.1. Hygienic Collection Conditions

Work areas used to collect specimens will be clean and sanitary. Individuals collecting specimens will follow hygienic practices including handwashing.

2.2 Specimen Collection, Handling, and Submission

2.2.1 Births in birthing facilities: the blood specimens of newborns born in birthing facilities and all other specimens taken in conformity with the law and these regulations will be sent to the Laboratory for testing. Pursuant to Section 25-4-1004(1)(b), C.R.S., the birthing facility where the infant is born shall forward all specimens to the Laboratory.

Pursuant to Section 25-4-1004(2), C.R.S., the birthing facility where the newborn is born shall also be responsible for helping to connect infants who screen positive to follow-up services to include aiding in the collection of additional specimens for unsatisfactory specimens or specimens with equivocal results, as well as collection of additional specimens for resolution of time-sensitive and time-critical screen positive results, as necessary for proper diagnosis.

2.2.1.1 The birthing facility will obtain an initial newborn screening specimen from every newborn born therein.

2.2.1.2 The initial newborn screening specimen shall consist of capillary blood collected by heel puncture or alternate method authorized by the Laboratory, placed directly on special blotter paper furnished by the Laboratory.

The initial newborn screening specimen shall be collected from all newborns at 24 hours of age, but no later than 48 hours of age and always before the newborn is discharged from the birthing facility, unless exceptional circumstances exist.

Heel puncture sampling will occur in a manner that maintains the health and safety of the newborn and individual collecting the specimen; ensure proper labeling and preparation of the specimen for delivery; and allow for accurate test results and proper diagnosis.

All circles shall be saturated with blood from one side of the blotter only. The named submitter will provide, on the attached demographic slip, all information requested by the Laboratory.

The specimens shall be air dried horizontally for three to four hours. After air-drying, specimens shall be forwarded to the Laboratory within 24 hours of collection, by courier or overnight delivery if available. Specimens shall be submitted to the Laboratory in the form and manner required by the Department.

2.2.1.3 If the newborn is to receive a blood transfusion, then the specimen for newborn screening is to be obtained prior to this procedure. If an initial newborn screening specimen is collected after transfusion, the collection form will be marked appropriately to indicate transfusion occurred.

2.2.2 Births outside birthing facilities: the physician, registered midwife, or other health professional attending a birth outside a birthing facility, shall be responsible for the collection and forwarding of the specimen described in 2.2.1.2. In the absence of a health professional, any other person attending the birth, or in the absence of any person so attending, the parent(s) or legal guardian(s) of the newborn, or in the absence of or inability of the newborn's parent(s) or legal guardian(s), the person in charge of the premises where the birth occurred shall be responsible.

2.3. Care Coordination

The named submitter of an initial newborn screening specimen shall forward any newborn screening screen negative or screen positive results produced by the Laboratory pursuant to Rule 4 to the health care provider responsible for the newborn's care within seven days for any screen negative results, within 72 hours for any time-sensitive screen positive results and within 24 hours for any time-critical screen positive results.

2.4 List of Conditions for Newborn Screening

The Laboratory shall conduct screening tests for the following conditions:

2.4.1 Phenylketonuria

2.4.2 Congenital Hypothyroidism

2.4.3 Hemoglobinopathies

2.4.4 Galactosemia

2.4.5 Cystic Fibrosis

2.4.6 Biotinidase Deficiency

2.4.7 Congenital Adrenal Hyperplasia

2.4.8 Medium Chain Acyl-CoA Dehydrogenase Deficiency

2.4.9 Very Long Chain Acyl-CoA Dehydrogenase Deficiency

2.4.10 Long-Chain L-3-Hydroxy Acyl-CoA Dehydrogenase Deficiency

2.4.11 Trifunctional Protein Deficiency

2.4.12 Carnitine Acyl-Carnitine Translocase Deficiency

2.4.13 Short Chain Acyl-CoA Dehydrogenase Deficiency

2.4.14 Carnitine Palmitoyltransferase II Deficiency

2.4.15 Glutaric Acidemia Type 2

2.4.16 Arginosuccinic Acidemia

2.4.17 Citrullinemia

2.4.18 Tyrosinemia

2.5.19 Hypermethionemia

2.4.20 Maple Syrup Urine Disease

2.4.21 Homocystinuria

2.4.22 Isovaleric Acidemia

2.4.23 Glutaric Acidemia Type 1

2.5.24 3-Hydroxy-3-Methylglutaryl-CoA Lyase Deficiency

2.4.25 Multiple Carboxylase Deficiency

2.4.26 3-Methylcrotonyl-CoA Carboxylase Deficiency

2.4.27 3-Methylglutaconic Aciduria

2.4.28 Methylmalonic Acidemias

2.4.29 Propionic Acidemia

2.4.30 Beta-Ketothiolase Deficiency

2.4.31 Carnitine Uptake Defect

2.4.32 Arginase Deficiency

2.4.33 Malonic Acidemia

2.4.34 Carnitine Palmitoyltransferase Deficiency 1a

2.4.35 Severe Combined Immunodeficiency

SECTION 3: SECOND NEWBORN SCREENING REQUIREMENTS FOR NAMED SUBMITTERS

3.1. Hygienic Collection Conditions

Work areas used to collect second newborn screening specimens will be clean and sanitary. Individuals collecting second newborn screening specimens will follow hygienic practices including handwashing.

3.2 Notification, Specimen Collection, Handling and Submission

3.2.1 Notification

The parent(s) or other legal guardian(s) of the newborn shall be advised that a second newborn screening test is required for conditions as specified in Rule 3.2.2.2 and 3.3.

3.2.1.1 Births in birthing facilities: it shall be the responsibility of the birthing facility to advise, verbally and in writing, such as by written information made available from the Department, the parent(s) or other legal guardian(s) of the newborn that it is necessary to have a second newborn screening test performed.

3.2.1.2 Births outside birthing facilities: it shall be the responsibility of the physician, registered midwife, or other health professional attending a birth outside a birthing facility to advise, verbally and in writing, such as by written information made available from the Department, the parent(s) or other legal guardian(s) of the newborn that it is necessary to have a second newborn screening performed.

3.2.2 Collection

3.2.2.1 The attending health care provider shall collect or require the specimen be collected from all newborns at a newborn well child appointment between 8 and 14 days after birth.

The specimen shall consist of capillary blood collected by heel puncture or alternate method authorized by the Laboratory, placed directly on special blotter paper furnished by the Laboratory.

Heel puncture sampling will occur in a manner that maintains the health and safety of the newborn and individual collecting the specimen; ensure proper labeling and preparation of the specimen for delivery; and allow for accurate test results and proper diagnosis.

All circles shall be saturated with blood from one side of the blotter only. The named submitter will provide, on the attached demographic slip, all information requested by the Laboratory.

The specimens shall be air dried horizontally for three to four hours. After air-drying, specimens shall be forwarded to the Laboratory within 24 hours of collection by first class mail, courier, or overnight delivery. Specimens shall be submitted to the Laboratory in the form and manner required by the Department.

3.2.2.2 Section 25-4-1004.5(3)(b)(V), C.R.S. allows exceptions to testing of second newborn screening specimens. Second newborn screening

specimen testing is not required for the conditions identified at 3.3.4, 3.3.5 and 3.3.6 unless: an unsatisfactory specimen was submitted for an initial newborn screening specimen; an abnormal result was obtained on an initial newborn screening specimen from the same newborn; or there is no record of a satisfactory initial newborn screening specimen submission.

3.3 List of Conditions for Second Newborn Screening

The Laboratory shall conduct screening tests for the following conditions:

3.3.1 Phenylketonuria

3.3.2 Congenital Hypothyroidism

3.3.3 Hemoglobinopathies

3.3.4 Galactosemia

3.3.5 Cystic Fibrosis

3.3.6 Biotinidase Deficiency

3.3.7 Congenital Adrenal Hyperplasia

SECTION 4: LABORATORY TESTING, REPORTING AND FOLLOW-UP SERVICES FOR NEWBORN SCREENING AND SECOND NEWBORN SCREENING

4.1 The Laboratory shall operate at least six (6) days per week. Specimen testing will be initiated by the Laboratory on the date of receipt or the next operating day following receipt of the specimen.

Results will be sent to the named submitter for initial newborn screening and for second newborn screening. Results will be reported in a manner and on a timeline consistent with the urgency of intervention.

4.1.1 Reports of screen negative test results will be sent within seven working days.

4.1.2 An attempt to report time-critical screen positive results will be made immediately, but in no case longer than 24 hours. Reporting may occur through the Department or its contractor. Attempts to report time-critical screen positive results will continue for up to 180 days.

4.1.2.1 If a contractor is utilized by the Department, the contractor may receive identifying patient information, protected health information, named submitter information and attending health care provider information to the extent necessary to perform these duties and in the manner authorized by law.

4.1.3 An attempt to report time-sensitive screen positive results will be made immediately, but in no case longer than 72 hours. Reporting may occur through

the Department or its contractor. Attempts to report time-sensitive screen positive results will continue for up to 180 days.

4.1.3.1 If a contractor is utilized by the Department, the contractor may receive identifying patient information, protected health information, named submitter information and attending health care provider information to the extent necessary to perform these duties and in the manner authorized by law.

4.1.4 An attempt to report unsatisfactory specimens or specimens with equivocal results will be made immediately, but in no case longer than 48 hours.

4.2 Follow-up Services

The following rules apply to follow-up services, while recognizing that family participation in the follow-up support and assistance services is voluntary.

4.2.1 Timeframe for initiating services

4.2.1.1 For time-critical screen positive results, follow-up services will be initiated within four hours or the clinically-relevant timeframe authorized by the Department to prevent death or intellectual or other permanent disabilities.

4.2.1.2 For time-sensitive screen positive results, follow-up services will be initiated within a clinically-relevant timeframe to prevent death or intellectual or other permanent disabilities. When required by the Department, follow-up services will begin with repeat or confirmatory testing.

4.2.2 Repeat or confirmatory testing

Repeat or confirmatory testing will occur when clinically necessary as determined by the Department. If, through repeat or confirmatory testing, the newborn screening result is screen negative, follow-up services will be discontinued after communicating the result.

4.2.3 Timeframe for providing referral services

Referrals to specialists will occur in a timely manner so a parent or legal guardian may make a timely decision to respond to a time-critical screen positive result or a time-sensitive screen positive result. All referrals must occur within the first 28 days of age unless, at its discretion, the Department may extend follow-up services beyond 28 days of age when repeat or confirmatory testing, diagnosis, interventions have created necessary delays to the Department's ability to provide referral services or exceptional circumstances exist. In no instance will follow-up services continue beyond 365 days of the child's birth.

4.2.4 If a contractor is utilized by the Department to perform follow-up services, the contractor may receive identifying patient information, protected health information, named submitter information and attending health care provider

information to the extent necessary to perform these duties and in the manner authorized by law.

4.2.5 Monitoring participation in follow-up services

The Department shall monitor:

4.2.5.1 The number of newborns with a screen positive result who opt to not participate in follow-up services;

4.2.5.2 The number of newborns with a screen positive result who receive repeat and confirmatory testing when clinically necessary;

4.2.5.3 The number of newborns with a screen positive result who receive referral services;

4.2.5.4 The number of newborns with a screen positive result who move out of state, withdraw from or do not participate in follow-up services, and;

4.2.5.5 Such other monitoring the Department deems appropriate to monitor the effectiveness of newborn screening, second newborn screening and follow-up services.

4.3 If a contractor is utilized by the Department, the contractor may receive identifying patient information, protected health information, named submitter information and attending health care provider information to the extent necessary to perform these duties and in the manner authorized by law.

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Office of the Attorney General

Tracking number: 2018-00600

Opinion of the Attorney General rendered in connection with the rules adopted by the

Board of Health

on 12/19/2018

5 CCR 1005-4

NEWBORN SCREENING AND SECOND NEWBORN SCREENING

The above-referenced rules were submitted to this office on 12/21/2018 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 27, 2018 13:40:38

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Center for Health and Environmental Data (1006, 1009 Series)

CCR number

5 CCR 1006-1

Rule title

5 CCR 1006-1 VITAL STATISTICS 1 - eff 02/14/2019

Effective date

02/14/2019

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Center for Health and Environmental Data

VITAL STATISTICS

5 CCR 1006-1

[Publication Instruction: Update and insert new adopted and effective date.]

Adopted by the Board of Health on December 19, 2018; effective February 14, 2019.

[Publication Instruction: Delete the current rule in its entirety and replace with the text found below.]

SECTION 1 AUTHORITY AND PURPOSE FOR ESTABLISHING RULES AND REGULATIONS

These regulations are promulgated pursuant to Section 25-2-103, C.R.S. which states that the "State Board of Health shall adopt, promulgate, amend, and repeal such rules and regulations and orders in accordance with the provisions of Section 24-4-103, C.R.S. as are necessary and proper for carrying out the provisions of the article."

The purpose of these regulations is to establish rules governing the administration of Colorado's vital statistics system.

SECTION 2 DEFINITIONS, DESIGNATION OF OFFICES, SUBMISSION, USE, AND DISTRIBUTIONS OF VITAL STATISTICS

SECTION 2.1 Definitions

As used in this regulation, unless the context otherwise requires:

A. "Certificate" means a printed, certified copy of the vital event record.

B. "Legal representative" means an attorney, physician, funeral director, or other authorized agent, as determined by the State Registrar, acting on behalf of the registrant or his family.

C. "Next of kin" means a person's closest living relative or relatives and those who, under Colorado law, have legal authority over the disposition of human remains, see Section 12-54-102(17), C.R.S.

D. "Person with a direct and tangible interest" means the registrant, a member of the registrant's immediate family, as determined by the State Registrar, the registrant's legal guardian or legal custodian, or their respective legal representatives. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right, or for genealogical purposes. The natural parents of adopted children when neither has custody, and commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

E. "Record" means an electronic or paper vital event registered as reported, updated, and stored within the files of the office of the State Registrar of vital statistics and designated offices.

F. "Report" means an electronic or paper document containing information related to a vital event submitted by a person or entity required to submit the information in accordance with this state statute and this regulation for the purpose of registering a vital event.

G. "State Registrar" means the State Registrar of Vital Statistics or their designee.

H. "Vital event" means an event recognized under Colorado law as statistically significant. These

include but are not limited to birth, marriage, civil unions, adoption, dissolution or nullification of marriage, dissolution or nullification of civil unions, parentage determinations, change of name, change of sex, death, and any data related thereto which have been accepted for registration and incorporated into the official records and certificates.

SECTION 2.2 Designation of Additional Offices

A. The State Registrar shall determine whether offices other than the office of the State Registrar and organized local health departments established pursuant to Part 5 or 7 of Article 1 of Title 25 are needed to aid in the efficient administration of the system of vital statistics. Such determination shall be based on an evaluation of the most efficient method to meet the needs of the people of this state with respect to the establishment and operation of the system of vital statistics.

B. The State Registrar shall delegate such duties and responsibilities to such offices as the State Registrar deems necessary to insure the efficient operation of the system of vital statistics. If the State Registrar determines that additional offices are necessary, such offices shall be designated or established by the State Registrar. The duties and responsibilities may be assigned to currently existing offices, or special branch offices of the State Registrar may be established in those areas where they are deemed necessary, or a combination of existing offices and branch offices may be used. The State Registrar shall determine the responsibilities and duties of each office independently.

C. Employees and individuals operating in the state or local offices will comply with the vital statistics law; this rule; and the policies, processes, and procedures directed by the State Registrar, including requirements to attend periodic meetings as required by the State Registrar. As needed, state and local offices may be asked to assess and document performance and costs associated with administration of vital statistics.

SECTION 2.3 Submission, Use and Distribution of Vital Statistics Information

All electronic or paper forms, reports, records, certificates, and data used in the system of vital statistics are the property of the office of the State Registrar of vital statistics, and shall be surrendered to the State Registrar as required by law, submitted and distributed in the form and manner required, prescribed and distributed by the State Registrar, and only used for official purposes, including the reporting vital statistics, or as authorized by statute and this rule. Only software approved by the State Registrar shall be used in the electronic reporting of vital events.

SECTION 2.4 General Requirements for Preparing Certificates

A. Those registering vital events will use the current version of the electronic registration system approved by the State Registrar. The State Registrar, at their discretion, may grant waivers for not using the electronic registration system in unusual circumstances. If a waiver is granted, the report will be submitted on a typewriter with a black ribbon, on a letter-quality printer with black or blue ink, or printed legibly in black, unfading ink.

B. Only those individuals authorized in state statute to register and certify vital event information to the State Registrar can submit a report. All signatures shall be entered in black, unfading ink or an electronically as authorized by Section 24-71-101, C.R.S.

C. Unless otherwise directed by the State Registrar, no report shall be complete and correct and acceptable for registration if it:

1. Does not have the certifier’s name typed or printed legibly under their signature;

2. Does not supply all items of information called for thereon or satisfactorily account for their omission;

3. Contains alterations or erasures;

4. Does not contain handwritten or electronic signature as required;

5. Is marked “copy” or “duplicate”;

6. Is a carbon copy;

7. Contains improper or inconsistent data;

8. Contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease; or,

9. Is not prepared in the form and manner prescribed by state statute, these rules and the State Registrar.

D. Full or short form certified copies of vital records may be made by mechanical, electronic, or other reproductive processes, except that the information contained in the “Information for Medical and Health Use Only” section of the birth certificate shall not be included. When a certified copy is issued, each certification shall be certified as a true copy by the State Registrar, and shall include the date issued, the name of the issuing officer, the State Registrar’s signature or an authorized facsimile thereof, and the seal of the issuing office.

E. When the State Registrar finds evidence that a certificate was registered through misrepresentation or fraud, the State Registrar has the authority to withhold the issuance of a certified copy of such certificate until additional evidence satisfactory to the State Registrar has been obtained or until a court determination of the facts has been made.

SECTION 3 HEIRLOOM CERTIFICATES

Applicants for heirloom birth certificates and heirloom marriage certificates shall pay a fee of $35.00 per copy.

SECTION 4 REGISTRATION OF BIRTH

SECTION 4.1 Sex Designation

The record and certificate may identify the sex designation as female, intersex, or male at the time of birth and may be amended pursuant to Section 5.5 to identify the sex designation as female, intersex, male or “X”.

SECTION 4.2 Delayed Registration of Birth

Any birth registered 1 year or more after the date of birth, constitutes a delayed registration of birth.

A. 1. Any individual eighteen years of age or older or an emancipated minor, born in the state of Colorado whose birth is not registered in this state may request the registration of a delayed report of birth.

2. If an individual is under 18 years of age, the request for registration of a delayed report of birth may be submitted by one of the following in the indicated order of priority:

a. One of the parents of the registrant,

b. The legal guardian of the registrant,

c. The legal custodian of the registrant, or

d. In the absence, inability or refusal of a parent, guardian or legal custodian, any next of kin who is eighteen years of age or older, at least ten years older than the registrant, and has personal knowledge of the facts of live birth.

B. 1. An individual requesting registration of a delayed report of birth must provide a sworn, signed and notarized statement that establishes in the form and manner required by the State Registrar:

a. The full name of the person at the time of live birth;

b. The date of birth and place of live birth;

c. The full name of the mother prior to first marriage;

d. The full name of the father unless parentage needs to be amended pursuant to Section 5.

2. To establish these facts, the requestor must submit the following documentation:

a. One document showing name;

b. Two documents proving birthdate or age (at least one showing actual birthdate);

c. Two documents proving birthplace; and,

d. One document proving parentage.

At least one of the documents identified above must be have been created during the first 10 years of life. One document may be a sworn affidavit that is notarized.

3. The State Registrar may require additional evidence in support of the facts of birth and/or an explanation of why the report of birth was not registered within the required ten days.

C. The State Registrar, or their designee, shall determine the acceptability of all documentary evidence submitted. All documents must be internally consistent. Each document must be verifiable and originate from separate sources and must be in the form of the original record or a duly certified copy thereof or a signed statement from the custodian of the record or document. Documents may include, but are not limited to:

1. Census records;

2. Hospital records;

3. Military records;

4. Social security records;

5. Voter registration records;

6. School records; or

7. Other documents as designated by the State Registrar.

D. The submission and documentation shall be reviewed and upon approval, an abstract will be developed. The abstract will identify each document submitted to support the facts shown on the delayed birth certificate including, the title or description of the document, the date of the original filing of the document being abstracted, and the information regarding the birth facts contained in the document. The abstract will be attached to the delayed certificate of birth. Original documents submitted in support of the delayed birth registration shall be returned to the applicant after review and abstraction.

E. 1. The State Registrar, or their designee, shall, by signature, certify that no prior birth certificate is on file for the person whose birth is to be recorded, that the evidence submitted has been reviewed and abstracted, and that the documentation establishes the facts of birth.

2. Births registered after ten days, but within one year from the date of birth, shall not be marked “delayed.”

F. Requests for delayed certificates which have not been completed within one year from the date of

application may be dismissed at the discretion of the State Registrar. Upon dismissal, the State Registrar shall so advise the applicant and all original documents submitted in support of such registration shall be returned to the applicant

SECTION 5 AMENDING RECORD OR CERTIFICATES

SECTION 5.1 General Requirements for Amending Certificates

A. 1. If the registrant is less than 18 years of age, an application to amend a birth certificate may be made by the following:

a. one of the parents,

b. a legal guardian,

c. the individual responsible for filing the certificate,

d. an attorney acting on behalf of an person authorized under this rule, or

e. an authorized agent, as determined by the State Registrar.

2. If the registrant is 18 years of age or over, an application to amend a birth record must be made by one of the following:

a. the registrant,

b. their attorney, or

c. their authorized agent, as determined by the State Registrar.

3. Unless expressly stated elsewhere in this rule, only a funeral director, coroner, physician, local registrar, health facility, next of kin, or legal representative may request to amend a death record. Applications to amend the medical certification of cause of death shall be made only by the physician or coroner who signed the medical certification, in which case an amended certificate must be filed.

B. Unless otherwise provided in these regulations or in the statute, all other amendments to vital records shall be submitted and documented in the form and manner prescribed by the State Register. The submission will include:

1. The information needed to identify the record, the incorrect item as it is listed on the certificate; and the correct item as it should appear, and;

2. One or more items of documentary evidence which support the alleged facts and were established at least five years prior to the date of application for amendment or within seven years of the date of the event.

C. The State Registrar shall evaluate the evidence submitted in support of any amendment. At the discretion of the State Registrar, the amendment may be rejected if the validity or adequacy of the documentary evidence is questionable, and the applicant advised of the reasons for the action.

D. Once an amendment of an item is made on a vital event record, the item shall not be amended again, except upon determination of good cause by the State Registrar.

E. Amended certificates shall only be amended to the extent necessary to modify the Information included in the report or court decree. The remainder of the information shown on the original certificate shall remain unchanged. The certificate will be identified as “amended” or “delayed” when required by law.

SECTION 5.2 New Certificates of Birth to Amend Parentage (Section 25-2-113, C.R.S.)

A. A new certificate of birth may be issued as to any person born in this state upon receipt of:

1. A request from an individual or, in the case of an individual under the age of eighteen, a request from parent, guardian or legal custodian and:

   a. A certified copy of a court decree issued pursuant to Section 25-2-113, C.R.S., or

   b. A report or certified copy of a decree concerning the adoption, or parentage of such a person from a court of competent jurisdiction outside this state.

   If the surname of the child is not decreed by the court, the request for a new certificate shall specify the surname to be placed on the record.

2. A request from a birth mother and second parent who marry after the birth of a child, a certificate of marriage, and a sworn and notarized statement of parentage signed by the birth parents. If the existing certificate includes the names of both parents, a new record may only be prepared when a determination of parentage is made by a court of competent jurisdiction. A divorce decree that does not decree parentage cannot be used to establish parentage.

3. A request from a birth mother and a second parent if, upon review of the original birth record, the State Registrar determines that the second parent's name may be added pursuant to Section 25-2-112(3), C.R.S. The surname of the child may be specified as part of the acknowledgement of parentage process.

B. A new certificate of birth will not be prepared for an adoption if the court that has decreed the adoption, an adoptive parent, or the adopted person requests that no new certificate be prepared.

C. In addition to the requirements of Section5.1, the requesting party shall provide the information necessary to locate the existing record and such other information necessary to complete the certificate, such as:

1. The name of the child;

2. The date and place of birth as transcribed from the original record;

3. The names and personal particulars of the adoptive parents or of the parents listed on the original birth record, whichever is appropriate;

4. The birth number assigned to the original birth record;

5. The original filing date.

SECTION 5.3 Amendment of Minor Errors on Birth Certificates Within the First Year

Amendment of obvious errors, omissions or transposition of letters in words of common knowledge may be made by the State Registrar within the first year after the date of birth, either upon their or their designee's own observation or query, or upon request of a person with a direct and tangible interest in the certificate, as defined in Section 2.1.D. When such additions or minor amendments are made by the State Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change shall be made on the record in such a way as not to become a part of any certificate issued. The certificate shall not be marked "Amended".

SECTION 5.4 Amendment of Registrant's Given Name(s) on Birth Certificates Within the First Year

Until the registrant's first birthday, given names may be amended upon written request of:

A. Both parents,

B. The mother when no second parent is listed,

C. The father in the case of the death or incapacity of the mother,

D. The mother in the case of the death or incapacity of the father,

E. The legal guardian or legal custodian of the registrant, or

F. A parent in the absence of a second parent.

After one year from the date of birth, if the name was entered incorrectly on the birth certificate, the provisions of Section 5.2 must be followed to amend a given name. To change a given name after one year, a legal change of name order must be submitted from a court of competent jurisdiction.

SECTION 5.5 Amendment of the Sex Designation

Before changing the sex designation on the birth certificate, the State Registrar must:

A. Confirm the registrant is eighteen years of age or older, or an emancipated minor, or, if the registrant is under the age of eighteen, confirm that the person requesting the amendment is a parent on the birth record, a legal guardian, or an attorney or other authorized agent, as determined by the State Registrar.

B. Confirm the name on the birth certificate and the name of the individual for whom the amendment is requested match, or can be linked through the submitted documentation in instances such as where the registrant is changing their name and sex designation at the same time, and

C. 1. Receive: a certified copy of an order of a court of competent jurisdiction changing the sex of the applicant, or

2. a. For a registrant that is an adult, receive from the registrant, in the form and manner prescribed by the State Registrar, a notarized, self-attestation that identifies the requested change to the sex designation.

b. For a registrant that is a minor, receive, in the form and manner prescribed by the State Registrar, a letter from a licensed treating medical or behavioral health provider, which also includes the provider's medical license or certificate number and the issuing U.S. State/Foreign Country of license/certificate, signed under the penalty of perjury, confirming the sex designation on the birth certificate does not accurately reflect the patient's gender identity.

This requirement should not be read to require an individual to undergo any specific surgery, treatment, clinical care or behavioral health care.

3. The State Registrar shall change the sex designation pursuant to a request made under Section 5.5(C)(2) only once during an individual's lifetime. Any further amendment to the sex designation on a birth record or certificate requires a court order pursuant to Section 5.5(C)(1).

SECTION 5.6 OTHER AMENDMENTS TO ANY VITAL EVENT RECORD OR CERTIFICATE

A. All information of a medical nature may be amended only upon receipt of a signed statement from the person(s) responsible for providing such information. The State Registrar may require documentary evidence to substantiate the requested amendment.

B. The State Register may authorize other amendments not expressly stated herein, when such amendments are authorized by statute, do not conflict with the requirements herein, and can be accomplished in the form and manner necessary to maintain the integrity of the vital event record.

SECTION 6 DEATH REGISTRATION AND RECORDS

SECTION 6.1 Acceptance of Incomplete Record

Pursuant to Section 25-2-110, C.R.S., a certificate of death for each death, including a stillborn death, that occurs in Colorado, must be filed with the State Registrar, or as otherwise directed by the State Registrar,

within five days after the death occurs, and prior to final disposition. Pursuant to Section 25-48-109(2), C.R.S., when a death has occurred pursuant to the End of Life Options Act, the cause of death shall be listed as the underlying terminal illness and the death does not constitute grounds for post-mortem inquiry under Section 30-10-606 (1), C.R.S.

If all the information necessary to complete a report of death is not available within the time prescribed for filing the report, the funeral director, or person acting as such, shall register the report with all information that is available. In all cases, the medical certification must be signed by the person responsible for such certification. If the cause of death is unknown, undetermined, or under investigation, this information will be recorded under cause of death in the report.

An amended report of death that provides the information missing from the original certificate, shall be signed and registered directed by the State Registrar within 90-days of the date the death occurred, unless otherwise authorized by the State Registrar. The death certificate shall be marked “Amended.”

SECTION 6.2 Hospital or Institution May Assist in Preparation of Certificate

When a death occurs in a hospital or other institution and the death is not under the jurisdiction of the coroner, the person in charge of such institution, or their designated representative, may initiate the report as follows:

A. By placing the full name of the decedent and the date, time and place of death on the death certificate and obtaining from the attending physician the medical certification of cause of death and the physician’s signature; and,

B. By presenting the partially completed death certificate to the funeral director or person acting as such.

SECTION 6.3 Persons Required to Keep Death Records

Each funeral director shall keep a record containing, at a minimum, the following information about each dead body or fetus the funeral director handles:

A. The date, place, and time of receipt;

B. The date, place, and manner of disposition;

C. If the dead body or fetus is delivered to another funeral director, the date of such delivery and the name and address of the funeral director to whom delivered; and

D. The items required by the certificate of death for those deaths for which the funeral director was required to file the certificate.

SECTION 7 DELAYED REGISTRATION OF DEATH

The registration of a death after the time prescribed by statutes and regulations shall be registered in the form and manner prescribed below:

A. If the attending physician or coroner at the time of death, and the attending funeral director or person who acted as such, are available to complete and sign the certificate of death, it may be completed without additional evidence and filed with the State Registrar. For those certificates filed one year or more after the date of death, the physician or coroner, and the funeral director or person who acted as such, must state in accompanying affidavits that the information on the record is based on records kept in their files.

B. In the absence of the attending physician or coroner and the funeral director or person who acted as such, the report may be filed by the next of kin of the decedent and shall be accompanied by:

    1. A signed and notarized affidavit of the person filing the report affirming the accuracy of the information in the report, and;

2. Two documents that identify the decedent, and the decedent's date and place of death.

In all cases, the State Registrar may require additional documentary evidence to prove the facts of death.

A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

SECTION 8 FINAL DISPOSITION OF A BODY OR DEAD FETUS

SECTION 8.1 Authorization for Final Disposition of the Body

The office designated or established pursuant to Section 25-2-103, C.R.S. in the county where the death occurred shall authorize final disposition of the body in the form and manner prescribed by the State Registrar if:

A. The funeral director, or person acting as such, presents a report of death that is fully and properly completed, includes all medical information, and is signed by the physician or coroner, or

B. The funeral director, or person acting as such, presents a report of death that lists the cause of death as "pending investigation" but which is otherwise fully and properly completed, and is signed by the physician or coroner.

SECTION 8.2 State Anatomical Board

The State Anatomical Board's acceptance of a dead body shall be considered final disposition. In such cases, "Donation" shall be recorded in the report as the type of disposition. If no funeral director, or person acting as such, is responsible for reporting the death of the person whose body is accepted, a State Anatomical Board representative must register the death within 5 days from the date of death and obtain authorization for final disposition of the body as required by Section 25-2-111(1), C.R.S.

SECTION 8.3 Disposition of a Dead Fetus by a Hospital

Disposition by a licensed hospital, including those with a subcontract with a funeral home or crematory, of the remains of a dead fetus may be made without issuance of a final disposition permit but authorization of the parent(s) must be obtained.

SECTION 8.4 Handling of Dead Body

A dead body kept more than twenty-four hours before burial or cremation shall be embalmed or properly refrigerated. If a deceased person had a communicable disease at the time of death, the hospital or the attending physician shall notify the funeral director or person acting as such, and the funeral director or person acting as such shall consult with the local or state health officer concerning disposition of the body, and shall follow the precautions indicated by the health officer.

A dead body shipped by common carrier shall be enclosed in a strong, tightly sealed container which will prevent the leakage of fluids or odor.

SECTION 8.5 Permit to Accompany Remains

A final disposition permit shall accompany the remains to their destination. The funeral director or person acting as such also shall observe requirements of the common carrier pertaining to transportation of dead bodies.

SECTION 8.6 Disinterment and Reinterment

The disinterment permit shall be authorization for the disinterment, transportation and reinterment of the body. The State Registrar shall issue a permit upon proper application.

No dead body or fetus may be disinterred without first obtaining a permit from the State Registrar, unless

A. a coroner is disinterring a body for purposes of examination, and the body will be reinterred within

the boundaries of the original cemetery after examination; or

B. the disinterment is for the purpose moving a body within the boundaries of an established cemetery.

Ashes of a body cremated by authorized means are not considered a dead body for the purposes of this paragraph.

SECTION 9 RECORD PRESERVATION AND RELEASE

SECTION 9.1 Record preservation and destruction

When an authorized reproduction of a vital record has been properly prepared by the State Registrar and when all steps have been taken to insure the continued preservation of the information, the record from which such authorized reproduction was made may be disposed of by the State Registrar. Such record may not be disposed of, however, until the quality of the authorized reproduction has been tested to ensure that acceptable certified copies can be issued, and until a security copy of such document has been placed in a secure location removed from the building where the authorized reproduction is housed.

SECTION 9.2 Disclosure of Records

A. The State Registrar or other custodians of vital records shall not permit inspection of, or disclose information contained in, vital statistics records, or copy or issue a copy of all or part of any such record unless he is satisfied that the applicant has a direct and tangible interest in such record.

B. The State Registrar may permit the use of data from vital statistics records for statistical or research purposes, subject to such conditions as the State Registrar may impose. No data shall be furnished from records for research purposes until the State Registrar has prepared, in writing, the conditions under which the records or data will be used, and received an agreement signed by a responsible agent of the research organization agreeing to conform to such conditions.

C. The State Registrar may disclose data from a vital statistics record to federal, state, county, or municipal agencies of government, or designees of such agencies of government, that request such data in the conduct of their official duties, or any other agency that demonstrates it is acting in the interest of the registrant.

D. The State Registrar may disclose data from vital statistics records to the extent necessary for the treatment, control, investigation, and prevention of diseases and conditions dangerous to the public health. Every effort shall be made to limit disclosure of protected health information or personal identifying information to the minimal amount necessary to accomplish the public health purpose.

E. The State Registrar or local custodian shall not issue a certified copy of a record until a signed application has been received from the applicant. Whenever it shall be deemed necessary to establish an applicant’s right to information from a vital record, the State Registrar or local custodian may also require identification of the applicant or a sworn statement. Other procedures may be established by the State Registrar.

F. Nothing in this Section shall be construed to permit disclosure of information contained in the “Information for Medical and Health Use Only” section of the birth certificate unless specifically authorized by the State Registrar for statistical or research purposes, or if authorized by a court of competent jurisdiction.

SECTION 10 STATISTICAL REPORTS REQUIRED

Spontaneous fetal death means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

Induced termination of pregnancy means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth.

Each spontaneous fetal death of 20 completed weeks gestation or more which occurs in this State shall be reported directly to the State Registrar on the form prescribed and furnished by the State Registrar. The funeral director, or person acting as such, or a licensed hospital, if the dead fetus was delivered and final disposition occurred in a hospital, shall complete and file a Certificate of Fetal Death within five days after delivery.

Spontaneous fetal deaths of less than 20 completed weeks gestation, and each induced termination of pregnancy which occurs in this State, regardless of the length of gestation, shall be reported directly to the State Registrar on the prescribed Report of Spontaneous or Induced Abortion within five days by the person in charge of the institution in which the event occurred. If the induced termination of pregnancy was performed outside an institution, the attending physician or his designee shall prepare and file the report.

Reports of spontaneous fetal deaths of less than 20 completed weeks gestation and all reports of induced termination of pregnancy are to be used only for compilation of statistical reports and are not to be incorporated into the official records of the office of the State Registrar. The State Registrar is authorized to dispose of such reports when all statistical processing of the records has been accomplished.

All reports required under this Section 10 are considered to be vital statistics records subject to the confidentiality provisions of Section 25-2-117 C.R.S. and Section 9.2 of these rules.

SECTION 11 MATCHING OF BIRTH AND DEATH CERTIFICATES

To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the State Registrar shall establish a program to match death certificates with the corresponding birth certificates. This will be done for all deaths occurring in Colorado within the first year of life, at a minimum. Records will be matched for Colorado residents and births occurring in Colorado to the extent possible upon receipt of appropriate records from other states where the deaths occurred.

The date of death, the state where the death occurred, and the death certificate number shall be posted to the birth certificate.

Section 12 SEARCH PROCEDURES TO LOCATE A SECOND BIRTH PARENT

The search shall be conducted by the State Registrar. To maintain confidentiality, the State Registrar shall not divulge the reason for the inquiry to any person except the second birth parent.

