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Introduction

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

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

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

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

Notice of Proposed Rulemaking

Tracking number

2025-00112

Department

200 - Department of Revenue

Agency

207 - Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Rule title

GAMING REGULATIONS

Rulemaking Hearing

Date

04/17/2025

Time

09:15 AM

Location

1707 Cole Blvd, Suite 300, Redrocks Conference Room, Lakewood, CO 80401, and virtually

Subjects and issues involved

Annual gaming tax setting hearings. The Division is not recommending any changes to the gaming tax rates. The Gaming Commission will decide if changes are warranted after two months of testimony.

Statutory authority

Sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-602, C.R.S., and 44-30-604, C.R.S., (1991).

Contact information

Name

Kenya Collins

Title

Director of Administration

Telephone

303-205-1338

Email

kenya.collins@state.co.us

BASIS AND PURPOSE FOR RULE 14

The purpose of Rule 14 is to establish the rate of the gaming tax on adjusted gross proceeds of gaming in compliance with section 44-30-601, C.R.S., to provide for security for the payment of gaming taxes to the Department, and to provide for the payment of gaming taxes by electronic fund transfer and to change the method of filing monthly gaming tax returns to electronically transmitted. The statutory basis for purpose for Rule 14 is found in sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-602, C.R.S., and 44-30-604, C.R.S., (1991).

RULE 14 GAMING TAX

30-1401 Gaming and device taxes.

Annually the Commission shall conduct Rule making hearings concerning the gaming tax rate and device fee rate for the subsequent gaming year. Testimony regarding the consideration of the gaming tax shall include the following topics to be heard during the following time periods. Additional appropriate topics relating to these issues may also be considered as deemed necessary by the Commission. Furthermore, in addition to the topics outlined below, the Commission may receive testimony from any member of the public during any of the following time periods on the other topics relevant to the consideration of the gaming tax and device fee rates. The following general schedule is established to provide structure to the annual consideration by the Commission, however rigid compliance is not mandatory and this regulation shall in no way be construed to limit the time periods or subject matters which the Commission may consider in determining the various tax rates. During the month of April, the Commission shall receive testimony regarding the methodology to be utilized in the consideration of the gaming tax for the subsequent gaming year. In May, the Commission shall receive testimony regarding the following topics: the expenditure impacts and revenue benefits from limited gaming in the cities of Black Hawk, Central City, and Cripple Creek, and the counties of Gilpin and Teller; the expenditure impacts, revenue benefits, and negative impacts from limited gaming for statutorily defined entities eligible for the Local Government Limited Gaming Impact Fund; and the expenditure impacts from limited gaming on agencies of the State of Colorado. During the month of June the Commission shall receive testimony regarding the financial conditions of licensees pertinent to the consideration of the gaming tax pursuant to the criteria expressed in part 6 of the limited gaming act of 1991. (30-1401(1) temp. 5/12/93. perm. 6/30/93)(30-1401 1/30/98 amended perm 07/30/00) *Eff 07/30/2008, Amended 11/14/21*

(1) Each retail licensee conducting or offering limited gaming to the public shall be liable for, and shall pay to the Department of Revenue, a limited gaming tax upon the adjusted gross proceeds from limited gaming. The tax imposed by Section 44-30-601, C.R.S.(1991), shall be determined in accordance with the following schedule: *Eff 07/30/2008*

If the Annual Adjusted Gross Proceeds are:	The Tax is:
Up to $2,000,000 (Including $2,000,000)	0.25%
Over $2,000,000 to $5,000,000	2%
Over $5,000,000 to $8,000,000	9%
Over $8,000,000 to $10,000,000	11%
Over $10,000,000 to $13,000,000	16%
Over $13,000,000	20%

(30-1401(1) temp. 9/29/94. perm. 11/30/94)(30-1401(1) temp. 10/01/96, perm. 10/30/96)(30-1401(1) temp 07/01/99. perm. 07/30/99) *Eff 07/01/2013*

Notice of Proposed Rulemaking

Tracking number

2025-00115

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)

Rulemaking Hearing

Date

04/15/2025

Time

01:00 PM

Location

Webinar or 1560 Broadway, STE 850, Denver, CO 80202

Subjects and issues involved

The purpose of this regulation is to establish requirements regarding the offering of Colorado Option Standardized Plans in the small group market.

Statutory authority

§§ 10-1-108(7), 10-1-109(1), 10-16-109, 10-16-1304(3), 10-16-1305, and 10-16-1312, C.R.S.

Contact information

Name

Daisy Zoll

Title

Program Assistant

Telephone

7205564952

Email

daisy.zoll@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

DRAFT Proposed Regulation 4-2-XX

CONCERNING COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLANS IN THE SMALL GROUP MARKET

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-109, 10-16-1304(3), 10-16-1305, and 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish requirements regarding the offering of Colorado Option Standardized Plans in the small group market.

Section 3 Applicability

This regulation applies to all carriers offering small group health benefit plans subject to the small group laws of Colorado and the requirements of federal law.

Section 4 Definitions

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

B. “Colorado Option Standardized Plan” or “Standardized Plan” shall have the same meaning as found at §10-16-1303(14), C.R.S.

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

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

E. “Insurance producer” or “producer” shall have the same meaning as found at § 10-2-103(6), C.R.S., with the exception that for purposes of this regulation it does not include § 10-2-103(6)(b), C.R.S.

F. “Non-Standardized Plan” means, for the purposes of this regulation, a health benefit plan that does not meet the definition of Standardized Plan found at § 10-16-1303(14), C.R.S.

G. “Sale” shall have the same meaning as found at Colorado Insurance Regulation 1-2-17, Section 4.I.

H. “Small employer” shall have the same meaning as found at § 10-16-102(61)(b), C.R.S.

I. “Small group market” shall have the same meaning as found at § 10-16-1303(13), C.R.S.

J. “Solicit” or “solicitation” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

Section 5 Offering Colorado Option Standardized Plans in the Small Group Market

A. A carrier that is required to offer Standardized Plans in the small group market pursuant to § 10-16-1305, C.R.S. must offer both Standardized and non-Standardized Plans at the time of solicitation or sale.

B. Except as otherwise provided in Federal law, Title 10 of the Colorado Revised Statutes, and Colorado Insurance Regulations, a carrier must offer Standardized Plans in the same manner and under the same solicitation or sale policies and restrictions as the carrier’s non-Standardized Plans in the small group market. The carrier may not restrict the number of Standardized Plans offered to employers to less than the number of non-Standardized Plans offered to employers.

1. A carrier may not limit a producer’s or employer’s ability to offer Standardized Plans and non-Standardized Plans at the same time.

2. A carrier may not limit a producer’s or employer’s ability to offer more than one Standardized Plan and non-Standardized Plan at the same time.

Section 6 Severability

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

Section 7 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 8 Effective Date

This regulation shall become effective on Month, Day, Year.

Section 9 History

New regulation effective Month, Day, Year.

Notice of Proposed Rulemaking

Tracking number

2025-00117

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)

Rulemaking Hearing

Date

04/15/2025

Time

01:00 PM

Location

Webinar or 1560 Broadway, STE 850, Denver, CO 80202

Subjects and issues involved

The purpose of this regulation is to establish rules for the required premium reduction methodology for the Colorado Option standardized bronze, silver and gold health benefit plans to be offered by all carriers offering individual and small group health benefits plans issued or renewed on or after January 1, 2026.

Statutory authority

§§ 10-1-108(7), 10-1-109(1), 10-16-109, 10-16-1304, 10-16-1305, 10-16-1306, and 10-16-1312, C.R.S.

Contact information

Name

Daisy Zoll

Title

Program Assistant

Telephone

7205564952

Email

daisy.zoll@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

DRAFT Proposed Amended Regulation 4-2-85

CONCERNING THE METHODOLOGY FOR CALCULATING PREMIUM RATE REDUCTIONS FOR COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLANS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-109, 10-16-1304, 10-16-1305, 10-16-1306, and 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish rules for the required premium reduction methodology for the Colorado Option standardized bronze, silver and gold health benefit plans to be offered by all carriers offering individual and small group health benefits plans issued or renewed on or after January 1, 2026~~5~~.

Section 3 Applicability

This regulation applies to all carriers offering individual and small group health benefit plans subject to the individual and small group laws of Colorado and the requirements of federal law.

This regulation is applicable subject to § 10-16-1308(2)(b), C.R.S.~~If Colorado's Section 1332 Innovation Waiver Request for the Colorado Option is not approved by the U.S. Department of Health and Human Services and the Department of Treasury, then these premium reductions will not go into effect.~~

Section 4 Definitions

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

B. “Baseline Plan” or “2021 Baseline Plan” means, for the purposes of this regulation, the health benefit plan with the carrier’s lowest 21-year-old non-tobacco use premium rate, by metal level, in the applicable county from the 2021 Benefit Year, regardless of whether the health benefit plan is sold in the entire county or a partial county. The Baseline Plan shall only consider on-eExchange health benefit plans for the Individual market and be determined prior to the impact of the Colorado reinsurance program. The Baseline Plan shall only consider off-eExchange health benefit plans for the Small Group market.

C. “Benefit Year” means, for the purposes of this regulation, the calendar year for individual health benefit plans, or the twelve month period beginning with the health benefit plan contract date for small group health benefit plans.

D. “Calibrated Plan Adjusted Index Rate” means, for the purpose of this regulation, line 3.14 on Worksheet 2 of the URRT.

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

F. “Colorado Option Standardized Plan” or “Standardized Plan” or shall have the same meaning as found at § 10-16-1303(14), C.R.S.

G. “Commissioner” shall have the same meaning as found at § 10-16-102(13), C.R.S.

~~G~~H. “CSR” means, for the purposes of this regulation, a cost-sharing reduction health benefit plan variation defined in 45 C.F.R. § 156.420(a).

~~I~~H. “CSR Load” means, for the purposes of this regulation, the load in the silver plan premiums necessary to cover the cost of providing the CSR benefit to qualified consumers in the on-~~exchange~~ Exchange silver health benefit plans.

~~I~~J. “CPI-U” means, for the purposes of this regulation, the Consumer Price Index for all urban consumers, U.S. city average, and all items, as determined by the Bureau of Labor Statistics of the United States Department of Labor.

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

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

M~~L~~. “Expanded bronze” means, for the purposes of this regulation, a bronze health benefit plan that provides coverage for at least one (1) major service, other than preventive services, prior to meeting the deductible, or meets the requirements to qualify as a high deductible health plan under 26 U.S.C 223(c)(2), as established at 45 C.F.R. § 156.140(c), with a bronze actuarial value of 60%.

N~~M~~. “Federal Actuarial Value Calculator” or “Federal AV Calculator” means, for the purposes of this regulation, the AV Calculator required pursuant to 45 C.F.R. § 156.135.

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

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

Q~~P~~. “Healthcare coverage cooperative” shall have the same meaning as found at § 10-16-1002(2), C.R.S.

~~Q~~R. “Induced demand factor” means, for the purposes of this regulation, the anticipated induced demand associated with the health benefit plan’s cost sharing (metal) level.

R~~S~~. “Medical Inflation” shall have the same meaning as found at § 10-16-1303(10), C.R.S.

T~~S~~. “Metal Level" means, for the purposes of this regulation, the bronze, silver, and gold health benefit plans available in the individual and small group market as found at § 10-16-103.4, C.R.S.

U~~T~~. “Non-EHB” means, for the purposes of this regulation, any benefit in a health benefit plan that is not an EHB as found at § 10-16-102(22), C.R.S.

V~~U~~. “Plans and Benefits Template” or “PBT” means, for the purpose of this regulation, the Plans & Benefits Template created by the Centers for Medicare & Medicaid Services (CMS).

W~~V~~. “Premium” shall have the same meaning as found at § 10-16-102(51), C.R.S.

X~~W~~. “Reinsurance” shall have the same meaning as found at § 10-16-1103(12), C.R.S.

Y~~X~~. “SERFF” means, for the purposes of this regulation, the System for Electronic Rate and Form Filing.

Z~~Y~~. “Supplemental Template” shall have the same meaning as found at Colorado Insurance Regulation 4-2-39 Section (6)(C)(3).

AA~~Z~~. “Substantially Similar Plan” means, for the purposes of this regulation, the silver level health benefit plan that is substantially similar to the on-eExchange CSR-loaded silver health benefit plan, but without the CSR load, for those off-eExchange consumers who do not qualify for advanced premium tax credits or CSRs.

AB~~A~~. “URRT” means, for the purpose of this regulation, the Unified Rate Review Template created by the Centers for Medicare & Medicaid Services.

Section 5 Premium Rate Reduction Methodology for Colorado Option Standardized Health Benefit Plans

A. Pursuant to § 10-16-1305(2)(a)-(c), C.R.S., carriers offering a Standardized Plan at the bronze, silver, and gold metal levels must offer standardized plans with a premium that is reduced by a specified percent relative to their 2021 premiums, after adjustments for medical inflation. The Division will define the allowable adjustments for the calculation of the premium rate reduction methodology required for the Colorado Option. The required premium reductions are:

1. Five percent premium reduction for the Benefit Year beginning in 2023;

2. Ten percent premium reduction for the Benefit Year beginning in 2024; and

3. Fifteen percent premium reduction for the Benefit Year beginning in 2025.

B. Pursuant to § 10-16-1305(2)(d), C.R.S., for the Benefit Year beginning on or after January 1, 2026, and each year thereafter, each carrier and healthcare coverage cooperative shall limit any annual premium rate increase to a rate that is no greater~~more~~ than medical inflation, relative to the Maximum Colorado Option Standardized Plan Premium of the previous Benefit Year, as defined in Section 5.C.10 of this regulation ~~previous year~~.

C. The Division will calculate whether a carrier meets the premium reductions specified in Sections 5.A. and 5.B. using the following methodology.

1. Bronze and Expanded Bronze health benefit plans will be combined to determine the lowest cost premium rate for the Bronze Colorado Option Standardized Plan.