Based on information from the birth parent seeking a match as well as information in the State Registrar's sealed file, the State Registrar shall check the following records for a match with the second birth parent:

A. If the second birth parent is presumed dead, death records in those state(s) where the death may have occurred.

B. Colorado motor vehicle records.

C. Birth records in the state where the second birth parent was born.

D. The Index of Marriages and Divorces in the Colorado State Registrar's office and the county clerk's office.

Efforts to locate the second birth parent will occur within 30 days of the initial match between the adult adoptee and seeking birth parent. The State Registrar will await responses to inquiries for at least 60 days. If the second birth parent has not been located within 90 days of the initial match, the State Registrar shall exchange the current identifying information between the adult adoptee and the seeking birth parent. If the second parent is located, they will be advised of the adoptee's request for identifying information. If the birth parent does not consent, the Department of Public Health and Environment shall not exchange current identifying information between the adult adoptee and the seeking birth parent through the voluntary adoption registry.

Section 12.1 Fees

The birth parent seeking the match shall reimburse the Department the full cost of performing the search, including phone charges and fees.

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Office of the Attorney General

Tracking number: 2018-00567

Opinion of the Attorney General rendered in connection with the rules adopted by the

Board of Health

on 12/19/2018

5 CCR 1006-1

VITAL STATISTICS

The above-referenced rules were submitted to this office on 12/21/2018 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 27, 2018 13:40:00

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Prevention Services Division (1009, 1015, 1016 Series)

CCR number

6 CCR 1015-6

Rule title

6 CCR 1015-6 STATE-DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREA DESIGNATION 1 - eff 02/14/2019

Effective date

02/14/2019

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Prevention Services Division

STATE-DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREA DESIGNATION

6 CCR 1015-6

[Publishing instructions: Include adopted and effective date.]

Adopted by the Board of Health on December 19, 2018; effective February 14, 2019.

[Publishing instructions: This rule replaces an emergency rule adopted by the Board of Health on August 15, 2018. TN# 2018-00404. The entire rule text found below was adopted; however, note that the only substantive changes since TN 2018-00404 are inserting "by" in the definition at 1.3(7) and modification to 1.4(1).]

1.1 Purpose

This rule establishes quantitative methods for determining which areas of Colorado have a shortage of health care providers and thus, should receive a state designation as a health professional shortage area. The methodology for substance use disorder designation is based upon:

1) The estimated demand for substance use disorder service encounters within a population defined by a discrete geographic area;

2) The estimated supply of substance use disorder service encounters for the population within a discrete geographic area;

3) The determination of whether supply meets demand within a discrete geographic area; and

4) The designation of geographic areas as substance use disorder health professional shortage areas where the resultant supply falls short of estimated demand for minimally adequate substance use disorder treatment.

1.2 Authority

This regulation is adopted pursuant to the authority in Section 25-1.5-404(1)(a), Colorado Revised Statutes.

1.3 Definitions

1) "Behavioral Health Care Provider," pursuant to Section 25-1.5-502(1.3), C.R.S.,

means the following providers who provide behavioral health care services within their scope of practice:

a) a licensed addiction counselor (LAC),
b) a certified addiction counselor (CAC),
c) a licensed professional counselor (LPC),
d) a licensed clinical social worker (LCSW),
e) a licensed marriage and family therapist (LMFT),
f) a licensed psychologist (Ph.D. or Psy.D.),
g) a licensed physician assistant (PA) with specific training in substance use disorder,
h) an advanced practice nurse (APN) with specific training in substance use disorder, pain management, or psychiatric nursing, or
i) a physician with specific board certification or training in addiction medicine, pain management, or psychiatry.

2) "Behavioral Health Care Services," pursuant to Section 25-1.5-502(1.5), C.R.S., means services for the prevention, diagnosis, and treatment of, and the recovery from, mental health and substance use disorders.

3) "Capacity" means the typical volume of health service encounters a health care professional can produce within the scope of his or her practice and scheduled clinical hours.

4) "Catchment Area" means a discrete geographic area where a preponderance of the civilian noninstitutionalized population within the service area could reasonably expect to access behavioral health services within the service area without excessive travel, when it is adequately resourced.

5) "Census Block Group" means a statistical division of a census tract defined by the United States Census Bureau.

6) "Civilian Noninstitutionalized Population" are all people who live and sleep most of the time within the boundaries of a geographic area but are not housed in a group quarter such as a correctional institution, juvenile facility, military installation, or dormitory.

7) "Colorado Health Systems Directory" means the clinician data system administered by the Colorado Department of Public Health and Environment's Primary Care Office (section 25-1.5-403, C.R.S.) which provides a comprehensive database of all licensed clinicians and health care sites in Colorado.

8) "Encounter" means an instance of direct provider to patient interaction with

the primary purpose of diagnosing, evaluating or treating a patient's substance use disorder.

9) "Minimally Adequate Treatment" means the minimum necessary health care service visits for diagnosis, treatment or recovery needed to address a specific or general medical or behavioral health care service need.

10) "Prevalence" means the proportion of a population who has substance use disorder at some point within the previous year.

11) "Polygon" means a closed, irregular geometric shape on a map surface that defines equivalent road travel distances from a central point within the shape.

12) "Population Centroid" means the geometric center of a group of population points within a geographic shape (*e.g.*, census block group).

13) "State-Designated Health Professional Shortage Area," pursuant to Section 25-1.5-402(11) and Section 25-1.5-502(13), C.R.S., means an area of the state designated by the Primary Care Office in accordance with state-specific methodologies established by the State Board by rule pursuant to Section 25-1.5-404 (1)(a), C.R.S., as experiencing a shortage of health care professionals or behavioral health care providers.

14) "State Designated Substance Use Disorder Health Professional Shortage Area" means a State-Designated Health Professional Shortage Area experiencing a shortage of behavioral health care providers providing behavioral health care services for substance use disorder.

15) "Substance Use Disorder" means mild, moderate, or severe recurrent use of drugs and/or alcohol that causes clinically and functionally significant impairment of individuals. Impairment may include health concerns, disability, risky behavior, social impairment, and failure to perform significant responsibilities at work, school, or with family. The diagnosis may be applied to the abuse of one or more of ten separate classes of drugs including alcohol, caffeine, cannabis, hallucinogens, inhalants, opioids, sedatives, stimulants, tobacco, and other substances. The dependent use of tobacco and caffeine are not a primary focus of this rule.

1.4 Substance Use Disorder Health Professional Shortage Area Determination Method

1) Catchment areas are created for analysis of behavioral health care provider capacity by determining standard road travel distances from the population centroid of each census block group in Colorado using a variable two-step floating catchment area method.

2) The population of each catchment area is the civilian noninstitutionalized population according to the most recent available data from United State Census Bureau at the time of analysis.

3) The estimated burden of substance use disorder within each catchment area is determined by multiplying the civilian noninstitutionalized population in the catchment area (section 1.4(2)) by substance use disorder prevalence according to age and sex. Substance use disorder prevalence is determined using the most recent available data from the National Survey on Drug Use and Health administered by the U.S. Department of Health and Human Services, Substance Use and Mental Health Services Administration.

4) The estimated behavioral health services demand for substance use disorder in each catchment area is determined by multiplying the estimated burden of substance use disorder (section 1.4(3)) by the number of minimally adequate treatments as reported in the National Comorbidity Survey – Replication administered by the U.S. Department of Health and Human Services, Substance Use and Mental Health Services Administration.

5) The estimated substance use disorder services supply in each catchment area is determined by evaluating a list of behavioral health care providers with a practice address within the catchment area and the behavioral health care providers' encounter productivity. The list of behavioral health care providers is derived from the most recent available data reported in the Colorado Health Systems Directory administered by the Colorado Department of Public Health and Environment's Primary Care Office. Each behavioral health care provider is assigned a behavioral health service 12 month productivity rate. The sum of encounter productivity for all practicing behavioral health care providers in the catchment area is the total estimated substance use disorder services supply in the catchment area.

6) Designation of a census block group as a State Designated Substance Use Disorder Health Professional Shortage Area occurs when the supply of behavioral health service encounters falls below the per capita demand for minimally adequate treatment for those who experience substance use disorder within the catchment area.

7) Current designation status of each region of the state will be posted at least annually on or about July 1 on a publicly accessible website.

1.5 Data Sources

1) If current data from the sources cited above are unavailable, the department may rely upon a comparable data sources.

2) To the extent available, reliable and practicable, the department will rely upon data collected within one year prior to analysis.

3) Behavioral health care providers practice characteristics data may be derived from direct survey methods, claims analysis, peer reviewed and validated workforce research tools, and statistical methods.

1.6 Review

Shortage designation status will be reviewed in 2018 and at least every three years thereafter. More frequent review may be performed where data is available and analytical resources are available. Designation status of each area will remain effective for 36 months from the date of publication or when replaced by a more recent analysis.

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Opinion of the Attorney General rendered in connection with the rules adopted by the

Board of Health

on 12/19/2018

6 CCR 1015-6

STATE-DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREA DESIGNATION

The above-referenced rules were submitted to this office on 12/21/2018 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 27, 2018 13:39:44

Cynthia H. Coffman
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by Glenn E. Roper
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Labor Standards and Statistics (Includes 1103 Series)

CCR number

7 CCR 1103-8

Rule title

7 CCR 1103-8 Wage and Hour Direct Investigation Rules 1 - eff 02/14/2019

Effective date

02/14/2019

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

WAGE & HOUR DIRECT INVESTIGATIONS RULES

7 CCR 1103-8

Rule 1. Statement of Purpose and Authority

1.1 The general purpose of these Wage and Hour Direct Investigation Rules is to implement the Division of Labor Standards and Statistics's authority to conduct direct investigations of potential violations of Colorado wage and hour law. These rules are promulgated pursuant to the division's authority in C.R.S. §§ 8-1-103(3), 8-1-107(2), 8-1-111, 8-1-116, 8-1-117, 8-4-111(1)(a), and 8-6-107.

1.2 If any provision of these rules or their application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of the rules shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of these rules are severable.

1.3 The director of the Division of Labor Standards and Statistics in the Department of Labor and Employment has the authority to enforce Colorado wage and hour law and these rules.

1.4 Colo. Const. art. XVIII, § 15 (2018); Title 8, Articles 1, 4, and 6 of the Colorado Revised Statutes (2018); 7 CCR 1103-1 (2018); and 7 CCR 1103-7 (2018) are hereby incorporated by reference into this rule. Such incorporation excludes later amendments to or editions of the constitution, statutes, and rules. They are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Suite 600, Denver CO 80202. Copies may be obtained from the Division of Labor Standards & Statistics at a reasonable charge. They can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of them at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing them.

Rule 2. Definitions and Clarifications

2.1 "Division" means the Division of Labor Standards and Statistics.

2.2 "Employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed. For the purpose of these rules, an individual primarily free from control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an "employee".

2.3 "Employer" means every person, firm, partnership, association, corporation, migratory field labor contractor or crew leader, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above mentioned classes, employing any person in Colorado; except that the provisions of these rules shall not apply to the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

2.4 "Employer's correct address" includes, but is not limited to, the employer's email address, the employer's address on file with the Colorado Secretary of State, and the address of the employer's registered agent on file with the Colorado Secretary of State.

2.5 "Fine" means any monetary amount assessed against an employer and payable to the division.

2.6 "Notice of Investigation" means a notice to an employer which identifies potential violations under investigation and includes an initial request for documentation and records.

2.7 "Notice of Investigation Termination" means a notice to an employer that no further action is contemplated by the division regarding the potential violations described in the Notice of Investigation.

2.8 "Place of employment" is defined at C.R.S. § 8-1-101(12).

2.9 "Wage and hour law" includes Colo. Const. art. XVIII, § 15; C.R.S. § 8-4-101 et seq.; C.R.S. § 8-6-101 et. seq.; 7 CCR 1103-1 et seq.; and 7 CCR 1103-7 et seq.

Rule 3. <u>Direct Investigations</u>

3.1 The division may initiate and conduct a direct investigation of an employer for potential violations of wage and hour law if:

3.1.1 It receives a credible allegation or suggestion that the employer is violating or has violated Colorado wage and hour law with regard to multiple workers; or

3.1.2 The employer or its workers are in an industry, occupation, or geographic area in which employees or workers are relatively low paid and unskilled, or commonly misclassified; or

3.1.3 The employer or its workers are in an industry, occupation, or geographic area in which there has been a history of wage theft or unpaid wages.

3.2 The division may investigate potential violations of wage and hour law regarding all of the employer's employees, all of its contractors, or any subset or combination thereof.

3.3 The direct investigation shall be limited to potential violations that occurred no more than two years prior to the commencement of the investigation, except that the direct investigation may include potential violations that occurred no more than three years prior to the commencement of the investigation if the division receives a credible allegation or suggestion that the employer willfully violated Colorado wage and hour law.

3.4 For purposes of determining the credibility of an allegation or suggestion related to Sections 3.1.1 and 3.3, a number of factors may be relevant, including but not limited to:

3.4.1 The reasonableness or unreasonableness of the allegation or suggestion;

3.4.2 The allegation or suggestion's consistency or lack of consistency;

3.4.3 Contradiction or support of the allegation or suggestion by other evidence;

3.4.4 The person's knowledge, source of knowledge, and ability to observe;

3.4.5 The strength of the person's memory;

3.4.6 The person's motive;

3.4.7 The person's state of mind;

3.4.8 The person's demeanor and manner while making the allegation or suggestion;

3.4.9 Any relationship the person may have to either side of the case; and

3.4.10 How the person might be affected by the outcome of an investigation.

3.5 The division will not investigate potential violations that have already been or are currently being investigated or adjudicated by a court or by the United States Department of Labor.

3.6 The division shall initiate the direct investigation by sending a Notice of Investigation to the employer at the employer's correct address.

3.7 The employer must submit a complete response to the Notice of Investigation within 14 calendar days after it was sent. The division may extend the deadline upon a showing by the employer of good cause.

3.8 Investigatory methods utilized by the division may include, but are not limited to:

3.8.1 Document requests;

3.8.2 Interviews of the employer, employees, workers, contractors, and other individuals;

3.8.3 Requests for written statements;

3.8.4 Information gathering, fact-finding, and reviews of written submissions;

3.8.5 Site visits; and

3.8.6 Any other lawful technique that enables the division to assess the employer's compliance with wage and hour law.

3.9 The employer may designate an authorized representative to represent it during the investigation.

3.10 Any employer under investigation shall permit the director or his or her designees to enter and inspect the place of employment and all relevant documents therein and conduct interviews with relevant individuals.

3.10.1 If the division conducts a site visit, it shall take reasonable efforts to do so during the employer's business hours, and to minimize disruption to the employer's business operations.

3.11 If an employer refuses to produce requested records and documents, or refuses to admit the director or his or her designee to any place of employment, the division may assess upon the employer fines in accordance with C.R.S. §§ 8-1-117(2), 8-4-103(4.5), and 8-4-113(b).

3.12 The employer is responsible for ensuring the division has its current contact information.

Rule 4. <u>Preliminary Findings</u>

4.1 Prior to the issuance of a Citation or Notice of Assessment to an employer for unpaid wages or penalties, the division shall issue to the employer a Notice of Preliminary Findings. The Notice of Preliminary Findings will:

4.1.1 Identify the employees to whom wages appear to be owed, based on the reasonable inferences drawn from the investigation;

4.1.2 Identify the amount of wages that appear to be owed to each named employee and the basis of the apparent violations; and

4.1.3 Afford the employer at least fourteen calendar days after it was sent to respond with information contesting some or all of the preliminary findings, proof of payment of some or all of the identified wages that appear to be owed, or some combination of both.

4.2 The division need not issue a Notice of Preliminary Findings prior to issuing a Citation solely for fines assessed pursuant to § 3.11 and owed to the division.

4.3 The Notice of Preliminary Findings will constitute a written demand for the payment of the wages per C.R.S. § 8-4-101(15), and will be treated as such pursuant to C.R.S. § 8-4-109(3).

Rule 5. <u>Determination</u>

5.1 Upon completing the investigation, the division may issue a determination detailing its conclusions.

5.1.1 The division may issue a Citation against an employer that the division determines by a preponderance of evidence has violated wage and hour law.

5.1.2 The division may issue to the employer one or more Notices of Assessment for each employee who the division determines by a preponderance of the evidence has suffered a violation of wage and hour law and who is owed wages or penalties.

5.1.3 If a Notice of Assessment names an employee who is owed wages or penalties, the division will make all reasonable efforts to send a copy of the Citation and that Notice of Assessment to the named employee.

5.1.4 The division may issue to the employer a Notice of Assessment for any fines assessed upon the employer.

5.1.5 The Citation and Notice of Assessment will identify the violation, any wages owed to the employee, any penalties owed to the employee pursuant to C.R.S. § 8-4-109(3), and any fines owed to the division.

(1) If the division concludes that wages are owed to the employee, but cannot calculate the precise amount of wages due, then the division may award a reasonable estimate of wages due.

5.1.6 To encourage compliance by the employer, if the employer pays the employee all wages and compensation owed within fourteen days after a Citation and Notice of Assessment is sent to the employer, the division may reduce by up to fifty percent any penalties imposed pursuant to C.R.S. § 8-4-109, and may waive or reduce any fines imposed.

5.1.7 If the division does not determine that an employee suffered a violation of Colorado wage and hour law, the division may issue a Notice of Investigation Termination.

5.2 The division shall send the determination via U.S. postal mail, electronic means, or personal delivery on the date the determination is issued.

5.3 The appeal deadline is calculated from the date the division's determination is originally issued and sent to the employer.

5.4 If any copies of the determination are sent to the employer after the date of its issuance, those copies are only courtesy copies and do not change the thirty-five day appeal and termination deadlines.

Rule 6. <u>Appeal</u>

6.1 The employer may appeal a Citation and one or more Notices of Assessment.

6.1.1 A valid appeal is a written statement that is timely filed with the division, explains the clear error in the determination that is the basis for the appeal, and has been signed by the employer or the employer's authorized representative. The employer is encouraged to use the division's appeal form.

6.1.2 No appeal will be heard and no hearing will be held unless the appeal is received by the division within thirty-five calendar days of the date the determination is sent. It is the responsibility of the employer filing the appeal to ensure the appeal is received by the division within the thirty-five day filing deadline.

6.1.3 Upon receipt of the appeal, the division will send a copy of the record of its investigation to the employer via U.S. postal mail, electronic means, or personal delivery. All evidence submitted to the division as part of the investigation is part of the record on appeal and need not be resubmitted.

6.2 Parties to the appeal will be the employer and the division.

6.3 An employer that timely files a valid appeal of the division's determination will be afforded an administrative appeal hearing before a division hearing officer. Parties may appear by telephone.

6.4 Consistent with C.R.S. § 8-4-111.5, the hearing officer shall have the power and authority to call, preside at, and conduct hearings. The hearing officer has the power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed determination.

6.4.1 The provisions of C.R.S. § 8-4-111.5(2)(b) and (c), and of (3)(b), are applicable to an appeal filed pursuant to § 6.1 of these rules.

6.5 The parties may submit new evidence to the hearing officer in accordance with deadlines imposed by the division.

6.5.1 New evidence must be sent to all other parties to the appeal. Failure to send all new evidence to all other parties to the appeal may result in the evidence being excluded from the record.

6.6 If the employer that filed the appeal does not participate in the hearing, the appeal may be dismissed.

6.7 The division shall keep a full and complete record of all proceedings in connection with the investigation. All testimony at a hearing must be recorded by the division but need not be transcribed unless the hearing officer's decision is appealed.

6.8 The hearing officer may, upon the application of any party or on his or her own motion, convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters that may simplify further proceedings.

6.9 The hearing officer shall make a decision on each relevant issue raised, including findings of fact, conclusions of law, and an order. The hearing officer will decide whether the division's determination is based on a clear error of fact or law.

6.10 The hearing officer shall not engage in ex parte communication with any party to an appeal.

6.11 The hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106. The division shall promptly provide all parties with a copy of the hearing officer's decision via U.S. postal mail, electronic means, or personal delivery.

6.12 Any party to the administrative proceeding may appeal the hearing officer's decision only by commencing an action for judicial review in the district court of competent jurisdiction within thirty-five days after the date of mailing of the decision by the division. The hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106. Judicial review is limited to appeal briefs and the record designated on appeal.

Rule 7. Certified Copy

7.1 The division shall issue a certified copy of the division's final decision in accordance with 7 CCR 1103-7 § 2.4.

Rule 8. Preservation of Actions

8.1 No Citation, Notice of Assessment, or Notice of Investigation Termination issued by the division is intended to preclude an employee from initiating or pursuing a civil action or other administrative proceeding. However, evidence obtained by the division in the course of an investigation may be considered in determining whether an employee has initiated a wage complaint pursuant to 7 CCR 1103-7 § 4.2.1.

Rule 9. Discrimination Prohibited

9.1 The provisions of C.R.S. § 8-4-120 apply to employees who assist the division's investigations under this rule.

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Office of the Attorney General

Tracking number: 2018-00633

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Labor Standards and Statistics (Includes 1103 Series)

on 12/21/2018

7 CCR 1103-8

Wage and Hour Direct Investigation Rules

The above-referenced rules were submitted to this office on 12/21/2018 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.

January 03, 2019 16:26:28

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Agriculture

Agency

State Board of Stock Inspection Commissioners

CCR number

8 CCR 1205-3

Rule title

8 CCR 1205-3 RULES PERTAINING TO THE ANNUAL TRANSPORTATION PERMIT FOR CATTLE OR ALTERNATIVE LIVESTOCK 1 - eff 02/15/2019

Effective date

02/15/2019

DEPARTMENT OF AGRICULTURE
STATE BOARD OF STOCK INSPECTION COMMISSIONERS

RULES PERTAINING TO THE ANNUAL TRANSPORTATION PERMIT FOR CATTLE

8 CCR 1205-3

Part 1. Requirements of a valid annual transportation permit

A valid annual transportation permit shall be issued on a form prescribed by the Colorado State Board of Stock Inspection Commissioners. In order to be valid, the following information shall be contained on the form:

1.1. A complete description of the animal including color, breed, sex, and brands.

1.2. A legible expiration date which is one year from the date of issue. The brand inspection seal shall be placed over the expiration date.

Part 2. Fees

2.1. The annual transportation permit fee for show cattle shall be $ 20.00 per head.

2.2. The annual transportation permit fee for rodeo cattle which are permanently branded with the owner's Colorado recorded brand shall be $3.00 per head.

Part 3. Statements of Basis and Purpose

3.1. Adopted July 8, 1998 – Effective August 30, 1998

Statutory Authority

These rules are adopted pursuant to § 35-41-101(3), C.R.S. (1997) and § 35-53-130, HB 98-1101.

The purposes of these rules are to establish the annual transportation permit fee and to define the requirements of an annual transportation permit.

3.2. Adopted December 20, 2018 – Effective February 15, 2019

Statutory Authority

These rules are proposed for adoption by the State Board of Stock Inspection Commissioners pursuant to their authority under §§ 35-41-101 (3) and 35-53-130, C.R.S.

Purpose

The purpose of this rulemaking is to remove alternative livestock from the rule; update fees; and update language.

Factual and Policy Issues

Since this rule was initially adopted in 1998, the handling of alternative livestock has changed dramatically because of the concern regarding chronic wasting disease (CWD). As a matter of practice,

alternative livestock cannot travel without authorization from the State Veterinarians Office working in conjunction with Colorado Parks and Wildlife (CPW) and with brand inspectors. A blanket travel authorization that includes alternative livestock is inappropriate.

The proposed fee changes mirror the fee changes in 8 CCR 1205-6 “State Board of Stock Inspection Fees” adopted on October 15, 2014, effective January 1, 2015. Updating the fees will bring this rule into conformity with what has been in effect and collected since January 1, 2015.

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Tracking number: 2018-00632

Opinion of the Attorney General rendered in connection with the rules adopted by the

State Board of Stock Inspection Commissioners

on 12/20/2018

8 CCR 1205-3

RULES PERTAINING TO THE ANNUAL TRANSPORTATION PERMIT FOR CATTLE OR ALTERNATIVE LIVESTOCK

The above-referenced rules were submitted to this office on 12/20/2018 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.

January 02, 2019 14:35:21

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Emergency Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-2

Rule title

1 CCR 201-2 INCOME TAX 1 - eff 12/18/2018

Effective date

12/18/2018

DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

INCOME TAX

1 CCR 201-2

Regulation 39-22-109. Colorado-Source Income.

(1) **General Rule.** A Nonresident who derives income from sources in Colorado and who has Nexus must file a Colorado income tax return and pay Colorado income tax on Colorado net taxable income. Deferred recognition of any income from sources in Colorado remains Colorado-source income when such income is finally recognized. A Nonresident's Colorado income tax liability is calculated by first calculating the Nonresident's Colorado income tax as if the Nonresident was a full year Colorado resident and multiplying such tentative tax by the ratio of the Nonresident's Colorado modified federal adjusted gross income to the Nonresident's total modified federal adjusted gross income. See 1 CCR 201-2, Regulation 39-22-110 for rules governing modifications to income.

(2) **Definitions.** The following terms have the meanings set forth below unless the context of the regulation indicates otherwise:

(a) 'Nonresident' means an individual who is neither a domiciliary of Colorado nor a statutory resident of Colorado as set forth in § 39-22-103(8), C.R.S. and Department Regulation 39-22-103(8)(a).

(b) 'Business' means a business, trade, profession or occupation, including the activities of a nonprofit Pass-through entity that has unrelated business taxable income for federal income tax purposes. Business does not include activities of a Nonresident whose only activity in Colorado is buying and selling intangible property on his or her own account (See § 39-22-109(2)(a)(V), C.R.S.).

(c) 'Entertainer' means an individual who receives compensation to act, entertain, or inform (e.g., speaker or lecturer) at one or more discrete events in Colorado. This includes, but is not limited to, actors, bands, singers, orchestras, dancers, comedians, speakers, lecturers and similar performers.

(d) Member' means a partner, member, or shareholder of a Pass-through entity as defined in subparagraph (2)(e), below.

(e) 'Pass-through entity' means a partnership, limited partnership, limited liability partnership, a limited liability company that is treated as a partnership for Colorado tax purposes or a trust that is not taxed at the entity level (e.g., a grantor-type trust).

(f) Nexus' means the Nonresident's presence in Colorado, whether by being personally present in Colorado or being present in Colorado through agents or representatives, including through membership in a Pass-through entity or in a series of Pass-through entities described in paragraph (3)(c), below, for the purpose of direct or indirect financial profit, gain, benefit or advantage. Once nexus has been established, that nexus will continue for as long as the person continues to receive income from sources in Colorado that are related to such presence.

(3) **Common Types of Income Derived from Sources Within Colorado.** A Nonresident's income derived from a source within Colorado is subject to Colorado income tax. The source of income refers to the location where income is earned and not to the location of the payor or to the residency of the taxpayer. § 39-22-109, C.R.S. lists several types of income that are conclusively presumed to be Colorado-source income, but it is not an exclusive list of Colorado-source income. Colorado-source income includes any income derived from sources within Colorado including, but not limited to:

(a) *Ownership of Real or Tangible Personal Property.* Income derived from any ownership interest in real or tangible personal property located in Colorado (e.g., leases and licenses) is Colorado-source income, regardless of whether the Nonresident carries on a Business within Colorado and regardless of the place where the sale of such property is consummated. The following are examples of Colorado-source income.

(i) Rent and royalty income earned from real or tangible personal property located in Colorado is Colorado-source income.

(ii) Any gain or loss realized from the sale of real property located in Colorado is Colorado-source income. Deferred recognition of a gain (or loss) from the sale or exchange of real property located in Colorado remains Colorado-source income when such gain (or loss) is finally recognized. These types of transactions include installment sales, exchanges or transfers.

(A) *Example*: A Nonresident owns real property in Colorado and makes an I.R.C § 1031 exchange of the Colorado property for real property located in Texas. At the time of the exchange, the property had appreciated in value. In the following year, the Nonresident sells the Texas property. That portion of the gain attributable to the appreciation in value of the Colorado property is Colorado-source income even though the income was not recognized until the Texas property was sold. The Nonresident continues to have Colorado Nexus as long as the gain is deferred.

(iii) With respect to tangible personal property that appreciates in value while located in Colorado but is removed from Colorado for purposes of selling such property, the gain from the sale of such property is Colorado-source income.

(A) *Example*: A Nonresident owns a valuable painting that is displayed in her vacation home in Colorado. The painting significantly appreciates in value while located in Colorado. The Nonresident moves the painting to Nevada and immediately sells the painting for significant gain. The gain is Colorado-source income.

(iv) Interest income paid on a tax lien certificate for property located in Colorado is Colorado-source income. Any other interest income derived from the ownership of real or tangible personal property located in Colorado is also Colorado-source income. However, interest income from a loan secured by real or tangible property located in Colorado is not Colorado-source income.

(v) Interest income from an installment sale of real or tangible personal property located in Colorado is Colorado-source income.

(b) *Business Income.* Income earned by, credited to, derived from, accumulated for, or otherwise effectively attributable to (referred to herein as "derived from") a Business carried on in Colorado is Colorado-source income. A Nonresident carries on a Business in Colorado if the Nonresident (a) is present in Colorado for Business or (b) directly or

indirectly (e.g., through employees, representatives, or as a member of a pass-through entity) maintains, operates or shares in the maintaining or operating of any place in Colorado where Business affairs are conducted. When a Business is carried on within and outside Colorado, only such income that is fairly and equitably attributable to the Business carried on in Colorado is Colorado-source income. The following is a non-exhaustive list of common types of Business income and rules for sourcing such income.

(i) *Wage Income*. Income earned as an employee for work performed in Colorado is Colorado-source income, unless a more specific rule below applies. "Performed in Colorado" means the employee is physically in Colorado when the employee performs the work.

(A) *Telecommuting*. A Nonresident employee who telecommutes from a location outside of Colorado is not working in Colorado and the employee's income from such work is not Colorado-source income.

(B) *Work Days*. An employee's income is apportioned to Colorado based on the number of days the employee works ("Work Day") in Colorado. A Work Day in Colorado means a day in which the majority of the employee's work time for that day is performed in Colorado. Travel time to Colorado is included in calculating the Colorado Work Day hours, but travel time departing from Colorado is not included calculating the Colorado Work Day hours. The denominator of this ratio is the total number of Work Days the employee works in the year. A day is not a Work Day if the work done on such day is *de minimis.* See example (II) below.

(I) *Example*. Nonresident flies from California to Colorado on Tuesday but does not perform any other Business-related work in either California or Colorado on Tuesday. Nonresident attends a 2 hour Business meeting on Wednesday, returns to California Wednesday afternoon, and works 1 hour in the California office. Travel time to Colorado on Tuesday is considered a Work Day in Colorado because no other work was performed on Tuesday. Wednesday is not a Colorado Work Day because the majority of the work hours are allocated to California (flight to California and office work in California).

(II) *Example.* Nonresident prolongs his work trip to Colorado through the weekend. While in Colorado on the weekend vacation, the Nonresident checks his or her email and responds to a few non-substantive emails. Such a day is neither a Colorado Work Day nor a Work Day anywhere.

(ii) *Independent Contractor.* Business income of an independent contractor is sourced depending on whether the income is from a purely personal service or is from other than purely personal service. Purely personal services consist of services performed by an individual independent contractor with only incidental contributions from either other individuals or property. Such services include, but are not limited to, legal, accounting, architecture, or other professional services.

(A) *Purely personal service income.* If an independent contractor's Business income is earned by performing purely personal services and the purely personal services are performed both within and outside Colorado, the Nonresident shall apportion such income in the ratio of the number of hours the individual performed such services in Colorado to the total

number of hours the individual performed such services in the year. But see paragraph (4)(b)(iii) and (iv) if the Nonresident is paid on commission or contingency for purely personal services. Each discrete Business activity shall be separately apportioned. See paragraph (4)(b)(ii)(3) for a discussion of discrete Business activities.

(I) Hours worked includes non-billable hours.

(II) Nonresidents independent contractors who work on a single job for entire days may utilize the Work Day rule described in paragraph (3)(b)(i)(B) of this regulation.

(III) *Example*. An expert witness testifies in trials conducted in Colorado during the year. The total hours the expert witness spent working in Colorado was 26. Therefore, the expert witness must apportion his or her income in the ratio of 26 hours in Colorado over the total number of work hours performed in that year.

(B) *Other than purely personal services income*. If an independent contractor's Business income is earned from activities other than the performance of purely personal services, then the Business income is apportioned under the apportionment rules for corporations set forth in § 39-22-303.6, C.R.S. and the regulations thereunder.

(I) *Example*. A Nonresident independent contractor provides oil and gas consulting services and travels to Colorado to provide consultation services to an oil and gas exploration company. Consultant hires Company B to perform laboratory analysis, the results of which are used by consultant to provide consulting services to the exploration company. Consultant is not performing purely personal services because the personal services of Company B are not incidental in value to consultant's services. Consultant uses the apportionment rules set forth in § 39-22-303.6(6), C.R.S and the regulations thereunder.

(II) *Example*. Nonresident independent contractor provides interior design consulting services to homeowners. Designer also sells a substantial amount of tangible personal property to Colorado homeowners. Designer is not performing purely personal services in Colorado because he or she makes sales of tangible personal property that are not incidental in value. The designer will apportion Business income using § 39-22-303.6(5), C.R.S and the regulations thereunder.

(C) *Discrete Business activities*. If the Nonresident independent contractor carries on two or more discrete Business activities in Colorado during the year, then the Nonresident independent contractor shall separately apportion the income derived from each activity, unless the income from each cannot be separately determined. The apportionment for each discrete Business activity, if both are purely personal services, is calculated based on the ratio of the number hours the individual performed such services in Colorado to the total number of hours the individual performed such purely personal services everywhere in the tax year. If the Nonresident independent contractor carries on more than one discrete Business activity, and at least one is a purely personal service

while at least another is not a purely personal service, the Nonresident independent contractor may choose to either apportion his or her income under 1) § 39-22-303.6, C.R.S and the regulations thereunder or 2) may separately calculate and apportion his or her income on the basis of work hours.

(I) *Example*. An independent contractor provides purely personal services in the form of consulting services for two separate companies in the same year. Contractor is paid on an hourly basis and performs these services in and outside Colorado for the first company and performs all consulting services outside Colorado for the second company. Each consulting job is a discrete income producing activity and, in the absence of records demonstrating a more accurate apportionment methodology, the Department will presume that the income for work performed for the first company should be apportioned based on the ratio of the number of work hours the consultant worked in Colorado to the total number of work hours in the tax year for the first company. Income from the second company is a discrete Business activity, the income from such work is entirely allocated to a source outside Colorado, and neither the income nor the work hours for such work is included in the apportionment for the first company.

(iii) *Commissions*. The amount of Colorado-source income of a Nonresident employee or independent contractor whose compensation is based on commissions is determined by multiplying the gross income earned from all commissions by a fraction, the numerator of which is the amount of sales made within Colorado and the denominator of which is the amount of sales made everywhere. The determination of whether sales are made within Colorado or elsewhere is based upon where the salesperson performs the activities in obtaining the order, not the location of the formal acceptance of the contract. If the Nonresident also earns income other than as commissions (e.g., wages as base pay), then the Nonresident must apportion such non-commission income based on the applicable rule (e.g., wage income apportioned as set forth in paragraph (4)(b)(i), above).

(iv) *Contingency Fees.* Each contingency fee arrangements is usually viewed as discrete Business activity and the fee is apportioned based on the ratio of the number of hours the Nonresident worked in Colorado on the discrete Business activity to the total number of hours worked everywhere on the discrete Business activity in the year.

(v) *Board of Directors.* Compensation paid by a corporation for services performed in Colorado by a Nonresident member of the board of directors for director services, including attendance at a board of directors' meeting, is Colorado-source income. If all services are performed in Colorado, the total income for such services is Colorado-source income. If the director’s services are performed both within and outside Colorado, then the total income paid for performing such service is multiplied by a fraction, the numerator of which is the number of hours the director is in Colorado performing director services and the denominator of which is the total hours the director provides services in the year. If the Nonresident is a paid member of more than one board of directors in the year, then the ratio is determined separately for each board.

(vi) *Construction Contractors*. Income of a construction contractor or subcontractor for construction services is sourced to the state where construction service is performed.

(vii) *Professional Athletes Employed by a Professional Team*. Income earned in Colorado by a Nonresident professional athlete employed by a professional team is Colorado-source income. The compensation received for services rendered as a member of a professional athletic team reported for federal income tax purposes shall be apportioned in the ratio of the number of duty days of professional services performed in Colorado over the total number of duty days during the tax year for which the athlete is required to make his or her services available to the franchise under the terms of his or her contract. The formula applies to active team members, team members on the disabled list, and other persons required to travel with the team and to perform services on behalf of the team, including coaches, managers and trainers. Teams include, but are not limited to, any professional baseball, basketball, football, hockey, soccer, and lacrosse teams.

(A) Duty days include all days of game, practice or travel that occur on or after the beginning of the team's official pre-season training through the last game in which the team competes. Duty days also include days the Nonresident is required by contract to perform services, but which fall outside this period, such as instructional leagues, “Pro Bowl”, or promotional events. In addition, duty days include days during the off-season when a team member undertakes training activities as part of a team-imposed program, but only if performed at the team facilities. Duty days for any member joining a team during the season shall begin on the day such person becomes a member, and for any member leaving a team during the season shall end on the day such person ceases to be a member. When a person switches teams during a taxable year, a separate duty day calculation shall be made for the period such person was with each team. Duty days do not include any try-out or pre-season cut days for which the Nonresident is not under contract with a team or any days for which a member is not compensated and is not rendering services for the team in any manner because such person has been suspended without pay and prohibited from performing any services for the team.