2. The 2021 Baseline Plan Unadjusted Premium will be calculated on a county, metal level, and market basis for each carrier. The 2021 Baseline Plan Unadjusted Premium will be calculated as follows:

   a. For the Individual Market:

      (1) 2021 Baseline Plan Unadjusted Premium =

      (minimum 2021 Calibrated Plan Adjusted Index Rate offered in the county for the metal level) x (1.0 age factor) x (2021 Geographic Rating Factor for the applicable county)

      (2) The Minimum 2021 Calibrated Plan Adjusted Index Rate will be determined using the carrier's 2021 "No Reinsurance" URRT.

   b. For the Small Group Market:

      (1) 2021 Baseline Plan Unadjusted Premium =

      (minimum annual filing 2021 Calibrated Plan Adjusted Index Rate offered in the county for the metal level) x ((fourth quarter rate of 2021 Baseline Plan) / (first quarter rate of 2021 Baseline Plan)) x (1.0 age factor) x (2021 Geographic Rating Factor for the applicable county)

      (2) If a carrier submitted quarterly rate filing(s) subsequent to the annual filing, the last filing submitted will be used to determine the fourth quarter rate for the Baseline plan.

3. An adjustment factor will be applied to reflect changes in the member cost sharing from the 2021 Baseline Plan to the applicable Colorado Option Standardized Plan design and underlying data changes in the 2023, 2024, ~~and~~ 2025, and 2026 federal AV calculators, including meaningfully different changes across the various metal levels beyond the impact of claim cost and utilization trends and trend leveraging. The Changes in Member Cost Sharing Adjustment will be calculated as follows:

   (Colorado Option Standardized Plan AV) x (CY2023 AV Calculator Adjustment) x (CY2024 AV Calculator Adjustment) x (CY2025 AV Calculator Adjustment) x (CY2026 AV Calculator Adjustment) x (Pricing AV Adjustment)

   ÷

   (2021 Baseline Plan AV)

   a. Colorado Option Standardized Plan AV for the applicable metal level.

   b. The CY2023 AV Calculator Adjustment will be:

      (1) 0.992 for Gold Metal Level Plans

      (2) 0.971 for Silver Metal Level Plans

      (3) 1.002 for Bronze Metal Level Plans

c. The CY2024 AV Calculator Adjustment will be:

(1) 1.017 for Gold Metal Level Plans

(2) 1.019 for Silver Metal Level Plans

(3) 1.020 for Bronze Metal Level Plans

d. The CY2025 AV Calculator Adjustment will be:

(1) 1.027 for Gold Metal Level Plans

(2) 1.040 for Silver Metal Level Plans

(3) 1.039 for Bronze Metal Level Plans

e. The CY2026 AV Calculator Adjustment will be:

(1) 1.00 for Gold Metal Level Plans

(2) 1.00 for Silver Metal Level Plans

(3) 1.00 for Bronze Metal Level Plans

fe. The Pricing AV Adjustment will be consistent across carriers and determined using information provided to the Division in a data call.

gf. The 2021 Baseline Plan AV will be determined by the value entered in the carrier's PBT for the 2021 Baseline Plan.

4. An adjustment factor will be applied to reflect changes in the loading applied to Individual market Silver health benefit plans for CSR payments. The CSR load will be calculated for both the Colorado Option Standardized Plan and the 2021 Baseline Plan using the ratio of the on-Exchange silver health benefit plan and the off-Exchange Substantially Similar Plan. The CSR Load Adjustment will be calculated as follows:

(Colorado Option Standardized Plan CSR Load) ÷

(2021 Baseline Plan CSR Load)

a. The Colorado Option Standardized Plan CSR Load will be calculated as follows:

(usingTthe Calibrated Plan Adjusted Index Rate for the on-eExchange Colorado Option Standardized Silver Plan ÷ divided by (the Calibrated Plan Adjusted Index Rate of the Substantially Similar off-Exchange Colorado Option Standardized Silver Plan) x (Substantially Similar off-Exchange Colorado Option Standardized Silver Plan Induced Demand Factor) ÷ (on-Exchange Colorado Option Standardized Silver Plan Induced Demand Factor).

b. The 2021 Baseline Plan CSR Load will be calculated using the Calibrated Plan Adjusted Index Rate for the 2021 Baseline Plan divided by the Calibrated Plan Adjusted Index Rate of the Substantially Similar off-Exchange plan of the 2021 Baseline Plan.

5. An adjustment factor will be applied to reflect changes in the ~~i~~Induced ~~d~~Demand ~~f~~Factor applied in 2021 and the applicable Colorado Option Standardized Plan design. The Induced Demand Factor Adjustment will be calculated as follows:

   (Colorado Option Standardized Plan Induced Demand Factor) ÷

   (2021 Baseline Plan Induced Demand Factor)

   a. The Colorado Option Standardized Plan Induced Demand Factor will be determined by the following formula:

      Colorado Option Standardized Plan Induced Demand Factor =

      $1.24 - (AV) + (AV)^2$

   b. The 2021 Baseline Plan Induced Demand Factor will be determined by the value supplied to the Division in a data call regarding 2021 plans. The 2021 Baseline Plan Induced Demand Factors are normalized based on the projected membership carriers assumed for the 2021 Benefit Year. To ensure the induced demand adjustment is consistent, a normalization factor will be developed and applied to the Induced Demand Factor using the formula in (a). This normalization factor will be developed separately for each carrier and ensure that the shift from carrier-specific ~~i~~Induced ~~d~~Demand ~~f~~Factor to the federal induced demand formula is revenue-neutral across each carrier's 2021 rate filing.

6. The Adjustment for EHB Changes of 1.0016 will be applied to reflect the changes in the EHB-benchmark plan, which will be in effect starting with the 2023 Benefit Year. This adjustment will be based on the cost impact of the benefit changes in the actuarial analysis submitted to CMS for approval of these changes.

7. If the Baseline Plan has non-EHBs not reflected in the Colorado Option Standardized Plan, an adjustment will be made based on the EHB Percent of Total Premium in the Plan & Benefits Template for 2021. Additionally, if the 2021 Baseline Plan did not include any non-EHB benefits but the carrier chooses to offer allowable non-EHB benefits in the Colorado Option Standardized Plan, an adjustment would also be made based on the EHB Percent of Total Premium in the Plan & Benefits Template for the Benefit Year. The Adjustment for non-EHB Changes will be calculated as follows:

   ("EHB Percent of Total Premium" for 2021 Baseline Plan) ÷

   ("EHB Percent of Total Premium" for the Colorado Option Standardized Plan)

   a. The "EHB Percent of Total Premium" for the Colorado Option Standardized Plan will be determined by the value entered in the carrier's PBT for the Colorado Option Standardized Plan.

   b. The "EHB Percent of Total Premium" for the Baseline Plan will be determined by the value entered in the carrier's 2021 PBT.

8. The Medical Inflation Trend will be calculated as follows:

   (1 + "Medical Inflation) ^ (Months of Trend/12)

   a. "Medical Inflation" will be ~~based on~~defined as the latest CPI-U for Medical Care for the Denver-Aurora-Lakewood, CO Core Based Statistical Area published 30

days prior to the issuance of a Division bulletin by June 30, 2023 for the 2024 Benefit Year, and January 1 of each year thereafter.

b. Months of Trend will be calculated as the difference between the midpoint of the Colorado Option Standardized Plan Benefit Year and the midpoint of the effective period of the 2021 Baseline Plan.

9. The Required Rate Reduction Factor will be calculated as follows:

(1 – Benefit Year Required Rate Reduction Percentage)

The Benefit Year Required Rate Reduction will equal 5% for Benefit Year 2023, 10% for Benefit Year 2024 and 15% for Benefit Years 2025 and all subsequent Benefit Years.

10. The Colorado Option Standardized Plan premium rate for a 21-year-old non-tobacco user, calculated on a county, metal level, and market basis for each carrier must be less than or equal to the Maximum Colorado Option Standardized Premium. The Maximum Colorado Option Standardized Plan Premium will be calculated as follows:

a. For Colorado Option Standardized Gold and Bronze Plans in the Individual and Small Group markets, and Colorado Option Standardized Silver Plans in the Small Group Market:

(1) Maximum Colorado Option Standardized Plan Premium =

(2021 Baseline Plan Unadjusted Premium) x (Changes in Member Cost Sharing Adjustment) x (Induced Demand Factor Adjustment) x (Adjustment for EHB Changes) x (Adjustment for non-EHB Changes) x (Medical Inflation Trend) x (Required Rate Reduction Factor)

(2) The Maximum Colorado Option Standardized Plan Premium for the Small Group Market is the maximum allowable premium for all plans commencing during the applicable benefit year, irrespective of whether the rates are based on an annual or quarterly rate filing.

b. For On-Exchange Colorado Option Standardized Silver Plans in the Individual Market:

(1) Maximum Colorado Option Standardized Plan Premium =

(2021 Baseline Plan Unadjusted Premium) x (Changes in Member Cost Sharing Adjustment) x (CSR Load Adjustment) x (Induced Demand Factor Adjustment) x (Adjustment for EHB Changes) x (Adjustment for non-EHB Changes) x (Medical Inflation Trend) x (Required Rate Reduction Factor)

(2) A separate calculation will not be required for the Off-Exchange Colorado Option Standardized Silver Plan.

c. If a carrier is offering the Standardized Plan in a county where the carrier did not sell plans in 2021, the Maximum Colorado Option Standardized Plan Premium will be the weighted average, using enrollment as of April 1, 2021, of the Maximum Colorado Option Standardized Plan Premiums, across all carriers, that offered plans in the applicable county in 2021, regardless of whether plans are sold in the entire county or a partial part of the county. If a county did not have

enrollment in any plans in the applicable metal level as of April 1, 2021, the Maximum Colorado Option Standardized Plan Premium will be the average of all plans in the applicable county in 2021, regardless of whether plans are sold in the entire county or a partial part of the county. A carrier's 2021 premiums will be excluded from the calculation described in this paragraph if the carrier has exited the market nationwide since 2021.

D. Carrier-filed Colorado Option Standardized Plan premiums submitted as part of rate filings pursuant to § 10-16-1306(1), C.R.S., must be at or below the rates set forth in Section 5.C.10. in order to be compliant with the required premium rate reductions pursuant to § 10-16-1305(2), C.R.S.

Section 6 Filing Requirements

A. For premium rates applicable in 2026 or any subsequent year, ~~C~~carriers shall notify the ~~c~~Commissioner by March 1 of the preceding year whether the carrier's Colorado Option Standardized Plan will comply with the required premium rate reductions set forth in § 10-16-1305(2), C.R.S., and calculated pursuant to Section 5 of this regulation.

~~1. For premium rates applicable in 2023, the carrier shall notify the commissioner. If a carrier's Colorado Option Standardized Plan fails to comply with the required premium rate reductions set forth in § 10-16-1305(2), C.R.S., and calculated pursuant to this Section 5, the carrier shall notify the commissioner of the reasons why the carrier is unable to meet the requirements in compliance with § 10-16-1306(2), C.R.S.~~

~~2. For premium rates applicable in 2024 or any subsequent year, the carrier shall notify the commissioner by March 1 of the preceding year.~~

B. Format of Filings

1. Carriers shall submit the notification of whether Colorado Option Standardized Plans will meet the required premium rate reductions through the "Colorado Option Standardized Plan Premium Rate Reduction" template supplied by the Division.

2. Carriers shall submit the "Colorado Option Standardized Plan Premium Rate Reduction" template in SERFF through an "Colorado Option Rate Reduction Notice" filing. This filing shall be submitted separately from any rate, form, annual certification, binder or network adequacy filing.

3. For the Individual market, Carriers shall use January 1 of the Benefit Year for which the filing applies for the "Effective Date" in SERFF.

4. For the small group market, Carriers shall use January 1 of the Benefit Year for the annual filing period as the "Effective Date" in SERFF. For other periods, the carrier shall use April 1, July 1 or October 1 of the Benefit Year for which the filing applies for the "Effective Date" in SERFF.

5. Carriers shall use "Informational" for the "Requested Filing Mode" in SERFF.

6. Carriers shall complete the SERFF Form Schedule tab to specify the forms to which this filing applies.

7. Carriers shall provide a filing description, including the Benefit Year the filing will support.

Section 7 Severability

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

Section 8 Incorporation by Reference

45 C.F.R. § 156.420(a) published by the Government Printing Office shall mean 45 C.F.R. § 156.420(a) as published on the effective date of this regulation and does not include later amendments to or editions of 45 C.F.R. § 156.420(a). A copy of 45 C.F.R. § 156.420(a) may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 C.F.R. § 156.420(a) may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

45 C.F.R. § 156.140(c) published by the Government Printing Office shall mean 45 C.F.R. § 156.140(c) as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 156.140(c). A copy of 45 C.F.R. § 156.140(c) may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 C.F.R. § 156.140(c) may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

45 C.F.R. § 156.135 published by the Government Printing Office shall mean 45 C.F.R. § 156.135 as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 156.135. A copy of 45 C.F.R. § 156.135 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 C.F.R. § 156.135 may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

Section 9 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 10 Effective Date

This regulation shall be effective ~~June 15, 2024.~~ Month, Day, Year.

Section 11 History

New regulation effective June 15, 2023.
Amended regulation effective June 15, 2024.
Amended regulation effective Month, Day, Year.

Notice of Proposed Rulemaking

Tracking number

2025-00116

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)

Rulemaking Hearing

Date

04/15/2025

Time

01:00 PM

Location

Webinar or 1560 Broadway, STE 850, Denver, CO 80202

Subjects and issues involved

The purpose of this regulation is to establish rules for the required bronze, silver, and gold Standardized plans to be offered by all carriers offering individual and small group health benefits plans issued or renewed on or after January 1, 2026.

Statutory authority

§§ 10-1-108(7), 10-1-109(1), 10-16-109, and 10-16-1312, C.R.S.

Contact information

Name

Daisy Zoll

Title

Program Assistant

Telephone

7205564952

Email

daisy.zoll@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

DRAFT Proposed Amended Regulation 4-2-81

CONCERNING COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLANS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-109, and 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish rules for the required bronze, silver, and gold Standardized plans to be offered by all carriers offering individual and small group health benefits plans issued or renewed on or after January 1, 20265.

Section 3 Applicability

This regulation applies to all carriers offering individual and small group health benefit plans subject to the individual and small group laws of Colorado and the requirements of federal law.

Section 4 Definitions

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

B. “Behavioral, mental health, and substance use disorder” shall have the same meaning as found at § 10-16-104(5.5)(d), C.R.S.

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

D. “Colorado Option Standardized Plan” or “Standardized plan” shall have the same meaning as found at §10-16-1303(14), C.R.S.

E. "Colorado Plans and Benefits Template" or "Colorado PBT" means, for the purposes of this regulation, the Colorado-specific modified version of the Federal PBT for submission of plans offered through the Public Benefit Corporation.

F. "Colorado Supplement to the Summary of Benefits and Coverage Form" or "COSSBC" shall have the same meaning as found at Colorado Insurance Regulation 4-2-20.

G. "Consumer Facing Materials" means, for the purposes of this regulation, plan-specific policy forms including the Summary of Benefits and Coverage Form, Colorado Supplement to the Summary of Benefits and Coverage Form, Evidence of Coverage, Certificate of Coverage, and plan-specific marketing materials including brochures, direct mail, website landing page, broker website portal landing page, welcome kit, newsletters, advertisements, and shopping portals on-exchange and off-exchange through the Public Benefit Corporation.

H. "Covered person" shall have the same meaning as found at § 10-16-102(15), C.R.S.

I. "Embedded deductible" means, for the purposes of this regulation, a cost-sharing provision within family policies where a covered person may satisfy their own individual deductible before the overall family deductible is satisfied.

J. "Embedded out-of-pocket maximum" means, for the purposes of this regulation, a cost-sharing provision within family policies where a covered person may satisfy their own individual out-of-pocket maximum before the overall family out-of-pocket maximum is satisfied.

K. "Essential health benefits" or "EHB" shall have the same meaning as found at § 10-16-102(22), C.R.S.

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

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

NM. "Federal Plans and Benefits Template" or "Federal PBT" means, for the purposes of this regulation, the Plans & Benefits Template created by the Centers for Medicare & Medicaid Services.

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

PO. "Network" shall have the same meaning as found at § 10-16-102(45), C.R.S.

QP. "Preventive drug" shall have the same meaning as found at Colorado Insurance Regulation 4-2-58.

RQ. "Provider" shall have the same meaning as found at § 10-16-102(56), C.R.S.

SR. "Public Benefit Corporation" shall have the same meaning as found at § 10-16-1303(12), C.R.S.

TS. "Silver Enhanced Plan" means, for the purposes of this regulation, the standardized silver plan offered by Connect for Health Colorado on the Colorado Public Benefit Corporation with an increase in the plan's actuarial value to 94% and a $0 premium containing the same plan design and cost sharing as the Colorado Option On-Exchange Silver (94% AV) Standardized Plan.

UT. "Summary of Benefits and Coverage Form" or "SBC" means, for the purposes of this regulation, the Summary of Benefits and Coverage Form created by the Centers for Medicare & Medicaid Services.

Section 5 Standardized Health Benefit Plan

A. Carriers shall offer a Standardized plan at the bronze, silver, and gold metal level tiers, as required under § 10-16-1304, C.R.S., and shall:

1. Offer the individual market Standardized plans on-Exchange~~,~~ and off-Exchange through the Public Benefit Corporation.

2. Use the following naming conventions in the Federal PBT and Colorado PBT as well as on consumer facing materials.

   a. For all metal tier plans: "[Name of Carrier] Colorado Option [Metal Tier]." The name of the carrier may be shortened to an easily identifiable acronym that is commonly used by the carrier in consumer facing publications.

   b. For silver cost-sharing reduction variant plans: “[Name of Carrier] Colorado Option Silver [% AV value].” The name of the carrier may be shortened to an easily identifiable acronym that is commonly used by the carrier in consumer facing publications.

3. Use the following naming conventions on identification cards:

   a. For all metal tier plans: “CO Option [Metal Tier].”

   b. For silver cost-sharing reduction variant plans: “CO Option Silver [% AV value].”

4. Use a Division approved, co-branded logo in individual and small group Standardized plan consumer facing materials. A co-branded logo will use both the Colorado Option logo and the carrier’s logo, to form a dual logo that is a single image.

5. Include a service area or network identifier in the plan name if the plan is not offered on a statewide basis with a statewide network.

B. Coverage must be provided in a manner consistent with the requirements of:

1. Federal law.

2. Article 16 of Title 10 of the Colorado Revised Statutes, as applicable to individual and small group health benefit plans, including but not limited to:

   a. §§ 10-16-1304, 10-16-1305, 10-16-1306, C.R.S.

   b. §§ 10-16-104(5.5) and 10-16-147, C.R.S. and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) as defined at § 10-16-102(43.5), C.R.S.

      (1) Carriers shall submit the CO Financial Requirement and Quantitative Treatment Limitation Classification Template and the Financial Requirements Attestation Template for Standardized Plans, required by Colorado Insurance Regulation 4-2-64, no later than March 1 of each year.

      (2) If it is determined that a carrier’s ~~standardized~~ Standardized plan does not comply with MHPAEA financial requirements and quantitative treatment limitations, the Division will make the minimum adjustments necessary to the cost sharing structure in the ~~standardized~~ Standardized plan to meet these requirements.

3. United States Preventive Services Task Force A and B recommendations, Advisory Committee on Immunization Practices age-appropriate immunization and vaccine schedules, and the Women's Preventive Services Guidelines published by the Health Resources and Services Administration (HRSA).

C. As part of the annual filings process, Standardized plans must be consistent with Colorado Insurance Regulations and guidance regarding rate and form filings, including but not limited to Colorado Insurance Regulations 4-2-39, 4-2-41, 4-2-58 and 4-2-64.

D. Individual market carriers must file all Standardized plans, except bronze plans, on Benefits Package 1 and bronze plans on Benefits Package 2 of the federal Plans and Benefits Template. Individual market carriers must file the Standardized bronze, off-eExchange silver, silver enhanced, and gold plans on the Colorado Plans and Benefits Template. Small group market carriers must file all Standardized plans, except bronze plans, on Benefits Package 1 and bronze plans on Benefits Package 2 of the federal Plans and Benefits Template.

E. Coverage must provide essential health benefits as defined in Colorado Insurance Regulation 4-2-42. Carriers are not permitted to add benefits outside of those outlined in Colorado Insurance Regulation 4-2-42 except that carriers may include reproductive health services in addition to the benefits in Colorado Insurance Regulation 4-2-42, subject to approval by the Division of Insurance. Carriers must follow the defined cost-sharing requirements for the benefits listed in Appendix A. Carriers may vary cost-sharing amounts for essential health benefits not listed in Appendix A.

F. The bronze, silver, and gold Standardized plans must include the following coverage:

1. Mental health, behavioral health and substance use disorder visits and primary care visits in accordance with the cost-sharing requirements contained in Appendix A.

2. Prenatal and postnatal visits in accordance with the cost-sharing requirements contained in Appendix A.

   a. Carriers utilizing a global billing structure for pregnancy-related care shall account for the cost sharing outlined in the Standardized plan in the global billing fee structure.

   b. Home visits shall be considered a covered postnatal care visit, subject to the cost-sharing for "prenatal and postnatal visits" contained in Appendix A.

   c. Prenatal and postnatal visits shall be combined in instances where a number of visits is specified in Appendix A.

3. Diabetes supplies, including but not limited to Continuous Glucose Monitors and all associated components with automated insulin delivery systems, must be provided with no cost sharing.

   a. Carriers must maintain an easy-to-understand, transparent, and searchable page on the carrier's website titled "Covered Diabetic Supplies for Colorado Option Plan" that includes the following information, updated for each plan year:

      (1) A clear statement that Colorado Option plans provide coverage of diabetic supplies at $0 cost-sharing and not subject to a deductible, copayments, or coinsurance.

      (2) A complete list of all diabetic supplies organized by category of items or supplies,

(a) For each category, the name of all items or supplies that are covered at $0 cost-sharing and not subject to a deductible, copayment, or coinsurance under the Colorado Option Standardized Health Benefit Plan must be listed.

(b) At a minimum, the list must include the following categories: "Continuous Glucose Monitors and Components", "Insulin Pumps", "Blood Glucose Monitors and Test Strips", and "Other Covered Diabetic Supplies".

(3) At all times, the list shall include all of the diabetic supplies that are covered for the current plan year. If a carrier has a change in the covered items and supplies, the carrier shall update the public-facing list within 10 business days of the change becoming effective. If a carrier has a change in the covered items and supplies, the carrier shall update the public-facing list within 10 business days of the change becoming effective.

(4) During the annual Open Enrollment Period, the website shall also display the diabetic supplies covered for the upcoming plan year.

b. If the carrier offers multiple Colorado Option plans that cover different diabetic supplies, a different list should be included for each plan, and clearly marked with the marketing name(s) of the Colorado Option plan(s) that cover the specific supplies listed.

c. Next to each item or supply, the carrier must clearly indicate whether it is covered under the medical benefit, including durable medical equipment (DME), or prescription drug benefit.

(1) If an item or supply is covered as DME, the carrier must include clear instructions for how a consumer may obtain the diabetic supply through the covered DME supplier, including where to find the contact information for the carrier's covered DME supplier.

(2) If an item or supply is covered under the prescription drug benefit, the carrier must include clear instructions on how a consumer can access the carrier's most recent prescription drug formulary and the carrier's provider directory.

4. Carrier formularies:

a. Formularies shall have five drug tiers that allow copay only cost sharing:

(1) Tier 1: The prescription drug tier which consists of drugs used for preventive purposes.

(2) Tier 2: The prescription drug tier which consists of the lowest cost tier of prescription drugs, most are generic.

(3) Tier 3: The prescription drug tier which consists of medium-cost prescription drugs, most are generic, and some brand-name prescription drugs.

(4) Tier 4: The prescription drug tier which consists of the higher-cost prescription drugs, most are brand-name prescription drugs, and some specialty drugs.

(5) Tier 5: The prescription drug tier which consists of the highest-cost prescription drugs, most are specialty drugs.

b. Carriers may assign prescription drugs to one of the five tiers based on drug usage, cost and clinical effectiveness so long as such classification remains in compliance with applicable Federal and Colorado state law requirements.

c. The cost-share amounts in Appendix A are for a 30-day supply of a prescription drug. A carrier may apply up to three times the cost-share amount for a 90-day supply.

4. Consistent with existing coverage requirements, carriers must provide the following:

a. Carriers must include the “Colorado QuitLine” as part of covered tobacco cessation programs;

b. When outpatient education for prediabetes is recommended by a provider, carriers must include a program recognized by the National Centers for Disease Control and Prevention (CDC) Diabetes Prevention Program as part of diabetes prevention coverage.

G. The Colorado Option bronze, silver, and gold Standardized plans may not have a tiered network with different copays for different network tiers.

H. Covered persons in the Standardized plans must receive care at the cost-sharing levels required for the different services in the Standardized plans for any “In-Network” provider. In-network services include services provided by an out-of-network provider, but are approved as in-network by the carrier.

I. The Standardized bronze, silver, and gold plans do not specify cost-sharing amounts for any out-of-network services except for those services required under state or federal law to have in-network cost-share amounts.

J. Any copay, coinsurance, and deductible payments for in-network covered services shall apply to the out-of-pocket maximum.

K. Carriers shall use an embedded deductible.

L. Carriers shall use an embedded out-of-pocket maximum.

M. Carriers are not required to submit reasonable modification requests for benefits and/or cost-sharing modifications found in Appendix A of this regulation. Carriers are required to submit any other benefits and/or cost-sharing reasonable modification requests to the Standardized plans, pursuant to Colorado Insurance Regulation 4-2-27.

Section 6 Incorporation by Reference

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

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

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

The Women's Preventive Services Guidelines, published by the Health Resources and Services Administration, shall mean the Women's Preventive Services Guidelines published by the Health Resources and Services Administration, as published on the effective date of this regulation and does not include later amendments to, or editions of the Women's Preventive Services Guidelines published by the Health Resources and Services Administration. The Women's Preventive Services Guidelines published by the Health Resources and Services Administration may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the Health Resources and Services Administration website at https://www.hrsa.gov/womens-guidelines. Certified copies of the Women's Preventive Services Guidelines, published by the Health Resources and Services Administration, are available from the Colorado Division of Insurance for a fee.

Section 7 Severability

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

Section 8 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 9 Effective Date

This regulation shall become effective on ~~June 15, 2024,~~Month, Day, Year.

Section 10 History

This regulation shall become effective June 30, 2022.
Amended regulation effective ~~June 15, 2024.~~Month, Day, Year.

Appendix A: 2026~~5~~ Gold, Silver, and Bronze Standardized Plans

This Appendix outlines the plan designs for the gold, silver, and bronze metal tier standardized plans.

- The column **"Member Cost Share (In Network)"** refers to the cost share amount paid by the covered person after their deductible is met.
- The **"x" in the "Deductible Applies"** column indicates that a covered person is expected to meet their deductible prior to paying the cost share amount listed in the "Member Cost Share (In Network)" column.
- If there is **no "x" in the "Deductible Applies"** column, this indicates that the cost-share is pre-deductible or first dollar coverage.

Standardized Silver Cost Sharing Reduction Plans at 73% AV and 87% AV are only required to be offered in the individual, On-Exchange market. Standardized Silver Cost Sharing Reduction Plans at the 94% AV level are required to be offered in the individual, On-Exchange market, and the individual, Off-Exchange market through the Public Benefit Corporation.