(B) Each duty day is assigned to the state in which the service is performed. Duty days during which a team member is on the disabled list performing no substantial services for the team will not be apportioned to any particular state but will be included in the total number of duty days for apportionment purposes.

(C) Travel days are considered duty days and are apportioned as follows: Travel days which include a game, required practice, meeting, or other service are duty days apportioned to the state in which the game, practice, or service is conducted. Travel days not involving a game, practice, or required service will not be apportioned to any particular state, but will be included in the total number of duty days.

(D) “Compensation received for services rendered as a member of a professional athletic team” means the total compensation received for the official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year, plus any additional compensation received for rendering services for the team

on a date that is not during the season (e.g., compensation for representing a team at an all-star game) during the taxable year. "Compensation received for services rendered as a member of a professional athletic team" includes, but is not limited to, salaries; wages; guaranteed payments; bonuses except as otherwise provided herein. Bonuses are includable in "compensation received for services rendered as a member of a professional athletic team" if they are earned as a result of play during the season or for playing in championship, playoff or "all-star" games. Bonuses are also includable if paid for signing a contract, unless all of the following conditions are met:

(I) The bonus is not conditional upon the athlete playing any games, or performing any subsequent services, for the team, or even making the team,

(II) The bonus is separate from the payment of salary or any other compensation, and

(III) The bonus is nonrefundable.

(E) Income not subject to apportionment would include strike benefits contract buy-out payments, severance pay, termination pay, relocation payments, and other payments not related to the performance of service.

(F) *Examples.*

(I) Player A, a Nonresident individual, is a member of a professional athletic team. His accounting period for federal income tax purposes (and, hence, for Colorado income tax purposes) is the calendar year. Player A's contract with the team requires Player A to report to his team's training camp and to participate in all exhibition, regular season and playoff games. This two-season contract covers an athletic season that begins during calendar year 2013 and ends during calendar year 2014 (for which Player A shall be paid $400,000) and an athletic season that begins during calendar year 2014 and ends during calendar year 2015 (for which Player A shall be paid $600,000). Assuming that Player A is paid $500,000 during 2014 (50% of his salary for the 2013-2014 season and 50% of his salary for the 2014-2015 season), the proportion of such compensation received by Player A for calendar year 2014 that is derived from Colorado sources is that proportion of the $500,000 Player A had duty days in Colorado during calendar year 2014 to the total duty days for Player A during calendar year 2014.

(II) Player C, a Nonresident individual, is a member of a professional athletic team. During the season, Player C travels to Colorado to participate in the annual all-star game as a representative of his team. The days that Player C spends in Colorado for travel, practice and the game are considered to be duty days spent in Colorado during the taxable year and are included in duty days for Player C during the taxable year.

(III) Assume that the facts are the same as in Example (c), except that Player C is not participating in the all-star game and is not rendering services for his team in any manner. Player C is

travelling to and attending the game solely as a spectator. If Player C is not required to render services for the team during the all-star game, then the days that Player C spends in Colorado to attend the all-star game are not considered to be duty days spent in Colorado during the taxable year and are not included in duty days for Player C during the taxable year.

(viii) *Entertainers and Professional Athletes Not Employed by a Professional Team.* Income earned by a Nonresident professional athlete that is not a member of a professional team (e.g., golfers, boxers, wrestlers, racers, etc.) or a Nonresident Entertainer for performances, competitions, or events held within Colorado is Colorado-source income. If the Entertainer or professional athlete is paid an identifiable amount for each event performed in Colorado, that amount is the amount of Colorado-source income. If the Nonresident is not paid a specific amount for the performance or competition in Colorado, then the Department will presume that a fair apportionment of the Nonresident's income for such activity is the Nonresident's gross income derived from the performance(s) or competition(s) multiplied by the ratio of the number of performances or competitions performed in Colorado divided by the total number of performances and competitions performed anywhere in the year.

(ix) *Stock Options*. Income from the exercise of employee stock options is Colorado-source income if such income is treated as compensation for federal tax purposes and to the extent the employee worked in Colorado during the period the employee was required to work for the employer prior to the exercise of the option.

(x) *Severance, Paid-out Sick and Vacation Leave, Disability Pay and Unemployment Insurance.* Severance pay, paid-out sick and vacation leave pay, disability pay and unemployment insurance is Colorado-source income to the extent that the income is attributable to employment in Colorado regardless of whether the person is a resident when the benefit is paid.

(xi) *Deferred Compensation*. Deferred compensation is Colorado-source income to the extent it is income derived from a Business, including employment, carried on in Colorado. Deferred compensation includes all compensation paid or made available to the Nonresident in a tax year following the year in which the compensation was earned. Deferred compensation paid to a Nonresident is not subject to Colorado income tax if 4 U.S.C. § 114 applies to such income (including retirement plans under sections I.R.C § 401(a), 403(a) and (b), 408(k), 7701(a)(38), 457, railroad retirement benefits (45 U.S.C. § 231(m)), Social Security benefits, or other income that federal law precludes Colorado from subjecting to Colorado income tax, even if the retirement benefits were earned in tax years when the taxpayer was a resident or was a Nonresident earning income from Colorado sources). Deferred compensation is often treated as wage income and therefore paragraph 4(b)(i) above applies in determining whether or not the deferred compensation derived from a Business carried on in Colorado in the year it was earned is Colorado-source income. Similarly, to the extent that deferred income reflects other types of income (e.g., royalties from patents employed in Colorado), then the relevant subparagraph of this regulation applies.

(xii) *Guaranteed Payments.* Guaranteed payments typically are in lieu of wage income and the source of such income is determined in accordance with the rules for sourcing wage income (see paragraph (4)(b)(i), above). If the guaranteed payment is not in lieu of wage income, then the guaranteed payment is allocated or apportioned based on the income-generating activity (e.g., a

guaranteed payment based on partnership income from the sale of real property located in Colorado is allocated pro rata to the Nonresident partner).

(xiii) *State Income Tax Refunds.* A state income tax refund is apportioned to Colorado to the extent the underlying or related income is derived from any Business, including employment, carried on by the Nonresident in Colorado.

(xiv) *Military personnel and their spouses*. Compensation paid by the United States for service in the armed forces of the United States performed by a Nonresident in Colorado is not Colorado-source income. See §§ 39-22-109(2)(b) and 103(8)(b), C.R.S. and Department Regulation 39-22-103(8) governing income of military personnel and their spouses.

(xv) *Payments from a Covenant Not to Compete*. Income derived from a covenant not to compete is Colorado-source income to the extent that it is derived from any Business, including employment, carried on by the Nonresident in Colorado.

(xvi) *Disaster Relief Workers.* For tax years beginning on or after January 1, 2015, the income earned by a Nonresident disaster relief worker performing work in Colorado during a disaster period is exempt from Colorado income tax. See § 39-22-104(4)(t), C.R.S.

(c) *Distributive Share of a Member of a Pass-through Entity.* Income received as part of the Nonresident individual's distributive share of a Pass-through entity income, gain, loss, or deduction is Colorado-source income to the extent that the Pass-through entity determines that income is Colorado-source income pursuant to § 39-22-203(1)(a), C.R.S. and the regulations promulgated thereunder. These rules apply to all Members of a Pass-through entity regardless of the type of the entity (e.g., limited liability company, limited liability partnership, limited liability limited partnership) or the status of the Member (e.g., limited or general).

(i) A Nonresident has Nexus with Colorado if the Nonresident is a Member of a Pass-through entity doing business in Colorado.

(ii) *Character of income*. The activities of a Pass-through entity are attributable to its Members. Therefore, a Member is engaged in a Business in Colorado to the extent the Pass-through entity is engaged in Business in Colorado. The character of the item of income, loss, deduction or credit included in the Member's distributive share is determined as if the item was realized or incurred directly by the Member from the source from which the item was realized by the Pass-through entity or incurred in the same manner as the Pass-through entity. The principles of this paragraph apply in the case of an ownership chain that runs through multiple Pass-through entities.

(iii) A Nonresident Member of a Pass-through entity deriving income from within Colorado and elsewhere has Colorado-source income as determined by § 39-22-109, C.R.S. and this regulation, or as determined by § 39-22-303.6, C.R.S. and the regulations thereunder if the Pass-through entity elects under § 39-22-203(1)(a), C.R.S. to apportion its income pursuant to § 39-22-303.6, C.R.S.

(iv) A Nonresident Member's share of Colorado-source Business income of a Pass-through entity that elects to apportion its income pursuant to § 39-22-303.6, C.R.S. (including the special apportionment regulations adopted thereunder) shall be based on the Member's pro rata share of such Pass-through entity's income multiplied by the Pass-through entity's apportionment percentage.

(v) In the case of a Nonresident who is a Member of a partnership ("first partnership") which partnership is a partner in another partnership ("second partnership"), the following rules apply:

(A) *Unitary Partnerships.* In the case of unitary partnerships, the election made by the second partnership is irrelevant to the treatment of income of the first partnership.

(I) If the first partnership makes the election to apportion its income pursuant to § 39-22-303.6, C.R.S. (including special the apportionment regulations adopted thereunder) and is unitary with the second partnership as determined by general unitary theory, then the Nonresident member of the first partnership's share of Colorado source income is the Member's pro rata share of the partnership's Colorado-source income as determined by 39-22-303.6, C.R.S. The first and second partnerships are treated as a single entity for purposes of calculating apportionment under 39-22-303.6, C.R.S.

(II) If the first partnership makes the election not to apportion its income pursuant to § 39-22-303.6, C.R.S. and is unitary with the second partnership, then the partnerships are treated as one partnership and the income is sourced in accordance with this regulation.

(B) *Non-unitary Partnerships.* In the case of non-unitary partnerships, the election made by the first partnership is irrelevant to the treatment of income of the second partnership.

(I) If the two partnerships are non-unitary, then regardless of the election made by the first partnership, the first partnership's pro-rata share of the second partnership's Colorado-source income is directly allocated by the first partnership to Colorado and is not apportioned. The pro-rata share of such income passes through to the Nonresident Member as Colorado-source income.

(vi) A Nonresident individual may include as a credit for taxes paid on their Nonresident individual income tax return any payment made on their behalf by a partnership or Subchapter S corporation on a composite return. See §§ 39-22-601(2.5) and (5), C.R.S.

(vii) *Investment partnerships*. A partnership whose sole activity is to buy and sell securities for its own account is not carrying on a Business in Colorado. Therefore, a Nonresident individual partner of such a partnership is not subject to Colorado income tax on their distributive share of such partnership income. § 39-22-109(2)(a)(V), C.R.S. A partnership that engages in other activities in Colorado that are neither the described activities here nor entirely ancillary to such activities is carrying on Business in Colorado.

(viii) *Foreign source income of an export partnership*. See, § 39-22-206, C.R.S. for the exclusion of foreign source income of an export partnership from Colorado taxable income.

(d) *Estates and Trusts.* The Colorado-source income of a Nonresident's distributive share of estate or trust income shall be determined as follows:

(i) A Nonresident individual's share of estate or trust income, gain, loss or deduction is Colorado-source income to the extent the estate or trust derives income from sources described in section (3), above. Estates or trusts that derive income from a Business carried on partly within and without Colorado allocate and apportion their income in accordance with the provisions of this regulation.

(ii) Income received by a Nonresident fiduciary of a resident trust is sourced to Colorado.

(iii) The character of the item of income, loss, deduction or credit included in the Nonresident beneficiary's distributive share is determined as if the item was realized or incurred directly by the beneficiary from the source from which the item was realized by the estate or trust, or incurred in the same manner as the estate or trust.

(e) *Intangible Personal Property.* Income, including gain, loss, interest, annuity benefits, and dividends earned by a Nonresident is Colorado-source income when the intangible property earning income is employed in a Business in Colorado. The following is a non-exhaustive list of examples of intangible property employed in a Business activity.

(i) Patent and copyright (including trademark and other similar intangible interests) royalties constitute Colorado-source income if, in the case of a patent, the patent is employed in production, fabrication, manufacturing, processing or other commercial activity in Colorado and, in the case of copyright, if the printing or publication of the copyrighted material occurs in Colorado.

(ii) *Sale of Interest in Pass-through entity*. Gain or loss from the sale of a Member's active interest in a Pass-through entity is Colorado-source income in the same proportion as the entity's average apportionment factor for the immediately prior three tax years. Gain or loss from the sale of a Member's passive interest in a Pass-through entity is not Colorado-source income. A Member's interest is passive if, in the tax year the interest is sold, the Member did not materially participate in the Business of the Pass-through entity as defined in I.R.C. § 469(h).

(iii) Income from the sale of goodwill in a Business is allocated or apportioned in the same percentage as the sale of the Business's other assets.

(f) *Subchapter S Corporations.*

(i) A Subchapter S corporation's distribution of Colorado-source income to a Nonresident is subject to Colorado income tax. Subchapter S corporation distribution of income attributable to Colorado sources is allocated and apportioned pursuant to § 39-22-303.6, C.R.S. and the regulations thereunder.

(ii) The character of income of a shareholder of a Subchapter S corporation is not determined as if the item of income or expense is incurred by the shareholder but, rather, is determined as if the income is incurred directly by the Subchapter S corporation. See § 39-22-323(3), C.R.S

(iii) See § 39-22-326, C.R.S. for calculation for an individual who is a part-year Nonresident. A subchapter S corporation must file a tax return that applies

apportionment as described in § 39-22-303.6, C.R.S. See § 39-22-601(2.5), C.R.S.

(g) Gambling and Games of Chance. Income from gambling and games of chance conducted in Colorado, including limited stakes gambling, bingo, raffle, Colorado Lottery, sweepstakes, door prizes and other games of chance, is Colorado-source income regardless of whether the Nonresident was present in Colorado when the gambling or game was conducted or the winnings or prize was awarded or paid.

(4) **Net Operating Loss Carryforwards.** A net operating loss carryforward is treated as Colorado or non-Colorado sourced based on the source in the year the loss was generated.

(a) *Example*: Taxpayer is a resident of California in tax year 1 and generates a federal net operating loss of $80,000 that is carried forward on the federal return. In tax year 2, taxpayer has $50,000 of California-source income and $60,000 in Colorado-source income. Pursuant to § 39-22-110, C.R.S., taxpayer calculates the tentative Colorado income tax based on the net income of $30,000. The numerator of the apportioning ratio that is applied to the tentative Colorado income tax does not include the net operating loss generated in California but the denominator includes the net operating loss. Assuming taxpayer has no “above-the-line” adjustments or adjustments described in §§ 39-22-104(3) and (4), C.R.S., the ratio is 50/(50+60-80)=5/3. In this case, the taxpayer multiplies Colorado tentative tax by a ratio greater than one. See Department Regulation 39-22-110 for a discussion of the tentative tax and adjustments to income of part-year residents and full-year nonresidents.

Cross References

1. See 1 CCR 201-2, Regulation 39-22-110 for guidance on how a part-year resident or nonresident reports Colorado-source income, and for the treatment of modifications to federal income on the Colorado return.

Regulation 39-22-303.6–1. Apportionment and Allocation Definitions.

Basis and Purpose. The bases of this regulation are §§39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide definitions for the terms used throughout Regulations 39-22-303.6–1 through –17. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **Definitions.** In addition to the definitions provided in § 39-22-303.6 C.R.S. and unless the context otherwise requires, the following terms, as used throughout Regulations 39-22-303.6–1 through –17, are defined or further defined as follows:

(a) "Allocation" refers to the assignment of nonapportionable income to a particular state.

(b) "Apportionment" refers to the division of apportionable income among states by use of a formula containing apportionment factors.

(c) "Billing address" means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction and kept in good faith in the normal course of business and not for tax avoidance purposes.

(d) "Business activity" refers to the transactions and activities occurring in the regular course of a particular trade or business of a taxpayer and includes the acquisition, employment, development, management, or disposition of property that is or was related to the operation of the taxpayer's trade or business.

(e) "Business customer" means a customer that is a business operating in any form, including a sole proprietorship. Sales to a nonprofit organization, to a trust, to the U.S. Government, to a foreign, state, or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned consistent with the rules for those sales.

(f) "Code" means the Internal Revenue Code as currently written and subsequently amended.

(g) "*Gross receipts*" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital in a transaction that produces apportionable income for which the income or loss is recognized under the Internal Revenue Code, and, where the income of foreign entities is included in apportionable income, amounts that would have been recognized under the Internal Revenue Code if the relevant transactions or entities were in the United States. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold.

(h) "Individual customer" means a customer that is not a business customer.

(i) "Intangible property" generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; ideas; contract rights including broadcast rights; agreements not to

compete; goodwill and going concern value; securities; and, except as otherwise provided in this regulation, computer software. Receipts from the sale of intangible property may be excluded from the numerator and denominator of the taxpayer's receipts factor pursuant to § 39-22-303.6(6)(d)(III), C.R.S. and paragraph (1)(d) of Regulation 39-22-303.6–12.

(j) "Place of order," means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.

(k) "Population" means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.

(l) "*Receipts*" means all gross receipts of the taxpayer that are not allocated under § 39-22-303.6, C.R.S., and that are received from transactions and activity in the regular course of the taxpayer's trade or business. The following are additional rules for determining "receipts" in various situations:

(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "receipts" includes all gross receipts from the sale of such goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances.

(ii) In the case of cost-plus-fixed-fee contracts, such as the operation of a government-owned plant for a fee, "receipts" includes the entire reimbursed cost plus the fee.

(iii) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency or the performance of equipment service contracts or research and development contracts, "receipts" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

(iv) In the case of a taxpayer engaged in the sale of equipment used in the taxpayer's trade or business, where the taxpayer disposes of the equipment under a regular replacement program, "receipts" includes the gross receipts from the sale of this equipment. For example, a truck express company that owns a fleet of trucks, and sells its trucks under a regular replacement program, the gross receipts from the sale of the trucks would be included in "receipts."

(v) In the case of a taxpayer with insubstantial amounts of gross receipts arising from sales in the ordinary course of business, the insubstantial amounts may be excluded from the receipts factor unless their exclusion would materially affect the amount of income apportioned to Colorado.

(vi) Receipts of a taxpayer from hedging transactions, or from holding cash or securities, or from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded. Receipts arising from a business activity are receipts from hedging if the primary purpose of engaging in the business activity is to reduce the exposure to risk caused by other business activities. Whether events or transactions not involving cash or securities are hedging transactions shall be determined based on the primary purpose of the taxpayer engaging in the activity giving rise to the receipts, including the

acquisition or holding of the underlying asset. Receipts from the holding of cash or securities, or maturity, redemption, sale, exchange, loan, or other disposition of cash or securities are excluded from the definition of receipts whether or not those events or transactions are engaged in for the purpose of hedging. The taxpayer's treatment of the receipts as hedging receipts for accounting or federal tax purposes may serve as indicia of the taxpayer's primary purpose, but shall not be determinative.

(vii) Receipts, even if apportionable income, are presumed not to include such items as, for example:

(A) damages and other amounts received as the result of litigation;

(B) property acquired by an agent on behalf of another;

(C) tax refunds and other tax benefit recoveries;

(D) contributions to capital;

(E) income from forgiveness of indebtedness;

(F) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code; or

(G) amounts realized as a result of factoring accounts receivable recorded on an accrual basis.

(viii) Exclusion of an item from the definition of "receipts" is not determinative of its character as apportionable or nonapportionable income. Certain gross receipts that are "receipts" under the definition are excluded from the "receipts factor" under § 39-22-303.6(6), C.R.S. Nothing in this definition shall be construed to modify, impair, or supersede any provision of § 39-22-303.6(9), C.R.S.

(m) "Related party" means:

(i) a stockholder who is an individual, or a member of the stockholder's family as set forth in section 318 of the Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock;

(ii) a stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or

(iii) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Code, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of the Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

(n) "Security" means any interest or instrument commonly treated as a security as well as other instruments that are customarily sold in the open market or on a recognized exchange, including, but not limited to, transferable shares of a beneficial interest in any corporation or other entity, bonds, debentures, notes, and other evidences of indebtedness, accounts receivable and notes receivable, cash and cash equivalents including foreign currencies, and repurchase and futures contracts.

(o) "State where a contract of sale is principally managed by the customer," means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

(p) "Trade or business," as used in the definition of apportionable income and in the application of that definition means the unitary business of the taxpayer, part of which is conducted within Colorado.

Regulation 39-22-303.6–2. Apportionable and Nonapportionable Income.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining what is apportionable and nonapportionable income. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **General Rule.** Section 39-22-303.6(1)(a) and (c), C.R.S. requires every item of income be classified either as apportionable income or nonapportionable income. Income for purposes of classification as apportionable or nonapportionable includes gains and losses. Apportionable income is apportioned among jurisdictions by use of a formula. Nonapportionable income is specifically assigned or allocated to one or more specific jurisdictions pursuant to express rules. An item of income is classified as apportionable income if it falls within the definition of apportionable income. An item of income is nonapportionable income only if it does not meet the definitional requirements for being classified as apportionable income.

(2) **Apportionable Income.**

(a) Apportionable income means:

(i) any income that would be allocable to Colorado under the United States Constitution, but that is apportioned rather than allocated pursuant to the laws of this state.

(ii) all income that is apportionable under the United States Constitution and is not allocated under the laws of this state, including:

(A) income arising from transactions and activity in the regular course of the taxpayer's trade or business; and

(B) income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.

(b) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, income derived from accounts receivable, operating income, non-operating income, etc., is of no aid in determining whether income is apportionable or nonapportionable income.

(3) **Principal Tests of Apportionable Income.**

(a) *Transactional Test.* Apportionable income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(i) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Colorado, the resulting income of the transaction or activity is apportionable income for Colorado. Income may be apportionable income even though the actual transaction or activity that gives rise to the income does not occur in Colorado.

(ii) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the

trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, such activities do not satisfy the transactional test.

(iii) The transactional test includes, but is not limited to, income from sales of:

(A) inventory,

(B) property held for sale to customers,

(C) services which are commonly sold by the trade or business, and

(D) property used in the production of apportionable income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(b) *Functional test.* Apportionable income also includes income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.

(i) "Property" includes any direct or indirect interest in, control over, or use of real property, tangible personal property, and intangible property by the taxpayer.

(ii) Property that is "related to the operation of the trade or business" refers to property that is or was used to contribute to the production of apportionable income directly or indirectly, without regard to the materiality of the contribution. Property that is held merely for investment purposes is not related to the operation of the trade or business.

(iii) "Acquisition, management, employment, development or disposition" refers to a taxpayer's activities in acquiring property, exercising control and dominion over property and disposing of property, including dispositions by sale, lease, or license. Income arising from the disposition or other utilization of property that was acquired or developed in the course of the taxpayer's trade or business constitutes apportionable income, even if the property was not directly employed in the operation of the taxpayer's trade or business.

(iv) *Application of Functional Test.*

(A) Income from the disposition or other utilization of property is apportionable if the property is or was related to the operation of the taxpayer's trade or business. This is true even though the transaction or activity from which the income is derived did not occur in the regular course of the taxpayer's trade or business.

(B) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or

transactions involving property, including transactions made in the full or partial liquidation or the winding-up of any portion of the trade or business, is apportionable income if the property is or was related to the taxpayer's trade or business. Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like that was developed or acquired for use by the taxpayer in its trade or business constitutes apportionable income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(C) Income from intangible property is apportionable income when the intangible property serves an operational function as opposed to solely an investment function.

(D) If the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business, then income from that property is apportionable income even if the actual transaction or activity involving the property that gives rise to the income does not occur in Colorado.

(E) Income from the disposition or other utilization of property which has been withdrawn from use in the taxpayer's trade or business and is instead held solely for unrelated investment purposes is not apportionable. Property that was related to the operation of the taxpayer's trade or business is not considered converted to investment purposes merely because it is placed for sale, but any property which has been withdrawn from use in the taxpayer's trade or business for five years or more is presumed to be held for investment purposes.

(F) If with respect to an item of property a taxpayer takes a deduction from income that is apportioned to Colorado, it is presumed that the item of property is or was related to the operation of the taxpayer's trade or business. No presumption arises from the absence of any of these actions.

(G) Application of the functional test is generally unaffected by the form of the property (e.g., tangible, intangible, real, or personal property). Income arising from an intangible interest, as, for example, corporate stock or other intangible interest in an entity or a group of assets, is apportionable income when the intangible itself or the property underlying or associated with the intangible is or was related to the operation of the taxpayer's trade or business. Thus, while apportionment of income derived from transactions involving intangible property may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, i.e., the same unitary business, establishment of such a relationship is not the exclusive basis for concluding that the income is subject to apportionment. It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function.

(v) *Examples.*

(A) *Example (i):* Taxpayer purchases a chain of 100 retail stores for the purpose of merging those store operations with its existing business. Five of the retail stores are redundant under the taxpayer's business plan and are sold six months after acquisition. Even though the five stores were never integrated into the taxpayer's trade or business, the income is apportionable because the property's acquisition was related to the taxpayer's trade or business.

(B) *Example (ii):* Taxpayer is in the business of developing adhesives for industrial and construction uses. In the course of its business, it accidentally creates a weak but non-toxic adhesive and patents the formula, awaiting future applications. Another manufacturer uses the formula to create temporary body tattoos. Taxpayer wins a patent infringement suit against the other manufacturer. The entire damages award, including interest and punitive damages, constitutes apportionable income.

(C) *Example (iii):* Taxpayer is engaged in the oil refining business and maintains a cash reserve for buying and selling oil on the spot market as conditions warrant. The reserve is held in overnight "repurchase agreement" accounts of U.S. treasuries with a local bank. The interest on those amounts is apportionable income because the reserves are necessary for the taxpayer's business operations. Over time, the cash in the reserve account grows to the point that it exceeds any reasonably expected requirement for acquisition of oil or other short-term capital needs and is held pending subsequent business investment opportunities. The interest received on the excess amount is nonapportionable income.

(D) *Example (iv):* A manufacturer decides to sell one of its redundant factories to a real estate developer and transfers the ownership of the factory to a special purpose subsidiary, SaleCo, immediately prior to its sale to the real estate developer. The parties elect to treat the sale as a disposition of assets under IRC § 338(h)(10), resulting in SaleCo recognizing a capital gain on the sale. The capital gain is apportionable income. Note: although the gain is apportionable, application of the standard apportionment formula in § 39-22-303.6(6), C.R.S. may not fairly reflect the taxpayer's business presence in any state, necessitating resort to equitable apportionment pursuant to § 39-22-303.6(9), C.R.S.

(E) *Example (v)*: A manufacturer purchases raw materials to be incorporated into the product it offers for sale. The nature of the raw materials is such that the purchase price is subject to extreme price volatility. In order to protect itself from extreme price increases (or decreases), the manufacturer enters into futures contracts pursuant to which the manufacturer can either purchase a set amount of the raw materials for a fixed price, within a specified time period, or resell the futures contract. Any gain on the sale of the futures contract would be considered apportionable income, regardless of whether the contracts were made or resold in Colorado.

(F) *Example (vi):* A national retailer produces substantial revenue related to the operation of its trade or business. It invests a large portion of the revenue in fixed income securities that are divided into three categories;

(a) short-term securities held pending use of the funds in the taxpayer's trade or business; (b) short-term securities held pending acquisition of other companies or favorable developments in the long-term money market, and (c) long-term securities held as an investment. Interest income on the short-term securities held pending use of the funds in the taxpayer's trade or business (a) is apportionable income because the funds represent working capital necessary to the operations of the taxpayer's trade or business. Interest income derived from the other investment securities ((b) and (c)) is not apportionable income as those securities were not held in furtherance of the taxpayer's trade or business.

(4) **Nonapportionable Income.** Nonapportionable income means all income other than apportionable income.

(5) **General Rules for Certain Classes of Income.** The following applies the foregoing principles for purposes of determining whether particular income is apportionable or non-apportionable income. The examples used throughout these regulations are illustrative only and are limited to the facts they contain.

(a) *Rents from Real and Tangible Personal Property.* Rental income from real and tangible property is apportionable income if the property with respect to which the rental income was received is or was used in the taxpayer's trade or business.

(i) *Example (i):* The taxpayer operates a multistate car rental business. The income from car rentals is apportionable income.

(ii) *Example (ii):* The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is apportionable income.

(iii) *Example (iii):* The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five-story office building for use in connection with its trade or business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two floors are held for future use in the trade or business and are leased to tenants on a short-term basis in the meantime. The rental income is apportionable income.

(iv) *Example (iv)*: The taxpayer operates a multistate chain of grocery stores. It purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is not apportionable income of the grocery store trade or business. Therefore, the net rental income is nonapportionable income.

(v) *Example (v):* The taxpayer operates a multistate chain of men's clothing stores. The taxpayer invests in a 20-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining 18 floors are leased to others. The rental of the 18 floors is not done in furtherance of but rather is separate from the operation of the taxpayer's trade or business. The net rental income is not apportionable income of the clothing store trade or business. Therefore, the net rental income is nonapportionable income.

(vi) *Example (vi):* The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later the plant was closed and put up for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold 18 months later. The rental income is apportionable income and the gain on the sale of the plant is apportionable income.

(b) *Gains or Losses from Sales of Assets.* Gain or loss from the sale, exchange, or other disposition of real property or of tangible or intangible personal property constitutes apportionable income if the property while owned by the taxpayer was related to the operation of the taxpayer's trade or business.

(i) *Example (i):* In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the trade or business. The gains or losses resulting from those sales constitute apportionable income.

(ii) *Example (ii):* The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later sold the property at a gain while it was in operation by the taxpayer. The gain is apportionable income.

(iii) *Example (iii):* Same as (ii) except that the plant was closed and put up for sale but was not in fact sold until a buyer was found 18 months later. The gain is apportionable income.

(iv) *Example (iv):* Same as (ii) except that the plant was rented while being held for sale. The rental income is apportionable income and the gain on the sale of the plant is apportionable income.

(c) *Interest.* Interest income is apportionable income when the intangible with respect to which the interest was received arose out of or was created in the regular course of the taxpayer's trade or business, or the purpose of acquiring and holding the intangible is or was related to the operation of the taxpayer's trade or business.

(i) *Example (i):* The taxpayer operates a multistate chain of department stores, selling for cash and on credit. Service charges, interest, or time-price differentials and the like are received with respect to installment sales and revolving charge accounts. These amounts are apportionable income.

(ii) *Example (ii):* The taxpayer conducts a multistate manufacturing business. During the year, the taxpayer receives a federal income tax refund pertaining to the taxpayer's trade or business and collects a judgment against a debtor of the business. Both the tax refund and the judgment bear interest. The interest income is apportionable income.

(iii) *Example (iii):* The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as workmen's compensation claims, rain and storm damage, machinery replacement, etc. The funds in those accounts earn interest. Similarly, the taxpayer temporarily invests funds intended for payment of federal, state, and local tax obligations pertaining to the taxpayer's trade or business. The interest income is apportionable income.

(iv) *Example (iv):* The taxpayer is engaged in a multistate money order and traveler's check business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the

investment of the funds pending their redemption. The interest income is apportionable income.

(v) *Example (v):* The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling $200,000 that it regularly invests in short-term interest bearing securities. The interest income is apportionable income.

(vi) *Example (vi):* In January, the taxpayer sold all of the stock of a subsidiary for $20,000,000. The funds are placed in an interest-bearing account pending a decision by management as to how the funds are to be utilized. The funds are not pledged for use in the business. The interest income for the entire period between the receipt of the funds and their subsequent utilization or distribution to shareholders is nonapportionable income.

(d) *Dividends.* Dividends are apportionable income when the stock with respect to which the dividends were received arose out of or was acquired in the regular course of the taxpayer's trade or business, or when the purpose for acquiring and holding the stock is or was related to the operation of the taxpayer's trade or business, or contributes to the production of apportionable income of the trade or business.

(i) *Example (i):* The taxpayer operates a multistate chain of stock brokerage houses. During the year, the taxpayer receives dividends on stock that it owns. The dividends are apportionable income.

(ii) *Example (ii):* The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as workmen's compensation claims, etc. A portion of the moneys in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and any dividends are apportionable income.

(iii) *Example (iii):* The taxpayer and several unrelated corporations own all of the stock of a corporation whose business consists solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock in order to obtain a source of supply of materials used in its manufacturing trade or business. The dividends are apportionable income.

(iv) *Example (iv):* The taxpayer is engaged in a multistate heavy construction business. Much of its construction work is performed for agencies of the federal government and various state governments. Under state and federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets (cash and marketable securities) to current liabilities. In order to maintain an adequate bonding capacity, the taxpayer holds various stocks and interest-bearing securities. Both the interest income and any dividends received are apportionable income.

(v) *Example (v):* The taxpayer receives dividends from the stock of its subsidiary or affiliate that acts as the marketing agency for products manufactured by the taxpayer. The dividends are apportionable income.

(vi) *Example (vi):* The taxpayer is engaged in a multistate glass manufacturing business. It also holds a portfolio of stock and interest-bearing securities, the

acquisition and holding of which are unrelated to the manufacturing business. The dividends and interest income received are nonapportionable income.

(e) *Patent and Copyright Royalties*. Patent and copyright royalties are apportionable income when the patent or copyright with respect to which the royalties were received arose out of or was created in the regular course of the taxpayer's trade or business, or when the acquiring and holding the patent or copyright is or was related to the operation of the taxpayer's trade or business, or contributes to the production of apportionable income of the trade or business.

(i) *Example (i):* The taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business, the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are apportionable income.

(ii) *Example (ii):* The taxpayer is engaged in the music publishing trade or business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are thereafter used by the taxpayer in its trade or business. Any royalties received on these copyrights are apportionable income.

(6) **Proration of Deductions.** In most cases, an allowable deduction of a taxpayer will be applicable to only the apportionable income arising from a particular trade or business or to a particular item of nonapportionable income. In some cases, an allowable deduction may be applicable to the apportionable incomes of more than one trade or business and to items of nonapportionable income. In such cases, the deduction shall be prorated among those trades or businesses and those items of nonapportionable income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(a) *Consistency in Reporting.*

(i) *Year-to-Year Consistency.* In filing returns with Colorado, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modifications.

(ii) *State-to-State Consistency*. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under § 39-22-303.6, C.R.S., Article IV of the Multistate Tax Compact, or the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its Colorado return the nature and extent of the variance.

(7) **Consistency and Uniformity in Reporting.**

(a) *Year-to-Year Consistency.* In filing returns with Colorado, if the taxpayer departs from or modifies the manner in which income has been classified as apportionable income or nonapportionable income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(b) *State-to-State Consistency.* If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under § 39-22-303.6, C.R.S., Article IV of the Multistate Tax Compact, or the Uniform Division of Income for Tax Purposes Act are not uniform in the classification of income as apportionable or nonapportionable income, the taxpayer shall disclose in its Colorado return the nature and extent of the variance.

Regulation 39-22-303.6–3. Apportionment and Allocation of Income.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining whether income must be allocated or apportioned. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **Apportionment.** If the business activity with respect to any trade or business of a taxpayer occurs both within and without Colorado, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business that is derived from sources within Colorado shall be determined by apportionment in accordance with § 39-22-303.6(4), (5) and (6), C.R.S.

(2) **Allocation.** Unless electing to treat all income as apportionable income, any taxpayer subject to the taxing jurisdiction of Colorado shall allocate all of its nonapportionable income or loss within or without Colorado in accordance with § 39-22-303.6(7), C.R.S. and the corresponding regulation.

(3) **Combined Report.** If a particular trade or business is carried on by a taxpayer and one or more affiliated corporations, nothing in § 39-22-303.6, C.R.S. or in these regulations shall preclude the use of a "combined report" whereby the entire apportionable income of such trade or business is apportioned in accordance with § 39-22-303, § 39-22-303.6, § 39-22-303.7, or § 39-22-303.9, C.R.S.

(4) **Taxpayers Subject to Multiple Apportionment Methodologies.** A taxpayer may be engaged in two or more distinctly different commercial activities. Each activity may require the use of different apportionment methodologies described in Regulations 39-22-303.6–1 through –17 (regular apportionment of apportionable income) and Special Regulations for Allocation and Apportionment 1A through 8A.

(a) *Minimal Commerical Activities.*

(i) When the sum of the gross receipts of one commercial activity that requires the use of a different apportionment methodology amounts to less than one percent of the taxpayer's total gross receipts, such commercial activity is conclusively minimal and the taxpayer shall apportion the income from the minimal activity in the same ratio that it apportions its gross receipts pursuant to the receipts factor for the remainder of the commercial activity.

(ii) When the sum of the gross receipts of one commercial activity that requires the use of a different apportionment methodology amounts to less than five percent of the taxpayer's total gross receipts, such commercial activity may be minimal depending on the facts. If such commercial activity is considered minimal, the taxpayer shall apportion the income from the minimal activity in the same ratio that it apportions its gross receipts pursuant to the receipts factor for the remainder of the commercial activity.

(b) *Commercial Activities that are Not Minimal.* If multiple activities give rise to gross receipts that are not minimal, the taxpayer shall use the apportionment methodology most applicable to each commercial activity to separately allocate and apportion Colorado income for such commercial activities. The Colorado taxable income for each commercial activity shall be computed on a separate apportionment schedule. Such Colorado taxable

incomes shall then be combined and any net operating loss carryforward applied. Any tax and credits shall then be computed on the total Colorado taxable income.