Gold Standardized Plan

Actuarial Value	**78.0%**
Individual Deductible (Combined Medical & Drug)	$2,050~~1,875~~
Individual Out-of-Pocket Maximum	$9,600~~8,700~~
Family Deductible	$4,100~~3,750~~

Family Out-of-Pocket Maximum			$19,20017,400
Common Medical Event	Service Type	Member Cost Share (In Network)	Deductible Applies
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$5055	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Outpatient services	30%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	30%	X
Tests	Laboratory tests	30%	X
	X-rays and diagnostic imaging	30%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	30%	X

Drugs to treat Illness or Condition	Tier 1	$0	
	Tier 2	$10	
	Tier 3	$50	
	Tier 4	$200	
	Tier 5	$600	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	30%	X

	Physician/Surgical Services	30%	X
Need Immediate Attention	Urgent care centers or facilities	$50	
	Emergency room services	30%	X
	Emergency medical transportation (ambulance)	30%	X
Hospital Stay	Inpatient Hospital services	30%	X
	Inpatient Physician and Surgical Services	30%	X

	Inpatient Rehabilitation Services	30%	X
	Inpatient Habilitation Services	30%	X
Help recovering or other health needs	Speech Therapy	30%	X
	Physical Therapy	30%	X
	Occupational Therapy	30%	X
	Durable medical equipment[1]	30%	X

	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Silver Standardized Plan

(On-Exchange Individual Market & Small Group Market)

Actuarial Value			**70.0%**
Individual Deductible (Combined Medical & Drug)			$4,4004,000
Individual Out-of-Pocket Maximum			$9,8009,000
Family Deductible			$8,8008,000
Family Out-of-Pocket Maximum			$19,60018,000
Common Medical Event	Service Type	Member	Deductible

		Cost Share (In Network)	Applies
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$~~80~~90	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	40%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	40%	X
Tests	Laboratory tests	40%	X
	X-rays and diagnostic imaging	40%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	40%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$20	
	Tier 3	$125	
	Tier 4	$300	
	Tier 5	$650	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	40%	X
	Physician/Surgical Services	40%	X

Need Immediate Attention	Urgent care centers or facilities	$80	
	Emergency room services	40%	X
	Emergency medical transportation (ambulance)	40%	X
Hospital Stay	Inpatient Hospital services	40%	X
	Inpatient Physician and Surgical Services	40%	X
	Inpatient Rehabilitation Services	40%	X

	Inpatient Habilitation Services	40%	X
Help recovering or other health needs	Speech Therapy	40%	X
	Physical Therapy	40%	X
	Occupational Therapy	40%	X
	Durable medical equipment[1]	40%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Silver (73% AV) Standardized Plan

(On-Exchange Individual Market)

Actuarial Value			**73.0%**
Individual Deductible (Combined Medical & Drug)			$2,850~~2,600~~
Individual Out-of-Pocket Maximum			$8,000~~7,350~~
Family Deductible			$5,700~~5,200~~
Family Out-of-Pocket Maximum			$16,000~~14,700~~
Common Medical Event	Service Type	Member	Deductible

		Cost Share (In Network)	Applies
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$~~80~~90	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	40%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	40%	X
Tests	Laboratory tests	40%	X
	X-rays and diagnostic imaging	40%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	40%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$20	
	Tier 3	$125	
	Tier 4	$300	
	Tier 5	$600	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	40%	X
	Physician/Surgical Services	40%	X

Need Immediate Attention	Urgent care centers or facilities	$80	
	Emergency room services	40%	X
	Emergency medical transportation (ambulance)	40%	X
Hospital Stay	Inpatient Hospital services	40%	X
	Inpatient Physician and Surgical Services	40%	X
	Inpatient Rehabilitation Services	40%	X

	Inpatient Habilitation Services	40%	X
Help recovering or other health needs	Speech Therapy	40%	X
	Physical Therapy	40%	X
	Occupational Therapy	40%	X
	Durable medical equipment[1]	40%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Silver (87% AV) Standardized Plan

(On-Exchange Individual Market)

Actuarial Value			**87.0%**
Individual Deductible (Combined Medical & Drug)			$950~~900~~
Individual Out-of-Pocket Maximum			$3,350~~3,050~~
Family Deductible			$1,900~~1,800~~
Family Out-of-Pocket Maximum			$6,700~~6,100~~
Common Medical Event	Service Type	Member Cost Share	Deductible Applies

		(In Network)	
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$~~60~~65	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	30%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	30%	X
Tests	Laboratory tests	30%	X
	X-rays and diagnostic imaging	30%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	30%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$0	
	Tier 3	$60	
	Tier 4	$120	
	Tier 5	$180	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	30%	X
	Physician/Surgical Services	30%	X

Need Immediate Attention	Urgent care centers or facilities	$60	
	Emergency room services	30%	X
	Emergency medical transportation (ambulance)	30%	X
Hospital Stay	Inpatient Hospital services	30%	X
	Inpatient Physician and Surgical Services	30%	X
	Inpatient Rehabilitation Services	30%	X

	Inpatient Habilitation Services	30%	X
Help recovering or other health needs	Speech Therapy	30%	X
	Physical Therapy	30%	X
	Occupational Therapy	30%	X
	Durable medical equipment[1]	30%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Silver (94% AV) Standardized Plan

(On-Exchange Individual Market and Off-Exchange Individual Market through the Public Benefit Corporation)

Actuarial Value	**94.5%**
Individual Deductible (Combined Medical & Drug)	$100
Individual Out-of-Pocket Maximum	$1,375~~1,225~~
Family Deductible	$200
Family Out-of-Pocket Maximum	$2,750~~2,450~~

Common Medical Event	Service Type	Member	Deductible

		Cost Share (In Network)	Applies
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$40	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	20%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	20%	X
Tests	Laboratory tests	20%	X
	X-rays and diagnostic imaging	20%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	20%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$0	
	Tier 3	$20	
	Tier 4	$40	
	Tier 5	$60	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	20%	X
	Physician/Surgical Services	20%	X

Need Immediate Attention	Urgent care centers or facilities	$40	
	Emergency room services	20%	X
	Emergency medical transportation (ambulance)	20%	X
Hospital Stay	Inpatient Hospital services	20%	X
	Inpatient Physician and Surgical Services	20%	X
	Inpatient Rehabilitation Services	20%	X

	Inpatient Habilitation Services	20%	X
Help recovering or other health needs	Speech Therapy	20%	X
	Physical Therapy	20%	X
	Occupational Therapy	20%	X
	Durable medical equipment[1]	20%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Silver Off Exchange Standardized Plan

(Individual Market Off-Exchange)

Actuarial Value			**70.0%**
Individual Deductible (Combined Medical & Drug)			$4,400~~4,000~~
Individual Out-of-Pocket Maximum			$9,800~~9,000~~
Family Deductible			$8,800~~8,000~~
Family Out-of-Pocket Maximum			$19,600~~18,000~~
Common Medical Event	Service Type	Member	Deductible

		Cost Share (In Network)	Applies
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$~~80~~90	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	40%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	40%	X
Tests	Laboratory tests	40%	X
	X-rays and diagnostic imaging	40%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	40%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$20	
	Tier 3	$125	
	Tier 4	$300	
	Tier 5	$650	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	40%	X
	Physician/Surgical Services	40%	X

Need Immediate Attention	Urgent care centers or facilities	$80	
	Emergency room services	40%	X
	Emergency medical transportation (ambulance)	45%	X
Hospital Stay	Inpatient Hospital services	40%	X
	Inpatient Physician and Surgical Services	40%	X
	Inpatient Rehabilitation Services	40%	X

	Inpatient Habilitation Services	40%	X
Help recovering or other health needs	Speech Therapy	40%	X
	Physical Therapy	40%	X
	Occupational Therapy	40%	X
	Durable medical equipment[1]	40%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Bronze Standardized Plan

Actuarial Value	**63.5%**
Individual Deductible (Combined Medical & Drug)	$7,500
Individual Out-of-Pocket Maximum	$10,000~~9,200~~
Family Deductible	$15,000
Family Out-of-Pocket Maximum	$20,000~~18,400~~

Common Medical Event	Service Type	Member Cost Share	Deductible Applies

		(In Network)	
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	First 3 visits $0, then deductible, then $50	X
	Specialist visit	50%	X
Pregnancy	Prenatal and postnatal visits	First 3 visits $0, then deductible, then $50	X
Mental/ Behavioral Health	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	50%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	50%	X
Tests	Laboratory tests	50%	X
	X-rays and diagnostic imaging	50%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	50%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$30	
	Tier 3	$200	
	Tier 4	$350	
	Tier 5	$700	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	50%	X
	Physician/Surgical Services	50%	X

Need Immediate Attention	Urgent care centers or facilities	50%	X
	Emergency room services	50%	X
	Emergency medical transportation (ambulance)	50%	X
Hospital Stay	Inpatient Hospital services	50%	X
	Inpatient Physician and Surgical Services	50%	X
	Inpatient Rehabilitation Services	50%	X

	Inpatient Habilitation Services	50%	X
Help recovering or other health needs	Speech Therapy	50%	X
	Physical Therapy	50%	X
	Occupational Therapy	50%	X
	Durable medical equipment[1]	50%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Notice of Proposed Rulemaking

Tracking number

2025-00114

Department

700 - Department of Regulatory Agencies

Agency

716 - Division of Professions and Occupations - State Board of Nursing

CCR number

3 CCR 716-1

Rule title

NURSING RULES AND REGULATIONS

Rulemaking Hearing

Date

04/23/2025

Time

09:00 AM

Location

Webinar only - See below

Subjects and issues involved

The Colorado State Nursing Board will hold an Emergency and Permanent Rulemaking Hearing on Wednesday, April 23, 2025, at 9:00 A.M. (MDT), regarding proposed revisions to multiple Board rules. The purpose is to make Board ordered revisions and to implement Colorado Senate Bill 23-167 (CONCERNING THE REGULATION OF CERTIFIED MIDWIVES BY THE STATE BOARD OF NURSING, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION) and to correct a deficiency in the incorporation by reference.

Statutory authority

12-20-204, 12-255-112, 12-255-107(1)(j), 24-4-103(6)(a) and 24-4-103, C.R.S.

Contact information

Name

Maria Rascon Arana

Title

Regulatory Coordinator

Telephone

303-869-3409

Email

dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Division of Professions and Occupations - State Board of Nursing

NURSING RULES AND REGULATIONS

3 CCR 716-1

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

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1.9 RULES AND REGULATIONS FOR THE LICENSED PRACTICAL NURSE IN RELATION TO IV THERAPY~~AUTHORITY~~

A. BASIS: The Rules contained in this Rule 1.9 are adopted pursuant to authority granted the Board by sections 12-255-101 to 134, C.R.S., as amended, and specifically pursuant to authority granted in section 12-255-107(1)(e), C.R.S., as amended.

B. PURPOSE: These Rules are adopted to set forth the guidelines for the Licensed Practical Nurse (LPN) related to his/her role in intravenous therapy and venous blood sampling. The patient care responsibilities of LPNs should be within the parameters of their educational preparation and their demonstrated abilities. Therefore, LPNs and their supervisors have a joint responsibility to assure that LPNs practice within the scope of their educational basis and demonstrated abilities.

C. DEFINITIONS:

For the purposes of Rule 1.9, the following terms have the indicated meaning:

1. "Adult Client" is an individual whose chronological age is thirteen years or older.

~~2. "Approved IV Therapy Course/Program" is an IV Therapy Course/Program, as defined in paragraph (7), and accepted by the Board, that includes theory/lab and clinical practice related to the knowledge, skills and ability to perform IV therapy and venous blood sampling, and also meets the standards set in Section (G) of Rule 1.9.~~

2~~3~~. "Board" is the State Board of Nursing.

3~~4~~. "Direct Injection" is the administration of a drug directly into the Venous Access Device or through the proximal port on a continuous infusion set.

4~~5~~. "Intravenous Fluids" means fluids containing one or more of the following elements: dextrose 5%; normal saline; lactated ringers; sodium chloride 0.45%; or sodium chloride 0.2%.

~~6. "IV Authority" refers to Board granted permission to practice IV therapy and venous blood sampling.~~

~~7. "IV Therapy Course/Program" prepares the LPN to perform IV therapy and venous blood sampling, utilizing Venous Access Devices, as defined in paragraph (12), on the Adult Client within the scope of practice, as defined in Section (D).~~

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58. "Peripheral Veins" are the veins not in the chest, neck or abdomen.

~~9. "Preceptor" is a licensed professional or a licensed practical nurse with IV Authority, employed by a healthcare agency, who assumes joint teaching responsibility with the clinical instructor, when the instructor is not present in the setting.~~

610. "Pre-mixed" means IV solution prepared and labeled by an authorized licensed professional or manufacturer. Manufacturer prepared solutions include those closed systems requiring activation to administer.

711. "Supervision" means a professional nurse, physician, dentist, or podiatrist is physically present or accessible by some form of telecommunication.

812. Types of "Venous Access Devices":

a. Peripheral catheters

(1) "Peripheral short catheter" is a Venous Access Device less than 3 inches (7.5 cm) in length.

(2) "Peripheral midline catheter" means a peripherally inserted catheter whose tip terminates no further than the axilla and is between 3 inches and 8 inches (7.5 cm and 20 cm) in length.

b. Central catheters

(1) "PICC (peripherally inserted central catheter)" means an IV catheter whose tip terminates in the superior vena cava and is confirmed by chest x-ray.

(2) "Central catheter" means an IV catheter whose tip terminates in the superior vena cava and may be either tunneled, implanted, or percutaneously inserted, and is confirmed by chest x-ray.

D. SCOPE OF PRACTICE OF THE LICENSED PRACTICAL NURSE ~~WITH~~ IN RELATION TO IV THERAPY~~AUTHORITY~~

1. The patient care responsibilities of the LPN should be within the parameters of their educational preparation and their demonstrated abilities.

2. A LPN ~~with IV Authority~~ may perform the following procedures under the Supervision of a professional nurse, physician, dentist, or podiatrist:

a. Calculate and observe flow rate of intravenous infusions;

b. Stop the flow of Intravenous Fluids, as defined in Sections (C)(5) and (C)(10) of Rule 1.9;

c. Remove peripheral short catheter for Adult Clients;

d. Report and document observations and procedures relating to intravenous infusion and insertion sites;

e. Utilize Peripheral Veins for intravenous access with a peripheral short catheter;

f. Perform blood sampling from a peripheral vein or through a central Venous Access Device using a syringe or vacutainer device.

g. Reconstitute IV antibiotics following pharmacy instructions and/or organizational policies.

h. Administer the following:

(1) Intravenous Fluids through Venous Access Devices;

(2) Pre-mixed Intravenous Fluids containing electrolytes and vitamins;

(3) Pre-mixed antibiotic solutions via Venous Access Devices delivered per labeled instructions by gravity flow, pump or Direct Injection for a period of time consisting of greater than five minutes in duration; and/or

(4) The first dose of IV antibiotic therapy under the observation of a professional nurse, physician, podiatrist, or dentist who is present in the same patient care area.

i. Regulate the prescribed flow rate of the Intravenous Fluids;

j. Monitor the systemic effects of intravenous therapy;

k. Flush Venous Access Devices designed to maintain venous patency with normal saline or a sub-therapeutic dosage of heparin;

l. Change dressings and/or caps to Venous Access Devices; and/or

m. Switch from continuous infusion of Intravenous Fluid to heparin/saline lock

E. OUTSIDE THE SCOPE OF PRACTICE FOR LICENSED PRACTICAL NURSES IN RELATION TO IV THERAPY~~AUTHORITY~~

1. A licensed practical nurse ~~with IV Authority~~ may not perform any of the following procedures as they are outside the LPN's scope of practice:

a. Administration of IV medications, except as allowed in Section (D)(2)(g) of Rule 1.9;

b. Access or de-access implanted central venous access ports;

c. Insertion of a PICC line or a peripheral midline catheter;

d. Repair of Venous Access Devices;

e. Remove a central venous access catheter;

f. Administration of parenteral nutrition solutions;

g. Administration of blood and blood products;

h. Administration of chemotherapy intravenous medications/solutions;

i. Administration of thrombolytic agent to declot a catheter; and/or

j. Direct Injection of any IV medication for a period of time consisting of five minutes or less in duration.

~~**F. REQUIREMENTS FOR OBTAINING IV AUTHORITY**~~

~~1. Successful completion of an Approved IV Therapy Course/Program is required if:~~

~~a. The LPN's IV Authority was removed on January 1, 2006, or;~~

~~b. The LPN had not received IV Authority prior to January 1, 2006, or;~~

~~c. The LPN's basic practical nursing program did not include an Approved IV Therapy Course/Program.~~

~~2. Upon the successful completion of an Approved IV Therapy Course/Program, the applicant must:~~

~~a. Possess an active, unencumbered Colorado or multi-state practical nurse license.~~

~~b. Submit an IV Authority application on a current Board approved form, and pay the applicable fee.~~

~~c. Verify completion of an Approved IV Therapy Course/Program through a Board approved competency checklist.~~

~~3. An applicant by Endorsement of IV Authority from another state or territory of the United States must:~~

~~a. Possess an active, unencumbered Colorado or multi-state practical nurse license.~~

~~b. Upon endorsement for licensure, submit an IV Authority application on a current Board approved form, and pay the applicable fee.~~

~~c. Submit proof of successful completion of an Approved IV Therapy Course/Program.~~

~~4. United States military personnel who have education and training documented on an official transcript and determined to be substantially equivalent, as determined by the Board, to the Approved IV Therapy Course/Program curriculum requirements in Rule 1.9 Rules and Regulations for the Licensed Practical Nurse in Relation to IV Authority will be eligible to IV Authority as provided for in section 12-20-202(4),C.R.S., and are subject to requirements of section (F)(2) of this Rule 1.9.~~

~~**G. STANDARDS FOR IV THERAPY/VENOUS BLOOD SAMPLING COURSES**~~

~~1. Curriculum for IV Therapy Course/Program shall:~~

a. Provide adequate theory and supervised clinical practice in IV therapy related to the Adult Client necessary for the performance of nursing functions, as outlined in Section (D) of Rule 1.9.

b. Provide the following content:

(1) Legal implications and scope of practice.

(2) Role of the licensed practical nurse in intravenous therapy.

(3) Related anatomy and physiology, including the physiology of aging and site selection.

(4) Fluids and electrolytes.

(5) Commonly used Intravenous Fluids.

(6) Hazards and complications of IV therapy, local and systemic.

(7) Psychological aspects of venipuncture.

(8) Infection control measures.

(9) Identifying types of Venous Access Devices.

(10) Monitoring Venous Access Devices.

(11) Dressing and cap changes.

(12) Initiating, monitoring, regulating, replacing, and discontinuing Intravenous Fluids.

(13) Use of appropriate equipment, including IV pumps.

(14) Drug incompatibilities.

(15) Administration of Pre-mixed vitamins and electrolytes.

(16) Pharmacology of heparin and antibiotics.

(17) Administration of Pre-mixed IV antibiotics.

(18) Flushing of Venous Access Devices designed to maintain venous patency.

(19) Collection of venous blood specimens from Peripheral Veins and central Venous Access Devices for tests and use of appropriate equipment for same.

(20) Nursing care, intervention, reporting and documentation related to intravenous therapy/venous blood sampling.

c. Each student shall complete clinical practice or simulated clinical practice related to:

(1) Peripheral short catheter insertion on Adult Clients.

(2) Initiation and monitoring of Intravenous Fluid administration on Adult Clients through Venous Access Devices.

(3) Flushes into Venous Access Devices designed to maintain venous patency for Adult Clients.

(4) Administration of Pre-mixed antibiotics via Venous Access Device to Adult Clients.

(5) Utilization of IV pumps.

(6) Peripheral venous blood sampling on Adult Clients.

(7) Discontinuation of peripheral short devices.

(8) Documentation of nursing actions and observations.

(9) Sterile dressing change on central Venous Access Devices.

(10) Blood collection from a central Venous Access Device.

d. At the discretion of the instructor, students may demonstrate knowledge and competency in skills with validation of previous IV therapy education.

e. The Board may review new IV Therapy Course/Program applications and approve IV Therapy Course/Programs that meet the standards set forth in Section (G)(1)(a-c) of Rule 1.9.

f. All Approved IV Therapy Courses/Programs shall submit an annual report on a Board approved form to demonstrate compliance with Rule 1.9. Failure to submit an annual report may result in withdrawal of Board approval.

H. WITHDRAWAL OF IV AUTHORITY

1. The Board may withdraw IV Authority if the Board has reasonable cause to believe that the nurse no longer meets the requirements for IV Authority as set forth in section (F) of this Rule 1.9, or the Board has reasonable cause to believe that the nurse is unable to practice IV Authority with reasonable skill and safety.

Adopted April 22, 2009
Revised April 26, 2012
Effective July 1, 2012

1.13 RULES AND REGULATIONS REGARDING THE DELEGATION OF NURSING OR CERTIFIED MIDWIFE TASKS

A. STATEMENT AND BASIS OF PURPOSE

The Rules contained in this Rule 1.13 are adopted pursuant to authority granted the Board by sections 12-20-204(1) and 12-255-107(1)(j), C.R.S., and specifically pursuant to authority granted in section 12-255-131(6), C.R.S. The purpose of these Rules is to specify procedures and criteria regarding the delegation of nursing or certified midwife tasks.

The practical nurse ("PN"), professional nurse ("RN"), advanced practice registered nurse ("APRN"), and certified midwife ("CM") are responsible for and accountable to each consumer of nursing care for the quality of nursing or midwifery care he or she provides either directly or through the delegated care provided by others.

B. DEFINITIONS:

For the purposes of Rule 1.13, the following terms have the indicated meaning;

1. "Board" means the State Board of Nursing.

2. "Client" means the recipient of nursing or midwifery care.

3. "Competence" is the Certified Nurse Aide's (CNA) ability to perform those tasks included in the expanded scope of practice as set forth in Section (I)(3) of Rule 1.10, with reasonable skill and safety to a client, as deemed by the RN or APRN.

4. "Continued Competence" is the CNA's ability to perform those tasks included in the expanded scope of practice as set forth in Section (I)(3) of Rule 1.10, with reasonable skill and safety to a client, as deemed by the RN, or APRN's direct observation of the CNA's clinical performance of the task to occur not less than annually after initially being deemed competent.

5. "Deemed Competent" is the RN or APRN's determination that the CNA is competent to perform the task with reasonable skill and safety to a client.

6. "Delegatee" means an individual receiving the Delegation who acts in a complementary role to the PN, RN, APRN, or CM who has been trained appropriately for the task delegated, and whom the PN, RN, APRN, or CM authorizes to perform a task that the individual is not otherwise authorized to perform.

7. "Delegation" means the assignment to a competent individual the authority to perform in a selected situation a selected nursing or selected certified midwife task included in the practice of practical nursing as defined in section 12-255-104(~~9~~10), C.R.S., or in the practice of professional nursing as defined in section 12-255-104(10~~8~~), C.R.S.; or the practice of a certified midwife as defined in section 12-255-104(7.5), C.R.S.

8. "Delegator" means the PN, RN, APRN, or CM making the Delegation; the Delegator must hold a current, active license and if appropriate advanced practice registration and prescriptive authority.

9. "Developmental Disabilities Nurse (DDN) Setting" means a practice setting for a RN or APRN, employed by or contracted by community center boards, the community board's

provider organizations or other agencies providing services through the Colorado Division of Developmental Disabilities.

10. Individualized Healthcare Plan ("IHP") means a plan for a specific Client that is developed by a RN or APRN employed or contracted by the Client's School, Licensed Child Care Facility, or DDN Setting in conjunction with the Client and parent or guardian and, if applicable, based on the Client's Licensed Health Care Provider's orders for the administration of Medications and/or treatments for the Client.

11. "Licensed Child Care Facility" means any facility licensed as a family child care home or child care center as defined in section 26-6-102, C.R.S.

12. "Licensed Health Care Provider" means an individual who is licensed or otherwise authorized by the state pursuant to this Title 12, or Article 3.5 of Title 25, C.R.S., to provide health care services.

13. "Medication" means any prescription or nonprescription drug as defined in section 12-280-103, C.R.S.

14. "Practitioner" means a person authorized by law to prescribe treatment, Medication or medical devices and acting within the scope of such authority.

15. "School" means any institution of primary or secondary education, including preschool and kindergarten.

16. "Supervision" means the provision of guidance and review by a PN, RN, APRN, or CM for the accomplishment of a nursing or certified midwife task or activity, with initial direction of the task, periodic inspection of the actual act of accomplishing the task or activity, and evaluation of the outcome.

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1.15 RULES AND REGULATIONS FOR PRESCRIPTIVE AUTHORITY FOR ADVANCED PRACTICE REGISTERED NURSES

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F. REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY

1. Requirements for Provisional Prescriptive Authority.

   a. Must apply in a manner approved by the Board;

   b. Pay application fee;

   c. Submit proof of an appropriate degree and satisfactory completion of education requirements as described in Section (D) of Rule 1.15;

   d. Submit verification of National Certification as described in Section (E) of Rule 1.15, unless the Board grants an exception;

e. An attestation of having professional liability insurance pursuant to section 12-255-113, C.R.S., and Rule 1.14;

f. Submit verification of inclusion on the Advanced Practice Registry pursuant to section 12-255-111, C.R.S.;

g. An attestation stating the Applicant has completed at least three years of Clinical Work Experience, as defined in Section (C)(8) of Rule 1.15;

h. An attestation stating that the Applicant's Mentor(s) meets requirements in Section (C)(11) or (C)(12) of Rule 1.15; and

i. Has an active professional nurse and APRN license that is in good standing and without disciplinary sanctions or significant adverse prescribing as determined by the Board.

2. Requirements for Original Full Prescriptive Authority.

a. Submit an application in a manner approved by the Board which includes:

(1) An attestation of successful completion of 750 hours of experience in a Mentorship.

b. The application for Full Prescriptive Authority must be submitted within three years of being granted Provisional Prescriptive Authority or if applying under Section (J)(2) of Rule 1.15 within one year of being granted Provisional Prescriptive Authority.

~~(1) If the RXN-P cannot meet the requirements in Section (F)(2)(a) of Rule 1.15, the RXN-P may petition the Board for an exception to demonstrate competence. Exceptions will be reviewed on a case-by-case basis. The decision to grant or deny such exception will be at the sole discretion of the Board.~~

3. Any application not completed within one year of the date of receipt of the application expires and will be purged.

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J. REQUIREMENTS FOR AN ADVANCED PRACTICE REGISTERED NURSE WITH PRESCRIPTIVE AUTHORITY IN ANOTHER STATE TO OBTAIN FULL PRESCRIPTIVE AUTHORITY IN COLORADO

1. Applicants must submit an application in a manner approved by the Board.

2. Applicants must be actively listed on the Advanced Practice Registry in the Role and, where applicable, the Population Focus, or equivalent as determined by the Board, for which the Applicant seeks Prescriptive Authority.

3. Applicants must have Active Prescriptive Authority in another state or U.S. jurisdiction in the Role and, where applicable, the Population Focus, or equivalent as determined by the Board, for which the Applicant seeks Prescriptive Authority.

a. Prescriptive Authority credentials issued by the United States Military are deemed to be substantially equivalent to prescriptive authority in another state or jurisdiction.

4. Requirements to apply for Full Prescriptive Authority for applicants with prescriptive authority and at least 750 hours of documented experience prescribing medications in another state, U.S. jurisdiction, or U.S. military:

a. Verification of prescriptive authority and 750 hours of documented experience prescribing medications, in another state, jurisdiction, or the U.S. military, in a manner approved by the Board. The acceptance of the documented hours of experience prescribing medications is at the sole discretion of the Board; and

b. Attestation stating applicant has completed at least three (3) years of Clinical Work Experience as defined in section (C)(7) of this Rule.