(c) *Examples.*

(i) *Example (i).* Corporation A and corporation B are an affiliated group of C corporations that are required to file a combined report. Corporation A engages in trucking and Corporation B engages in retail sales of tangible personal property. Corporation A derives all of its income from sales of transportation services to Corporation B. Corporation A and Corporation B have distinctly different commercial activities; however, Corporation A does not derive income from sources outside its affiliate, Corporation B. Corporation A and Corporation B apportion their taxable income pursuant to § 39-22-303.6 C.R.S. and the regulations thereunder because of Corporation B's retail sales. Special Regulation 6A, regarding the apportionment of trucking income, is not used to apportion Corporation A's income because all of Corporation A's receipts are excluded from the apportionment calculation as intercompany transactions.

(ii) *Example (ii).* Same facts as Example (i), except Corporation A derives $2 million from sales of transportation services to third-parties who are not part of the affiliated group. Corporation B makes $20 million in sales of its goods to consumers. Total sales of the affiliated group are $22 million. Corporation A must use Special Regulation 6A, prescribing apportionment of income for trucking companies, and Corporation B must apportion its income pursuant to § 39-22-303.6, C.R.S. and the regulations thereunder. Corporation A and Corporation B must separately calculate their receipts factors using the appropriate methodologies. Each corporation must also calculate separate taxable income for each commercial activity and use the appropriate receipts factor to calculate Colorado taxable income. The combined group then calculates tax and applies any credits generated.

Regulation 39-22-303.6–4. Taxable in Another State.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining whether a taxpayer is taxable in another state. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **General Rule.** A taxpayer is subject to the allocation and apportionment provisions of § 39-22-303.6, C.R.S. if it has income from business activity that is taxable both within and without Colorado. A taxpayer's income from business activity is taxable without Colorado if the taxpayer, by reason of such business activity (i.e., the transactions and activity occurring in the regular course of a particular trade or business), is taxable in another state within the meaning of § 39-22-303.6(3)(c), C.R.S.

(2) **Applicable Tests.** A taxpayer's income is taxable in another state if it meets either one of two tests:

(a) By reason of business activity in another state, the taxpayer is subject to one of the types of taxes specified in § 39-22-303.6(3)(c)(I), C.R.S., or

(b) by reason of such business activity, another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer.

(3) **Producing Nonapportionable Income.** A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in that other state pertaining to the production of nonapportionable income or business activities relating to a separate trade or business.

(4) **Subject to Tax in Another State.** A taxpayer is "subject to" one of the taxes specified in § 39-22-303.6(3)(c)(I), C.R.S., if it carries on business activities in a state and the state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in § 39-22-303.6(3)(c)(I), C.R.S., in another state shall furnish to the Department upon its request evidence to support such assertion. The Department may request that such evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject to one of the taxes specified in § 39-22-303.6(3)(c)(I), C.R.S., in the other state.

(a) *Voluntary Tax Payment.* If the taxpayer voluntarily files and pays one or more of the taxes specified in § 39-22-303.6(3)(c)(I), C.R.S. when not required to do so by the laws of that state, or pays a minimal fee for the qualification, organization, or privilege of doing business in that state, but:

(i) does not actually engage in business activity in that state, or

(ii) engages in some business activity not sufficient for nexus, and

the minimum tax bears no relationship to the taxpayer's business activity within such state, the taxpayer is not "subject to" one of the taxes specified in § 39-22-303.6(3)(c)(I), C.R.S.

(A) *Example*: State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the $50 minimum tax, although it carries on no business activity in State A. Corporation X is not taxable in State A.

(b) The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states that do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in § 39-22-303.6(3)(c)(I), C.R.S. that may be considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is "subject to" one of the taxes specified in § 39-22-303.6(3)(c)(I), C.R.S. in another state.

(i) *Example (i):* State A requires all nonresident corporations which qualify or register in State A to pay to the Secretary of State an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively higher by bracketed amounts. The statute sets a minimum fee of $50 and a maximum fee of $500. Failure to pay the tax bars a corporation from utilizing the state courts for enforcement of its rights. State A also imposes a corporation income tax. Nonresident Corporation X is qualified in State A and pays the required fee to the Secretary of State but does not carry on any business activity in State A (although it may utilize the courts of State A). Corporation X is not "taxable" in State A.

(ii) *Example (ii):* Same facts as Example (i) except that Corporation X is subject to and pays the corporation income tax. Payment is prima facie evidence that Corporation X is "subject to" the net income tax of State A and is "taxable" in State A.

(iii) *Example (iii):* State B requires all nonresident corporations qualified or registered in State B to pay to the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of (1) outstanding capital stock, and (2) surplus and undivided profits. The fee or tax base attributable to State B is determined by a three factor apportionment formula. Nonresident Corporation X, which operates a plant in State B, pays the required fee or tax to the Secretary of State. Corporation X is "taxable" in State B.

(iv) *Example (iv):* State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based upon its business activity in the state but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax.

(5) **Another State has Jurisdiction to Subject Taxpayer to a Net Income Tax.** The second test, that of §39-22-303.6(3)(c), C.R.S., applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of such business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present when the state is prohibited from imposing the tax by reason of the provision of Public Law 86-272, 15 U.S.C.A., §§ 381-385. In the case of any "state" as defined in § 39-22-303.6(1)(e) C.R.S., other than a state of the United States or political subdivision thereof, the determination of whether the "state" has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that "state". If jurisdiction is otherwise present, that "state" is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

(a) *Example:* Corporation X is actively engaged in manufacturing farm equipment in State A and in foreign country B. Both State A and foreign country B impose a net income tax but foreign country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and foreign country B.

Regulation 39-22-303.6–5. Calculating the Receipts Factor.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining which gross receipts are included in a taxpayer's receipts factor. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **General Rule.** All apportionable income of each trade or business of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in § 39-22-303.6(4), C.R.S.

(a) *Denominator.* The denominator of the receipts factor shall include the gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except gross receipts excluded under § 39-22-303.6, C.R.S. and these regulations.

(b) *Numerator.* The numerator of the receipts factor shall include the gross receipts attributable to Colorado and derived by the taxpayer from transactions and activity in the regular course of its trade or business, except gross receipts excluded under § 39-22-303.6, C.R.S. and these regulations.

(c) *Exceptions.* In some cases, certain gross receipts should be disregarded in determining the receipts factor in order that the apportionment formula will operate fairly to apportion to Colorado the income of the taxpayer's trade or business.

(d) The receipts factor for an affiliated group of C corporations filing a combined return shall not include receipts from property delivered in Colorado by an includable C corporation that is not doing business in Colorado.

(e) *Consistency in Reporting.*

(i) *Numerator and Denominator Consistency*. In filing returns with Colorado, the taxpayer must use the same methodology in calculating both the numerator and the denominator of the receipts factor.

(ii) *Year-to-Year Consistency*. In filing returns with Colorado, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the receipts factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(iii) *State-to-State Consistency*. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under § 39-22-303.6, C.R.S., Article IV of the Multistate Tax Compact, or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to Colorado the nature and extent of the variance.

(2) **Mediation**. Whenever a taxpayer is subjected to different sourcing methodologies regarding intangibles or services by the Department and one or more other state taxing authorities, the taxpayer may petition for, and the Department may participate in, and encourage the other state taxing authorities to participate in, non-binding mediation in accordance with the alternative dispute resolution regulations promulgated by the Multistate Tax Commission from time to time, regardless of whether all the state taxing authorities are members of the Multistate Tax Compact.

Regulation 39-22-303.6–6. Sales of Tangible Personal Property in Colorado.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining which gross receipts from sales of tangible personal property are included in a taxpayer's receipts factor. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **General Rule.** Gross receipts from sales of tangible personal property are in Colorado:

(a) if the property is delivered or shipped to a purchaser within Colorado regardless of the f.o.b. point or other condition of sale; or

(b) if the property is shipped from an office, store, warehouse, factory, or other place of storage in Colorado and the taxpayer is not taxable in the state to which the property is shipped.

(2) Property is delivered or shipped to a purchaser within Colorado if the recipient is located in Colorado, even though the property is ordered from outside Colorado.

(a) *Example:* The taxpayer, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states, including Colorado. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to purchaser's branch store in Colorado. The branch store in Colorado is the purchaser within Colorado with respect to $25,000 of the taxpayer's sales.

(3) Property is delivered or shipped to a purchaser within Colorado if the shipment terminates in Colorado, even though the property is subsequently transferred by the purchaser to another state.

(a) *Example*: The taxpayer makes a sale to a purchaser who maintains a central warehouse in Colorado at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in Colorado constitute property delivered or shipped to a purchaser within Colorado.

(4) The term "purchaser within Colorado" shall include the ultimate recipient of the property if the taxpayer, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within Colorado.

(a) *Example*: A taxpayer sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Colorado pursuant to purchaser's instructions. The sale by the taxpayer is in Colorado.

(5) When property being shipped by the taxpayer from the state of origin to a consignee in another state is diverted while en route to a purchaser in Colorado, the sales are in Colorado.

(a) *Example*: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route, the produce is diverted to the purchaser's place of business in Colorado in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to Colorado.

(6) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to Colorado if the property is shipped from an office, store, warehouse, factory, or other place of storage in Colorado.

(a) *Example*: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in Colorado. Taxpayer's only activity in State B is the solicitation of orders by a resident salesperson. All orders by the State B salesperson are sent to the branch office in Colorado for approval and are filled by shipment from the inventory in Colorado. Since the taxpayer is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to Colorado, the state from which the merchandise was shipped.

(7) If a taxpayer whose salesperson operates from an office located in Colorado makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(a) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(b) If the taxpayer is not taxable in the state from which the third party ships the property, then the sale is in Colorado.

(c) *Example:* The taxpayer in Colorado sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in Colorado.

Regulation 39-22-303.6–7. Sales Other Than Sales of Tangible Personal Property in Colorado.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining which gross receipts from sales other than sales of tangible personal property are included in a taxpayer's receipts factor. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

In general, § 39-22-303.6(6), C.R.S. provides for the inclusion in the numerator of the receipts factor of gross receipts arising from transactions other than sales of tangible personal property.

(1) **General Rule.** Receipts, other than receipts described in § 39-22-303.6(5), C.R.S. (from sales of tangible personal property) are in Colorado within the meaning of § 39-22-303.6(6), C.R.S. and Regulations 39-22-303.6–7 through –13 if and to the extent that the taxpayer's market for the sales is in Colorado. In general, the provisions in this section establish uniform rules for (1) determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Colorado, (2) reasonably approximating the state or states of assignment when the state or states cannot be determined, (3) excluding receipts from the sale of intangible property from the numerator and denominator of the receipts factor pursuant to § 39-22-303.6(6)(d)(III), C.R.S., and (4) excluding receipts from the denominator of the receipts factor, pursuant to § 39-22-303.6(6)(f), C.R.S. where the state or states of assignment cannot be determined or reasonably approximated.

(2) **General Principles of Application.** In order to satisfy the requirements of Regulations 39-22-303.6–7 through –13, a taxpayer's assignment of receipts from sales of other than tangible personal property must be consistent with the following principles:

(a) A taxpayer shall apply the rules set forth Regulations 39-22-303.6–7 through –13 based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including, without limitation, the taxpayer's books and records kept in the normal course of business. A taxpayer shall determine its method of assigning receipts in good faith, and apply it such method consistently with respect to similar transactions year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the Department upon request.

(b) Regulations 39-22-303.6–7 through –13 provide various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy, and must continue to do so with each succeeding rule in the hierarchy, where applicable. For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

(c) A taxpayer's method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with the standards set forth in Regulations 39-22-303.6–7 through –13, rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

(3) **Rules of Reasonable Approximation.**

(a) In general, Regulations 39-22-303.6–7 through –13 establishes uniform rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Colorado. The regulation also sets forth rules of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific rules of approximation prescribed in Regulations 39-22-303.6–7 through –13. In other cases, the applicable rule in Regulations 39-22-303.6–7 through –13 permits a taxpayer to reasonably approximate the state or states of assignment using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in Regulations 39-22-303.6–7 through –13.

(b) *Approximation Based Upon Known Sales.* In an instance where, applying the applicable rules set forth in Regulation 39-22-303.6–10 (Sale of a Service), a taxpayer can ascertain the state or states of assignment for a substantial portion of its receipts from sales of substantially similar services ("assigned receipts"), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales that it believes tracks the geographic distribution of the assigned receipts in its receipts factor in the same proportion as its assigned receipts. This rule also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services. *See paragraph (5) of Regulations 39-22-303.6–11 and paragraph (1)(c) of Regulation 39-22-303.6–12.*

(c) *Related-Party Transactions.* Where a taxpayer has receipts subject to these Regulations 39-22-303.6–7 through –13 from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

(4) **Rules with Respect to Exclusion of Receipts from the Receipts Factor.**

(a) The receipts factor only includes those amounts defined as receipts under § 39-22-303.6(1)(d), C.R.S. and applicable regulations.

(b) Certain receipts arising from the sale of intangibles are excluded from the numerator and denominator of the sales factor pursuant to § 39-22-303.6(6)(d)(III), C.R.S. *See paragraph (1)(d) of Regulation 39-22-303.6–12.*

(c) In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned pursuant to the applicable rules set forth in Regulations 39-22-303.6–7 through –13 (including through the use of a method of reasonable approximation, when relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the denominator of the taxpayer's receipts factor pursuant to § 39-22-303.6(6)(f), C.R.S. and these regulations.

(d) Receipts of a taxpayer from hedging transactions, or from holding cash or securities, or from the maturity, redemption, sale, exchange, loan or other disposition of cash or securities, shall be excluded pursuant to § 39-22-303.6(1)(d), C.R.S. and §39-22-303.6(6), C.R.S.

(5) **Changes in Methodology; Department Review.**

(a) *No Limitation on § 39-22-303.6(9), C.R.S. or Regulations 39-22-303.6–16 and –17.* Nothing in the regulations adopted here pursuant to § 39-22-303.6(6), C.R.S. is intended to limit the application of § 39-22-303.6(9), C.R.S. or the authority granted to the Department under § 39-22-303.6(9), C.R.S. To the extent that regulations adopted pursuant to § 39-22-303.6(9), C.R.S. conflict with provisions of these regulations adopted pursuant to § 39-22-303.6(6), C.R.S., the regulations adopted pursuant to § 39-22-303.6(9), C.R.S. control. If the application of § 39-22-303.6(6), C.R.S. or the regulations adopted pursuant thereto result in the attribution of receipts to the taxpayer's receipts factor that do not fairly represent the extent of the taxpayer's business activity in Colorado, the taxpayer may petition for or Department may require the use of a different method for attributing those receipts.

(b) *General Rules Applicable to Original Returns.* In any case in which a taxpayer files an original return for a taxable year in which it properly assigns its receipts using a method of assignment, including a method of reasonable approximation, in accordance with the rules stated in Regulations 39-22-303.6–7 through –13, the application of such method of assignment shall be deemed to be a correct determination by the taxpayer of the state or states of assignment to which the method is properly applied. In those cases, neither the Department nor the taxpayer (through the form of an audit adjustment, amended return, abatement application or otherwise) may modify the taxpayer's methodology as applied for assigning those receipts for the taxable year. However, the Department and the taxpayer may each subsequently, through the applicable administrative process, correct factual errors or calculation errors with respect to the taxpayer's application of its filing methodology.

(c) *Department's Authority to Adjust a Taxpayer's Return*. The provisions contained in this paragraph (5)(c) are subject to paragraph (5)(b). The Department's authority to review and adjust a taxpayer's assignment of receipts on a return to more accurately assign receipts consistently with the rules or standards of Regulations 39-22-303.6–7 through –13 includes, but is not limited to, each of the following potential actions.

(i) In a case in which a taxpayer fails to properly assign receipts from a sale in accordance with the rules set forth in Regulations 39-22-303.6–7 through –13, including the failure to properly apply a hierarchy of rules consistent with the principles of paragraph (2)(b), the Department may adjust the assignment of the receipts in accordance with the applicable rules in Regulations 39-22-303.6–7 through –13.

(ii) In a case in which a taxpayer uses a method of approximation to assign its receipts and the Department determines that the method of approximation employed by the taxpayer is not reasonable, the Department may substitute a method of approximation that the Department determines is appropriate or may exclude the receipts from the taxpayer's numerator and denominator, as appropriate.

(iii) In a case in which the Department determines that a taxpayer's method of approximation is reasonable, but has not been applied in a consistent manner with respect to similar transactions or year to year, the Department may require that the taxpayer apply its method of approximation in a consistent manner.

(iv) In a case in which a taxpayer excludes receipts from the denominator of its receipts factor on the theory that the assignment of the receipts cannot be reasonably approximated, the Department may determine that the exclusion of

those receipts is not appropriate, and may instead substitute a method of approximation that the Department determines is appropriate.

(v) In a case in which a taxpayer fails to retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, or fails to provide those records to Department upon request, the Department may treat the taxpayer's assignment of receipts as unsubstantiated, and may adjust the assignment of the receipts in a manner consistent with the applicable rules in Regulations 39-22-303.6–7 through –13.

(vi) In a case in which the Department concludes that a customer's billing address was selected by the taxpayer for tax avoidance purposes, the Department may adjust the assignment of receipts from sales to that customer in a manner consistent with the applicable rules in Regulations 39-22-303.6–7 through –13.

(d) *Taxpayer Authority to Change a Method of Assignment on a Prospective Basis*. A taxpayer that seeks to change its method of assigning its receipts under Regulations 39-22-303.6–7 through –13 must disclose, in the original return filed for the year of the change, the fact that it has made the change. If a taxpayer fails to adequately disclose the change, the Department may disregard the taxpayer's change and substitute an assignment method that the Department determines is appropriate.

(e) *Department Authority to Change a Method of Assignment on a Prospective Basis*. The Department may direct a taxpayer to change its method of assigning its receipts in tax returns that have not yet been filed, including changing the taxpayer's method of approximation, if upon reviewing the taxpayer's filing methodology applied for a prior tax year, the Department determines that the change is appropriate to reflect a more accurate assignment of the taxpayer's receipts within the meaning of Regulations 39-22-303.6–7 through –13, and determines that the change can be reasonably adopted by the taxpayer. The Department will provide the taxpayer with a written explanation as to the reason for making the change. In a case in which a taxpayer fails to comply with the Department's direction on subsequently filed returns, the Department may deem the taxpayer's method of assigning its receipts on those returns to be unreasonable, and may substitute an assignment method that the Department determines is appropriate.

(f) *Further Guidance.* The Department may issue further public written statements with respect to the rules set forth in this regulation. These statements may, among other things, include guidance with respect to: (1) what constitutes a reasonable method of approximation within the meaning of the regulations, and (2) the circumstances in which a filing change with respect to a taxpayer's method of reasonable approximation will be deemed appropriate.

Regulation 39-22-303.6–8. Sale, Rental, Lease, or License of Real Property.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining which gross receipts from the sale, rental, lease, or license of real property are included in a taxpayer's receipts factor. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

In the case of a sale, rental, lease, or license of real property, the receipts from the sale are in Colorado if and to the extent that the property is in Colorado.

Regulation 39-22-303.6–9. Rental, Lease, or License of Tangible Personal Property.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining which gross receipts from the rental, lease, or license of tangible personal property are included in a taxpayer's receipts factor. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

In the case of a rental, lease, or license of tangible personal property, the receipts from the sale are in Colorado if and to the extent that the property is in Colorado. If property is mobile property that is located both within and without Colorado during the period of the lease or other contract, the receipts assigned to Colorado are the receipts from the contract period multiplied by a fraction, the numerator of which is the total time within Colorado during the tax period and the denominator of which is the total time during the tax period (as adjusted when necessary to reflect differences between usage during the contract period and usage during the taxable year).

Regulation 39-22-303.6–10. Sale of a Service.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining which gross receipts from sales of services are included in a taxpayer's receipts factor. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **General Rule.** The receipts from a sale of a service are in Colorado if and to the extent that the service is delivered to a location in Colorado. In general, the term "delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth in paragraphs (2)–(4).

(2) **In-Person Services.**

(a) *In General.* Except as otherwise provided in this paragraph (2), in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation, warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services, including medical testing, x-rays, and mental health care and treatment; child care; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons. In-person services include services within the description above that are performed at (1) a location that is owned or operated by the service provider or (2) a location of the customer, including the location of the customer's real or tangible personal property. Although various professional services, including legal, accounting, financial, and consulting services, and other similar services as described in paragraph (4), may involve some amount of in-person contact, they are not treated as in-person services within the meaning of this paragraph (2).

(b) *Assignment of Receipts.*

(i) *Rule of Determination.* Except as otherwise provided in this paragraph (2)(b), if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale are in Colorado if and to the extent the customer receives the in-person service in Colorado. In assigning receipts from sales of in-person services, a taxpayer must first attempt to determine the location where a service is received, as follows:

(A) If the service is performed with respect to the body of an individual customer in Colorado (e.g., hair cutting or x-ray services) or in the physical presence of the customer in Colorado (e.g., live entertainment or athletic performances), the service is received in Colorado.

(B) If the service is performed with respect to the customer's real estate in Colorado, or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in Colorado, the service is received in Colorado.

(C) If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside Colorado, the service is received in Colorado if the property is shipped or delivered to the customer in Colorado.

(c) *Rule of Reasonable Approximation*. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states.

(d) *Examples*. For purposes of the examples, it is irrelevant whether the services are performed by an employee of the taxpayer or by an independent contractor acting on the taxpayer's behalf.

(i) *Example (i).* Salon Corp has retail locations in Colorado and in other states where it provides hair cutting services to individual and business customers, the latter of whom are paid for through the means of a company account. The receipts from sales of services provided at Salon Corp's Colorado locations are in Colorado. The receipts from sales of services provided at Salon Corp's locations outside Colorado, even when provided to residents of Colorado, are not receipts from Colorado sales.

(ii) *Example (ii)*. Landscape Corp provides landscaping and gardening services in Colorado and in neighboring states. Landscape Corp provides landscaping services at the in-state vacation home of an individual who is a resident of another state and who is located outside Colorado at the time the services are performed. The receipts from sale of services provided at the Colorado location are in Colorado.

(iii) *Example (iii)*. Same facts as Example (ii), except that Landscape Corp provides the landscaping services to Retail Corp, a corporation with retail locations in several states, and the services are with respect to those locations of Retail Corp that are in Colorado and the other states. The receipts from the sale of services provided to Retail Corp are in Colorado to the extent the services provided to Retail Corp are in Colorado to the extent the services are provided in Colorado.

(iv) *Example (iv).* Camera Corp provides camera repair services at a Colorado retail location to walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought to its Colorado location at a facility that is in another state. In these cases, the repaired camera is then returned to the customer at Camera Corp's Colorado location. The receipts from the sale of these services are in Colorado.

(v) *Example (v).* Same facts as Example (iv), except that a customer located in Colorado mails the camera directly to the out-of-state facility owned by Camera Corp to be fixed, and receives the repaired camera back in Colorado by mail. The receipts from the sale of the service are in Colorado.

(vi) *Example (vi).* Teaching Corp provides seminars in Colorado to individual and business customers. The seminars and the materials used in connection with the seminars are prepared outside Colorado, the teachers who teach the seminars include teachers that are resident outside Colorado, and the students who attend the seminars include students that are resident outside Colorado. Because the

seminars are taught in Colorado, the receipts from sales of the services are in Colorado.

(3) **Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer.**

(a) *In General.* If the service provided by the taxpayer is not an in-person service within the meaning of paragraph (2), or a professional service within the meaning of paragraph (4), and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in Colorado if and to the extent that the service is delivered in Colorado.

(i) For purposes of this paragraph (3):

(A) A service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service.

(B) A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service but one or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services or the direct or indirect delivery of advertising to the customer's intended audience. *(See paragraph (3)(b)(i) and Example (iv) under paragraph (3)(b)(i)(C))*

(C) A service can be delivered to or on behalf of a customer by physical means or through electronic transmission.

(D) A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(b) *Assignment of Receipts*. The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of this paragraph (3), a service delivered by an electronic transmission is not a delivery by a physical means). If a rule of assignment set forth in this paragraph (3) depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer.

(i) *Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or Business Customer.* Services delivered to a customer or on behalf of a customer through physical means include, for example, product delivery services where property is delivered to the customer or to a third party on behalf of the customer; the delivery of brochures, fliers, or other direct mail services; the delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and the sale of custom software (e.g., when software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate income taxation) when the taxpayer installs the custom software at the

customer's site. The rules in this paragraph (3)(b)(i) apply whether the taxpayer's customer is an individual customer or a business customer.

(A) *Rule of Determination*. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through physical means, a taxpayer must first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.

(B) *Rule of Reasonable Approximation*. If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.

(C) *Examples*.

(I) *Example (i).* Direct Mail Corp, a corporation based outside Colorado, provides direct mail services to its customer, Business Corp. Business Corp contracts with Direct Mail Corp to deliver printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's customers are in Colorado and some of those customers are in other states. Direct Mail Corp will use the postal service to deliver the printed fliers to Business Corp's customers. The receipts from the sale of Direct Mail Corp's services to Business Corp are assigned to Colorado to the extent that the services are delivered on behalf of Business Corp to Colorado customers (i.e., to the extent that the fliers are delivered on behalf of Business Corp to Business Corp's intended audience in Colorado).

(II) *Example (ii).* Ad Corp is a corporation based outside Colorado that provides advertising and advertising-related services in Colorado and in neighboring states. Ad Corp enters into a contract at a location outside Colorado with an individual customer, who is not a Colorado resident, to design advertisements for billboards to be displayed in Colorado, and to design fliers to be mailed to Colorado residents. All of the design work is performed outside Colorado. The receipts from the sale of the design services are in Colorado because the service is physically delivered on behalf of the customer to the customer's intended audience in Colorado.

(III) *Example (iii)*. Same facts as Example (ii), except that the contract is with a business customer that is based outside Colorado. The receipts from the sale of the design services are in Colorado because the services are physically delivered on behalf of the customer to the customer's intended audience in Colorado.

(IV) *Example (iv).* Fulfillment Corp, a corporation based outside Colorado, provides product delivery fulfillment services in Colorado and in neighboring states to Sales Corp, a corporation located outside Colorado that sells tangible personal property through a mail order catalog and over the Internet to customers.

In some cases when a customer purchases tangible personal property from Sales Corp to be delivered in Colorado, Fulfillment Corp will, pursuant to its contract with Sales Corp, deliver that property from its fulfillment warehouse located outside Colorado. The receipts from the sale of the fulfillment services of Fulfillment Corp to Sales Corp are assigned to Colorado to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp are to recipients in Colorado.

(V) *Example (v).* Software Corp, a software development corporation, enters into a contract with a business customer, Buyer Corp, which is physically located in Colorado, to develop custom software to be used in Buyer Corp's business. Software Corp develops the custom software outside Colorado, and then physically installs the software on Buyer Corp's computer hardware located in Colorado. The development and sale of the custom software is properly characterized as a service transaction, and the receipts from the sale are assigned to Colorado because the software is physically delivered to the customer in Colorado.

(ii) *Delivery to a Customer by Electronic Transmission*. Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases, or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following rules apply.

(A) *Services Delivered By Electronic Transmission to an Individual Customer.*

(I) *Rule of Determination*. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in Colorado if and to the extent that the taxpayer's customer receives the service in Colorado. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.

(II) *Rules of Reasonable Approximation*. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the customer's billing address.

(B) *Services Delivered By Electronic Transmission to a Business Customer.*

(I) *Rule of Determination*. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in Colorado if and to the extent that the taxpayer's customer receives the service in Colorado. If the taxpayer can

determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of this paragraph (3)(b)(ii)(B), it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer.

(II) *Rule of Reasonable Approximation*. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states.

(III) *Secondary Rule of Reasonable Approximation.* In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in this paragraph (3)(b)(ii)(B)(III). In these cases, unless the taxpayer can apply the safe harbor set forth in paragraph (3)(b)(ii)(B)(IV), the taxpayer shall reasonably approximate the state or states in which the service is received as follows:

(1) first, by assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer;

(2) second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and

(3) third, if the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address;

provided, however, if the taxpayer derives more than 5% of its receipts from sales of services from any single customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.

(IV) *Safe Harbor*. In the case of the delivery of a service to a business customer by electronic transmission, a taxpayer may not be able to determine or reasonably approximate under paragraph (3)(b)(ii)(B)(II) the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated in paragraph (3)(b)(ii)(B)(III), apply the safe harbor stated in this paragraph. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer:

(1) engages in substantially similar service transactions with more than 250 customers, whether business or individual, and

(2) does not derive more than 5% of its receipts from sales of all services from that customer.

This safe harbor applies only for purposes of services delivered by electronic transmission to a business customer, and not otherwise.

(V) *Related Party Transactions*. In the case of a sale of a service by electronic transmission to a business customer that is a related party, the taxpayer may not use the secondary rule of reasonable approximation in (3)(b)(ii)(B)(III) but may use the rule of reasonable approximation in paragraph (3)(b)(ii)(B)(II) and the safe harbor in paragraph (3)(b)(ii)(B)(IV), provided that the Department may aggregate sales to related parties in determining whether the sales exceed 5% of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion.

(C) *Examples*. In these examples, unless otherwise stated, assume that the taxpayer is not related to the customer to which the service is delivered. Further, assume if relevant, unless otherwise stated, that the safe harbor set forth in paragraph (3)(b)(ii)(B)(IV) does not apply.

(I) *Example (i)*. Support Corp, a corporation based outside Colorado, provides software support and diagnostic services to individual and business customers that have previously purchased certain software from third-party vendors. These individual and business customers are located in Colorado and other states. Support Corp supplies its services on a case by case basis when directly contacted by its customer. Support Corp generally provides these services through the Internet but sometimes provides these services by phone. In all cases, Support Corp verifies the customer's account information before providing any service. Using the information that Support Corp verifies before performing a service, Support Corp can determine where its services are received, and therefore must assign its receipts to these locations. The receipts from sales made to Support Corp's individual and business customers are in Colorado to the extent that Support Corp's services are received in Colorado. *See paragraph (3)(b)(ii)(A) and (B).*

(II) *Example (ii)*. Online Corp, a corporation based outside Colorado, provides web-based services through the Internet to individual customers who are resident in Colorado and in other states. These customers access Online Corp's web services primarily in their states of residence, and sometimes, while traveling, in other states. For a substantial portion of its receipts from the sale of services, Online Corp can either determine the state or states where the services are received, or, where it cannot determine the state or states, it has sufficient information regarding the place of receipt to reasonably approximate the state or states. However, Online Corp cannot determine or

reasonably approximate the state or states of receipt for all of the sales of its services. Assuming that Online Corp reasonably believes, based on all available information, that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its services generally tracks those for which it does have this information, Online Corp must assign to Colorado the receipts from sales for which it does not know the customers' location in the same proportion as those receipts for which it has this information. *See paragraph (3)(b) of Regulation 39-22-303.6–7*.

(III) *Example (iii).* Same facts as Example (ii), except that Online Corp reasonably believes that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its web-based services do not generally track the sales for which it does have this information. Online Corp must assign the receipts from sales of its services for which it lacks information as provided to its individual customers using the customers' billing addresses. *See paragraph (3)(b)(ii)(A).*

(IV) *Example (iv).* Net Corp, a corporation based outside Colorado, provides web-based services to a business customer, Business Corp, a company with offices in Colorado and two neighboring states. Particular employees of Business Corp access the services from computers in each Business Corp office. Assume that Net Corp determines that Business Corp employees in Colorado were responsible for 75% of Business Corp's use of Net Corp's services, and Business Corp employees in other states were responsible for 25% of Business Corp's use of Net Corp's services. In this case, 75% of the receipts from the sale are received in Colorado. *See paragraph (3)(b)(ii)(B)(I).*

(V) *Example (v).* Same facts as Example (iv), except assume alternatively that Net Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate the location or locations. Under these circumstances, if Net Corp derives 5% or less of its receipts from sales to Business Corp, Net Corp must assign the receipts under paragraph (3)(b)(ii)(B)(III) to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than 5% of its receipts from sales of services to Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

(VI) *Example (vi).* Net Corp, a corporation based outside Colorado, provides web-based services through the Internet to more than 250 individual and business customers in Colorado and in other states. Assume that for each customer Net Corp cannot determine the state or states where its web services are actually received, and lacks sufficient information regarding the place of

receipt to reasonably approximate the state or states. Also assume that Net Corp does not derive more than 5% of its receipts from sales of services to a single customer. Net Corp may apply the safe harbor stated in paragraph (3)(b)(ii)(B)(IV), and may assign its receipts using each customer's billing address.

(iii) *Services Delivered Electronically Through or on Behalf of an Individual or Business Customer*. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically but one or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

(A) *Rule of Determination*. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in Colorado if and to the extent that the end users or other third-party recipients are in Colorado. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in Colorado to the extent that the audience for the advertising is in Colorado. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in Colorado to the extent that the end users or other third-party recipients receive the services in Colorado. The rules in this paragraph (3)(b)(iii) apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.

(B) *Rule of Reasonable Approximation*. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, the taxpayer shall reasonably approximate the state or states.

(C) *Select Secondary Rules of Reasonable Approximation.*

(I) If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the

advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in that area.

(II) If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients, and if the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area.

(III) When using the secondary reasonable approximation methods provided above, the relevant specific geographic area of delivery includes only the areas where the service was substantially and materially delivered or resold. Unless the taxpayer demonstrates the contrary, it will be presumed that the area where the service was substantially and materially delivered or resold does not include areas outside the United States.

(D) *Examples*.

(I) *Example (i)*. Cable TV Corp, a corporation based outside of Colorado, has two revenue streams. First, Cable TV Corp sells advertising time to business customers pursuant to which the business customers' advertisements will run as commercials during Cable TV Corp's televised programming. Some of these business customers, though not all of them, have a physical presence in Colorado. Second, Cable TV Corp sells monthly subscriptions to individual customers in Colorado and in other states. The receipts from Cable TV Corp's sale of advertising time to its business customers are assigned to Colorado to the extent that the audience for Cable TV Corp's televised programming during which the advertisements run is in Colorado. *See paragraph (3)(b)(iii)(A)*. If Cable TV Corp is unable to determine the actual location of its audience for the programming, and lacks sufficient information regarding audience location to reasonably approximate the location, Cable TV Corp must approximate its Colorado audience using the percentage that reflects the ratio of its Colorado subscribers in the geographic area in which Cable TV Corp's televised programming featuring the advertisements is delivered relative to its total number of subscribers in that area. *See paragraph (3)(b)(iii)(C)(I)*. To the extent that Cable TV Corp's sales of monthly subscriptions represent the sale of a service, the receipts from these sales are properly assigned to Colorado in any case in which the programming is received by a customer in Colorado. *See paragraph (3)(b)(ii)(A)*. In any case in which Cable TV Corp

cannot determine the actual location where the programming is received, and lacks sufficient information regarding the location of receipt to reasonably approximate the location, the receipts from these sales of Cable TV Corp's monthly subscriptions are assigned to Colorado where its customer's billing address is in Colorado. *See paragraph (3)(b)(ii)(A)(II).* Note that whether and to the extent that the monthly subscription fee represents a fee for a service or for a license of intangible property does not affect the analysis or result as to the state or states to which the receipts are properly assigned. *See paragraph 5 of Regulation 39-22-303.6–11.*

(II) *Example (ii)*. Network Corp, a corporation based outside of Colorado, sells advertising time to business customers pursuant to which the customers' advertisements will run as commercials during Network Corp's televised programming as distributed by unrelated cable television and satellite television transmission companies. The receipts from Network Corp's sale of advertising time to its business customers are assigned to Colorado to the extent that the audience for Network Corp's televised programming during which the advertisements will run is in Colorado. *See paragraph (3)(b)(iii)(A).* If Network Corp cannot determine the actual location of the audience for its programming during which the advertisements will run, and lacks sufficient information regarding audience location to reasonably approximate the location, Network Corp must approximate the receipts from sales of advertising that constitute Colorado sales by multiplying the amount of advertising receipts by a percentage that reflects the ratio of the Colorado population in the specific geographic area in which the televised programming containing the advertising is run relative to the total population in that area. *See paragraph (3)(b)(iii)(C)(II) and (III).*

(III) *Example (iii)*. Web Corp, a corporation based outside of Colorado, provides Internet content to viewers in Colorado and other states. Web Corp sells advertising space to business customers pursuant to which the customers' advertisements will appear in connection with Web Corp's Internet content. Web Corp receives a fee for running the advertisements that is determined by reference to the number of times the advertisement is viewed or clicked upon by the viewers of its website. The receipts from Web Corp's sale of advertising space to its business customers are assigned to Colorado to the extent that the viewers of the Internet content are in Colorado, as measured by viewings or clicks. *See paragraph (3)(b)(iii)(A).* If Web Corp is unable to determine the actual location of its viewers, and lacks sufficient information regarding the location of its viewers to reasonably approximate the location, Web Corp must approximate the amount of its Colorado receipts by multiplying the amount of receipts from sales of advertising by a percentage that reflects the Colorado population in the specific geographic area in which the content containing the advertising is delivered relative to the total population in that area. *See paragraph (3)(b)(iii)(C).*

(IV) *Example (iv)*. Retail Corp, a corporation based outside of Colorado, sells tangible property through its retail stores located in Colorado and other states, and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. In this case, the phone answering services of Answer Co are being delivered to Retail Corp's customers and prospective customers. Therefore, Answer Co is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and must assign the proceeds from this service to the state or states from which the phone calls are placed by the customers or prospective customers. If Answer Co cannot determine the actual locations from which phone calls are placed, and lacks sufficient information regarding the locations to reasonably approximate the locations, Answer Co must approximate the amount of its Colorado receipts by multiplying the amount of its fee from Retail Corp by a percentage that reflects the Colorado population in the specific geographic area from which the calls are placed relative to the total population in that area. *See paragraph (3)(b)(iii)(C)(I).*

(V) *Example (v)*. Web Corp, a corporation based outside of Colorado, sells tangible property to customers via its Internet website. Design Co. designed and maintains Web Corp's website, including making changes to the site based on customer feedback received through the site. Design Co.'s services are delivered to Web Corp, the proceeds from which are assigned pursuant to paragraph (3)(b)(ii). The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co.'s services, and may even interact with Design Co in the course of providing feedback, does not transform the service into one delivered "on behalf of" Web Corp to Web Corp's customers and prospective customers.