5. Requirements to apply for Full Prescriptive Authority for applicants with prescriptive authority and less than 750 hours of documented experience prescribing medications in another state, jurisdiction, or the U.S. military:

a. Active Provisional Prescriptive Authority granted pursuant to Section (F)(1) of Rule 1.15.

b. Completion of the additional hours, up to at least 750 hours, of experience prescribing medications within a Mentorship as set forth in Section (G) of Rule 1.15.

c. Submission of an application for Full Prescriptive Authority within three years of obtaining Provisional Prescriptive Authority, providing evidence of the following:

(1) Verification of prescriptive authority and hours of documented experience prescribing medications, in another state, in a manner approved by the Board. The acceptance of the documented hours of experience prescribing medication is at the sole discretion of the Board; and

(2) Additional mentored prescribing hours, up to at least 750 hours, completed within a Mentorship in Colorado.

d. Upon petition by the applicant, and with due consideration of the need to protect the public, the Board may accept a substantially equivalent method of establishing the requirements set forth in this Section (J)(5) of Rule 1.15. It is anticipated that such alternative will rarely be used. The decision to accept such substantially equivalent method of establishing the requirements is at the sole discretion of the Board.

K. REINSTATEMENT OF PRESCRIPTIVE AUTHORITY

1. To apply for reinstatement of prescriptive authority the APRN must possess an active, Colorado or multi-state compact professional nurse license that is in good standing and without Disciplinary Sanction as defined in Section (C)(9), and have reinstated the Role and, if applicable, Population Focus on the APR for which the APRN wishes to reinstate Full Prescriptive Authority.

2. An APRN applying to reinstate Full Prescriptive Authority must complete the reinstatement application for Full Prescriptive Authority and meet the requirements as set forth in Sections (D), (E), (F) and (H) of Rule 1.15.

   a. If an APRN fails to meet the requirements as set forth in section 12-255-112, C.R.S., and the Provisional Prescriptive Authority expires by operation of law, the APRN must complete a new application for Provisional Prescriptive Authority and meet the current requirements as set forth in Sections (D), (E), and (F) of Rule 1.15.

3. An APRN whose Provisional or Full Prescriptive Authority is withdrawn as the result of a disciplinary action under section 12-255-119, C.R.S., as set forth in Section (M)(2)(a) of Rule 1.15, shall not be eligible to apply for Prescriptive Authority for two years after the date of the withdrawal of such Prescriptive Authority. After the end of the two year waiting period an APRN must complete a new application and meet all requirements as set forth in Rule 1.15.

4. Every advanced practice registered nurse with prescriptive authority applying for reinstatement, except those who qualify for an exemption, must fulfill the substance use prevention training requirements set forth in Section (C) of Rule 1.235.

L. RENEWAL OF PRESCRIPTIVE AUTHORITY

1. Renewal of Provisional or Full Prescriptive Authority is required at the time of the RXN's professional nurse license renewal in Colorado. Multi-state compact licensed professional nurses granted Provisional or Full Prescriptive Authority by the Board shall be required to renew the Provisional or Full Prescriptive Authority every two years and shall be issued a specific expiration date for the Prescriptive Authority.

2. Every advanced practice registered nurse with prescriptive authority applying for renewal, except those who qualify for an exemption, must fulfill the substance use prevention training requirements set forth in Section (C) of Rule 1.235.

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1.16 DUTY TO REPORT REQUIREMENTS

A. **BASIS:** The authority for the promulgation of these rules and regulations by the State Board of Nursing is set forth in sections 12-20-204(1), 12-255-107(1)(j), 12-255-120(1)(b) and (z), 12-255-209(1)(b) and (u), and 12-295-111(1)(b), C.R.S.

B. **PURPOSE:** The purpose of these rules and regulations is to set forth the requirements and procedures of reporting convictions for Nurse Aides, Psychiatric Technicians, Practical Nurses, Professional Nurses, and Certified Midwives in the State of Colorado.

C. **REPORTING CONVICTIONS**

1. Any individual licensed or certified pursuant to sections 12-255-104(3.2), 12-255-104(3.3), 12-295-103(4), 12-255-104(7) and (11), C.R.S., shall inform the Board, in a manner set forth by the Board, within thirty days of the following occurrences in the case of a licensed individual, and within forty-five days of the following occurrences in the case of a certified individual:

a. The conviction of the certificate holder or licensee of a crime as defined in Title 18 of the Colorado Revised Statutes.

b. For purposes of these Rules: a conviction includes a plea of guilty or a plea of nolo contendere (no contest), accepted by the court, or the imposition of a deferred judgment/sentence.

2. The notice to the Board shall include the following information:

a. The Court;

b. The Jurisdiction;

c. The case name;

d. The case number:

e. A description of the matter or a copy of the indictment of charges; and

f. Terms of sentence given upon conviction.

3. The Board may initiate a complaint pursuant to sections 12-255-119 and 12-255-212, C.R.S.

4. This Rule applies to any conviction or plea as described in Section (C)(1) of Rule 1.16 that occurred on or after October 1, 2008.

D. **REPORTING JUDGMENTS, SETTLEMENTS, ADVERSE ACTIONS, AND SURRENDERS**

1. Any individual licensed pursuant to sections 12-295-103(4), 12-255-104(3.2), (3.3), (7) and (11), C.R.S., shall report to the Board in writing, in a manner set forth by the Board, within thirty days of the following occurrences:

a. A final judgment or settlement in a court of competent jurisdiction regarding allegations of malpractice of nursing

b. An adverse action taken against the individual by another licensing agency in another jurisdiction, a peer review body, a health care institution, a professional or nursing or Certified Midwife society or association, a governmental agency, a~~n~~ law enforcement agency, or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in Article 255, C.R.S.

c. The surrender of a license or other authorization to practice nursing or as a Certified Midwife in another jurisdiction or the surrender of membership ~~o~~in any nursing staff or professional nursing or midwifery association or society, which surrender occurs while the individual is under investigation by any of such organizations or authorities for acts or conduct similar to acts or conduct that would constitute grounds for action as described in Article 255, C.R.S.

2. The reports described in section D(1) of Rule 1.16 shall include the following information:

a. If the reportable event concerns a judgment or settle regarding allegations of malpractice, the court, the jurisdiction, the case name, the case number, a description of the matter, or a copy of the complaint, and a copy of the verdict, the court decision, or, if settled, the court's order of dismissal.

b. If the reportable event is adverse action taken by an entity reference above, the name of the entity, its jurisdiction, the case name, the docket or proceeding or case number by which it is designated, a description of the matter, or a copy of the document initiating the action or proceeding and, if the matter has been adjudicated or settled, a copy of the consent decree, order, or decision.

c. If the reportable event is the surrender of a license or other authorization to practice, a copy of all relevant documents disclosing the reason for and circumstances of the surrender

E. **Failure to comply with this rule may constitute grounds for disciplinary action.**

Adopted: July 30, 2008
Effective: October 1, 2008
Revised: October 24, 2012
Effective: December 15, 2012
Revised: October 27, 2021
Effective: December 30, 2021
Revised: January 24, 2024
Effective: March 16, 2024

…

1.18 RULES AND REGULATIONS FOR THE CERTIFIED NURSE AIDE IN RELATION TO MEDICATION AIDE AUTHORITY

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G. MEDICATION AIDE AUTHORITY BY ENDORSEMENT

1. Pursuant to the Occupational Credential Portability Program under section 12-20-202(3), C.R.S., an applicant is entitled to medication authority by endorsement in Colorado if the applicant is currently certified as a nurse aide with medication aide authority in good standing in another state or US territory or through the federal government, or holds a military occupational specialty, as defined in section 24-4-201, C.R.S., and has submitted satisfactory proof under penalty of perjury that:

   a. The applicant:

      (1) Has substantially equivalent education, experience, or credentials that are described in Section (F)(1)(a), (F)(1)(f) ~~and~~, Section (F)(1)(h), and (F)(1)(g) of these rules; and~~or~~

      (2) Has held for at least one year a current and valid medication aide authority in a jurisdiction with a scope of practice that is substantially similar to the scope of practice for certified nurse aides with medication aide authority as specified in Article 255 of Title 12, C.R.S., and these rules.

b. The applicant has not committed an act that would be grounds for disciplinary action under Article 255 of Title 12, C.R.S.

c. The applicant has submitted an application on the current Board approved form and has paid the application fee.

d. The Board may deny medication aide authority if:

(1) The Board demonstrates by a preponderance of evidence, after notice and opportunity for a hearing, that the applicant:

(a) Lacks the requisite substantially equivalent education, experience, or credentials for certification; or

(b) Has committed an act that would be grounds for disciplinary action under Article 255 of Title 12, C.R.S.

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1.20 1.20 RULES AND REGULATIONS REGARDING THE DESIGNATION OF AUTHORIZED ENTITIES TO CONDUCT PROFESSIONAL REVIEW OF ADVANCED PRACTICE REGISTERED NURSES AND CERTIFIED MIDWIVES

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C. DESIGNATIONS: In order to be designated by the Nursing Board as an authorized entity entitled to establish professional review committees, an entity must:

1. Have in place written procedures that are in accordance with Colorado Revised Statutes Title 12, Article 30 and that have been approved by the authorized entity's governing board.

2. Have a governing board that registers with the Division of Professions and Occupations in accordance with section 12-30-206, C.R.S.

3. Report to the Nursing Board and the Division of Professions and Occupations in accordance with Colorado Revised Statutes Title 12, Article 30.

4. Provide an affidavit, upon request from the Board:

a. that the authorized entity's professional review committee has at least one Certified Midwife or one Advanced Practice Registered Nurse as a voting member with a scope of practice similar to that of the person who is the subject of a professional review; or

b. that the professional review committee has engaged an Advanced Practice Registered Nurse or a Certified Midwife, not previously involved in the review, to perform an independent review as appropriate with a scope of practice similar to that of the person being reviewed.

5. Be one of the following entities:

a. A society or association of Advanced Practice Registered Nurses or of Certified Midwives designated by the Nursing Board in accordance with and compliance with sections 12-30-204(3) and 12-30-204(5)(f), C.R.S. The Nursing Board designates societies or associations of Advanced Practice Registered Nurses and of Certified Midwives that establish:

(1) Members are licensed to practice under Colorado Revised Statutes Title 12, Article 255 and granted a license as a Certified Midwife or authority as Advanced Practice Registered Nurses as appropriate and residing in the state of Colorado;

(2) Members specialize in a distinct and recognizable discipline of midwifery or of nursing in a specified nursing role and population focus. Such specialization may be shown by establishing that:

(a) Such group is recognized by the national certifying body of said population and focus; or

(b) The specialty society or association must provide the Nursing Board with a description of that society's or association's requirements for membership at the time it seeks designation. The society or association must show that its membership is open to all practitioners in the state of Colorado, and that such individual whose services are being reviewed is a member of the society or association.

b. A corporation authorized to insure Certified Midwives or Advanced Practice Registered Nurses designated by the Nursing Board in accordance with section 12-30-204(5)(h), C.R.S. The Nursing Board designates those corporations that are a professional liability insurer authorized to do business in Colorado under the provisions of section 10-3-105, C.R.S.

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1.21 RULES AND REGULATIONS REGARDING THE REPORTING REQUIREMENTS OF ~~SECTIONS 12-30-204(8)(f) AND~~ SECTION 12-30-206(2)(b)(II), C.R.S., AND OF THE FEDERAL HEALTH CARE QUALITY IMPROVEMENT ACT OF 1986, AS AMENDED

A. **BASIS:** The authority for promulgation of rules and regulations by the State Board of Nursing ("Nursing Board") is set forth in sections 24-4-103, 12-30-201(1)(a), 12-30-204(5), 12-30- 203(1)(b), 12-30-203(3)(a), and 12-30-208(2), C.R.S.

B. **PURPOSE:** These rules have been adopted by the Nursing Board to clarify reporting requirements so that the Nursing Board is able to effectively and efficiently utilize and allow professional review committees and governing boards, in order to meet the Nursing Board's responsibilities under Colorado Revised Statutes Title 12, Article 30. These Rules will enable the Nursing Board to more effectively regulate the conduct of the practice of nursing or midwifery of those individuals licensed under Colorado Revised Statutes Title 12, Article 255 and granted authority as advanced practice registered nurses or Certified Midwives by encouraging prompt, accurate, and complete reporting by governing boards of authorized entities ("Authorized Entities") and their professional review committees. Reporting to the Nursing Board is required:

1. As obligated under:

a. The federal "Health Care Quality Improvement Act of 1986", as amended as required by section 12-30-208(2), C.R.S.; and

b. The Professional Review of Health Care Providers as required by ~~sections 12-30-204(8)(f) and~~ 12-30-204(10), C.R.S.; and

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1.23 RULES AND REGULATIONS REGARDING CONTINUING EDUCATION AND/OR TRAINING

A. BASIS: These Rules and Regulations are adopted by the State Board of Nursing ("Board") pursuant to sections 12-30-114 and 12-255-129, C.R.S.

B. PURPOSE: The purpose of these rules and regulations is to require advanced practice registered nurses with prescriptive authority or Certified Midwives with prescriptive authority to complete training to demonstrate competency in various aspects of substance use prevention.

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1.28 RULES AND REGULATIONS FOR LICENSURE OF CERTIFIED MIDWIVES

A. BASIS: The authority for the promulgation of these rules and regulations by the State Board of Nursing is set forth in sections 12-20-202(3), 12-20-204(1), 12-255-107(1)(b), (d), and (j), 12-255-109, 12-255-110, 12-255-11.5, 12-255-114, 12-255-115, 12-255-121, and 12-255-122, C.R.S.

…

F. LICENSURE BY ENDORSMENT

1. Pursuant to the Occupational Credential Portability Program under section 12-20-202(3), C.R.S., an Applicant is entitled to Licensure as a Certified Midwife by endorsement in Colorado if the Applicant has met the requirements of Sections (D)(1), (D)(2), (E)-(12) of Rule 1.28 and is currently licensed in Good Standing in another state or U.S. territory.

   a. The Applicant:

      (1) Has substantially equivalent experience or credentials that are required by Article 255 of Title 12, C.R.S.; or

      (2) Has held for at least one year a current and valid license as a Certified Midwife in a jurisdiction with a scope of practice that is substantially similar to the scope of practice for certified midwives specified in Article 255 of Title 12, C.R.S.

2. The Board may deny such license if:

   a. The Board demonstrates by a preponderance of evidence, after notice and opportunity for a hearing, that the Applicant:

      (1) Lacks the requisite substantially equivalent education, experience, or credentials for a license; or

(2) Has committed an act that would be grounds for disciplinary action under Article 255 of Title 12, C.R.S.

G. REINSTATEMENT AND REACTIVATION

1. A licensee who does not renew his or her license within the 60 day grace period, as set forth in section 12-20-202 (1) (e) C.R.S., will have an expired license and will be ineligible to practice until such license is reinstated.

2. A Certified Midwife may elect inactive status in accordance with section 12-255-122, C.R.S. A licensee may not apply for inactive status to avoid disciplinary action. Upon inactivation any and all authorities attached to the license will be cancelled.

3. The licensee must apply for reinstatement or reactivation in a manner approved by the Board.

4. The licensee applying for reinstatement or reactivation must pay the application fee.

5. A licensee who has practiced on an expired or inactive license may be subject to disciplinary action.

6. A licensee whose Certified Midwife license has been expired or inactive must comply with ~~s~~Section (D)~~.~~(3)~~.~~ and (D)~~.~~(4)~~.~~ of this Rule 1.28.

7. The application for reinstatement or reactivation shall be denied if the Board determines:

   a. The Certified Midwife reinstatement or reactivation applicant has not actively practiced as a Certified Midwife in another state for the two-year period immediately preceding application, or

   b. The reinstatement or reactivation applicant does not provide evidence of an active certificate from the American Midwifery Certification Board (AMCB) or its successor entity.

…

I. REQUIREMENTS FOR PROFESSIONAL LIABILITY INSURANCE

1. Pursuant to the requirements of section 12-255-113(1), C.R.S., it is unlawful for any Certified Midwife to be engaged in an Independent Practice of midwifery to practice within the state of Colorado unless the Certified Midwife purchases and maintains or is covered by professional liability insurance in an amount not less than five hundred thousand dollars per claim with an aggregate liability for all claims during the year of one million five hundred thousand dollars.

2. Pursuant to these rules, a Certified Midwife whose Independent Practice falls entirely within one or more of the following categories is exempt from the professional liability insurance requirements set forth in section 12-255-113, C.R.S.:

   a. A federal civilian or military Certified Midwife whose practice is limited solely to that required by his or her federal/military agency.

b. A Certified Midwife who is covered by individual professional liability coverage (or an alternative which complies with section 12-255-113(1), C.R.S.) or liability insurance that is maintained by an employer/contracting agency in the amounts set forth in section 12-255-113(1), C.R.S.

c. A Certified Midwife who provides uncompensated health care; or

d. A Certified Midwife who practices as a public employee under the "Colorado Governmental Immunity Act, sections 24-10- 101 to 118, C.R.S."

3. In order to establish eligibility for an exemption from the statutory financial responsibility requirements, a Certified Midwife must provide such information as may be requested by the Board.

4. Failure to maintain professional liability insurance pursuant to section 12-255-113, C.R.S. may be grounds for discipline pursuant to section 12-255-120(1)(aa), C.R.S.

…

J. GENERAL GUIDELINES

1. For any~~A~~ licensee who fails to maintain certification, or who practices on an expired or inactive license may be subject to disciplinary action.

2. A licensee who fails to answer application questions accurately, the failure constitutes grounds for discipline under 12-255-120 (1)(v), C.R.S..

3. Any application not completed within one year of the date of receipt of the original application expires and will be purged.

K. CERTIFIED MIDWIFE SCOPE OF PRACTICE

1. A Certified Midwife scope of practice is set by the American College of Nurse- Midwives (ACNM) as set forth in the ACNM Core Competencies for Basic Midwifery Practice (effective March 20, 2020) and incorporated by reference. The standards and regulations incorporated by reference may be examined at the State Board of Nursing, 1560 Broadway, Suite 1350, Denver, Colorado 80202, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at cost upon request. The Program Director or the Program Director's designee will provide information regarding how the incorporated standards and regulations may be examined at any state public depository library. The standards and regulations are also available online from the agency, organization or association originally issuing the code, standard, guideline or rules as follows: ACNM-Core Competencies for Basic Midwifery Practice (effective March 20, 2020) at-https://midwife.org/standard-setting-documents/. ~~for midwifery scope of practice https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000266/Def Definition%20Midwifery%20Scope%20of%20Practice_2021.pdf (effective 2021); and Core Competencies for Basic Midwifery Practice (2020) https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000050/ACNMCoreCompetenciesMar2020_final.pdf. (effective 2020)~~ This rule does not include any later amendments or editions of the code, standard, guideline, or rule.

2. Certified Midwifery is not the practice of nursing.

…

1.29 RULES AND REGULATIONS FOR PRESCRIPTIVE AUTHORITY FOR CERTIFIED MIDWIVES

A. **BASIS:** The authority for the promulgation of these rules and regulations by the State Board of Nursing ("Board") is set forth in sections 12-20-204(1), 12-255-107(1)(j), and 12-255-112, C.R.S., of the Colorado Revised Statutes (C.R.S.).

B. **PURPOSE:** Section 12-255-112(4)(a.5), C.R.S. sets forth the legal requirements for a Certified Midwife to obtain prescriptive authority in Colorado. First, the Certified Midwife must obtain Provisional Prescriptive Authority. Generally, those requirements are:

1. Midwife certification in good standing from the American Midwifery Certification Board or its successor entity; and

2. Professional liability insurance coverage of all acts within the scope of practice of a Certified Midwife in the amount of five hundred thousand dollars per claim with an annual aggregate liability for all claims of one million five hundred thousand dollars; and

3. Complete at least three years of combined clinical work as a Certified Midwife.

Upon receiving Provisional Prescriptive Authority, the Certified Midwife is legally authorized to prescribe medications and controlled substances schedules II-V to patients appropriate to the Certified Midwife's Role. Within three years of receiving Provisional Prescriptive Authority the Certified Midwife with Provisional Prescriptive Authority (hereinafter referred to as CMRX-P) must:

4~~3~~. Complete a 750 hour Mentorship with a Physician or an Advanced Practice Registered Nurse (APRN) with Full Prescriptive Authority or with a Certified Midwife with Full Prescriptive Authority and experience in prescribing medications. The Physician or APRN or Certified Midwife shall have education, training, experience and an active practice that corresponds with the Role of the CMRX-P.

If the CMRX-P does not complete these additional requirements within three years of receiving Provisional Prescriptive Authority such authority will expire for failure to comply with statutory requirements.

~~4. Complete at least three years of combined clinical work experience as a Certified Midwife.~~

C. **DEFINITIONS:**

1. Advanced Practice Registered Nurse (APRN): A professional nurse who meets the requirements of section 12-255-111, C.R.S., who obtained specialized education or training and is included on the Advanced Practice Registry.

2. Applicant: A Certified Midwife who is licensed seeking Provisional Prescriptive Authority in the Role specified by the American Midwifery Certification Board or its successor entity.

3. Board: The State Board of Nursing.

4. Certified Midwife means an individual who meets the qualifications for practice as a Certified Midwife as specified by the American Midwifery Certification Board or its successor entity and who is currently licensed by the Board.

5. Clinical Work Experience: Any relevant experience accumulated as a Certified Midwife, including paid or unpaid work experience, volunteer work, or student work. The gratuitous care of friends or members of the family is not included in Clinical Work Experience.

6. DEA: Drug Enforcement Administration.

7. Disciplinary Sanction: Any current restriction, limitation, encumbrance or condition on the Physician Mentor's medical license or on the RXN Mentor's nursing license or on the CMRX Mentor's midwifery license or on the alternative to discipline program authorized by the Mentor's licensing board.

8. Full Prescriptive Authority: The authority granted to the CMRX to prescribe medications upon completion of the requirements set forth in Section (E)(2) of this Rule.

9. Mentor: Physician Mentor: A person who holds a license to practice medicine in Colorado or a physician who is otherwise exempted from licensure pursuant to section 12-240-107(3)(j), C.R.S. The physician's license must be in good standing without Disciplinary Sanction as defined in Section (C)(7) of this Rule ~~1.36~~. The Physician Mentor must be actively practicing medicine in the State of Colorado and shall have education, training, experience and a practice that corresponds to the Role of the CMRX-P. The Physician Mentor must also have an unrestricted DEA registration.

10. Mentor: RXN Mentor: A professional nurse who has met the qualifications for an APRN, is included on Colorado's advanced practice registry, has Full Prescriptive Authority in Colorado, and has experience prescribing medications with full prescriptive authority preceding the beginning of the Mentorship. The RXN Mentor's nursing license must be without Disciplinary Sanction as defined in Section (C)(7) of this Rule ~~1.36~~. The RXN Mentor shall have an active practice in Colorado and shall have education, training, experience and a practice that corresponds to the Role of the CMRX-P. The RXN Mentor must have an unrestricted DEA registration.

11. Mentor: CMRX Mentor. A Certified Midwife who is licensed and has Full Prescriptive Authority in Colorado and has experience prescribing medications with full prescriptive authority preceding the beginning of the Mentorship. The CMRX Mentor's license must be without Disciplinary Sanction as defined in Section (C) (7) of this Rule ~~1.29~~. The LCMRX Mentor shall have an active practice in Colorado and shall have education, training, experience and a practice that corresponds to the Role of the CMRX-P.The CMRX Mentor must have an unrestricted DEA registration.

12. Mentorship: A formal, Mutually Structured relationship between the CMRX-P as defined in Section (C)(1~~8~~3) of this Rule ~~1.29~~, and the Physician Mentor or RXN Mentor or CMRX Mentor to further the CMRX-P's knowledge, skill, and experience in prescribing.

13. Mentorship Agreement: A mutually structured agreement documented in writing and signed by the CMRX-P and the Mentor(s), which outlines a process and frequency for ongoing interaction and discussion of prescriptive practice throughout the Mentorship between the Mentor(s) and the CMRX-P to assure safe prescribing practice.

14. Mutually Structured: Developed, implemented, and agree upon by the CMRX-P and the Mentor(s).

15. Provisional Prescriptive Authority: The authority granted to the Applicant to prescribe medications within the Role and, if applicable, Population Focus of the Certified Midwife pursuant to Section (F)(1) and Section (J)(2) of this Rule ~~1.29.~~

16. Role: The advanced practice area for which the Applicant has been prepared including certified midwife (CM), nurse practitioner (NP), certified nurse midwife (CNM), certified registered nurse anesthetist (CRNA), and/or clinical nurse specialist (CNS).

17. CMRX: A Certified Midwife who is licensed and has been granted Full Prescriptive Authority by the Board.

18. CMRX Provisional (CMRX-P): A Certified Midwife who is licensed and who has been granted Provisional Prescriptive Authority by the Board.

19. Synchronous Communication: Real-time communication; existing or happening at the same time; occurring at the same moment of time; simultaneous. Synchronous Communication will be conducted in a secure manner to safeguard protected information. Synchronous Communication may include the use of electronic communication tools such as audio, web or video conferencing. Synchronous Communication does not include email communications.

20. Unencumbered: No current restriction to practice in the state of Colorado.

D. NATIONAL CERTIFICATION REQUIREMENT

1. Pursuant to section 12-255-112(4)(a.5)(I~~V~~), C.R.S., a Certified Midwife applying for prescriptive authority must obtain and maintain national certification from The American Midwifery Certification Board or its successor entity.

E. REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY

1. Requirements for Provisional Prescriptive Authority.

   a. Must apply in a manner approved by the Board;

   b. Pay application fee;

   c. Submit verification of National Certification as described in Section (D) of this Rule;

   d. An attestation of having professional liability insurance pursuant to section 12-255-113, C.R.S.

   e. An attestation stating the Applicant will register with the prescription drug monitoring program as required by section 12-280-403 (2)(a).

   f. An attestation stating that the Applicant's Mentor(s) meets requirements in Section (C)(9) or (C)(10) or (C)(11) of this Rule; and

g. Has an active Certified Midwife license that is in good standing and without disciplinary sanctions ~~or significant adverse prescribing as determined by the Board~~.

2. Requirements for Original Full Prescriptive Authority

a. Submit an application in a manner approved by the Board which includes:

(1) An attestation of successful completion of 750 hours of experience in a Mentorship

b. The application for Full Prescriptive Authority must be submitted within three years of being granted Provisional Prescriptive Authority.

~~(1) If the CMRX-P cannot meet the requirements in Section (E)(2)(a) of this Rule, the CMRX-P may petition the Board for an exception to demonstrate competence. Exceptions will be reviewed on a case-bycase basis. The decision to grant or deny such exception will be at the sole discretion of the Board.~~

(1~~2~~) An attestation stating the applicant has completed at least three years of Clinical Work Experience, as defined in section (C)(5) of this Rule.