(VI) *Example (vi)*. Wholesale Corp, a corporation based outside of Colorado, develops an Internet-based information database outside Colorado and enters into a contract with Retail Corp whereby Retail Corp will market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property or may have elements of both, but for purposes of analysis it does not matter. *See paragraph (5) of Regulation 39-22-303.6–11.* Assume that on the particular facts applicable in this example, Wholesale Corp is selling database access in transactions properly characterized as involving the performance of a service. When an end user purchases access to Wholesale Corp's database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with that transaction. In this case, Wholesale Corp's services are being delivered through Retail Corp to the end user. Wholesale Corp must assign its receipts from sales to Retail Corp to the state or states in which the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine the state or states where the end users actually receive access to Wholesale Corp's database, and lacks sufficient information

regarding the location from which the end users access the database to reasonably approximate the location, Wholesale Corp must approximate the extent to which its services are received by end users in Colorado by using a percentage that reflects the ratio of the Colorado population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in that area. *See paragraph (3)(b)(iii)(C)(II).* Note that it does not matter for purposes of the analysis whether Wholesale Corp's sale of database access constitutes a service or a license of intangible property, or some combination of both. *See paragraph (5) of Regulation 39-22-303.6–11.*

(4) **Professional Services.**

(a) *In General.* Except as otherwise provided in this paragraph (4), professional services are services that require specialized knowledge and in some cases require a professional certification, license, or degree. These services include the performance of technical services that require the application of specialized knowledge. Professional services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending services, credit card services (including credit card processing services), data processing services, legal services, consulting services, video production services, graphic and other design services, engineering services, and architectural services.

(b) *Overlap with Other Service Categories.*

(i) Certain services that fall within the definition of "professional services" set forth in this paragraph (4) are nevertheless treated as "in-person services" within the meaning of paragraph (2), and are assigned under the rules of paragraph (2). Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services, or child care services, where the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are "in-person services" and are assigned as such, notwithstanding that they may also be considered to be "professional services." However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial, and consulting services, are assigned as professional services under the rules of this paragraph (4), notwithstanding the fact that these services may involve some amount of in-person contact.

(ii) Professional services may, in some cases, include the transmission of one or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, in these cases, despite this transmission, the assignment rules that apply are those set forth in this paragraph (4), and not those set forth in paragraph (3), pertaining to services delivered to a customer or through or on behalf of a customer.

(c) *Assignment of Receipts.* In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which will consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general rule of determination, and must be reasonably approximated.

The assignment of receipts from a sale of a professional service depends, in many cases, upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer is the person who contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's services.

(i) *General Rule*. Receipts from sales of professional services other than those services described in paragraph (4)(c)(ii) (architectural and engineering services), paragraph (4)(c)(iii) (services provided by a financial institution) and paragraph (4)(h)(iv) (transactions with related parties) are assigned in accordance with this paragraph (4)(c)(i).

(A) *Professional Services Delivered to Individual Customers*. Except as otherwise provided in this paragraph (4) (see in particular paragraph (4)(c)(iv)), in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this paragraph (4)(c)(i)(A). In particular, the taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.

(B) *Professional Services Delivered to Business Customers*. Except as otherwise provided in paragraph (4), in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this paragraph (4)(c)(i)(B). In particular, unless the taxpayer may use the safe harbor set forth in paragraph (4)(c)(i)(C), the taxpayer shall assign the receipts from the sale as follows:

(I) first, by assigning the receipts to the state where the contract of sale is principally managed by the customer;

(II) second, if the place of customer management is not reasonably determinable, to the customer's place of order; and

(III) third, if the customer's place of order is not reasonably determinable, to the customer's billing address;

provided, however, in any instance in which the taxpayer derives more than 5% of its receipts from sales of all services from any single customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.

(C) *Safe Harbor. Large Volume Transactions.* Notwithstanding the rules set forth in paragraph (4)(c)(i)(A) and (B), a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer (1) engages in

substantially similar service transactions with more than 250 customers, whether individual or business, and (2) does not derive more than 5% of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of paragraph (4)(c)(i) and not otherwise.

(ii) *Architectural and Engineering Services with Respect to Real or Tangible Personal Property*. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of this paragraph (4). However, unlike in the case of the general rule that applies to professional services, (1) the receipts from a sale of an architectural service are assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states; and (2) the receipts from a sale of an engineering service are assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These rules apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in this paragraph (4)(c)(ii), the receipts from a sale of these services must be assigned under the general rule for professional services. *See paragraph (4)(c)(i)*.

(iii) *Services Provided by a Financial Institution*. The apportionment rules that apply to financial institutions are set forth in 1 CCR 201-2, Special Regulation 7A, which includes specific rules to determine a financial institution's receipts factor. However, 1 CCR 201-2, Special Regulation 7A also provides that receipts from sales, other than sales of tangible personal property, including service transactions, that are not otherwise apportioned under 1 CCR 201-2, Special Regulation 7A, are to be assigned pursuant to § 39-22-303.6, C.R.S. and these regulations. In any instance in which a financial institution performs services that are to be assigned pursuant to § 39-22-303.6, C.R.S. and these regulations including, for example, financial custodial services, those services are considered professional services within the meaning of this paragraph (4), and are assigned according to the general rule for professional service transactions as set forth paragraph (4)(c)(i).

(iv) *Related Party Transactions*. In any instance in which the professional service is sold to a related party, rather than applying the rule for professional services delivered to business customers in paragraph (4)(c)(i)(B), the state or states to which the service is assigned is the place of receipt by the related party as reasonably approximated using the following hierarchy:

(A) if the service primarily relates to specific operations or activities of a related party conducted in one or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related party's payroll at the locations to which the service relates in the state or states; or

(B) if the service does not relate primarily to operations or activities of a related party conducted in particular locations, but instead relates to the operations of the related party generally, then to the state or states in which the related party has employees, in proportion to the related party's payroll in those states.

The taxpayer may use the safe harbor provided in paragraph (4)(c)(i)(C) provided that the Department may aggregate the receipts from sales to related parties in applying the 5% rule if necessary or appropriate to avoid distortion.

(v) *Examples*. Unless otherwise stated, assume in each of these examples that the customer is not a related party and that the safe harbor set forth in paragraph (4)(c)(i)(C) does not apply.

(A) *Example (i)*. Broker Corp provides securities brokerage services to individual customers who are residents in Colorado and in other states. Assume that Broker Corp knows the state of primary residence for many of its customers, and where it does not know the state of primary residence, it knows the customer's billing address. Also assume that Broker Corp does not derive more than 5% of its receipts from sales of all services from any one individual customer. If Broker Corp knows its customer's state of primary residence, it shall assign the receipts to that state. If Broker Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it shall assign the receipts to that state. *See paragraph (4)(c)(i)(A).*

(B) *Example (ii)*. Same facts as Example (i), except that Broker Corp has several individual customers from whom it derives, in each instance, more than 5% of its receipts from sales of all services. Receipts from sales to customers from whom Broker Corp derives 5% or less of its receipts from sales of all services must be assigned as described in Example (i). For each customer from whom it derives more than 5% of its receipts from sales of all services, Broker Corp is required to determine the customer's state of primary residence and must assign the receipts from the services provided to that customer to that state. In any case in which a 5% customer's state of primary residence is Colorado, receipts from a sale made to that customer must be assigned to Colorado; in any case in which a 5% customer's state of primary residence is not Colorado receipts from a sale made to that customer are not assigned to Colorado.

(C) *Example (iii)*. Architecture Corp provides building design services for buildings located, or expected to be located, in Colorado to individual customers who are resident in Colorado and other states, and to business customers that are based in Colorado and other states. The receipts from Architecture Corp's sales are assigned to Colorado because the locations of the buildings to which its design services relate are in Colorado, or are expected to be in Colorado. For purposes of assigning these receipts, it is not relevant where, in the case of an individual customer, the customer primarily resides or is billed for the services, and it is not relevant where, in the case of a business customer, the customer principally manages the contract, placed the order for the services, or is billed for the services. Further, these receipts are assigned to Colorado even if Architecture Corp's designs are either physically delivered to its customer in paper form in a state other than Colorado or are electronically delivered to its customer in a state other than Colorado. *See paragraphs (4)(b)(ii) and (c)(ii).*

(D) *Example (iv)*. Law Corp provides legal services to individual clients who are resident in Colorado and in other states. In some cases, Law Corp may prepare one or more legal documents for its client as a result of these services and/or the legal work may be related to litigation or a legal matter that is ongoing in a state other than where the client is a resident. Assume that Law Corp knows the state of primary residence for many of its clients, and where it does not know the state of primary residence, it knows the client's billing address. Also assume that Law Corp does not

derive more than 5% of its receipts from sales of all services from any one individual client. If Law Corp knows its client's state of primary residence, it shall assign the receipts to that state. If Law Corp does not know its client's state of primary residence, but rather knows the client's billing address, it shall assign the receipts to that state. For purposes of the analysis, it is irrelevant whether the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or the litigation or other legal matter that is the underlying predicate for the services is in another state. *See paragraphs (4)(b)(ii) and (c)(i).*

(E) *Example (v).* Law Corp provides legal services to several multistate business clients. In each case, Law Corp knows the state in which the agreement for legal services that governs the client relationship is principally managed by the client. In one case, the agreement is principally managed in Colorado; in the other cases, the agreement is principally managed in a state other than Colorado. If the agreement for legal services is principally managed by the client in Colorado, the receipts from sale of the services are assigned to Colorado; in the other cases, the receipts are not assigned to Colorado. In the case of receipts that are assigned to Colorado, the receipts are so assigned even if (1) the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or (2) the litigation or other legal matter that is the underlying predicate for the services is in another state. *See paragraphs (4)(b)(ii) and (c)(i).*

(F) *Example (vi)*. Consulting Corp, a company that provides consulting services to law firms and other customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's services directly. Assuming that Consulting Corp knows that its agreement with Law Corp is principally managed by Law Corp in Colorado, the receipts from the sale of Consulting Corp's services are assigned to Colorado. It is not relevant for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting Corp's services directly. *See paragraph (4)(c)(i)(B).*

(G) *Example (vii)*. Bank Corp provides financial custodial services, including the safekeeping of some of its customers' financial assets, to 100 individual customers who are resident in Colorado and in other states. Assume for purposes of this example that Bank Corp knows the state of primary residence for many of its customers, and where it does not know the state of primary residence, it knows the customer's billing address. Also assume that Bank Corp does not derive more than 5% of its receipts from sales of all of its services from any single customer. Note that because Bank Corp does not have more than 250 customers, it may not apply the safe harbor for professional services stated in paragraph (4)(c)(i)(C). If Bank Corp knows its customer's state of primary residence, it must assign the receipts to that state. If Bank Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it must assign the receipts to that state. Bank Corp's receipts are assigned to Colorado if the customer's state of primary residence (or billing address, in cases where it does not know the customer's state of primary residence) is in Colorado, even if Bank Corp's financial custodial work, including the safekeeping of the

customer's financial assets, takes place in a state other than Colorado. *See paragraph (4)(c)(i)(A).*

(H) *Example (viii)*. Same facts as Example (vii), except that Bank Corp has more than 250 customers, individual or business. Bank Corp may apply the safe harbor for professional services stated in paragraph (4)(c)(i)(C), and may assign its receipts from sales to a state or states using each customer's billing address.

(I) *Example (ix)*. Same facts as Example (viii), except that Bank Corp derives more than 5% of its receipts from sales from a single individual customer. As to the sales made to this customer, Bank Corp is required to determine the individual customer's state of primary residence and must assign the receipts from the service or services provided to that customer to that state. *See paragraphs (4)(c)(i)(A) and (c)(iii)*. Receipts from sales to all other customers are assigned as described in Example (viii).

(J) *Example (x).* Advisor Corp, a corporation that provides investment advisory services, provides these advisory services to Investment Co. Investment Co is a multistate business client of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it manages for individual clients, who are the ultimate beneficiaries of Advisor Corp's services. Assume that Investment Co's individual clients are persons that are resident in numerous states, which may or may not include Colorado. Assuming that Advisor Corp knows that its agreement with Investment Co is principally managed by Investment Co in Colorado, receipts from the sale of Advisor Corp's services are assigned to Colorado. It is not relevant for purposes of the analysis that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are residents of numerous states. *See paragraph (4)(c)(i)(B).*

(K) *Example (xi)*. Advisor Corp provides investment advisory services to Investment Fund LP, a partnership that invests in securities and other assets. Assuming that Advisor Corp knows that its agreement with Investment Fund LP is principally managed by Investment Fund LP in Colorado, receipts from the sale of Advisor Corp's services are assigned to Colorado. *See paragraph (4)(c)(i)(B).* Note that it is not relevant for purposes of the analysis that the partners in Investment Fund LP are residents of numerous states.

(L) *Example (xii)*. Design Corp is a corporation based outside Colorado that provides graphic design and similar services in Colorado and in neighboring states. Design Corp enters into a contract at a location outside Colorado with an individual customer to design fliers for the customer. Assume that Design Corp does not know the individual customer's state of primary residence and does not derive more than 5% of its receipts from sales of services from the individual customer. All of the design work is performed outside Colorado. Receipts from the sale are in Colorado if the customer's billing address is in Colorado. *See paragraph (4)(c)(i)(A).*

Regulation 39-22-303.6 – 11. License or Lease of Intangible Property.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining which gross receipts

from the license or lease of intangible property are included in a taxpayer's receipts factor. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **General Rules.**

(a) The receipts from the license of intangible property are in Colorado if and to the extent the intangible is used in Colorado. In general, the term "use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The rules that apply in determining the location of the use of intangible property in the context of several specific types of licensing transactions are set forth in paragraph (2)-(5). For purposes of the rules set forth in this Regulation 39-22-303.6–11, a lease of intangible property is to be treated the same as a license of intangible property.

(b) In general, a license of intangible property that conveys all substantial rights in that property is treated as a sale of intangible property for purposes of Regulations 39-22-303.6–7 through 13. *See Regulation 39-22-303.6–12.* Note, however, that for purposes of Regulations 39-22-303.6–11 and –12, a sale or exchange of intangible property is treated as a license of that property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property.

(c) Intangible property licensed as part of the sale or lease of tangible property is treated under Regulations 39-22-303.6–7 through –13 as the sale or lease of tangible property.

(d) Nothing in this Regulation 39-22-303.6–11 shall be construed to allow or require inclusion of receipts in the receipts factor that are not included in the definition of "receipts" pursuant to § 39-22-303.6(1)(d), C.R.S., or related regulations, or that are excluded from the numerator and the denominator of the receipts factor pursuant to § 39-22-303.6(6)(d)(III), C.R.S. For examples of the types of intangibles that are excluded pursuant to § 39-22-303.6(1)(d), C.R.S., see paragraphs (1)(i), (1)(l)(vi) and (1)(l)(vii) of Regulation 39-22-303.6–1. For examples of the types of intangibles that are excluded pursuant to § 39-22-303.6(6)(d)(III), C.R.S., see paragraph (1)(d) of Regulation 39-22-303.6–12. So, to the extent that the transfer of either a security, as defined in paragraph (1)(n) of Regulation 39-22-303.6–1, or business "goodwill" or similar intangible value, including, without limitation, "going concern value" or "workforce in place," may be characterized as a license or lease of intangible property, receipts from such transaction shall be excluded from the numerator and the denominator of the taxpayer's receipts factor.

(2) **License of a Marketing Intangible.** Where a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items (a "marketing intangible") to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible are assigned to Colorado to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in Colorado.

(a) Examples of a license of a marketing intangible include, without limitation, the license of a service mark, trademark, or trade name; certain copyrights; the license of a film, television, or multimedia production, or event for commercial distribution; and a franchise agreement. In each of these instances the license of the marketing intangible is intended to promote consumer sales.

(b) In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to Colorado, it shall assign

that amount or proportion to Colorado. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from Colorado consumers, the portion of the licensing fee to be assigned to Colorado must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the Colorado population in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services, or other items relative to the total population in that area. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to Colorado must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the Colorado population in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing that marketing intangible will be presumed to be derived from within the United States.

(3) **License of a Production Intangible.** If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a “production intangible”), the licensing fees paid by the licensee for that right are assigned to Colorado to the extent that the use for which the fees are paid takes place in Colorado.

(a) Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in that process.

(b) In the case of a license of a production intangible to a party other than a related party where the location of actual use is unknown, it is presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile (where the licensee is a business) or the licensee’s state of primary residence (where the licensee is an individual). If the Department can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in Colorado, it is presumed that the entire use is in Colorado except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside Colorado. In the case of a license of a production intangible to a related party, the taxpayer must assign the receipts to where the intangible property is actually used.

(4) **License of a Mixed Intangible.** If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a “mixed intangible”) and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the Department will accept that separate statement for purposes of Regulations 39-22-303.6–7 through –13. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the Department can reasonably establish otherwise.

(5) **License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services.**

(a) *In General.* In some cases, the license of intangible property will resemble the sale of an electronically delivered good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction are assigned by applying the rules set forth in paragraphs (3)(b)(ii) and (iii) of Regulation 39-22-303.6–10, as if the transaction were a service delivered to an individual or business

customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this paragraph (5) include, without limitation, the license of database access, the license of access to information, the license of digital goods (see paragraph (2) of Regulation 39-22-303.6–13), and the license of certain software (e.g., where the transaction is not the license of pre-written software that is treated as the sale of tangible personal property see paragraph (1) of Regulation 39-22-303.6–13).

(b) *Sublicenses*. Pursuant to paragraph (5)(a), the rules of paragraph (3)(b)(iii) of Regulation 39-22-303.6–10 may apply where a taxpayer licenses intangible property to a customer that, in turn, sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. In particular, the rules set forth at paragraph (3)(b)(iii) of Regulation 39-22-303.6–10 that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may also apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (e.g., because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property.

(6) **Examples.** In these examples, unless otherwise stated, assume that the customer is not a related party.

(a) *Example (i)*. Crayon Corp and Dealer Co enter into a license contract under which Dealer Co as licensee is permitted to use trademarks that are owned by Crayon Corp in connection with Dealer Co's sale of certain products to retail customers. Under the contract, Dealer Co is required to pay Crayon Corp a licensing fee that is a fixed percentage of the total volume of monthly sales made by Dealer Co of products using the Crayon Corp trademarks. Under the contract, Dealer Co is permitted to sell the products at multiple store locations, including store locations that are both within and without Colorado. Further, the licensing fees that are paid by Dealer Co are broken out on a per-store basis. The licensing fees paid to Crayon Corp by Dealer Co represent fees from the license of a marketing intangible. The portion of the fees to be assigned to Colorado are determined by multiplying the fees by a percentage that reflects the ratio of Dealer Co's receipts that are derived from its Colorado stores relative to Dealer Co's total receipts. *See paragraph (2).*

(b) *Example (ii)*. Program Corp, a corporation based outside Colorado, licenses programming that it owns to licensees, such as cable networks, that, in turn, will offer the programming to their customers on television or other media outlets in Colorado and in all other U.S. states. Each of these licensing contracts constitutes the license of a marketing intangible. For each licensee, assuming that Program Corp lacks evidence of the actual number of viewers of the programming in Colorado, the component of the licensing fee paid to Program Corp by the licensee that constitutes Program Corp's Colorado receipts is determined by multiplying the amount of the licensing fee by a percentage that reflects the ratio of the Colorado audience of the licensee for the programming relative to the licensee's total U.S. audience for the programming. *See paragraph (5).* Note that the analysis and result as to the state or states to which receipts are properly assigned would be the same to the extent that the substance of Program Corp's licensing transactions may be determined to resemble a sale of goods or services, instead of the license of a marketing intangible. *See paragraph (5).*

(c) *Example (iii)*. Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the contract, Wholesale Co is granted the right to use trademarks owned by Moniker Corp to brand sports equipment that is to be manufactured by Wholesale Co or an unrelated entity, and to sell the manufactured equipment to unrelated companies that will ultimately market the equipment to consumers in a specific geographic region, including a foreign country. The license agreement confers a license of a marketing intangible, even though the trademarks in question will be affixed to property to be manufactured. In addition, the license of the marketing intangible is for the right to use the intangible property in connection with sales to be made at wholesale rather than directly to retail customers. The component of the licensing fee that constitutes the Colorado receipts of Moniker Corp is determined by multiplying the amount of the fee by a percentage that reflects the ratio of the Colorado population in the specific geographic region relative to the total population in that region. *See paragraph (2).* If Moniker Corp is able to reasonably establish that the marketing intangible was materially used throughout a foreign country, then the population of that country will be included in the population ratio calculation. However, if Moniker Corp is unable to reasonably establish that the marketing intangible was materially used in the foreign country in areas outside a particular major city; then none of the foreign country's population beyond the population of the major city is included in the population ratio calculation.

(d) *Example (iv)*. Formula, Inc and Appliance Co enter into a license contract under which Appliance Co is permitted to use a patent owned by Formula, Inc to manufacture appliances. The license contract specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed percentage of the gross receipts from the products that are later sold. The contract does not specify any other fees. The appliances are both manufactured and sold in Colorado and several other states. Assume the licensing fees are paid for the license of a production intangible, even though the royalty is to be paid based upon the sales of a manufactured product (i.e., the license is not one that includes a marketing intangible). Because the Department can reasonably establish that the actual use of the intangible property takes place, in part, in Colorado, the royalty is assigned based to the location of that use rather than to the location of the licensee's commercial domicile in accordance with paragraph (1). It is presumed that the entire use is in Colorado except to the extent that the taxpayer can demonstrate that the actual location of some or all of the use takes place outside Colorado. Assuming that Formula, Inc can demonstrate the percentage of manufacturing that takes place in Colorado using the patent relative to the manufacturing in other states, that percentage of the total licensing fee paid to Formula, Inc under the contract will constitute Formula, Inc's Colorado receipts. *See paragraph (5).*

(e) *Example (v)*. Axle Corp enters into a license agreement with Biker Co in which Biker Co is granted the right to produce motor scooters using patented technology owned by Axle Corp, and also to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The contract is a license of both a marketing and production intangible, i.e., a mixed intangible. The scooters are manufactured outside Colorado. Assume that Axle Corp lacks actual information regarding the proportion of Biker Co's receipts that are derived from Colorado customers. Also assume that Biker Co is granted the right to sell the scooters in a U.S. geographic region in which the Colorado population constitutes 25% of the total population during the period in question. The licensing contract requires an upfront licensing fee to be paid by Biker Co to Axle Corp and does not specify what percentage of the fee derives from Biker Co's right to use Axle Corp's patented technology. Because the fees for the license of the marketing and production intangible are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of a marketing intangible, unless either the taxpayer or the Department reasonably establish otherwise. Assuming that neither party establishes otherwise, 25% of the licensing fee constitutes Colorado receipts. *See paragraphs (2) and (4).*

(f) *Example (vi)*. Same facts as Example (v), except that the license contract specifies separate fees to be paid for the right to produce the motor scooters and for the right to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The licensing contract constitutes both the license of a marketing intangible and the license of a production intangible. Assuming that the separately stated fees are reasonable, the Department will: (1) assign no part of the licensing fee paid for the production intangible to Colorado, and (2) assign 25% of the licensing fee paid for the marketing intangible to Colorado*. See paragraph (4).*

(g) *Example (vii)*. Better Burger Corp, which is based outside Colorado, enters into franchise contracts with franchisees that agree to operate Better Burger restaurants as franchisees in various states. Several of the Better Burger Corp franchises are in Colorado. In each case, the franchise contract between the individual and Better Burger provides that the franchisee is to pay Better Burger Corp an upfront fee for the receipt of the franchise and monthly franchise fees, which cover, among other things, the right to use the Better Burger name and service marks, food processes and cooking know-how, as well as fees for management services. The upfront fees for the receipt of the Colorado franchises constitute fees paid for the licensing of a marketing intangible. These fees constitute Colorado receipts because the franchises are for the right to make Colorado sales. The monthly franchise fees paid by Colorado franchisees constitute fees paid for (1) the license of marketing intangibles (the Better Burger name and service marks), (2) the license of production intangibles (food processes and know-how) and (3) personal services (management fees). The fees paid for the license of the marketing intangibles and the production intangibles constitute Colorado receipts because in each case the use of the intangibles is to take place in Colorado. *See paragraphs (2) and(3).* The fees paid for the personal services are to be assigned pursuant to Regulation 39-22-303.6–10.

(h) *Example (viii)*. Online Corp, a corporation based outside Colorado, licenses an information database through the Internet to individual customers who are resident in Colorado and in other states. These customers access Online Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. The license is a license of intangible property that resembles a sale of goods or services and are assigned in accordance with paragraph (5). If Online Corp can determine or reasonably approximate the state or states from which its database is accessed, it must do so. Assuming that Online Corp cannot determine or reasonably approximate the location from which its database is accessed, Online Corp must assign the receipts made to the individual customers using the customers' billing addresses to the extent known. Assume for purposes of this example that Online Corp knows the billing address for each of its customers. In this case, Online Corp's receipts from sales made to its individual customers are in Colorado in any case in which the customer's billing address is in Colorado. *See paragraph (3)(b)(ii)(A) of Regulation 39-22-303.6–10.*

(i) *Example (ix)*. Net Corp, a corporation based outside Colorado, licenses an information database through the Internet to a business customer, Business Corp, a company with offices in Colorado and two neighboring states. The license is a license of intangible property that resembles a sale of goods or services and are assigned in accordance with paragraph (5). Assume that Net Corp cannot determine the location from which its database is accessed but reasonably approximates that 75% of Business Corp's database access took place in Colorado, and 25% of Business Corp's database access took place in other states. In that case, 75% of the receipts from database access is in Colorado. Assume alternatively that Net Corp lacks sufficient information regarding the location from which its database is accessed to reasonably approximate the location. Under these circumstances, if Net Corp derives 5% or less of its receipts from database access from Business Corp, Net Corp must assign the receipts under paragraph (3)(b)(ii)(B) of Regulation 39-22-303.6–10 to the state from which Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where

Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than 5% of its receipts from database access from Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state. See paragraph (3)(b)(ii)(B) of Regulation 39-22-303.6–10

(j) *Example (x)*. Net Corp, a corporation based outside Colorado, licenses an information database through the Internet to more than 250 individual and business customers in Colorado and in other states. The license is a license of intangible property that resembles a sale of goods or services and receipts from that license are assigned in accordance with paragraph (5). Assume that Net Corp cannot determine or reasonably approximate the location where its information database is accessed. Also assume that Net Corp does not derive more than 5% of its receipts from sales of database access from any single customer. Net Corp may apply the safe harbor stated in paragraph (3)(b)(ii)(B)(IV) of Regulation 39-22-303.6–10 and may assign its receipts to a state or states using each customer's billing address.

(k) *Example (xi)*. Web Corp, a corporation based outside of Colorado, licenses an Internet-based information database to business customers that then sublicense the database to individual end users that are residents in Colorado and in other states. These end users access Web Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. Web Corp's license of the database to its customers includes the right to sublicense the database to end users, but the sublicenses provide that the rights to access and use the database are limited to the end users' own use and prohibit the individual end users from further sublicensing the database. Web Corp receives a fee from each customer based upon the number of sublicenses issued to end users. The license is a license of intangible property that resembles a sale of goods or services and are assigned by applying the rules set forth in paragraph (3)(b)(iii) of Regulation 39-22-303.6–10. *See paragraph (5).* If Web Corp can determine or reasonably approximate the state or states where its database is accessed by end users, it must do so. Assuming that Web Corp lacks sufficient information from which it can determine or reasonably approximate the location where its database is accessed by end users, Web Corp must approximate the extent to which its database is accessed in Colorado using a percentage that represents the ratio of the Colorado population in the specific geographic area in which Web Corp's customer sublicenses the database access relative to the total population in that area. *See paragraph (3)(b)(iii)(C) of Regulation 39-22-303.6–10.*

Regulation 39-22-303.6–12. Sale of Intangible Property.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining which gross receipts from the sale of intangible property are included in a taxpayer's receipts factor. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **Assignment of Receipts.** The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this Regulation 39-22-303.6–12, a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from the transaction are not contingent on the productivity, use, or disposition of the property. For the rules that apply where the consideration for the transfer of rights is contingent on the productivity, use, or disposition of the property, see paragraph (1) of Regulation 39-22-303.6–11.

(a) *Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area*. In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in Colorado, the taxpayer shall assign the receipts from the sale to Colorado. If the intangible property is used or is authorized to be used in Colorado and one or more other states, the taxpayer shall assign the receipts from the sale to Colorado to the extent that the intangible property is used in or authorized for use in Colorado through reasonable approximation.

(b) *Sale that Resembles a License (Receipts are Contingent on Productivity, Use, or Disposition of the Intangible Property).* In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use, or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in Regulation 39-22-303.6–11 (pertaining to the license or lease of intangible property).

(c) *Sale that Resembles a Sale of Goods and Services*. In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive from payments contingent on the productivity, use, or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in paragraph (5) of Regulation 39-22-303.6–11 (relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in paragraph (5) of Regulation 39-22-303.6–11

(d) *Excluded Receipts*. Receipts from the sale of intangible property are not included in the receipts factor in any case in which the sale does not give rise to receipts within the meaning of § 39-22-303.6(1)(d), C.R.S. In addition, in any case in which the sale of intangible property does result in receipts within the meaning of § 39-22-303.6(1)(d), C.R.S., those receipts are excluded from the numerator and the denominator of the taxpayer's receipts factor if the receipts are not referenced in §§ 39-22-303.6(6)(d)(I), 39-22-303.6(6)(d)(II)(A), or 39-22-303.6(6)(d)(II)(B), C.R.S. See §§ 39-22-303.6(6)(d)(III), C.R.S. The sale of intangible property that is excluded from the numerator and denominator of the taxpayer's receipts factor under this provision includes, without limitation, the sale of a partnership interest, the sale of business "goodwill," the sale of an agreement not to compete, or similar intangible value.

(e) *Examples*.

(i) *Example (i)*. Airline Corp, a corporation based outside Colorado, sells its rights to use several gates at an airport located in Colorado to Buyer Corp, a corporation based outside Colorado. The contract of sale is negotiated and signed outside of Colorado. The receipts from the sale are in Colorado because

the intangible property sold is a contract right that authorizes the holder to conduct a business activity solely in Colorado. *See paragraph (1).*

(ii) *Example (ii)*. Wireless Corp, a corporation based outside Colorado, sells a license issued by the Federal Communications Commission (FCC) to operate wireless telecommunications services in a designated area in Colorado to Buyer Corp, a corporation based outside Colorado. The contract of sale is negotiated and signed outside of Colorado. The receipts from the sale are in Colorado because the intangible property sold is a government license that authorizes the holder to conduct business activity solely in Colorado. *See paragraph (1)(a).*

(iii) *Example (iii)*. Same facts as Example (ii) except that Wireless Corp sells to Buyer Corp an FCC license to operate wireless telecommunications services in a designated area in Colorado and an adjacent state. Wireless Corp must attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Colorado. For purposes of making this reasonable approximation, Wireless Corp may rely upon credible data that identifies the percentage of persons that use wireless telecommunications in the two states covered by the license. *See paragraph (1)(a).*

(iv) *Example (iv)*. Sports League Corp, a corporation based outside Colorado, sells the rights to broadcast the sporting events played by the teams in its league in all 50 U.S. states to Network Corp. Although the games played by Sports League Corp will be broadcast in all 50 states, the games are of greater interest in the western region of the country, including Colorado. Because the intangible property sold is a contract right that authorizes the holder to conduct a business activity in a specified geographic area, Sports League Corp must attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Colorado. For purposes of making this reasonable approximation, Sports League Corp may rely upon audience measurement information that identifies the percentage of the audience for its sporting events in Colorado and the other states. *See paragraph (1)(a).*

(v) *Example (v)*. Inventor Corp, a corporation based outside Colorado, sells patented technology that it has developed to Buyer Corp, a business customer that is based in Colorado. Assume that the sale is not one in which the receipts derive from payments that are contingent on the productivity, use, or disposition of the property. *See paragraph (1)(a).* Inventor Corp understands that Buyer Corp is likely to use the patented technology in Colorado, but the patented technology can be used anywhere (i.e., the rights sold are not rights that authorize the holder to conduct a business activity in a specific geographic area). The receipts from the sale of the patented technology are excluded from the numerator and denominator of Inventor Corp's receipts factor. *See § 39-22-303.6(6)(III), C.R.S. and paragraph (1)(d).*

Regulation 39-22-303.6–13. Special Rules.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance for determining which gross receipts from sales of certain property are included in a taxpayer's receipts factor. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **Software Transactions.** A license or sale of pre-written software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights) transferred on a

tangible medium is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts are in Colorado as determined under the rules for the sale of tangible personal property set forth under § 39-22-303.6(5), C.R.S. and Regulation 39-22-303.6–6. In all other cases, the receipts from a license or sale of software are to be assigned to Colorado as determined otherwise under Regulations 39-22-303.6–7 through –13 (e.g., depending on the facts, as the development and sale of custom software, see paragraph (3) of Regulation 39-22-303.6–10; as a license of a marketing intangible, see paragraph (2) of Regulation 39-22-303.6–11; as a license of a production intangible, see paragraph (3) of Regulation 39-22-303.6–11; as a license of intangible property where the substance of the transaction resembles a sale of goods or services, see paragraph (5) of Regulation 39-22-303.6–11; or as a sale of intangible property, see Regulation 39-22-303.6–12.

(2) **Sales or Licenses of Digital Goods or Services.**

(a) *In General.* In the case of a sale or license of digital goods or services, including, among other things, the sale of various video, audio and software products or similar transactions, the receipts from the sale or license are assigned by applying the same rules as set forth in paragraph (3)(b)(ii) or (iii) of Regulation 39-22-303.6–10, as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service. *See paragraph (5) of Regulation 39-22-303.6–11 or paragraph (1)(c) of Regulation 39-22-303.6–12.*

(b) *Telecommunications Companies*. In the case of a taxpayer that provides telecommunications or ancillary services and that is thereby subject to 1 CCR 201-2, Special Regulation 8A, receipts from the sale or license of digital goods or services not otherwise assigned for apportionment purposes pursuant to that regulation are assigned pursuant to this paragraph (2)(b) by applying the rules set forth in paragraph (3)(b)(ii) or (iii) of Regulation 39-22-303.6–10 as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. However, in applying these rules, if the taxpayer cannot determine the state or states where a customer receives the purchased product it may reasonably approximate this location using the customer's "place of primary use" of the purchased product, applying the definition of "place of primary use" set forth in 1 CCR 201-2, Special Regulation 8A.

Regulation 39-22-303.6–14. Nonapportionable Income.

Basis and Purpose. The bases of this regulation are §§39-21-112, 39-22-301, 39-22-303, 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance in the allocation of nonapportionable income.

In the allocation of nonapportionable income, tangible personal property has a situs in Colorado at the time of the sale if it is physically located in Colorado immediately prior to the sale of the property. The movement of property in anticipation of sale or as part of the sale transaction is not considered in determining its situs immediately prior to the time of sale.

Regulation 39-22-303.6–15. Election to Treat All Income as Apportionable Income.

Basis and Purpose. The bases of this regulation are §§ 39-21-112, 39-22-301, 39-22-303, 39-22-303.6, C.R.S. The purpose of this regulation is to clarify how a taxpayer makes an election to treat all income as apportionable income.

(1) Every year, taxpayers may elect to treat all income as apportionable income.

(a) The election to treat all income as apportionable income must be made on or before the extended due date of the return (the fifteenth day of the tenth month following the close of the tax year) by marking the appropriate box on the original return.

(b) Once the original return has been filed for the year, the election may not be changed even if the extended due date for the year has not passed.

(c) Filing a return without making the election as provided in paragraph (1)(a) constitutes the non-exercise of the election for that tax year, even if the return is calculated with all income as apportionable income.

(d) The failure to file a return prior to the extended due date of the return constitutes the non-exercise of the election for that tax year.

(2) If the election described in this regulation is made for the income tax year, all income of the taxpayer is apportionable income and is included in the denominator and, if appropriate, the numerator of the taxpayer's receipts factor if not excluded pursuant to §§ 39-22-303.6(6)(d)(III) or (6)(f), C.R.S.

Regulation 39-22-303.6–16. Alternative Apportionment.

Basis and Purpose. The bases of this regulation are §§39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to provide guidance regarding the use of alternative apportionment methods. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. *See* 2018 Colo. Sess. Laws, ch. 369, § 1(2).

(1) **General Rule.** Section 39-22-303.6(9), C.R.S. provides that if the allocation and apportionment provisions of § 39-22-303.6, C.R.S. do not fairly represent the extent of the taxpayer's business activity in Colorado, the taxpayer may petition for, or the Department may require, with respect to all or any part of the taxpayer's business activities, if reasonable:

(a) separate accounting;

(b) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in Colorado;

(c) the inclusion of any receipts of a taxpayer otherwise excluded under § 39-22-303.6(1)(d), C.R.S., including those from hedging transactions or from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities; or

(d) the employment of any other method, notwithstanding any other provision of this section, to effectuate an equitable apportionment or allocation of the taxpayer's income, fairly calculated to determine the net income derived from or attributable to sources in Colorado.

(2) Section 39-22-303.6(9)(b), C.R.S. permits a departure from the allocation and apportionment provisions of § 39-22-303.6, C.R.S. only in limited and specific cases where the apportionment and allocation provisions contained in § 39-22-303.6, C.R.S. produce incongruous results.

(3) In the case of certain industries, transactions, or activities, Regulations 39-22-303.6–1 through –13, with respect to the apportionment formula, may not set forth appropriate procedures for determining the apportionment factor. Nothing in § 39-22-303.6(9)(b), C.R.S. or in this Regulation 39-22-303.6–16shall preclude the Department from establishing appropriate procedures under § 39-22-303.6(4) through (6), C.R.S. for determining the apportionment factor for each such industry, but such procedures shall be applied uniformly.

(4) In the case of certain taxpayers, the general rules under § 39-22-303 and 39-22-303.6 C.R.S. and the regulations thereunder may not set forth appropriate procedures for determining gross income or the apportionment factor. Nothing in § 39-22-303.6(9)(b), C.R.S. or in this regulation shall preclude the Department from distributing or allocating gross income and deductions under § 39-22-303(6), C.R.S.

Regulation 39-22-303.6–17. Apportioning Gross Receipts of Taxpayers with De Minimis or No Receipts.

Basis and Purpose. The bases of this regulation are §§39-21-112, 39-22-301, 39-22-303, and 39-22-303.6, C.R.S. The purpose of this regulation is to clarify how taxpayers with *de minimis* or no receipts shall determine their receipts factor. Consistent with the General Assembly's adoption of § 39-22-303.6, C.R.S., these regulations are intended to conform the state's income tax laws to the Multistate Tax Commission's model statute and regulation except when those model provisions are inconsistent with Colorado statute. See 2018 Colo. Sess. Law, ch.368, § 1(2).

(1) **General Rule.** This Regulation 39-22-303.6–17 applies to the determination of the receipts factor if the taxpayer's receipts are less than 3.33 percent of the taxpayer's gross receipts. A taxpayer's receipts subject to assignment under § 39-22-303.6 paragraph (5) and (6), C.R.S. are assigned under those sections and are not assigned by this Regulation 39-22-303.6–17.

(2) **Definitions.**

(a) "Gross receipts from lending activities" means interest income and other gross receipts arising from the activities described in paragraphs 3(d) through 3(j) of 1 CCR 201-2, Special Regulation 7A.

(b) An entity's apportionment factor is "*de minimis*" if the denominator is less than 3.33 percent of the entity's apportionable gross receipts or if the factor is insignificant in producing income.

(3) The following gross receipts are included in the receipts factor denominator and are assigned to the receipts factor numerator in Colorado as follows:

(a) Dividends paid by a related party are assigned to the receipts factor numerator in Colorado as follows:

(i) If paid from earnings that can be reasonably attributed to a particular year, the dividends are assigned to the receipts factor numerator in Colorado in a proportion equal to the dividend payor's apportionment factor in Colorado for that year as determined pursuant to § 39-22-303.6, C.R.S.

(ii) If the dividends were paid from earnings that cannot reasonably be attributed to a particular year, the dividends are assigned to the receipts factor numerator in Colorado in a proportion equal to the dividend payor's average apportionment factor in Colorado for the current and preceding year as determined pursuant to § 39-22-303.6, C.R.S.

(iii) *Example*. Taxpayer Bigbox Holding, Inc. (Holding) is a domestic corporation, domiciled in Delaware, with numerous foreign and domestic subsidiaries. Holding has no "receipts". Holding is the corporate parent of Bigbox Retailing, Inc. (Retailing), a domestic corporation with its commercial domicile in State X. During the tax year, Holding receives $100 million in dividends from Retailing. In both the current tax year and the prior tax year, Retailing conducted operations in ten states, including Colorado. Retailing's apportionment factor in Colorado in the current year is 20%, and the factor was 18% in the prior year. The dividends received from Retailing cannot be reasonably attributed to that entity's earnings in any specific year. Therefore, pursuant to paragraph (3)(a)(ii), Holding's receipts factor in Colorado is calculated by including the $100 million of apportionable dividends received from Retailing in the denominator, and $19 million in the receipts factor numerator in Colorado, based on the average of Retailing's apportionment factors in Colorado in the current year (20%) and prior year (18%).

(b) Gains are assigned to the receipts factor numerator in Colorado as follows:

(i) Gains (net of related losses, but not less than zero) from the disposition of stock (or other intangible property rights) representing at least a 20% ownership interest in an entity, are assigned to the receipts factor numerator in Colorado in a proportion equal to what the entity's separate apportionment factor was in Colorado for the tax year preceding the disposition as determined pursuant to § 39-22-303.6, C.R.S.

(ii) Gains (net of related losses, but not less than zero) from the disposition of assets of an entity or segment of a business are assigned to the receipts factor numerator in Colorado in a proportion equal to what the entity's separate apportionment factor was in Colorado in the tax year preceding the disposition as determined pursuant to § 39-22-303.6, C.R.S.

(iii) In applying paragraph (3)(b)(i) or (ii), in any case in which the entity did not exist in the prior year, or had an apportionment factor of zero, or had only a *de minimis* apportionment factor, the gross receipts from the gain are attributed to the

receipts factor numerator of Colorado under paragraphs (4) or (5) of this Regulation 39-22-303.6–17 as appropriate.

(iv) In applying this paragraph (b), in the case of an entity that was not subject to entity-level taxation, the apportionment percentage shall be computed as if the entity were a C corporation.

(v) *Examples*.

(A) Taxpayer, Nuclear Corp. (Nuclear) is a holding company with no "receipts" from transactions and activities in the ordinary course of business. In the prior tax year, Nuclear formed Target Corp. (Target) and transferred its stock ownership interest in three power plants, located in three states, one of which is in Colorado, to Target in exchange for the stock of Target. In the current tax year, Nuclear sells the stock of Target to Risky Investments for $500 million in cash, recognizing a gain of $100 million. In the tax year preceding the sale, Target's apportionment factor in Colorado was 30%. Based on Target's prior year apportionment factor, Nuclear would include $100 million in the denominator of its receipts factor and would assign $30 million to the receipts factor numerator in Colorado.

(B) Same facts as (A) except during the current tax year Nuclear formed Target and then sold the Target stock on the same day. Because Target did not exist in the year preceding the disposition, Nuclear would have to use paragraph (4) or (5), as appropriate, to assign a portion of the $100 million gain to its receipts factor numerator in Colorado.

(c) Gross receipts from lending activities are included in the receipts factor denominator and assigned to the receipts factor numerator in Colorado to the extent those gross receipts would have been assigned to Colorado under 1 CCR 201-2, Special Regulation 7A, Financial Institutions (including the rule of assignment to commercial domicile under (1)(c)(xv) of that regulation) as if the taxpayer were a financial institution subject to Special Regulation 7A, Financial Institutions, 1 CCR 201-2, except that:

(i) in the case of gross receipts derived from loans to a related party, which are not secured by real property, including interest, fees, and penalties, the gross receipts are included in Colorado's numerator in a proportion equal to the related party's apportionment factor in Colorado as determined by § 39-22-303.6, C.R.S. in the year the gross receipts were included in apportionable income; and,

(ii) gross receipts derived from accounts receivable previously sold to or otherwise transferred to the taxpayer are assigned under paragraph (3)(d).

(iii) *Examples*.

(A) Taxpayer Bigbox Holding, Inc. (Holding) is a domestic corporation domiciled in Delaware, with numerous foreign and domestic subsidiaries. Holding has no "receipts". Holding is the corporate parent of Bigbox Retailing, Inc. (Retailing), a domestic corporation with its commercial domicile in state X. During the current tax year, Holding receives $100 million in dividends from Retailing. In both the current tax year and the prior tax year, Retailing conducted operations in ten states, including Colorado. Retailing's apportionment factor in Colorado in the current year is 20%, and its factor was 18% in the prior year. In a prior year, Holding

lent its excess capital to Retailing as an unsecured loan. In repayment of that loan, Holding received $40 million of interest income from Retailing in the current tax year, in addition to the $100 million of dividend income that Holding received from Retailing. Pursuant to paragraph (3)(c) of this Regulation 39-22-303.6–17, Holding's interest income would be included in its receipts factor denominator, and 20% of Holding's interest income ($8 million) would be included in its receipts factor numerator in Colorado because 20% of Retailing's apportionment factors were in Colorado in the year the interest income was included in taxable income. Assuming Holding had no other gross receipts, Holding's receipt factor numerator in Colorado is 19.28% ($27 million /$140 million).

(B) Taxpayer Loan Participation Inc. (LPI) was formed to acquire and hold a participation in loans secured by real property originated by an unrelated financial institution. LPI has no employees or property and no other gross receipts except for payments of interest on the participation loan held. Even though LPI would not be considered a financial institution under 1 CCR 201-2, Special Regulation 7A, LPI's gross receipts are included in the denominator and assigned to the receipts factor numerator in Colorado under paragraph (3)(d) of 1 CCR 201-2, Special Regulation 7A in proportion to the value of loans secured by real property in Colorado compared to the value of loans secured by real property everywhere.

(d) Gross receipts derived from accounts receivable previously sold to or otherwise transferred to the taxpayer are included in the denominator and assigned to the receipts factor numerator in Colorado to the extent those accounts receivable are attributed to borrowers located in Colorado.

(i) *Examples*.

(A) Taxpayer IH Factoring, Inc. (Factoring) is a Delaware corporation that has twenty employees, all of whom are located in Delaware. Factoring purchases installment agreements (accounts receivable) from its parent corporation, Iron Horse Motorcycles, Inc. (Iron Horse). Factoring has access to information showing the addresses of the installment agreement customers. Factoring purchases installment agreements originating from Iron Horse's borrowers in States A and Colorado. Factoring is taxable in State A and Colorado. Factoring re-sells the agreements as securitized instruments to institutional investors. Factoring's gross receipts from selling the securitized instruments originating from Iron Horse's borrowers in State A and Colorado would be included in the receipts factor denominator, and Factoring's gross receipts from selling securitized instruments originating from Iron Horse's borrowers in Colorado would be assigned to the receipts factor numerator in Colorado.

(B) Same facts as above, but IH Factoring retains its ownership in the installment agreements and receives principal, interest, and related fees from Iron Horse's customers (borrowers). The principal, interest, and related fees received by Factoring from borrowers in State A and Colorado would be included in Factoring's receipts factor denominator, and Factoring's receipts received from Iron Horse's customers (borrowers) in Colorado would be assigned to the receipts factor numerator in Colorado.

(e) The net amount, but not less than zero, of gross receipts not otherwise assigned under this paragraph (3) arising from investment activities, including the holding, maturity, redemption, sale, exchange, or other disposition of marketable securities or cash are assigned to the sales factor numerator in Colorado if the gross receipts would be assigned to Colorado under paragraphs (3)(n) or (3)(p) of 1 CCR 201-2, Special Regulation 7A; all other gross receipts from investment activities not otherwise assigned under this paragraph (3) are assigned to the receipts factor numerator in Colorado if the investments are managed in Colorado.

(4) Except for gross receipts included and assigned under paragraph (3), gross receipts of a taxpayer whose income and receipts factor are included in a combined report in Colorado are included in the receipts factor denominator and are assigned to the receipts factor numerator in Colorado in the same proportion as the ratio of: (A) the total of the receipts factor numerators of all members of the combined group in Colorado, whether taxable or nontaxable, as determined pursuant to § 39-22-303(11), C.R.S., to (B) the denominator of the combined group.

(a) *Example*. Taxpayer Windfall, Inc. (Windfall) is a wholly-owned subsidiary of ABC Manufacturing Company (ABC). Windfall's only gross receipt during the year is $1 billion received in settlement of ABC's patent infringement suit against a business competitor that has been ongoing for several years. Windfall is included on a combined report filed by ABC on behalf of ABC, Windfall, and other direct and indirect controlled subsidiaries of ABC (collectively, the Combined Subsidiaries). The ratio of the total numerators of ABC and Combined Subsidiaries in Colorado, as reported on the combined report, to the denominator of the combined group is 25 percent. Windfall would include $1 billion in its receipts factor denominator and would include $250 million in the receipts factor numerator in Colorado.

(5) Except for those gross receipts included and assigned under paragraphs (3) or (4), gross receipts of a taxpayer that files as part of a federal consolidated return are included in the receipts factor denominator and are assigned to the receipts factor numerator in Colorado in a proportion equal to a percentage (but not greater than 100%), the numerator of which is the total of the consolidated group members' income allocated or apportioned to Colorado pursuant to § 39-22-303.6, C.R.S., and the denominator of which is the total federal consolidated taxable income.

(a) *Example*. Taxpayer Windfall, Inc. (Windfall) is a wholly-owned subsidiary of ABC Manufacturing Corp. (ABC). Windfall's only gross receipt is $1 billion received in settlement of ABC's patent infringement suit against a business competitor that has been ongoing for several years. Windfall is not included on a combined report filed in Colorado, but is included on a consolidated federal return filed by ABC on behalf of Windfall and other affiliated corporations that are included in such consolidated return. The total federal taxable income of that consolidated group is $5 billion, and the total amount of that income that is apportioned to Colorado by members of the consolidated group other than Windfall is $500 million. Because the percentage of the consolidated group's income that would be apportioned to Colorado is 10%, Windfall would include $1 billion in its receipts factor denominator and would assign 10% of that amount ($100 million) to the receipts factor numerator in Colorado.

(6) Nothing in this Regulation 39-22-303.6–17 shall prohibit a taxpayer from petitioning for, or the Department from applying, an alternative method to calculate the taxpayer's receipts factor in order to fairly represent the extent of the taxpayer's business activity in Colorado as provided for in § 39-22-303.6(9)(b), C.R.S., including the application of this rule in situations that do not meet the threshold of paragraph (1) of this Regulation 39-22-303.6–17. Such alternative method may be appropriate, for example, in situations otherwise addressed under paragraph (3)(a) where dividends were paid from earnings that were generated by the activities of a related party of the dividend payor, in which case the dividends may be more appropriately assigned to the receipts factor numerator in Colorado using the related party's average apportionment factors in Colorado.

Regulation 39-22-303.6–18. Income from Foreclosures.

A taxpayer who qualifies under the provisions of §39-22-303.6(10), C.R.S. must file using the rules of that provision (direct allocation). A taxpayer may not make an election pursuant to § 39-22-303.6(8), C.R.S. to treat such income as apportionable income.

Regulation 39-22-303.7–1. Definitions for Sourcing Sales of Mutual Fund Service Corporations.

In addition to the definitions provided in §39-22-303.7, C.R.S., and for the purpose of implementing §§ 39-22-303.6, 39-22-304, and 39-22-303.7, C.R.S. and related regulations, the following terms are defined or further defined as follows:

(1) "Affiliate of" or "affiliated with" another person means any person directly or indirectly controlling, controlled by, or under common control with such other person.

(2) "Affiliated regulated investment company" or "affiliated RIC" means a regulated investment company that (1) is a shareholder in another regulated investment company and (2), in common with such other regulated investment company, obtains management or distribution services, as described in (4)(a) and (4)(b), from the same provider of such services or a related provider.

(3) "Direct" and "indirect" services

(a) Direct services. Amounts are derived directly from the performance of management, distribution, or administration services when they are received as compensation for providing such services to a RIC or to a RIC's officers, directors or trustees acting on behalf of the RIC. For example, the fee received by a person hired by a RIC's trustees to manage the RIC's assets is derived directly from the performance of management services.

(b) Indirect services. Amounts are derived indirectly from the performance of management, distribution, or administration services when they are received as compensation for providing such services to a person who is directly responsible for providing management, distribution or administration services to a RIC pursuant to a contract between such person and the RIC or the RIC's officers, directors, or trustees acting on behalf of the RIC. For example, the fee received by a brokerage firm hired by a person

that is under contract to provide management services to a RIC is derived indirectly from the performance of management services.

(4) "Mutual Fund Sales" means gross receipts derived, directly or indirectly, from the performance of the following services:

(a) Management services. The term management services includes, but is not limited to, the rendering of investment advice or investment research to or on behalf of a RIC, making determinations as to when sales and purchases of securities are to be made on behalf of the RIC, or the selling or purchasing of securities constituting assets of a RIC. Such activities must be performed:

(i) pursuant to a contract with the RIC entered into pursuant to 15 U.S.C. section 80a-15(a);

(ii) for a person that has entered into a contract referred to in subsection i) with the RIC; or

(iii) for a person that is affiliated with a person that has entered into a contract referred to in i) with the RIC.

(b) "Distribution services." The term distribution services includes, but is not limited to, advertising, servicing, marketing or selling shares of a RIC, including the receipt of contingent deferred sales charges and fees received pursuant to 17 CFR § 270.12b-1 (Sept. 9, 2004), which is incorporated herein by reference, but such incorporation by reference does not include later amendments or editions of this referenced material. Certified copies of this material are available for review in the executive director's office of the Department of Revenue at 1375 Sherman Street, Denver, Colorado 80261. Additionally, a copy of this material may be examined at any state publications depository library.

(i) In the case of an open end company, advertising, servicing or marketing shares must be performed by a person who is either engaged in or affiliated with a person that is engaged in the services of selling shares of a RIC. The service of selling shares of a RIC must be performed pursuant to a contract entered into pursuant to 15 U.S.C. section 80a-15(b).

(ii) In the case of a closed end company, advertising, servicing or marketing shares must be performed by a person who was either engaged in or affiliated with a person that was engaged in the services of selling shares of a RIC.

(c) "Administration services." The term administration services includes, but is not limited to, clerical, fund or shareholder accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for a RIC. The provider of administration services must also provide or be affiliated with a person that provides management or distribution services to any RIC.

(5) "Average Number of Shares" means the average of the number of shares owned by a class of shareholders at the beginning of each year and by the same class of shareholders at the end of the year, where "the year" refers to the RIC's taxable year that ends with or within the mutual fund service corporation's taxable year.

(6) "RIC" or "regulated investment company" or "fund" means a regulated investment company as defined in section 851 of the federal internal revenue code of 1986, as amended. For purposes of the apportionment of income pursuant to §39-22-303.7, § 39-22-303.6(9), C.R.S., and these

regulations, if the mutual fund service corporation principally provides management, distribution, or administration services to regulated investment companies as defined in section 851 of the federal internal revenue code, such terms also include pension and employee retirement plans and foreign entities similar to regulated investment companies as defined in section 851 of the federal internal revenue code.

(7) "Shareholder factor" or "Colorado shareholder factor" means the Average Number of Shares owned by the RIC's shareholders domiciled in Colorado divided by the Average Number of Shares owned by the RIC's shareholders everywhere.

Regulation 39-22-303.7–2. Sourcing Sales of Mutual Fund Service Corporations.

(1) The Colorado net income of mutual fund service corporations shall be calculated pursuant to §§ 39-22-303.6 and § 39-22-304, C.R.S. with the modification to apportionment set out in § 39-22-303.7, C.R.S. and related regulations.

(2) Colorado receipts from mutual fund sales – To determine Colorado receipts from mutual fund sales, a mutual fund service corporation must calculate mutual fund sales by fund and apply the Colorado shareholder factor for each fund to such mutual fund sales by fund.

(a) Colorado receipts by fund are calculated by multiplying mutual fund sales by fund by each fund's shareholder factor.

(b) The total Colorado receipts from mutual fund sales are then calculated by adding together the Colorado receipts for each separate fund.

(3) If the domicile of a shareholder is unknown to the mutual fund service corporation because the shareholder of record is a person that holds the shares of a regulated investment company as a depositor for the benefit of others, §39-22-303.7(2)(b) provides that the mutual fund service corporation may use any reasonable basis, such as ZIP codes of underlying shareholders or US census bureau data, in order to determine the proper location for the assignment of the shares. If no other basis appears reasonable, and if the number of such shares is not a majority of the total shares of the fund, then it shall be reasonable to exclude such shares from both the numerator and the denominator of the shareholder factor calculation.

Regulation 39-22-303(10). Foreign Source Income.

"Foreign source income" is taxable income from sources outside the United States as defined in section 862 of the internal revenue code. "Foreign source income" includes, but is not limited to, interest, dividends (including Sec. 78 "gross-up,") compensation for personal services, rents and royalties, and net income from the sale of property. "Foreign source income" is gross income, less expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions that cannot be allocated to some item or class of gross income.

IRC Sec. 78 dividend shall be subtracted from federal taxable income in accordance with 39-22-304(3)(j), C.R.S.

(1) If a taxpayer elects to claim foreign income taxes as a deduction for federal income tax purposes, such deductions shall also be allowed for Colorado income tax purposes.

Colorado modifications to federal taxable income shall include any foreign source income and related foreign income taxes included in a combined report but not included in the federal return.

(2)

(a) If a federal election is made to claim foreign taxes as a credit, a percentage of foreign source income shall be excluded from Colorado income subject to apportionment and from the numerator and denominator of the sales factor.

For purposes of this regulation, foreign tax includes tax paid or accrued, deemed paid, or carried over or carried back to the tax year, per the federal income tax return. Not included are taxes carried over from, or carried back to, a tax year beginning before Jan. 1, 1986.

The foreign source income exclusion shall be the lesser of:

(i) Foreign source income (Excluding Sec. 78 Dividend), or

(ii) The product of Foreign Taxes Paid ("FT") and the Foreign Source Income (Excluding Sec. 78 Dividend) ("FSI net §78") divided by the product of the

effective federal corporation tax rate ("Fed Rate") and the Foreign Source Income (Including Sec.78 Dividend) ("FSI"). This is expressed as the following formula:

(FT X "FSI net §78") / (Fed Rate X FSI)

The effective federal corporation tax rate means the combined taxpayer's federal corporate income tax (calculated in accordance with section 11(a) and (b) of the internal revenue code for such tax year) divided by the combined taxpayer's federal taxable income. As a formula:

Effective federal corporate tax rate = federal corporate income tax / federal corporate taxable income

Modifications computed per this regulation shall be claimed as "other" additions or subtractions in the modification section of the Colorado corporate income tax return.

(b) For tax years commencing prior to January 1, 2000, the denominator of the formula in subsection (b)(i) will use 46% in place of the effective federal corporation tax rate.

(3) When determining foreign source income for a foreign corporation, such income shall not include any income of the foreign corporation that is derived from the conduct of a trade or business within the United States.

(4) The excess, if any, of a taxpayer's foreign source income over the foreign source income exclusion shall not be included in the numerator of the Colorado receipts factor (see § 39-22-303.6(4)(b), C.R.S.).

Regulation 39-22-303(11)(c). Apportionment of Income on a Combined Report of Consolidated Return.

Basis and Purpose. The bases for this regulation are § 39-21-112(1), § 39-22-301, § 39-22-303, § 39-22-303.6, § 39-22-303.7, § 39-22-303.9, and § 39-22-305, C.R.S. The purpose of this regulation is to clarify how an affiliated group of C corporations apportion their income when included in a combined report or consolidated return.

(1) When filing a combined report, the affiliated group of C corporations shall file one return, apportioning income under the provisions of § 39-22-303.6 § 39-22-303.7, or § 39-22-303.9, C.R.S., and summing the numerators of each affiliated C corporation doing business in Colorado to derive a single apportionment factor for the combined group.

(a) In making any calculation pursuant to this regulation, including calculations of income, gross receipts, apportionment, or minimal commercial activity determinations, all intercompany transactions shall be eliminated before making any such calculation.

(b) Example: Corporations A, B, and C are an affiliated group of C corporations meeting three of the six tests in § 39-22-303(11), C.R.S. Corporations A and B are doing business in Colorado under 1 CCR 201-2, Regulation 39-22-301.1 and C is not. The Colorado receipts factors of the three corporations are as follows:

	Colorado Receipts	Total Receipts
Corporation A	$5,160,118	$7,652,492
Corporation B	$1,642,720	$80,009,652
Corporation C	$183,290	$814,005

The combined receipts factor would be as follows:

Colorado receipts (A+B) = $6,802,838

Total receipts (A+B+C) = $88,476,149 (Assumes no intercompany transactions.)

Combined receipts factor (Colorado receipts divided by total receipts) = 7.6889%

The 7.6889% receipts factor is applied to the combined modified federal taxable income (after elimination of intercompany transactions) of the affiliated group to determine the Colorado taxable income to be reported on the combined report.

Cross References

1. For additional information on doing business in Colorado, see 1 CCR 201-2, Regulation 39-22-301.1.

2. For information on which members of an affiliated group must be included in a combined report see 1 CCR 201-2, Regulation 39-22-303(11)(a).

Regulation 39-22-305. Consolidated Returns.

Basis and Purpose. The bases for this regulation are § 39-21-112(1) and § 39-22-305, C.R.S. The purpose of this regulation is to clarify how to make an election to file a consolidated return and how to withdraw such election.

(1) **Election to File a Consolidated Return.**

(a) The election to file a consolidated C corporation return pursuant to § 39-22-305, C.R.S. must be made on or before the due date of the filing of the return, including any extensions of time for filing the return. Such election must be made by indication on the return in the designated manner. If an election is made, such election may not be withdrawn after the due date, including any extension of time, for filing the return. A taxpayer who has not made a timely election may request permission from the Executive Director or their designee to make a consolidated return election consistent with the requirements set forth in Treas. Reg. (26 C.F.R.) § 301.9100-3.

(b) The election to file a consolidated return is binding for the election year and the next three tax years, unless permission is granted in writing by the Executive Director or the Executive Director's designee for an earlier change.

(c) From the fifth year forward, a taxpayer may revoke the election prior to the due date for filing a consolidated return, including any extensions of time for filing the return. If revoked, the revocation may not be withdrawn after such due date or any extension of time for filing the return. If the taxpayer revokes the election, it may subsequently elect to file on a consolidated basis pursuant to (1)(a) of this regulation. The filing by multiple taxpayers of non-consolidated returns shall be considered the revocation of the election. However, the inadvertent exclusion of a corporation from a consolidated return shall not be considered a revocation of the election.

(i) Example. A taxpayer will not revoked its consolidated election if the taxpayer acquires a new C corporation doing business in Colorado and inadvertently fails to include such corporation in the consolidated return for the year of acquisition.

(d) For any year a consolidated return is filed, the taxpayer shall file an affiliation schedule with the return.

(2) **Members of the Consolidated Return.** The Colorado income tax liability for an affiliated group of corporations filing a consolidated return is based only on the net income of those members of the affiliated group that have substantial nexus in Colorado, exceed the minimum standards of Public Law 86-272 (15 U.S.C. 381) in Colorado, and for which a tax is imposed under § 39-22-301, C.R.S. during that tax year. The consolidated net income of such corporations is allocated and apportioned in accordance with § 39-22-303.6, § 39-22-303.7, or § 39-22-303.9, C.R.S. The

apportionment factors of such consolidated group are based solely on the consolidated sales of the consolidated group.

(3) **Consolidated Return that Includes a Combined Report.**

(a) An election to file a consolidated return can be made even if the consolidated return will include members of an affiliated group of corporations that are required to file a combined report. When filing a consolidated return that includes any member of an affiliated group that is required to be included in a combined report, such consolidated return must include the income as computed in the combined report even if that income calculation is based on business activities of one or more affiliated corporations not doing business in Colorado.

(b) The affiliated group electing to file a consolidated return shall be treated as one taxpayer for purposes of filing the combined report.

Cross References

1. See 1 CCR 201-2, Regulation 39-22-301.1 for additional information on substantial nexus.

2. See 1 CCR 201-2, Regulation 39-22-303(11)(a) for additional information on filing a combined report.

COLORADO
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Taxation Division

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Colorado Department of Revenue
Statement of Emergency Justification and Adoption
Emergency Amendment to Regulations 39-22-109, 39-22-303.6–1 through –18, 39-22-303.7–1 and –2, 39-22-303.10, 39-22-303(11)(c), 39-22-305

Pursuant to sections 24-4-103(6), 39-21-112, 39-22-109, 39-22-303.6, 39-22-303.7, 39-22-303, and 39-22-305, C.R.S., I, Michael S. Hartman, Executive Director of the Department of Revenue, hereby adopt emergency amendments to tax Regulations 39-22-109, 39-22-303.6–1 through –18, 39-22-303.7–1 and –2, 39-22-303.10, 39-22-303(11)(c), and 39-22-305.

Section 24-4-103(6), C.R.S., authorizes the Executive Director to adopt temporary or emergency regulations if the Executive Director finds that the immediate adoption of the regulations are imperatively necessary to comply with a state or federal law or for the preservation of public health, safety, or welfare, and that compliance with the requirements of section 24-4-103, C.R.S. regarding promulgation of permanent rules would be contrary to the public interest.

I find that the immediate adoption of amendments to these regulations is imperatively necessary to provide guidance to corporations in light of recent legislation passed by the Colorado General Assembly in House Bill 18-1185, which implements revised corporate apportionment methods for income tax years commencing on and after January 1, 2019. House Bill 18-1185 specifically directs the Department to promulgate regulations regarding these revised apportionment methods. Permanent rulemaking proceedings are underway, but the statute will be effective prior to permanent adoption of the regulations. Thus, emergency regulations are necessary to provide guidance to corporations that conduct business inside and outside Colorado. As a result, I find that compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest under these circumstances.

Statutory Authority

The statutory authorities for these amendments are cited above.

Purpose

To provide explicit guidance regarding the application of Colorado's apportionment and allocation methods in light of House Bill 18-1185.

Adoption

For the reasons set forth above, I hereby adopt emergency regulations 39-22-109, 39-22-303.6–1 through –18, 39-22-303.7–1 and –2, 39-22-303.10, 39-22-303(11)(c), and 39-22-305, which are attached to this Statement. These regulations shall be effective on the date of its adoption and shall apply prospectively. This emergency rule shall be in force and effect for a period of one hundred and twenty days from the date of this notice, unless sooner terminated or replaced by permanent rules adopted in accordance with section 24-4-103, C.R.S.

Adopted this 18th day of December, 2018.

Michael S. Hartman
Executive Director
Colorado Department of Revenue

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Office of the Attorney General

Tracking number: 2018-00693

Opinion of the Attorney General rendered in connection with the rules adopted by the

Taxpayer Service Division - Tax Group

on 12/18/2018

1 CCR 201-2

INCOME TAX

The above-referenced rules were submitted to this office on 12/18/2018 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.

January 04, 2019 14:36:35

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Emergency Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-4

Rule title

1 CCR 201-4 SALES AND USE TAX 1 - eff 12/18/2018

Effective date

12/18/2018

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

Regulation 39-26-102(1.3). Auctioneers.

(1) Auctioneer's Duty to Collect Tax

(a) Definitions

(i) *Auction sale*. An auction sale is a sale conducted by an auctioneer who solicits offers to purchase tangible personal property or services until the highest offer is made.

(ii) *Auctioneer*. An auctioneer is a person who sells an interest in tangible personal property or taxable services owned by the auctioneer or another person at an auction sale. An auctioneer has the legal authority to accept on behalf of the seller an offer to buy. An interest in property or services includes a lease and license. A person selling goods on consignment for another is an auctioneer if the sale is made at an auction sale. An auctioneer includes a person who is a lienholder, such as storageman, pawnbroker, motor vehicle mechanic, or artisan, and is selling the property at an auction sale to foreclose such lien.

(b) *General Rule*. An auctioneer is a retailer and, therefore, must collect, report, and remit Colorado sales tax and state-administered local sales taxes to the Department, even if the auctioneer is a disclosed agent of the owner.

(c) *Calculation of Tax*. Sales tax is calculated on the gross price paid by the buyer for the purchase of taxable tangible personal property or a taxable service, including any non-optional fee that only successful bidders must pay in order to purchase taxable goods or services, even if the non-optional fee is separately stated from the bid price paid for the auctioned item.

(i) *Examples.*

(A) Auctioneer sells restaurant equipment at auction for $10,000 and charges a fee of ten percent of the selling price, which is deducted from the total sale proceeds paid by the purchaser(s). Sales tax is calculated on the selling price paid by a successful bidder ($10,000), which includes the ten percent auctioneer's fee. Similarly, the fee is included in the sales tax calculation if the purchaser is required to pay the fee in addition to the successful bid price (i.e., tax calculated on $11,000) because the fee is included in the overall purchase price of the item.

(B) Auctioneer charges owners or bidders a flat “entrance” fee which compensates auctioneer for its cost to rent the auction facilities, advertising, insurance, and/or auctioneer's administrative overhead. The fee is collected from sellers and bidders regardless of whether the

owner's good(s) sells or the bidder purchases auctioned property or a service. The fee is not included in the calculation of sales tax because the fee is charged regardless of whether there is a taxable sale of goods or services. However, the fee is included in the calculation of sales tax if the fee (whether a flat or percentage fee) is due and payable only when goods or services are sold.

(C) Auctioneer charges buyer a fee for additional services that buyer has the option, but is not required, to purchase as part of buyer's purchase of auctioned property or services, such as an optional fee for auctioneer's or seller's service of delivering the auctioned goods to buyer. The optional fee paid by buyer is not included in the sales tax calculation if, and only if, the fee is separately stated on the buyer's invoice.

(d) *Local Sales Taxes*. Auctioneers must collect any applicable state-administered local sales taxes. For motor vehicles sold at auction, an auctioneer, who is required to collect sales tax (see paragraph (2)(b), below), must collect any applicable state-administered local sales taxes, unless the motor vehicle is exempted from such local sales tax by § 29-2-105(1)(e), C.R.S.

(2) **Exceptions to Auctioneer's Duty to Collect**

(a) *Licensed Owners.* An auctioneer is not required to collect sales tax if the auctioneer sells taxable tangible personal property or services on behalf of a seller who, at the time of the sale, holds a current Colorado sales tax license issued by the Department. The licensed owner is responsible for collecting, remitting, and filing a sales tax return, even if the auctioneer was contractually obligated to the owner to collect the sales tax from the purchaser(s) and report and remit the tax to the Department, or if the auctioneer was contractually required to remit such collected tax to the licensed owner. An auctioneer, who is not legally required to collect tax because the owner is a licensed retailer but is collecting such tax on behalf of the owner, must disclose to the successful bidder the owner's name and owner's retail license number. An auctioneer who is not legally responsible to collect sales tax because the owner is a licensed retailer, but who nevertheless collects sales tax from a purchaser must hold the same in trust on behalf of the State of Colorado, and is liable for such tax if the tax is not remitted to the licensed seller or the Department.

(b) *Sales of motor vehicles.* An auctioneer is not required to collect sales taxes due on the sale of a motor vehicle, unless the auctioneer is licensed by Colorado as an automotive dealer pursuant to §12-6-101, et seq., C.R.S and the sale or use of the vehicle is subject to tax. § §39-26-113(7)(a) and (b), C.R.S.

(c) *Property Exempt from Sales Tax*. An auctioneer does not collect sales tax if the property is exempt from sales tax, such as an exempt farm close-out sale.

(d) *Burden of Proof*. An auctioneer has the burden of establishing with objective, verifiable documentation an exception or exemption from collecting, reporting, and remitting sales tax. An auctioneer selling on behalf of a licensed seller or to a purchaser with a sales tax exemption certificate must obtain a copy of the owner's sales tax license or, in the case of an exempt sale, the sales tax license number or the purchaser's sales tax exemption certificate, and verify that such license or certificate is valid at the time of the sale.

Cross References

1. Please visit the Department's website (www.colorado.gov/tax) for online services available for verifying tax licenses and exemption certificates.

2. See 1 CCR 201-4, Regulation 39-26-716.4(a) regarding an auctioneer's duties for an exempt farm close-out sale.

3. See 1 CCR 201-4, Regulation 39-26-718 for information on charitable entities conducting fundraising by auction sales.

4. See 1 CCR 201-4, Regulation 39-26-102(9) for the sourcing of sales for state and local sales tax purposes.

REGULATION 39- 26-102.3 (Repealed)

Regulation 39-26-102(9). Retail Sales.

Basis and Purpose. The bases for this regulation are §§ 29-2-105(1)(b), 39-21-112(1), 39-26-102(9), 39-26-102(10), 39-26-104, 39-26-107, 39-26-204(2), and 39-26-713, C.R.S. The purpose of this regulation is to establish the location to which a retail sale is sourced within Colorado.

(1) "Retail sale" includes all sales on which sales tax is imposed under § 39-26-104, C.R.S.

(2) A retail sale is a sale to the user or consumer of tangible personal property or service whether the sale is made by a licensed vendor or is between private parties.

(3) "Retail sale" includes only those sales made within Colorado. For purposes of determining whether a sale of tangible personal property or services, other than leases or rentals controlled by subparagraphs (4), (5), or (6) below, and sales of mobile telecommunications services under §39-26-104(1)(c), C.R.S., is made within Colorado, the following rules apply:

(a) When tangible personal property or services are received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When tangible personal property or services are not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), if that location is known to the seller.

(c) When subparagraphs (3)(a) and (3)(b) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(d) When subparagraphs (3)(a) through (3)(c) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(e) When subparagraphs (3)(a) through (3)(d) do not apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped.

(f) For the purpose of applying subparagraphs (3)(a) through (3)(e), the terms "receive" and "receipt" mean:

(i) Taking possession of tangible personal property; or

(ii) Making first use of services; but not

(iii) Possession by a shipping company on behalf of the purchaser.

(4) The lease or rental of tangible personal property, other than property identified in subparagraphs (5) or (6) shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subparagraph (3) of this regulation. Periodic payments made subsequent to the first payment are sourced to the

primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subparagraph (3) of this regulation.

(c) This subparagraph does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(5) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subparagraph (6), shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The location shall not be altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subparagraph (3).

(c) This subparagraph does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated bases, or on the acquisition of property for lease.

(6) The retail sale, including the lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subparagraph (3), notwithstanding the exclusion of lease or rental in subparagraph (3). “Transportation equipment” means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(b) Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(c) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(d) Containers designed for use on and component parts attached or secured on the items set forth in subparagraphs (6)(a) through (6)(c).

Regulation 39-26-103.5. Direct Payment Permit.

(1) **General Rule.** A purchaser who holds a direct payment permit ("Qualified Purchaser") shall remit sales and use taxes directly to the Colorado Department of Revenue ("Department") and not to the retailer. Retailers who sell taxable goods or services to a Qualified Purchaser shall not collect sales tax from such purchasers.

(2) **Qualified Purchaser Qualifications.** An applicant, which can be an entity or individual, for a direct payment permit must meet the following conditions.

(a) *Dollar Threshold*. An applicant must have had a minimum of $7,000,000 in purchases on which Colorado state sales or use tax was owed during the twelve months preceding the application. The dollar threshold excludes purchases that are exempt from Colorado state sales and use tax, even if such purchases are subject to state-administered local sales or use taxes. See, § 29-2-105, C.R.S. for a description of the local tax base. For example, the dollar threshold excludes exempt wholesale purchases of inventory. Additionally, commodities or tangible personal property that are to be erected upon or affixed to real property, such as building and construction materials and fixtures, are not included in the dollar threshold. See, § 39-26-103.5(1)(a), C.R.S.

(b) *Good Standing.* If an applicant has been subject to any tax administered by the Department for at least three years prior to the date of the application, an applicant cannot have been delinquent in collecting, remitting, or reporting any sales, use, income, or other tax administered by the Department for the immediate three years prior to the date applicant submits its application. If an applicant has not been subject to any tax administered by the Department for at least three years, the applicant cannot have been delinquent in collecting, remitting, or reporting taxes for any period after the date the applicant was first obligated to collect, remit, and report such taxes. The Department can waive this requirement if an applicant demonstrates to the satisfaction of the director or their designee that the failure to comply with the collecting, remitting, and reporting requirements was due to reasonable cause. In determining whether reasonable cause exists, the Department will consider, among other relevant aggravating and mitigating factors, whether:

(i) the failure was due to willful or reckless disregard of applicant's tax obligations;

(ii) the applicant failed to comply on more than one occasion;

(iii) the magnitude of the failure was significant in terms of dollars or time; and

(iv) the applicant made subsequent efforts to avoid future failures.

(c) *Accounting Systems and Practices*. An applicant must have in place an accounting system and set of practices that are acceptable to the Department. The accounting system and practices must fully and accurately report the amount of sales or use tax to be reported on the appropriate sales or use tax return(s), including state-administered local tax jurisdictions. The Department may revoke a direct payment permit and may make assessments of tax, penalties, or interest if such system or practices are not adequate to enable the Department to fully and accurately collect and allocate to cities, counties, and other local taxing entities all the sales and use taxes that the Department collects on behalf of such entities.

(d) A Qualified Purchaser is not required to be subject to the collection, remittance, and reporting requirements for sales taxes in order to obtain such a permit. Rather, a

Qualified Purchaser can be subject to the collection, remittance, and reporting requirements for any tax administered by the Department.

(3) **Effective Date.** A direct payment permit is effective from the date of issuance until December 31 of the third year following the year in which it is issued unless sooner revoked.

(4) **Purchaser's Funds.** When a Qualified Purchaser uses a direct payment permit, the Qualified Purchaser must use its own funds when paying a retailer for a transaction to which the direct payment permit applies. Retailers cannot accept payment from persons other than the Qualified Purchaser, including payment from the personal funds of an individual if the permit is held in the name of an entity. Retailers must collect tax if a Qualified Purchaser is making a purchase with funds other than the Qualified Purchaser's funds and will be liable for unpaid taxes for transactions paid in contravention of this subsection (4).

(5) **Revocation of Permits.**

(a) The Department may revoke a direct payment permit if the Qualified Purchaser violates any statute or regulation governing the administration of sales and use taxes, or if in the opinion of the Department the Qualified Purchaser becomes otherwise unable to meet any of the conditions for holding a direct payment permit. The Department shall provide written notice of the revocation by first-class mail to the last known address of the Qualified Purchaser thirty days prior to the effective date of such revocation. The notice of revocation shall set forth:

(i) the factual and legal basis for revocation,

(ii) advise the Qualified Purchaser of its right to appeal, and

(iii) the date the Department issued the notice.

The Department will issue a denial of a direct payment permit application in the same manner.

(b) An applicant who is denied a permit or a Qualified Purchaser whose permit was revoked, may appeal the decision by submitting to the Department's executive director a written request for hearing. The notice of appeal must be received by the Department within thirty days of the date of issuance of the notice of revocation or denial and contain the permit holder's name, address, permit account number (for revocations), and the legal and factual basis explaining why the permit should not be revoked or denied. Qualified Purchaser's notice of appeal shall suspend the effective date of the revocation until a final order resolving the appeal is issued by the executive director or the director's designee. The executive director or director's designee shall conduct a hearing and issue a final ruling on such appeal within a reasonable time.

(6) **Reporting Requirements.**

(a) A Qualified Purchaser holding a direct payment permit must directly remit to the Department all state and state-administered city, county and special district sales taxes that would have been collected by the retailer had the Qualified Purchaser purchased such goods or services without a direct payment permit.

(i) *Exceptions.* A Qualified Purchaser holding a direct payment permit cannot pay county lodging taxes, county short-term rental taxes, and local marketing district taxes directly to the Department because such taxes are not sales taxes. Retailer

must collect such taxes from the Qualified Purchaser and remit them to the Department. See, § 30-11-107.5 and § 30-11-107.7, C.R.S.

(b) A Qualified Purchaser must report and remit state and state-administered local taxes on or before the 20th day of each month following the month the Qualified Purchaser purchases taxable goods or services with a direct payment permit.

(c) The vendor must retain a copy of Qualified Purchaser's direct pay permit.

Cross References

1. See 1 CCR 201-4, Regulation 39-26-102(9) for the sourcing of sales for state and local sales tax purposes.

Regulation 39-26-104(1)(b)(I). Exchanged Tangible Personal Property.

(1) **General Rule.** When tangible personal property is received by a retailer as part or full payment for the sale of tangible personal property, sales tax shall be calculated upon the purchase price of the tangible personal property sold, minus the fair market value of the tangible personal property exchanged by the purchaser, provided the property taken by the retailer in the exchange is to be resold in the usual course of the retailer's trade or business.

(2) **Exceptions**. The general rule does not apply if:

(a) The property transferred from purchaser, or by a third party on behalf of the purchaser, to seller is not tangible personal property.

(i) *Examples.*

(A) Intangible property, such as stock certificates, and real property are not subject to sales or use tax.

(B) Services (because they are not property).

(b) Retailer does not resell, in the usual course of its business, the property transferred from purchaser.

(i) *Examples.*

(A) Retailer does not resell the property in a commercially reasonable period.

(B) Retailer takes a used computer from buyer in exchange for the sale of a new computer to buyer. Retailer then donates the used computer to a school. A donation does not constitute a sale and, therefore, the initial exchange does not qualify under the general rule.

(C) Retailer is in the business of selling only construction equipment. Buyer exchanges a boat as partial payment of its purchase of a large compressor. Retailer cannot reduce the price on which sales tax is calculated for the compressor by the fair market value of the boat even if the seller resells the boat. The resale of boats is not part of the retailer's usual course of business. Retailer and buyer also do not qualify for the vehicle exchange, even though the boat qualifies as a vehicle, because both the buyer and retailer must exchange vehicles. Therefore, both the retailer, as a licensed vendor, and buyer are liable for the sales tax on the purchase of the equipment and the retailer, as a buyer, is liable for sales tax on the fair market value of the boat (buyer would also be liable for the sales tax on the boat if buyer is a licensed retailer).

(ii) *Exception to the Resale Requirement - Vehicles.* The resale requirement does not apply if the property transferred (exchanged) by the seller to buyer is a vehicle and the property transferred (exchanged) by the buyer to the seller is a vehicle. Both vehicles must be subject to licensing, registration, or certification by the laws of Colorado. "Vehicles" include:

(A) Trailers, semi-trailers, trailer coach,

(B) Special mobile machinery (except such machinery used solely on property of the owner),

(C) Vehicles designed primarily to be operated or drawn on public highways, (§§ 42-3-103(1) and 104, C.R.S.),

(D) Watercraft (§ 33-13-103, C.R.S.),

(E) Aircraft (Colorado does not license aircraft but Colorado law requires aircraft possessed in this state be licensed by FAA) (§ 43-10-114(1), C.R.S.).

Purchaser, on whom the obligation to pay sales tax is levied, is the person who pays money or other consideration in addition to the exchanged vehicle. If the seller is a licensed retailer, then the retailer must collect sales tax from the purchaser. Persons who engage in three or more such exchanges may be required to obtain a motor vehicle dealer's license

(c) Exchanges that do not occur at the same time and place. See, § 39-26-104(1)(b).

(i) *Examples.*

(A) Motor vehicle dealer sells a motor vehicle to buyer, who pays cash. Two weeks later, buyer decides to sell another vehicle he owns to the dealer. Buyer cannot claim a refund for taxes paid for the first purchase because the second vehicle was not exchanged as part of the first sale.

(B) Retailer is in the business of leasing equipment. Customer rents a forklift for 30 days and retailer and customer agree at the time the lease is signed that customer will give retailer, as part of the payment, a used compressor that retailer intends to lease to third parties. The exchange does not qualify because the use of the forklift occurs over thirty days and does not occur at the same time and place as the exchange of the compressor. In contrast, a finance lease is treated as a credit sale and not as a true lease. An exchange involving a finance lease is treated as occurring at the same time and place as the other party's exchange of property.

Cross References

1. For additional requirements regarding the collection of tax for motor vehicles, see § 39-26-113, C.R.S.

2. See, § 39-26-104(1)(b)(I)(B), C.R.S. and § 12-6-101, et seq., C.R.S. for laws governing motor vehicle dealer licensing.

Regulation 39-26-105. Remittance of Tax.

Basis and Purpose. The statutory bases for this regulation are §§ 39-21-112(1) and 39-21-119, 39-26-105, 39-26-107, 39-26-109, 39-26-112, 39-26-118, and 39-26-704(2), C.R.S. The purpose of this regulation is to clarify sales tax remittance requirements and conditions under which a retailer is eligible to deduct a retailer's service fee from the sales tax they remit.

(1) **Retailer Requirements.**

(a) A retailer is liable and responsible for tax on the retailer's taxable sales made during the tax period prescribed for the retailer pursuant to 1 CCR 201-4, Regulation 39-26-109, calculated using the tax rate in effect at the time of the sale and applied to all taxable sales, including all taxable sales made for less than the minimum amount subject to tax pursuant to § 39-26-106, C.R.S. A retailer is also liable and responsible, pursuant to § 39-26-112, C.R.S., for the payment of any tax collected in excess of the tax rate in effect at the time of the sale and must remit such excess amount to the Department.

(b) A retailer shall file with the Department a return reporting its sales, including any sales exempt from taxation under article 26 of title 39, C.R.S., made during the preceding tax period. If a retailer makes no retail sales during its preceding tax period, the retailer must file a return reporting zero sales. Returns and any required supplemental forms must be completed in full.

(c) A retailer must file returns and remit any tax due to the Department in accordance with the filing schedules prescribed by 1 CCR 201-4, Regulation 39-26-109.

(2) **Due Date of Returns.** Sales tax returns and payments of tax reported thereon are due the twentieth day of the month following the close of the tax period. If the twentieth day of the month following the close of the tax period is a Saturday, Sunday, or legal holiday, the due date shall be the next business day.

(3) **Retailer's Service Fee.** Except as provided in this paragraph (3), a retailer may, in the remittance of collected sales tax, deduct and retain a retailer's service fee in the amount prescribed by § 39-26-105(1)(c), C.R.S.

(a) If the retailer is delinquent in remitting any portion of the tax due, other than in unusual circumstances shown to the satisfaction of the executive director, the retailer shall not retain a retailer's service fee for any portion of the tax for which the retailer is delinquent.

(b) If a retailer has retained a retailer's service fee pursuant to paragraph (3) of this regulation and, subsequent to the applicable due date, owes additional tax for the filing period as the result of an amended return or an adjustment made by the Department, the retailer shall not be permitted to retain a retailer's service fee with respect to the additional tax, but the retailer may retain the retailer's service fee associated with the original return, so long as the retailer filed the original return in good faith.

(4) **Application.**

(a) The liability and responsibility imposed by § 39-26-105, C.R.S. and this regulation apply to any retailer that has substantial nexus with Colorado and is doing business in this state, as defined in § 39-26-102(3), C.R.S. Retailers are considered to have a substantial nexus with Colorado for sales tax purposes if they meet any of the following criteria:

(I) the retailer maintains a physical presence in Colorado pursuant to §§ 39-26-102(3)(a), (d), and (e), C.R.S.; or

(II) in the previous calendar year or the current calendar year:

(A) the retailer's gross revenue from the sale of tangible personal property or services delivered into Colorado exceeds one hundred thousand dollars; or

(B) the retailer sold tangible personal property or services for delivery into Colorado in two hundred or more separate transactions.

(b) Paragraph (4)(a)(II) of this regulation shall not apply in determining a retailer's liability and responsibility for tax pursuant to § 39-26-105, C.R.S. and this regulation for any sale made prior to December 1, 2018.

(c) A retailer that has substantial nexus with Colorado as defined in paragraph (4)(a) of this regulation is not a "remote seller" as defined in § 39-26-102(7.7), C.R.S. and sales made by any such retailers are not "remote sales" as defined in § 39-26-102(7.6), C.R.S.

Cross References

1. Forms, returns, and instructions can be found online at www.colorado.gov/tax.

2. For additional information about excess tax collected by a retailer, see § 39-26-112, C.R.S. and 1 CCR 201-4, Regulation 39-26-106.

3. For information about electronic funds transfer (EFT) requirements and the timeliness of payments made via EFT, see 1 CCR 201-1, Special Regulation 1 Electronic Funds Transfer.

4. For information about dates payments or returns are deemed to have been made, see § 39-21-119, C.R.S. and 1 CCR 201-1, Regulation 39-21-119.

5. For information about electronic filing, see § 39-21-120, C.R.S. and 1 CCR 201-1, Regulation 39-21-120.

Regulation 39-26-105(1)(A) TAX RATE (Repealed)

Regulation 39-26-204(2). Retailer's Use Tax.

(1) Every retailer that has substantial nexus with Colorado and is doing business in this state, as defined in § 39-26-102(3), C.R.S., shall collect retailer's use tax, pursuant to § 39-26-204(2), C.R.S., with respect to any sale of tangible personal property for storage, use, or consumption in Colorado for which the retailer was not, under state and federal law, required to collect sales tax. Retailers are considered to have a substantial nexus with Colorado for sales tax purposes if they meet any of the following criteria:

(a) the retailer maintains a physical presence in Colorado pursuant to §§ 39-26-102(3)(a), (d), and (e), C.R.S.; or

(b) in the previous calendar year or the current calendar year:

(I) the retailer's gross revenue from the sale of tangible personal property or services delivered into Colorado exceeds one hundred thousand dollars; or

(II) the retailer sold tangible personal property or services for delivery into Colorado in two hundred or more separate transactions.

(2) Paragraph (1)(b) of this regulation shall not apply in determining a retailer's obligation to collect tax under § 39-26-204(2), C.R.S. and this regulation for any sale made prior to December 1, 2018.

(3) A retailer that has substantial nexus with Colorado as defined in paragraph (1) of this regulation is not a "remote seller" as defined in § 39-26-102(7.7), C.R.S. and sales made by any such retailers are not "remote sales" as defined in § 39-26-102(7.6), C.R.S.

Regulation 39-26-704(2).

(1) All sales which the state of Colorado is prohibited from taxing under the constitution or laws of the United States or the state of Colorado are exempt, including sales to ambassadors, consuls, and their employees who are citizens of the nation they are representing.

(2) Sales involving interstate commerce are exempt only in cases where the tax would be unconstitutional.

(3) All sales to railroads, except as provided in C.R.S. 1973, 39-26-710(1)(a) and to other common carriers doing an interstate business, to telephone and telegraph companies, and to all other agencies engaged in interstate commerce are taxable in the same manner as are sales to other persons.

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Colorado Department of Revenue
Statement of Emergency Justification and Adoption
Emergency Amendment to Regulations 39-26-102(1.3), 39-26-102.3, 39-26-102(9), 39-26-103.5, 39-26-104(1)(b)(I), 39-26-105, 39-26-105(1)(A), 39-26-204(2), and 39-26-704(2)

Pursuant to sections 24-4-103(6), 39-21-112, 39-26-102, 39-26-103.5, 39-26-104, 39-26-105, 39-26-204, and 39-26-704, C.R.S., I, Michael S. Hartman, Executive Director of the Department of Revenue, hereby adopt emergency amendments to tax Regulations 39-26-102(1.3), 39-26-102.3, 39-26-102(9), 39-26-103.5, 39-26-104(1)(b)(I), 39-26-105, 39-26-105(1)(A), 39-26-204(2), and 39-26-704(2).

Section 24-4-103(6), C.R.S., authorizes the Executive Director to adopt temporary or emergency regulations if the Executive Director finds that the immediate adoption of the regulations are imperatively necessary to comply with a state or federal law or for the preservation of public health, safety, or welfare, and that compliance with the requirements of section 24-4-103, C.R.S. regarding promulgation of permanent regulations would be contrary to the public interest.

I find that the immediate adoption of amendments to these regulations is imperatively necessary to provide guidance to retailers and consumers in light of the recent decision in *South Dakota v. Wayfair, Inc.*, 585 U.S. ___ (2018). In *Wayfair*, the United States Supreme Court overruled *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753 (1967), and held that physical presence is not required for a state to impose sales and use tax collection requirements on an out-of-state retailer.

Retailers who do not have a physical presence in Colorado may now be subject to state and local sales and use tax licensing and collection requirements under Colorado law. Without immediate guidance, these retailers could face substantial tax liabilities that they must pay from their own accounts but which Colorado law would have allowed them to collect from their customers had they known of the tax collection obligation at the time of the relevant transactions. Confusion among retailers may also adversely impact Colorado consumers.

Additionally, even though the Department has extended a grace period through May 31, 2019 based on feedback it received during the rulemaking process, these regulations are needed so retailers can understand what modifications they may need to make to their existing systems and processes to comply with these regulations after the grace period expires. Finally, allowing the existing emergency regulations to lapse at this juncture would only serve to create unnecessary confusion among the relevant stakeholder groups that are working to find innovative solutions to some of the issues that have arisen following the *Wayfair* decision. Thus, I find that compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest under these circumstances.

Statutory Authority

The statutory authorities for these amendments are cited above.

Purpose

To provide explicit guidance regarding the application of Colorado's sales and use taxes in light of *South Dakota v. Wayfair, Inc.*, 585 U.S. ___ (2018).

Adoption

For the reasons set forth above, I hereby adopt emergency Regulations 39-26-102(1.3), 39-26-102.3, 39-26-102(9), 39-26-103.5, 39-26-104(1)(b)(I), 39-26-105, 39-26-105(1)(A), 39-26-204(2), and 39-26-704(2), which are attached to this Statement. These emergency regulations shall be effective for a period of one hundred and twenty days from the date of this notice, unless sooner terminated or replaced by permanent regulations adopted in accordance with section 24-4-103, C.R.S. Nothing in this Statement of Emergency Justification and Adoption modifies the Department's previously announced grace period through May 31, 2019.

Adopted this 19th day of December, 2018.

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Tracking number: 2018-00692

Opinion of the Attorney General rendered in connection with the rules adopted by the

Taxpayer Service Division - Tax Group

on 12/18/2018

1 CCR 201-4

SALES AND USE TAX

The above-referenced rules were submitted to this office on 12/18/2018 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.

January 03, 2019 16:25:56

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Emergency Rules Adopted

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-18

Rule title

1 CCR 201-18 RETAIL MARIJUANA TAX 1 - eff 12/18/2018

Effective date

12/18/2018

DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

RETAIL MARIJUANA TAX

1 CCR 201-18

Regulation 39-28.8-101. Retail Marijuana Definitions.

Basis and Purpose. The basis for this regulation is §§ 39-21-112(1), 39-28.8-101, 39-28.8-205, and 39-28.8-308, C.R.S. The purpose of this regulation is to establish definitions for terms used in 1 CCR 201-18 regarding retail marijuana sales tax and retail marijuana excise tax.

With respect to regulations promulgated under Article 28.8 of Title 39, the following terms have the following meanings:

(1) Unless the context clearly requires otherwise, terms defined by section 39-28.8-101, C.R.S., section 44-12-103, C.R.S., or in Rule R 103 of 1 CCR 212-2 of the Marijuana Enforcement Division's rules related to the Colorado Retail Marijuana Code, shall have the same meanings in these regulations as therein defined.

(2) "Affiliated" means being owned or controlled by the same or related interests, where "related interests" includes individuals who are related by blood or marriage or entities that are directly or indirectly controlled by an entity or individual or related individuals.

(3) "Average Market Rate" shall have the same meaning as defined in subsection 39-28.8-101(1.5), C.R.S., and shall be calculated pursuant to Department Regulation 39-28.8-302(5) in the following categories:

(a) Bud

(b) Trim

(c) Bud Allocated for Extraction

(d) Trim Allocated for Extraction

(e) Immature Plant

(f) Wet Whole Plant

(g) Seed

(4) "Bud" shall have the same meaning as the product of the "Flowering" stage as set forth by Rule R 103 of 1 CCR 212-2 including the actual flower.

(5) "Bud Allocated for Extraction" means Bud that is designated for the extraction of Retail Marijuana Concentrate and not for direct sale to consumers.

(6) "Immature Plant" shall have the same meaning as set forth by Rule R 103 of 1 CCR 212-2.

(7) "Inventory Tracking System" shall have the same meaning as set forth by Rule R 103 of 1 CCR 212-2.

(8) "Marijuana" means Medical Marijuana or Retail Marijuana.

(9) "Retail Marijuana" shall have the same meaning as defined in subsection 39-28.8-101(7), C.R.S.

(10) "Retail Marijuana Concentrate" shall have the same meaning as "Retail Marijuana Concentrate" as set forth by Rule R 103 of 1 CCR 212-2.

(11) "Retail Marijuana Cultivation Facility" shall have the same meaning as defined in subsection 39-28.8-101(8), C.R.S.

(12) "Retail Marijuana Excise Tax" or "Excise Tax" means excise tax imposed by Part 3 of Article 28.8 of Title 39, C.R.S.

(13) "Retail Marijuana Excise Tax Return" means the excise tax return upon which all sales or Transfers of Retail Marijuana subject to Retail Marijuana Excise Tax and the amount of Retail Marijuana Excise Tax are reported.

(14) "Retail Marijuana Plant" means a plant of the genus cannabis, other than an Immature Plant, whether growing or harvested, that is cultivated by a licensed Retail Marijuana Cultivation Facility.

(15) "Retail Marijuana Product Manufacturing Facility" shall have the same meaning as defined in subsection 39-28.8-101(10), C.R.S.

(16) "Retail Marijuana Sales Tax" means sales tax imposed by Part 2 of Article 28.8 of Title 39, C.R.S.

(17) "Retail Marijuana Sales Tax Return" means the sales tax return upon which all sales of Retail Marijuana and Retail Marijuana Products and the amount of state and local Retail Marijuana Sales Tax are reported.

(18) "Retail Sales Tax" means the sales tax imposed by Part 1 of Article 26 of Title 39, C.R.S.

(19) "Test Period" means the period of time used to calculate the Average Market Rate. The Test Period shall be each November 1st to the subsequent January 31st, each February 1st to the subsequent April 30th, each May 1st to the subsequent July 31st, and each August 1st to the subsequent October 31st.

(20) "Transfer(s)(ed)(ing)" means to grant, convey, hand over, assign, sell, exchange, or barter, in any manner or by any means, with or without consideration, any Retail Marijuana or Retail Marijuana Product from one licensee to another licensee or to a consumer. A Transfer includes the movement of Retail Marijuana or Retail Marijuana Product from one licensed premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals.

(21) "Trim" means any part of a Retail Marijuana Plant other than Bud or Wet Whole Plant. Trim includes "sweet leaf" or "sugar leaf".

(22) "Trim Allocated for Extraction" means Trim that is designated for the extraction of Retail Marijuana Concentrate and not for direct sale to consumers.

(23) "Unaffiliated" means not being owned or controlled by the same or related interests, where "related interests" includes individuals who are related by blood or marriage or entities that are directly or indirectly controlled by an entity or individual or related individuals.

(24) "Unprocessed Retail Marijuana" means all Retail Marijuana that is first Transferred by a Retail Marijuana Cultivation Facility to a Retail Marijuana Store or a Retail Marijuana Products Manufacturing Facility, even though it may have gone through some processing, and even though it may be subject to further processing by another licensee.

(25) "Wet Whole Plant" means a Retail Marijuana Plant that is cut off just above the roots and is not trimmed, dried, or cured. The weight of the Wet Whole Plant includes all bud, leaves, stems, and stalk. The Wet Whole Plant must be weighed within 2 hours of the plant being harvested. The plant must not undergo any further processing prior to being weighed, and tax must be paid on the weight of the entire unprocessed plant.

DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

RETAIL MARIJUANA TAX

1 CCR 201-18

Regulation 39-28.8-302. Retail Marijuana Excise Tax.

Basis and Purpose. The basis for this regulation is §§ 39-21-112(1), 39-28.8-101, 39-28.8-301, 39-28.8-302, and 39-28.8-308, C.R.S. The purpose of this regulation is to provide guidance regarding the imposition and calculation of retail marijuana excise tax and the record keeping requirements therefor.

(1) **Incidence of Tax.** The Excise Tax is imposed upon the Retail Marijuana Cultivation Facility, which shall pay the Excise Tax to the Department on the first Transfer of Retail Marijuana to a Retail Marijuana Store or a Retail Marijuana Product Manufacturing Facility. No Excise Tax is imposed on the Transfer of Retail Marijuana from one Retail Marijuana Cultivation Facility to another Retail Marijuana Cultivation Facility. In the case of such Transfer, the Excise Tax is imposed on the subsequent Transfer of the Retail Marijuana to a Retail Marijuana Store or a Retail Marijuana Product Manufacturing Facility.

(2) **Exempt Transfers.** The Transfer of Retail Marijuana to a Retail Marijuana Testing Facility for testing purposes is exempt from Retail Marijuana Excise Tax so long as the marijuana is destroyed by the Retail Marijuana Testing Facility during or following the testing.

(3) **Inventory Tracking System.** When a Transfer is entered into the Inventory Tracking System, all Transfers between Unaffiliated Retail Marijuana business licensees must be entered in a manner that allows the contract price to be recorded in such Inventory Tracking System. The contract price recorded in the Inventory Tracking System must be the actual contract price as described in paragraph 4(b) of this regulation.

(4) **Calculation and Payment of Tax.**

(a) The method for calculating Retail Marijuana Excise Tax depends on the relationship between Retail Marijuana business licensees.

(i) Transfers from Retail Marijuana Cultivation Facilities to Unaffiliated Retail Marijuana Stores or Unaffiliated Retail Marijuana Product Manufacturing Facilities.

(A) If the first Transfer from a Retail Marijuana Cultivation Facility is to an Unaffiliated Retail Marijuana Store or Unaffiliated Retail Marijuana Product Manufacturing Facility, the Excise Tax is calculated based on the actual contract price, as defined in paragraph (4)(b) of this regulation, of the Retail Marijuana Transferred.

(B) If no contract price is established at the time of the first Transfer referenced in paragraph (4)(a)(i)(A), the Excise Tax is calculated based on the Average Market Rate of the Retail Marijuana Transferred. Examples of such Transfers include:

(I) a temporary Transfer, which does not constitute a sale, of Retail Marijuana from a Retail Marijuana Cultivation Facility to an Unaffiliated Retail Marijuana Product Manufacturing Facility that will process or manufacture the Retail Marijuana before returning it to the Retail Marijuana Cultivation Facility or to a Retail Marijuana Store Affiliated with the Retail Marijuana Cultivation Facility; or

(II) a Transfer of Retail Marijuana from a Retail Marijuana Cultivation Facility to an Unaffiliated Retail Marijuana Store for which a price is not established at the time of Transfer, but instead depends upon the revenue generated from the subsequent sale of the Retail Marijuana to the end consumer.

(ii) Transfers between Unaffiliated Retail Marijuana Cultivation Facilities of Retail Marijuana Harvested for Sale or for Extraction.

(A) If the first Transfer of Retail Marijuana is between Unaffiliated Retail Marijuana Cultivation Facilities, the Excise Tax is calculated based on the contract price, as defined in paragraph (4)(b) of this regulation, provided the Retail Marijuana had, at the time of Transfer between Unaffiliated Retail Marijuana Cultivation Facilities, been harvested for sale at a Retail Marijuana Store or for extraction by a Retail Marijuana Product Manufacturing Facility, and underwent no further cultivation following the Transfer between Unaffiliated Retail Marijuana Cultivation Facilities.

(B) The Excise Tax calculated pursuant to paragraph (4)(a)(ii)(A) of this regulation shall be imposed on the first Transfer of the Retail Marijuana from the Retail Marijuana Cultivation Facility to a Retail Marijuana Store or Retail Marijuana Product Manufacturing Facility.

(C) If no contract price is established prior to the first Transfer between Unaffiliated Retail Marijuana Cultivation Facilities, the Excise Tax is calculated on the Average Market Rate at the time of the Transfer. An example of such a transfer includes, but is not limited to:

(I) a transfer of Retail Marijuana between Unaffiliated Retail Marijuana Cultivation Facilities for which a price is not established at the time of Transfer, but instead depends on the revenue generated from the subsequent Transfer to a Retail Marijuana Store or Retail Marijuana Product Manufacturing Facility.

(iii) Affiliated Retail Marijuana business licensees.

(A) Except as provided in paragraph (4)(a)(ii) of this regulation, if the first Transfer from a Retail Marijuana Cultivation Facility is to an Affiliated Retail Marijuana Store or an Affiliated Retail Marijuana Product Manufacturing Facility, the Excise Tax is calculated based on the Average Market Rate of the Retail Marijuana Transferred.

(b) *Contract Price.* The contract price is the invoice price charged by a Retail Marijuana Cultivation Facility to each licensed purchaser for each Transfer of Unprocessed Retail Marijuana, exclusive of any tax that is included in the written invoice price, and exclusive

of any discount or other reduction. In the case of multiple invoices reflecting multiple prices for the same transaction, the contract price used to calculate the tax is the highest such price. For the purpose of this paragraph (4)(b), the invoice price charged includes all consideration the seller receives from the buyer in whatever form and regardless of the time of receipt.

(c) *Calculation of Average Market Rate.* The Department will calculate the Average Market Rate using reported sales of each category during the Test Period. The Department will determine the best methodology to arrive at the Average Market Rate. The Department may, from time to time, change its method of calculating the Average Market Rate if, in the judgment of the Department, such change is necessary to arrive at the most accurate Average Market Rate given the market conditions.

(d) In the case of Retail Marijuana Excise Tax calculated using Average Market Rate, the Excise Tax shall be calculated based on the category of Retail Marijuana (i.e., Bud, Trim, Immature Plant, Wet Whole Plant, Seed, Bud Allocated for Extraction, or Trim Allocated for Extraction) being Transferred. The provisions of this paragraph (4)(d) apply only to Excise Tax calculated using Average Market Rate.

(i) For the categories of Bud, Trim, Bud Allocated for Extraction, and Trim Allocated for Extraction, the Excise Tax is computed on the total weight of the Retail Marijuana Transferred. If multiple categories of Retail Marijuana are included in the Transfer, the Excise Tax shall be calculated separately for each category of Retail Marijuana included in the Transfer by separately calculating the total weight of the Retail Marijuana included in each category and multiplying the weight by the Average Market Rate of each category and the applicable Excise Tax rate. Notwithstanding this rule, inconsequential amounts of Bud inadvertently included in a Transfer that is otherwise Trim shall be treated as Trim and not as Bud.

(A) Retail Marijuana categorized for the purpose of Excise Tax calculation as Bud Allocated for Extraction or Trim Allocated for Extraction may not be subsequently Transferred for direct sale to consumers unless it has first been subject to extraction as allocated.

(B) If Bud Allocated for Extraction or Trim Allocated for Extraction is subsequently Transferred for direct sale to consumers and has not been subjected to extraction, the Retail Marijuana Cultivation Facility shall amend the Retail Marijuana Excise Tax Return upon which the Excise Tax was initially paid in order to recalculate the Excise Tax, and any applicable penalty and interest, using the Average Market Rates for the category of Bud or Trim, respectively.

(C) The Retail Marijuana Product Manufacturing Facility shall notify, in writing, the Retail Marijuana Cultivation Facility of any subsequent Transfer of Bud Allocated for Extraction or Trim Allocated for Extraction that has not first been subjected to extraction within seven (7) days of the Transfer by the Retail Marijuana Product Manufacturing Facility. Any failure by a Retail Marijuana Production Manufacturing Facility to notify a Retail Marijuana Cultivation Facility in accordance with this paragraph (4)(d)(i)(C) shall not relieve the Retail Marijuana Cultivation Facility of liability for any additional tax, penalty, and interest due pursuant to paragraph (4)(d)(i)(B) of this regulation.

(ii) The Retail Marijuana Excise Tax for Immature Plants is calculated on the total number of Immature Plants being sold or Transferred.

(iii) The Retail Marijuana Excise Tax for Wet Whole Plants is calculated on the total weight of the entire Retail Marijuana Wet Whole Plant. The weight of the entire Retail Marijuana Wet Whole Plant is subject to the Excise Tax because the Average Market Rate for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing (i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis. The Wet Whole Plant must be harvested and packaged in the same day.

(A) The Retail Marijuana Wet Whole Plant must be weighed within 2 hours of the plant being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. The Retail Marijuana Excise Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of being harvested or is subjected to further processing before being weighed, the Excise Tax on such plant cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates.

(B) A Retail Marijuana Cultivation Facility that calculates and pays the Excise Tax using the Wet Whole Plant rate must maintain records of the time each Wet Whole Plant (identified by its RFID tag) was harvested and weighed and the weight of each Wet Whole Plant. The records must be in writing and created contemporaneously with the harvesting and weighing.

(iv) The Retail Marijuana Excise Tax for seeds is calculated on the total number of seeds being Transferred.

(v) The Retail Marijuana Excise Tax for Retail Marijuana Concentrate produced by a Retail Marijuana Cultivation Facility shall be calculated either pursuant to paragraph (4)(d)(i) of this regulation based on the weight of Bud Allocated for Extraction and/or Trim Allocated for Extraction used in the extraction or pursuant to paragraph (4)(d)(iii) of this regulation based on the weight of Wet Whole Plant(s) used in the extraction.

(5) **Evidence of Payment of Tax.**

(a) Both the Retail Marijuana Cultivation Facility and the first purchaser or transferee shall maintain documentation sufficient to determine the Excise Tax due for the Transfer. Such documentation must include:

(i) the name and license number of the Retail Marijuana Cultivation Facility,

(ii) the name and license number of first purchaser or transferee,

(iii) the category of Retail Marijuana Transferred,

(iv) the date of Transfer,

(v) the weight or quantity, as applicable, of the Retail Marijuana Transferred, and

(vi) the contract price for the Transfer, if applicable.

Cross References

1. See §§ 29-2-114 and 32-1-1004, C.R.S. and the applicable local ordinance or resolution for information about the application of any local excise taxes to Retail Marijuana Transfers.

COLORADO
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Colorado Department of Revenue
Statement of Emergency Justification and Adoption
Emergency Regulations 39-28.8-101 and 39-28.8-302

Pursuant to §§ 24-4-103(6), 39-21-112(1), 39-28.8-101, 39-28.8-302, and 39-28.8-308 C.R.S., I, Michael S. Hartman, Executive Director of the Department of Revenue, hereby adopt emergency Regulations 39-28.8-101 and 39-28.8-302.

Section 24-4-103(6), C.R.S., authorizes the Executive Director to adopt a temporary or emergency regulation if the Executive Director finds that the immediate adoption of the regulation is imperatively necessary to comply with a state law or for the preservation of public health, safety, or welfare and that compliance with the requirements of section 24-4-103, C.R.S. regarding promulgation of a permanent regulation would be contrary to the public interest.

I find that the immediate adoption of the amendments to these regulations is necessary to provide guidance to Colorado taxpayers in light of statutory changes made by the Colorado General Assembly in Senate Bill 18-259, which created an additional method for calculating the retail marijuana excise tax for transfers of retail marijuana harvested for sale or for extraction between unaffiliated retail marijuana cultivation facilities. Defined terms have also been updated in Regulation 39-28.8-101 to add more clarity to the legislative changes. Permanent rulemaking proceedings are underway, but the legislative changes to the affected statute will be effective January 1, 2019. Thus, emergency regulations are necessary to provide guidance to taxpayers until promulgation of permanent regulations. As a result, I find that compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest under the circumstances.

Statutory Authority

The statutory authority for the amendments to the existing regulation is cited above.

Purpose

To conform the existing regulations to the statutory changes made in the 2018 legislative session.

Adoption

For the reasons set forth above, I hereby adopt emergency Regulations 39-28.8-101 and 39-28.8-302 C.R.S., which are attached to this Statement and shall be effective on the date of its adoption and shall apply prospectively. These emergency regulations shall be in force and effect for a period of one hundred and twenty days from the date of this notice, unless sooner terminated or replaced by permanent rules adopted in accordance with § 24-4-103, C.R.S.

Adopted this 18th day of December, 2018.

Michael S. Hartman
Executive Director
Colorado Department of Revenue

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STATE OF COLORADO
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Office of the Attorney General

Tracking number: 2018-00691

Opinion of the Attorney General rendered in connection with the rules adopted by the

Taxpayer Service Division - Tax Group

on 12/18/2018

1 CCR 201-18

RETAIL MARIJUANA TAX

The above-referenced rules were submitted to this office on 12/18/2018 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.

January 02, 2019 14:34:41

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Emergency Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 01/01/2019

Effective date

01/01/2019

RULE 6 RULES FOR THE APPLICATION FOR A DRIVER'S LICENSE, INSTRUCTION PERMIT OR IDENTIFICATION CARD FOR U.S. CITIZENS AND INDIVIDUALS WHO CAN DEMONSTRATE PERMANENT LAWFUL PRESENCE AND COLORADO RESIDENCY

Basis, Purpose and Statutory Authority:

The statutory bases for this regulation are sections 24-4-103, 24-72.1-103, 42-1-204, 42-2-107, 42-2-108, and 42-2-302, C.R.S.

The purpose of this rule is to set forth regulations for the types of documents the Department will accept as proof of the applicant's identity, date of birth, social security number, address of principal residence in Colorado, and U.S. citizenship or permanent lawful presence when applying for a driver's license, instruction permit, or identification card. Additionally, this rule describes the process the applicant will be required to follow for completing the application and what will occur if an application is incomplete or denied, including the process the applicant may use to request a hearing if their application is denied.

1.1 **Definitions**

1.2 Applicant–Any natural person applying to the Department for a Colorado driver's license, minor driver's license, instruction permit, or identification card who is a U.S. citizen or who can demonstrate permanent lawful presence in the U.S. and residency in Colorado.

1.3 Department–The Colorado Department of Revenue.

1.4 Document–An original document certified by the issuing agency, an amended original document certified by the issuing agency, or a true copy certified by the issuing agency, excluding miniature, wallet sized, or photocopies of documents.

1.5 Driver's License–A driver's license, minor driver's license, or instruction permit.

1.6 Exceptions Processing–The procedure the Department has established for persons who are unable, for reasons beyond their control, to present all necessary documents and must rely on alternative documents to establish identity, date of birth, or U.S. citizenship in lieu of lawful presence.

1.7 Full Legal Name –The applicant's first name, middle name(s), and last name or surname, without use of initials or nicknames, as it appears on the applicant's documents presented upon application.

1.8 Hearing–Hearing before a Department Administrative Hearing Officer.

1.9 Identification Card–A document issued by A Department of Motor Vehicles or its equivalent that contains the applicant's full legal name, full facial digital photograph, date of birth, and sex, but does not confer upon the bearer the right to operate a motor vehicle.

1.10 Identity–The verifiable characteristics that when taken together make a person unique and identifiable. Evidence of identity includes proof of name, date of birth, and physical characteristics, including a verifiable photograph.

1.11 Incomplete Application–An application for a Colorado driver's license, instruction permit, or identification card that does not satisfy federal and state requirements for the issuance of a Colorado driver's license, instruction permit, or identification card.

1.12 Lawful Presence– The status of a person who demonstrates U.S. citizenship or permanent lawful presence.

1.13 SAVE– The Department of Homeland Security Systematic Alien Verification for Entitlements system, managed by the U.S. Citizenship and Immigration Services of the Department of Homeland Security.

1.14 SSN – The Social Security Number issued by the U.S. Social Security Administration (SSA).

1.15 SSOLV–The Social Security Online Verification system managed by the Social Security Administration (SSA).

2.1 **Proof of Identity, Date of Birth, and Lawful Presence**

2.2 Every application for a Colorado driver's license, instruction permit, or identification card shall include the applicant's full legal name, date of birth, sex, SSN, and address of principal residence.

2.3 An applicant must provide source documents that are secure and verifiable as defined in section 24-72.1-102(5), C.R.S.

2.4 The following documents or combination of documents are acceptable to establish identity, date of birth, and lawful presence:

2.4.1 A valid unexpired Colorado driver's license, instruction permit, or identification card except that a Colorado driver's license, instruction permit, or identification card issued under the Colorado Road and Community Safety Act, section 42-2-501 et seq., C.R.S. is not acceptable.

2.4.2 A valid unexpired U.S. passport bearing the full legal name of the applicant.

2.4.3 A certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the applicant's state of birth.

2.4.4 A Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State (Form FS-240, DS-1350, or FS-545).

2.4.5 A valid, unexpired Permanent Resident Card (Form I-551) issued by the Department of Homeland Security (DHS) or the U.S. Immigration and Naturalization Service).

2.4.6 A Certificate of Naturalization issued by DHS (Form N-550 or N-570).

2.4.7 A Certificate of Citizenship issued by DHS (Form N-560 or N-561).

2.4.8 In addition to the documents listed in Section 2.3, the following documents may also be used to establish an applicant's identity and date of birth: A valid unexpired REAL ID driver's license, instruction permit, or identification card issued in compliance with the standards established by the federal REAL ID Act and verified with the state of issuance, and such other documents as determined by the Department consistent with the REAL ID Act.

2.5 If an applicant submits any source document that reflects a name differing from the applicant's full legal name (for example through marriage, adoption, court order or other mechanism permitted by state law or regulation), the Department shall require evidence of the name change through the presentation of documents issued by a court, governmental body, or other entity as determined by the Department.

3.1 **Social Security Requirements**

3.2 An applicant must present his or her SSA account card; if the SSA account card is not available, the applicant may present any of the following documents bearing the applicant's SSN:

3.1.1 SSA account number card; or, if a SSA account card is not available, the person may present any of the following documents bearing the applicant's SSN:

3.1.1 A W–2 form,

3.1.2 A SSA–1099 form,

3.1.3 A non-SSA–1099 form, or

3.1.4 A pay stub with the applicant's name and SSN on it.

3.2 An applicant's SSN shall be verified with the SSOLV.

4.1 **Qualifications for Issuance of a Duplicate Driver's License or Identification Card**

4.2 Applicants may apply for a duplicate of an existing Instruction Permit or Driver's License as provided below:

4.2.1 Applicants for a duplicate driver's license or identification card who are within Colorado must appear in person and certify, under penalty of perjury, that the previous driver's license or identification card was lost, stolen, or destroyed by completing the "Request for Duplicate Instruction Permit/Driver License" (DR2989) form provided by the Department.

4.2.2 Applicants for a duplicate driver's license or identification card who are out of state must submit, by mail, the "Request for Duplicate Instruction Permit/Driver License" (DR2989) form provided by the Department on which the applicant must certify, under penalty of perjury, that the previous driver's license or identification card was lost, stolen, or destroyed.

4.2. Duplicates by mail will be processed only for applicants who are out of state and provide an out of state mailing address.

4.2.1. Only two duplicate driver's licenses or identification cards may be issued per renewal period unless additional duplicates are approved by the Department.

5.1 **Address of Principal Residence in Colorado**

5.2 To document the address of principal residence in Colorado, an applicant must present at least two documents that include the applicant's name and principal residence. Examples include, but are not limited to: utility bill, credit card statements, pay stub or earnings statement, rent receipt, telephone bill, or bank statement:

5.3 A Colorado street address must be displayed except as provided below:

5.3.1 An alternative address may be displayed for individuals for whom a State law, regulation, or DMV procedure permits display of an alternative address.

5.3.2 An alternative address may be displayed for individuals who satisfy any of the following:

5.3.2.1 If the individual is enrolled in a State address confidentiality program, which allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking, to keep, obtain and use alternative addresses; and provides that the address of such person must be kept confidential, or other similar program; or

5.3.2.2 If the individual's address is entitled to be suppressed under state or federal law or suppressed by a court order including an administrative order issued by a State or Federal court; or

5.3.2.3 If the individual is protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

5.3.3 In areas where a number and street name has not been assigned for U.S. mail delivery, an address convention used by the U.S. Postal Service is acceptable.

6.1 **Process for Complete Application**

6.2 When an applicant has completed the required application and established the standards set forth in this rule, an application will be printed; the applicant will be required to review and verify the information on the application by signing a "signature capture device"; a fingerprint will be captured; and a photograph of the applicant will be taken. The printed and signed application serves as the temporary Colorado driver's license, instruction permit, or identification card. The permanent Colorado driver's license, instruction permit, or identification card will be mailed to the applicant at the address provided on the application.

7.1 **Process for Incomplete Application**

7.2 If an application is incomplete or the applicant has failed to provide documents verifiable by the Department for identity, date of birth or lawful presence, the Department may provide a Notice of Incomplete Application.

7.3 The Notice of Incomplete Application shall include a notation of the reason for the decision that the application is incomplete. If the authenticity of a document cannot be verified, then an application may be considered incomplete and additional documentation may be submitted, or the applicant may be referred to Exceptions Processing. An applicant may return to the Department with additional documentation prior to being denied a Colorado driver's license, instruction permit, or identification card.

7.4 Any applicant who has received a Notice of Incomplete Application and believes he or she has provided sufficient documentation to establish identity, date of birth, and U.S. citizenship may request Exceptions Processing.

7.5 Any applicant who has received a Notice of Incomplete Application and believes he or she has provided sufficient documentation to establish identity, date of birth, and U.S. citizenship, may request a Notice of Denial and contest the decision through the process described in section 8.0 below.

8.1 **Denial of Applications**

8.2 Nothing in this regulation shall be construed to prevent the Department from denying an application on the basis that an applicant has presented documents that are fraudulent or that are not secure and verifiable pursuant to section 24-72.1.102(5), C.R.S.

8.3 Nothing in this regulation restricts or prohibits the Department from verifying any document presented by an applicant.

8.4 An application shall be denied if the applicant presents fraudulent or altered documents or commits any other fraud in the application process.

9.1 **Hearing and Final Agency Action**

9.2 An Applicant who has received a Notice of Denial may, within 60 days of the date of the Notice of Denial, request a hearing on the denial by filing a written request for hearing with the Hearings Section of the Department at 1881 Pierce St. #106, Lakewood, CO 80214.

9.3 Hearings shall be held in accordance with the provisions of the State Administrative Procedure Act and the provisions of Title 42 of the Colorado Revised Statutes.

9.4 The only issue at the hearing shall be whether the applicant has satisfied federal and state requirements for the issuance of a Colorado driver's license, instruction permit, or identification card.

9.5 The hearing officer shall issue a written decision. If the hearing officer finds that the applicant has not satisfied federal and state requirements for the issuance of a Colorado driver's license, instruction permit, or identification card, then the denial shall be sustained. If the hearing officer

finds that the applicant has satisfied federal and state requirements for the issuance of a Colorado driver's license, instruction permit, or identification card, then the denial shall be rescinded and the Department shall issue the Colorado driver's license, instruction permit, or identification card.

9.6 The decision by the hearing officer shall constitute final agency action, and is subject to judicial review as provided by section 24-4-106, C.R.S.

STATE OF COLORADO

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Motor Vehicles Division

Emergency Rules:

Revised Rule 6, 1 CCR 204-30 –Rules for Application for a Driver's License, Instruction Permit or Identification Card for U.S. Citizens and Individuals Who Can Demonstrate Permanent Lawful Presence and Colorado Residency

Statement of Emergency Justification and Adoption

Pursuant to sections 24-4-103 and 42-1-204, C.R.S., I, Michael S. Hartman, Executive Director of the Department of Revenue ("Department"), hereby adopt the aforementioned revised Rule 6, 1 CCR 204-30, which is attached hereto.

Section 24-4-103(6), C.R.S., authorizes the Department to issue emergency rules if the Department finds that the immediate adoption of the rule is imperatively necessary to comply with a state law or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

I find that the immediate adoption of this revised rule is necessary to comply with an amendment to state law regarding the issuance of duplicate or replacement permits, minor driver's licenses or identification cards issued under sections 42-2-117 and 42-2-501, C.R.S., which takes effect on January 1, 2019.

Statutory Authority

The statutory authority for this rule is found at sections 24-4-103, 24-72.1-103, 42-1-204, 42-2-107, 42-2-108, and 42-2-302, C.R.S.

Purpose

The purpose of adopting the revisions to Rule 6 on an emergency basis is to ensure that Rule 6 complies with the amendments to sections 42-2-117and 42-2-509, C.R.S. that are effective January 1, 2019.

Rule 6 currently does not provide for the issuance of a duplicate or replacement driver's license, identification card, or instruction permit. SB 18-108 amended section 42-2-117(1.5), C.R.S., to provide that upon furnishing satisfactory proof that a driver's license has been lost, stolen, or destroyed, then the person to whom it was issued may apply for a duplicate or replacement of the license. SB 18-108 also amended section 42-2-509(2), C.R.S., to provides that if an instruction permit, minor driver's license, or identification card issued under Part 5 (the "Colorado Road and Community Safety Act") is lost, stolen, or destroyed, then the person to whom it was issued may obtain a duplicate or replacement.

It is imperative to correct the rule to comply with the amendments to sections 42-2-117 and 42-2-509, C.R.S., and with state law.

The Department will promptly notice Rule 6 for a permanent rulemaking hearing.

This emergency rule is effective on January 1, 2019.

12/27/18

Michael S. Hartman
Executive Director
Colorado Department of Revenue

Date

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

JUNE TAYLOR
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Office of the Attorney General

Tracking number: 2018-00728

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Motor Vehicles

on 12/27/2018

1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 01/03/2019 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.

January 15, 2019 15:53:04

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Conservation

CCR number

4 CCR 752-1

Rule title

4 CCR 752-1 Division of Conservation 1 - eff 01/01/2019

Effective date

01/01/2019

DEPARTMENT OF REGULATORY AGENCIES

Division of Conservation

4 CCR 752-1

Conservation Easements

CHAPTER 4: APPLICATION FEES FOR CALENDAR YEAR 2019

Statement of Basis and Purpose

Pursuant to section 12-61-1104(7), the Division shall promulgate rules to effectuate the duties of the commission pursuant to article 4 of title 24. Such rules shall specifically address the following:

(a) Allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry;

(b) A streamlined and lower-cost process for conservation easement holders that do not intend to accept new donations of conservation easements for which tax credits would be claimed that focuses on the holder's stewardship capabilities;

(c) The fees charged pursuant to subsection (3) of this section or section 12-61-1106(6), specifically ensuring that the fees are adequate to pay for administrative costs but not so high as to act as a disincentive to the creation of conservation easements in the state

4.1	Certification fees for entities currently accredited by a national land conservation organization		
	A.	Initial Certification Application Fee - Stewardship-only	$500
	B.	Initial Certification Application Fee - Full certification	$1,000
	C.	Conservation Easement Holder Renewal Fee - Stewardship-only	$250
	D.	Conservation Easement Holder Renewal Fee - Full certification	$500
4.2	Certification fees for entities not currently accredited by a national land conservation organization		
	A.	Initial Certification Application Fee - Stewardship-only	1,000
	B.	Initial Certification Application Fee - Full certification	$2,000
	C.	Conservation Easement Holder Renewal Fee - Stewardship-only	$500
	D.	Conservation Easement Holder Renewal Fee - Full certification	$1,000
4.3	Optional preliminary advisory opinions		
	A.	For an appraisal of a proposed transaction	$10,000
	B.	For a proposed deed of conservation easement, conservation purpose, or other relevant aspect of a proposed transaction	$2,000

4.4	Tax credit certificate applications		
	A.	For Donations made in 2011-2013	$305
	B.	For Donations made on or after January 1, 2014 or later	$8,000

DEPARTMENT OF REGULATORY AGENCIES

Division of Conservation

4 CCR 752-1

Conservation Easements

CHAPTER 2: CERTIFICATION OF QUALIFIED ORGANIZATIONS THAT HOLD CONSERVATION EASEMENTS

Statement of Basis and Purpose

Pursuant to section 12-61-1104, C.R.S., the Division of Conservation, in consultation with the Conservation Easement Oversight Commission, establishes minimum qualifications for organizations that hold conservation easements to encourage professionalism and stability.

2.1. Qualifications for certification of qualified organizations that intend to accept and hold conservation easements for which a new tax credit may be claimed.

The Division may deny, refuse to renew, suspend or revoke the certification of a conservation easement holder who fails to meet any of the following minimum qualifications:

A. Organization

The conservation easement holder:

1. pursuant to sections 12-61-1104(5) and (7)(a), C.R.S., is accredited by a national land conservation organization broadly accepted by the conservation industry; or
2. meets the requirements of a qualified organization under section 12-61-1104, C.R.S. and the qualifications in section 38-30.5-104(2), C.R.S., to hold a conservation easement for which a state tax credit may be claimed; and
3. has the capacity to accomplish the work of the holder including, but not limited to
    a. a board of sufficient size, skills, backgrounds and experience,
    b. a sufficient number of staff and/or volunteers; and
4. if a non-governmental entity, the holder must be in good standing with the Colorado Secretary of State.

B. Conservation Easement Selection, Review and Approval

1. The conservation easement holder has and follows reasonable written policies and procedures for selecting conservation easements. These must include, but are not limited to
    a. establishing and following selection criteria to identify conservation easements with at least one conservation purpose as defined in section 12-61-1106(1)(b), C.R.S.;
    b. documenting the conservation purpose(s);

c. working with the conservation easement grantor on an individual basis to identify and design the permitted uses, reserved rights, and prohibited uses intended to be memorialized in the conservation easement;

d. establishing and following a written policy for accepting phased conservation easements such that each proposed conservation easement of a phased project has at least one conservation purpose;

e. advising potential conservation easement grantors in writing that

i. they should seek their own legal, financial and tax advice;

ii. the holder does not provide legal, financial or tax advice;

iii. there may be adverse legal and other consequences if grantor terminates a conservation easement that was created or conveyed in expectation of receiving a tax credit; and

iv. the holder neither promises nor guarantees that the proposed conservation easement qualifies for state income tax credit purposes.

2. The conservation easement holder has and follows reasonable written policies and procedures for reviewing proposed conservation easements. These must include, but are not limited to:

a. Declining projects that

i. do not have at least one conservation purpose, or

ii. do not appear to have the necessary donative intent, or

iii. are potentially fraudulent or abusive.

b. Having a title company or competent attorney investigate and report on the title, water and mineral rights comprising the property prior to accepting the donation;

c. Evaluating title exceptions and, prior to accepting the donation, documenting how grantee addressed severed minerals or other exceptions to title so that they will not result in extinguishment or undermining of the expressed conservation purpose(s);

d. Ensuring that, prior to accepting the donation, any liens or encumbrances are released, subordinated or addressed so that the conservation purpose(s) of the easement is protected in perpetuity;

e. Providing sufficient information to the board of the holder, a qualified committee or other designee for review before a conservation easement is approved.

f. Receiving, reviewing and acknowledging, prior to accepting the donation, a baseline documentation report for the conservation easement prepared pursuant to section 12-61-1106(5)(c), C.R.S. The review shall assess, at a minimum, that:

i. The report documents describe the physical condition of the property at the time of the gift;

ii. The report documents accurately the conservation purposes of the easement; and

iii. The report is signed and dated by its author(s), the easement grantor and the easement grantee.

g. If a prior baseline documentation report is updated for use in connection with the second or subsequent phase of a conservation project, the update shall be a separate document preserved in the conservation easement holder's records, along with the original report.

h. Receiving and reviewing, before the donor submits a tax credit application pursuant to sections 12-61-1105 and 12-61-1106, C.R.S., a true copy of the signed "qualified appraisal" prepared by one or more "qualified appraisers" for all conservation easements for which a tax credit may be claimed pursuant to section 39-22-522, C.R.S. The holder's review shall assess, at a minimum, that:

i. The physical aspects and legal description of the property that was appraised are the same as those described in the conservation easement;

ii. The conservation easement that was appraised is identical to the conservation easement that was recorded;

iii. The ownership of the property that was appraised is identical to the grantor of the easement; and

iv. The appraisal appears to be a qualified appraisal prepared by a qualified appraiser in compliance with section 12-61-1106(3)(b)(I)-(IV), C.R.S.

3. Having the board of the holder approve all conservation easement donations, or establishing policies delegating the authority to approve transactions to a qualified committee or other designee;

i. Such review and approval must be documented; and

ii. If an entity other than the holder performs the due diligence and analysis described in parts 2., b., c, and d. of this section B., the holder must review the transaction and document that the project is consistent with its policies and procedures.

C. Stewardship and Enforcement: Practices and Capacity

1. The conservation easement holder has the following written practices, policies and procedures to ensure the fulfillment of the perpetual stewardship responsibilities of each of its conservation easements including, but not limited to:

a. Monitoring all conservation easements no less than annually, using at least one of the following methods:

i. On-the-ground physical inspection of the property; or

ii. aerial inspection of the property using manned or unmanned aircraft, or other methods in general use by other holders that monitor easements encumbering similar properties; and

iii. If aerial or other methods are used, conducting on-the-ground monitoring at least every five years.

b. Monitoring is documented in writing, and the documentation is reviewed by either the board of the holder, a qualified committee, or other designee;

c. Enforcing every conservation easement deed;

d. Reviewing proposed amendments to conservation easement deeds to confirm they

i. do not result in a net loss of conservation value, and

ii. do not create any non-incidental benefits serving the interests of grantor (impermissible private benefit).

e. Preserving important records, such as but not limited to, deeds, baseline documentation reports, monitoring reports and appraisals, in a safe and secure manner.

2. The conservation easement holder has the capacity to maintain, monitor and defend the purposes of its easements. If a non-governmental entity, these written policies must include, but not be limited to:

a. The holder maintains dedicated funds for the stewardship and legal defense of every conservation easement held. The funds must be managed in conformance with a financial plan, which may consider the value of insurance policies. The plan shall:

i. Ensure the longevity of the dedicated stewardship and enforcement funds;

ii. Determine the amount of stewardship and legal defense funds that will be needed. Minimum requirements are:

A. For stewardship, maintain a minimum fund balance of $3,500 per conservation easement, and

B. For legal defense, maintain a minimum fund balance of $100,000, or

C. For holders lacking sufficient money, provide a detailed plan with specific funding targets and timelines to achieve the minimum requirements in no more than two years.

b. Ensure that the dedicated funds for stewardship- and enforcement-related purposes are used only for these purposes or, as established through written policies, other allowable uses.

c. If a government entity, sufficient funds must be allocated in the budget to steward and enforce conservation easements. Funds are not required to be held in a dedicated stewardship fund.

D. Finance

The conservation easement holder has and follows reasonable written fiscal policies and procedures to ensure the transparent and responsible management of its assets. These must include, but are not limited to:

1. Having the board of the holder review and/or regularly assess the holder's financial status, including the annual budget and any financial changes that have occurred; and
2. Having a financial evaluation conducted on an annual basis by an independent qualified accountant who has no financial or other interest in the holder. The level of evaluation is determined by the holder's total annual operating revenue, not including the cost or value of conservation easements or fee-owned properties:
    a. Less than $100,000 requires an annual compilation;
    b. $100,000-$500,000 requires an annual financial review; and
    c. More than $500,000 requires an annual financial audit.

E. Governance

The conservation easement holder has and follows reasonable written policies and procedures to ensure responsible management. These must include, but are not limited to:

1. The holder has board meetings;
2. The holder has a written conflict of interest policy; and
3. Conservation easements and financial transactions with insiders must be documented and must demonstrate that there is no private inurement.

2.2. Qualifications for certification of qualified holders that do not intend to accept and hold conservation easements for which a new tax credit may be claimed

Pursuant to 12-61-1104(7)(b), the Division shall offer a streamlined and lower-cost process for conservation easement holders that do not intend to accept new donations of conservation easements for which tax credits would be claimed.

The Division may deny, refuse to renew, suspend or revoke the certification of a conservation easement holder who fails to meet any of the following minimum qualifications:

A. Organization

The conservation easement holder:

1. pursuant to sections 12-61-1104(5) and (7)(a), C.R.S., is accredited by a national land conservation organization broadly accepted by the conservation industry; or

2. meets the requirements of a qualified organization under section 12-61-1104, C.R.S. and the qualifications in section 38-30.5-104(2), C.R.S., to hold a conservation easement for which a state tax credit may be claimed; and

3. has the capacity to accomplish the work of the holder including, but not limited to

    a. a board of sufficient size, skills, backgrounds and experience,

    b. a sufficient number of staff and/or volunteers; and

4. if a non-governmental entity, the holder must be in good standing with the Colorado Secretary of State.

B. Stewardship and Enforcement: Practices and Capacity

1. The conservation easement holder has the following written practices, policies and procedures to ensure the fulfillment of the perpetual stewardship responsibilities of each of its conservation easements including, but not limited to:

    a. Monitoring all conservation easements no less than annually, using at least one of the following methods:

        i. On-the-ground physical inspection of the property; or

        ii. aerial inspection of the property using manned or unmanned aircraft, or other methods in general use by other holders that monitor easements encumbering similar properties; and

        iii. if aerial or other methods are used, conducting on-the-ground monitoring at least every five years.

    b. Monitoring is documented in writing, and the documentation is reviewed by either the board of the holder, a qualified committee, or other designee;

    c. Enforcing every conservation easement deed, including violations;

    d. Reviewing proposed amendments to conservation easement deeds to confirm they

        i. do not result in a net loss of conservation value, and

        ii. do not create any non-incidental benefits serving the interests of grantor (impermissible private benefit).

    e. Preserving original and duplicate copies of necessary and important records, such as deeds, baseline documentation reports, monitoring reports and appraisals, in a safe and secure manner.

2. The conservation easement holder has the capacity to maintain, monitor and defend the purposes of its easements. If a non-governmental entity, these written policies must include, but not be limited to:

    a. The holder maintains dedicated funds for the stewardship and legal defense of every conservation easement held. The funds must be

managed in conformance with a financial plan, which may consider the value of insurance policies. The plan shall:

a. Ensure the longevity of the dedicated stewardship and enforcement funds;

b. Determine the amount of stewardship and legal defense funds that will be needed. Minimum requirements are:

i. For stewardship, maintain a minimum fund balance of $3,500 per conservation easement, and

ii. For legal defense, maintain a minimum fund balance of $100,000, or

iii. For holders lacking sufficient money, provide a detailed plan with specific funding targets and timelines to achieve the minimum requirements in no more than two years.

b. Ensure that the dedicated funds for stewardship- and enforcement-related purposes are used only for these purposes or, as established through written policies, other allowable uses.

c. If a government entity, sufficient funds must be allocated in the budget to steward and enforce conservation easements. Funds are not required to be held in a dedicated stewardship fund.

C. Finance

The conservation easement holder has and follows reasonable written fiscal policies and procedures to ensure the transparent and responsible management of its assets. These must include, but are not limited to:

1. Having the board review and/or regularly assess the holder's financial status, including the annual budget and any financial changes that have occurred; and

2. Having a financial evaluation conducted on an annual basis by an independent qualified accountant who has no financial or other interest in the holder. The level of evaluation is determined by the holder's total annual operating revenue, not including the cost or value of conservation easements or fee-owned properties:

a. Less than $100,000 requires an annual compilation;

b. $100,000-$500,000 requires an annual financial review; and

c. More than $500,000 requires an annual financial audit.

D. Governance

The conservation easement holder has and follows reasonable written policies and procedures to ensure responsible management. These must include, but are not limited to:

1. The holder has board meetings;

2. The holder has a written conflict of interest policy; and

3. Conservation easements and financial transactions with insiders must be documented to show that there is no private inurement.

2.3. Expiration Date for Certification

Certification for a conservation easement holder expires on December 31 following the date of issuance, or on the date set forth on the next year's renewal application provided by the Division, whichever is later.

2.4. Eligibility for Conservation Easement Holders After Revocation

A conservation easement holder whose certification to hold a conservation easement has been revoked is not eligible to re-apply for certification until more than two years have elapsed from the date of certification revocation. Any re-application after such two-year period is required to be submitted on a new application.

2.5. Certification Renewal

Renewal of a conservation easement holder certification shall be executed only with the renewal application provided by the Division, submitted and accompanied by the prescribed non-refundable fee prior to the expiration date of certification.

2.6. Reinstatement of Certification After Expiration

An expired certification may be reinstated within one year after the date of expiration if the holder meets all the requirements in section 12-61-1104, C.R.S. and rules 2.1 or 2.2. A complete renewal application and the prescribed non-refundable renewal fee must be submitted to the Division for reinstatement. Certification is effective on the date reinstatement is issued and shall not be effective retroactively. Any certification that has been expired for more than one year shall not be reinstated.

2.7. Disciplinary Action

The Director may impose an administrative fine not to exceed two thousand five hundred dollars ($2,500) for each separate offense, as defined in subparagraphs A-E, below; and may revoke, suspend, or refuse to renew the certification of any conservation easement holder if, after an investigation and notice, and subject to the right to a hearing pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S., the Director determines that the conservation easement holder:

A. Has made false or misleading statements or material omission in their application for certification;

B. Has misrepresented or concealed any material fact from a conservation easement grantor;

C. Has employed any device, scheme, or artifice with intent to defraud a conservation easement grantor or any government agency;

D. Has failed to comply with any stipulation or agreement made with the Director; or

E. Has failed to comply with any of the certification requirements, or any lawful rule or regulation promulgated by the Director.

2.8. Information Request

A conservation easement holder must furnish to the Director such information or documentation as the Director in her/his sole discretion deems reasonably necessary for the enforcement of 12-61-1104, C.R.S. or any rules enacted by the Division. If information or documentation is required, the Director must give written notice, in detail, of the information so required and must allow the holder an additional twenty-one (21) days from delivery to present such material, which period may be extended only upon showing of good cause. Written notice may be hand-delivered or mailed by regular first-class mail, postage pre-paid, to the party entitled thereto. If hand-delivered, said notice is deemed delivered upon hand delivery. If mailed, said notice is deemed delivered as of the date of mailing.

2.9. Cease and Desist

If the Division has reasonable cause to believe any public or private holder is not in compliance with section 38-30.5-104 (2), C.R.S. and section 12-61-1104, C.R.S., the Director may issue an order requiring such organization to cease and desist from holding a conservation easement for which a state tax credit may be claimed.

2.10. Transferring Conservation Easements to Non-Certified Entities

A. A conservation easement holder must not assign or otherwise transfer any interest in a conservation easement for which a state tax credit has been or may be claimed to a non-certified holder.

B. A non-certified entity must not accept an assigned or otherwise transferred interest in a conservation easement for which a state tax credit has been or may be claimed.

C. Governmental entities transferring a partial interest in a conservation easement to another governmental entity in accordance with an established written agreement are exempt from this prohibition on transferring a partial interest in a conservation easement.

D. All certified holders retaining any interest in a conservation easement must remain responsible for stewardship and defense of the conservation easement.

2.11. Courtesy Filing

A certified conservation easement holder must notify the Division within 30 days of a substantive change in:

A. Physical or mailing address of the holder,

B. Authorized contact person,

C. Holder name,

D. Holder mission, or

E. Holder structure.

DEPARTMENT OF REGULATORY AGENCIES

Division of Conservation

4 CCR 752-1

Conservation Easements

CHAPTER 3: CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER MAY 29, 2018

Statement of Basis and Purpose

Pursuant to section 12-61-1104(7), the Division shall promulgate rules to effectuate the duties of the commission pursuant to article 4 of title 24. Such rules shall specifically address the following:

(d) The adoption of best practices, processes, and procedures used by other entities that regularly review conservation easement transactions, including a practice, process, or procedure deeming qualified conservation easement appraisals approved by these entities based on their independent reviews as credible for purposes of the conservation easement tax credit.

3.1 Tax credit application containing an appraisal that was prepared pursuant to section 12-61-1106(3)(b)(I)-(IV).

If another entity that regularly reviews conservation easement transactions has approved a qualified appraisal with a report date on or after May 29, 2018 for use by the other entity, the Director shall deem the appraisal as credible for purposes of the conservation easement tax credit if all of the following conditions are satisfied:

A. The qualified appraisal has been independently reviewed by a real estate appraiser licensed in Colorado as a certified general appraiser who, as of the effective date of the review:

1. is competent to appraise a conservation easement for the income tax purposes of its donor; and

2. is competent to appraise the type of property appraised in the appraisal under review; and

3. is in good standing with the Colorado Board of Real Estate Appraisers.

B. The appraisal review was prepared in compliance with the uniform standards of professional appraisal.

C. The other entity certifies in writing to the Division that:

1. it approved the appraisal for its own use; and

2. the reviewed appraisal was a qualified appraisal made for the income tax purposes of the donor of the easement; and

3. the independent review obtained by the entity for its use was prepared by a real estate appraiser licensed in Colorado as a certified general appraiser who, as of the date of the review:

a. was competent to appraise a conservation easement for the income tax purposes of its donor; and

b. was competent to appraise the type of property appraised in the appraisal under review; and

c. was in good standing with the Colorado Board of Real Estate Appraisers.

D. The other entity provides the Division with a true copy of the independent appraisal review it relied on as the basis for its approval of the qualified appraisal that was reviewed.

Emergency Rule Adoption – Justification

Division of Conservation within DORA

December 21, 2018

The adopted rules are necessary because the new Division of Conservation created on May 29, 2018 by HB 18-1291 is charged with matters detailed in the rules, including establishing different categories of certified holder, adopting a process for deeming credible qualified appraisals that have been reviewed and accepted by certain other entities, and setting all application fees in rule.

CYNTHIA H. COFFMAN
Attorney General

MELANIE J. SNYDER
Chief Deputy Attorney General

LEORA JOSEPH
Chief of Staff

STATE OF COLORADO
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Office of the Attorney General

Tracking number: 2018-00702

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Conservation

on 12/21/2018

4 CCR 752-1

CONSERVATION EASEMENTS

The above-referenced rules were submitted to this office on 12/21/2018 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.

January 04, 2019 08:38:41

Cynthia H. Coffman
Attorney General
by Glenn E. Roper
Deputy Solicitor General

Calendar of Hearings

Hearing Date/Time	Agency	Location
02/20/2019 03:30 PM	Division of Motor Vehicles	1881 Pierce Street Room 110
03/07/2019 09:00 AM	Public Utilities Commission	Commission Hearing Room, Suite 250 1560 Broadway Denver, Colorado 80202
03/07/2019 09:15 AM	Division of Professions and Occupations - State Physical Therapy Board	1560 Broadway, Suite 110D
03/07/2019 09:15 AM	Division of Professions and Occupations - State Physical Therapy Board	1560 Broadway, Suite 110D
03/07/2019 09:15 AM	Division of Professions and Occupations - State Physical Therapy Board	1560 Broadway, Suite 110D
03/07/2019 09:15 AM	Division of Professions and Occupations - State Physical Therapy Board	1560 Broadway, Suite 110D
03/07/2019 09:15 AM	Division of Professions and Occupations - State Physical Therapy Board	1560 Broadway, Suite 110D
03/07/2019 09:15 AM	Division of Professions and Occupations - State Physical Therapy Board	1560 Broadway, Suite 110D
03/07/2019 09:15 AM	Division of Professions and Occupations - State Physical Therapy Board	1560 Broadway, Suite 110D
03/07/2019 09:15 AM	Division of Professions and Occupations - State Physical Therapy Board	1560 Broadway, Suite 110D
02/19/2019 10:00 AM	Hazardous Materials and Waste Management Division	CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive S., Denver, CO 80246
02/19/2019 10:00 AM	Hazardous Materials and Waste Management Division	CDPHE, Bldg A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
02/19/2019 10:00 AM	Hazardous Materials and Waste Management Division	CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
02/19/2019 10:00 AM	Hazardous Materials and Waste Management Division	CDPHE, Bldg A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
02/19/2019 10:00 AM	Hazardous Materials and Waste Management Division	CDPHE, Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
02/22/2019 11:00 AM	Division of Unemployment Insurance	633 17th St, Conference Room 12-A, Denver, Colorado
02/14/2019 09:00 AM	Division of Oil and Public Safety	633 17th Street, Suite 500, Denver, CO 80202