3. Any application not completed within one year of the date of receipt of the application expires and will be purged.

F. MENTORSHIP REQUIREMENTS

1. To obtain Full Prescriptive Authority, the CMRX-P must complete 750 hours of ~~documented~~ experience in a Mentorship. The Mentorship shall be conducted with a Physician Mentor or RXN Mentor or CMRX Mentor [hereinafter referred to as Mentor(s)] as defined in Sections (C)(9), (C)(10) and (C)(11) of this Rule, respectively. The Mentorship must be completed within three years after Provisional Prescriptive Authority is granted.

a. ~~For the certified midwife (CM), the mentorship hours must cover the range of practice for the specific role.~~ To obtain Full Prescriptive Authority, the CMRX-P must submit to the Board verification of 750 hours of mentored experience on prescribing of drugs, devices, and other treatments based on clinical considerations, patient needs, and reasonable expectations of effectiveness for the individual patient and specific CMRX-P's role. All experiences of prescribing of drugs, devices, and other treatments must correspond with the CMRX-P's Role. As part of the verification, the Mentor(s) shall attest that the CMRX-P has completed their mentorship in prescribing in multiple pharmacological categories that are typically utilized in the Role for which the CMRX-P seeks Full Prescriptive Authority.

b. Licensure occurs at the level of the Role. CMs may specialize but cannot be licensed soley within a specialty area. Experience gained while practicing within a particular specialty or specialties correspond and provide evidence of experience satisfactory to the Board of prescribing for patients under the CMRX-P's Role, regardless of specialty or specialties.

Prior to beginning beginning a mentorship for the purpose of obtaining full prescriptive authority, the CMRX-P shall submit to the Board, in a form and manner approved by the Board, documentation sufficient to allow the Board to determine, whether the proposed mentorship is sufficiently structured to assure the CMRX-P, upon successful completion of the mentorship, will have gained sufficient experience to meet the requirements for Full Prescriptive Authority within their Role. The documentation submitted to the Board for consideration pursuant to this subsection shall, at minimum, clearly describe the Role of the mentorship and how the CMRX-P's practice in the mentorship will prepare the CMRX-P for prescribing to patients within the stated Role.

cb. This Section (F) does not apply to the CM with prescriptive authority and at least 750 hours of prescribing experience in another state, US jurisdiction or United States military applying for Full Prescriptive Authority as set forth in Section (H) (2) of this Rule.

2. The Mentorship Agreement shall contain the following elements:

   a. Is documented in writing and signed by the CMRX-P and the Mentor(s).

   b. Outlines the prescribing practice within the Role requested within the mentorship of the CMRX-P. a process, documentation, and frequency for ongoing Synchronous Communication, interaction and discussion of prescriptive practice throughout the Mentorship between the Mentor(s) and the CMRX-P to provide for safe prescribing practice.

3. The Mentorship Agreement shall be retained for a period of three years by the CMRX and the Mentor(s) following completion of the Mentorship and shall be available to the Board upon request.

4. The CMRX-P and the Mentor(s) shall provide documentation of the successful completion of the Mentorship as requested by the CMRX-P to complete an application to obtain Full Prescriptive Authority. The Mentor(s) shall not, without good cause, withhold his/her signature or otherwise fail to attest to the completion of the Mentorship. Upon submission of the application, the CMRX- P may be granted Full Prescriptive Authority.

5. If a circumstance such as retirement, illness, relocation or other event precludes any Mentor from continuing in the Mentorship, the CMRX-P shall secure a replacement Mentor and enter into a new, Mutually Structured Mentorship. Any hours accrued during the period of time in which the CMRX-P does not have a Mentor will not be credited toward completion of the 750 hour Mentorship.

6. The Mentor(s) shall not require payment or employment as a condition of entering into the mentor relationship. The Mentorship relationship should not be financially burdensome to either party. In recognition of the Mentor(s) time and expertise, reasonable expenses may be paid. Compensation by the CMRX-P to the Mentor(s) should be agreed upon as part of the Mutually Structured Mentorship, shall comply with standards of fair market value, and shall not be onerous or otherwise present a barrier to completion of the Mentorship.

G. OTHER REQUIREMENTS

1. The CMRX-P or CMRX must hold a valid DEA registration to prescribe controlled substances, Schedule II through V, and must adhere to all DEA requirements.

2. Pursuant to section 12-255-112(7)(c)(II), C.R.S., nothing in this Rule shall be construed to require a Certified Midwife to obtain prescriptive authority to deliver anesthesia care.

3. Pursuant to section 12-255-112(9), C.R.S., nothing in this Rule shall be construed to permit dispensing or distribution, as defined in section 12-280-103(14) and (15), C.R.S., by the CMRX, except for receiving and distributing a therapeutic regimen of prepackaged drugs prepared by a licensed pharmacist or drug manufacturer registered with the FDA and appropriately labeled, free samples supplied by a drug manufacturer, and distributing drugs for administration and use by other individuals as authorized by law.

H. REQUIREMENTS FOR A CERTIFIED MIDWIFE WITH PRESCRIPTIVE AUTHORITY IN ANOTHER STATE TO OBTAIN FULL PRESCRIPTIVE AUTHORITY IN COLORADO

1. Applicants must submit an application in a manner approved by the Board.

2. Applicants must be actively licensed as a Certified Midwife in the Role for which the Applicant seeks Prescriptive Authority.

3. Applicants must have Active Prescriptive Authority in another state or U.S. jurisdiction in the Role for which the Applicant seeks Prescriptive Authority.

    a. Prescriptive Authority credentials issued by the United States Military are deemed to be substantially equivalent to prescriptive authority in another state or jurisdiction.

4. Requirements to apply for Full Prescriptive Authority for applicants with prescriptive authority and at least 750 hours of documented experience prescribing medications in another state, U.S. jurisdiction, or U.S. military:

    a. Verification of prescriptive authority and 750 hours of documented experience prescribing medications, in another state, jurisdiction, or the U.S. military, in a manner approved by the Board. The acceptance of the documented hours of experience prescribing medications is at the sole discretion of the Board; and

    b. Attestation stating applicant has completed at least three (3) years of Clinical Work Experience as defined in section (C) (5) of this Rule.

5. Requirements to apply for Full Prescriptive Authority for applicants with prescriptive authority and less than 750 hours of documented experience prescribing medications in another state, jurisdiction, or the U.S. military:

    a. Active Provisional Prescriptive Authority granted pursuant to Section (E)(1) of this Rule.

    b. Completion of the additional hours, up to at least 750 hours, of experience prescribing medications within a Mentorship as set forth in Section (F) of this Rule.

    c. Submission of an application for Full Prescriptive Authority within three years of obtaining Provisional Prescriptive Authority, providing evidence of the following:

(1) Verification of prescriptive authority and hours of documented experience prescribing medications, in another state, in a manner approved by the Board. The acceptance of the documented hours of experience prescribing medication is at the sole discretion of the Board; and

(2) Additional mentored prescribing hours, up to at least 750 hours, completed within a Mentorship in Colorado.

d. Upon petition by the applicant, and with due consideration of the need to protect the public, the Board may accept a substantially equivalent method of establishing the requirements set forth in this Section (H)(5) of this Rule. It is anticipated that such alternative will rarely be used. The decision to accept such substantially equivalent method of establishing the requirements is at the sole discretion of the Board.

I. REINSTATEMENT OF PRESCRIPTIVE AUTHORITY

1. To apply for reinstatement of prescriptive authority the Applicant must possess an active, Colorado Certified Midwife license that is in good standing and without Disciplinary Sanction as defined in Section (C)(7) of this Rule.

2. A Certified Midwife applying to reinstate Full Prescriptive Authority must complete the reinstatement application for Full Prescriptive Authority and meet the requirements as set forth in Sections (D), (E), (F) and (G) of this Rule.

a. If a Certified Midwife fails to meet the requirements as set forth in section 12-255-112, C.R.S., and the Provisional Prescriptive Authority expires by operation of law, the Certified Midwife must complete a new application for Provisional Prescriptive Authority and meet the current requirements as set forth in Sections (D), (E), and (F) of this Rule.

3. A Certified Midwife whose Provisional or Full Prescriptive Authority is withdrawn as the result of a disciplinary action under section 12-255-119, C.R.S., as set forth in Section (K)(2)(a) of this Rule, shall not be eligible to apply for Prescriptive Authority for two years after the date of the withdrawal of such Prescriptive Authority. After the end of the two year waiting period a Certified Midwife must complete a new application and meet all requirements as set forth in this Rule.

4. Every Certified Midwife with prescriptive authority applying for reinstatement, except those who qualify for an exemption, must fulfill the substance use prevention training requirements set forth in Section (C) of Rule 1.2~~3~~5.

J. RENEWAL OF PRESCRIPTIVE AUTHORITY

1. Renewal of Provisional or Full Prescriptive Authority is required at the time of the CMRX's Certified Midwife license renewal in Colorado. Certified Midwives granted Provisional or Full Prescriptive Authority by the Board shall be required to renew the Provisional or Full Prescriptive Authority every two years and shall be issued a specific expiration date for the Prescriptive Authority.

2. Every Certified Midwife with prescriptive authority applying for renewal, except those who qualify for an exemption, must fulfill the substance use prevention training requirements set forth in Section (C) of Rule 1.2~~3~~5.

…

Adopted: April 28, 2010
Effective: June 30, 2010
Revised: April 22, 2014
Effective: June 14, 2014
Revised: July 21, 2015
Effective: September 14, 2015
Revised: April 26, 2017
Effective: 6/14/2017
Revised: October 27, 2021
Effective: December 30, 2021
Revised: January 24, 2024
Effective: March 16, 2024

…

1.16 DUTY TO REPORT REQUIREMENTS

…

B. **PURPOSE**: The purpose of these rules and regulations is to set forth the requirements and procedures of reporting convictions for Nurse Aides, Psychiatric Technicians, Practical Nurses, Professional Nurses, and Certified Midwives in the State of Colorado.

C. **REPORTING CONVICTIONS**

1. Any individual licensed or certified pursuant to sections 12-255-104(3.2), 12-255-104(3.3), 12-295-103(4), 12-255-104(7) and (11), C.R.S., shall inform the Board, in a manner set forth by the Board, within thirty days of the following occurrences in the case of a licensed individual, and within forty-five days of the following occurrences in the case of a certified individual:

…

D. **REPORTING JUDGMENTS, SETTLEMENTS, ADVERSE ACTIONS, AND SURRENDERS**

1. Any individual licensed pursuant to sections 12-295-103(4), 12-255-104(7) and (11), C.R.S., shall report to the Board in writing, in a manner set forth by the Board, within thirty days of the following occurrences:

…

b. An adverse action taken against the individual by another licensing agency in another jurisdiction, a peer review body, a health care institution, a professional or nursing or Certified Midwife society or association, a governmental agency, an law enforcement agency, or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in Article 255, C.R.S.

c. The surrender of a license or other authorization to practice nursing or as a Certified Midwife in another jurisdiction or the surrender of membership on any nursing staff or professional nursing association or society, which surrender occurs while the individual is under investigation by any of such organizations or authorities for acts or conduct similar to acts or conduct that would constitute grounds for action as described in Article 255, C.R.S.

…

Adopted: July 30, 2008
Effective: October 1, 2008
Revised: October 24, 2012
Effective: December 15, 2012
Revised: October 27, 2021
Effective: December 30, 2021
Revised: January 24, 2024
Effective: March 16, 2024

…

1.18 RULES AND REGULATIONS FOR THE CERTIFIED NURSE AIDE IN RELATION TO MEDICATION AIDE AUTHORITY

…

1.19 RULES AND REGULATIONS FOR MULTISTATE NURSE LICENSURE

…

1.20 RULES AND REGULATIONS REGARDING THE DESIGNATION OF AUTHORIZED ENTITIES TO CONDUCT PROFESSIONAL REVIEW OF ADVANCED PRACTICE REGISTERED NURSES AND CERTIFIED MIDWIVES

…

B. PURPOSE: These rules and regulations have been adopted by the Nursing Board to:

…

2. Establish procedures necessary to designate organizations that are authorized to insure persons licensed under Colorado Revised Statutes Title 12, Article 255 and granted authority as Certified Midwives or as advanced practice registered nurses (“Advanced Practice Registered Nurses”) as authorized entities that are able to establish professional review committees, as required by section 12-30-204(5)(h), C.R.S.

…

C. DESIGNATIONS: In order to be designated by the Nursing Board as an authorized entity entitled to establish professional review committees, an entity must:

…

4. Provide an affidavit, upon request from the Board:

   a. that the authorized entity's professional review committee has at least one Certified Midwife or one Advanced Practice Registered Nurse as a voting member with a scope of practice similar to that of the person who is the subject of a professional review; or

   b. that the professional review committee has engaged an Advanced Practice Registered Nurse or a Certified Midwife, not previously involved in the review, to perform an independent review as appropriate with a scope of practice similar to that of the person being reviewed.

5. Be one of the following entities:

   a. A society or association of Advanced Practice Registered Nurses or of Certified Midwives designated by the Nursing Board in accordance with and compliance with sections 12-30-204(3) and 12-30-204(5)(f), C.R.S. The Nursing Board designates societies or associations of Advanced Practice Registered Nurses and of Certified Midwives that establish:

      (1) Members are licensed to practice under Colorado Revised Statutes Title 12, Article 255 and granted a license as a Certified Midwife or authority as Advanced Practice Registered Nurses as appropriate and residing in the state of Colorado;

      (2) Members specialize in a distinct and recognizable discipline midwifery or of nursing in a specified nursing role and population focus. Such specialization may be shown by establishing that:

      …

   b. A corporation authorized to insure Certified Midwives or Advanced Practice Registered Nurses designated by the Nursing Board in accordance with section 12-30-204(5)(h), C.R.S. The Nursing Board designates those corporations that are a professional liability insurer authorized to do business in Colorado under the provisions of section 10-3-105, C.R.S.

   c. A health care or provider organization or professional society designated by the Nursing Board in accordance with section 12-30-204(6), C.R.S. The Nursing Board designates health care or provider organizations or professional societies with:

(1) A membership that includes Certified Midwives or Advanced Practice Registered Nurses; and

…

Adopted: April 23, 2013
Effective: June 14, 2013
Revised: January 24, 2024
Effective: March 16, 2024

1.21 RULES AND REGULATIONS REGARDING THE REPORTING REQUIREMENTS OF SECTIONS 12-30-204(8)(f) AND SECTION 12-30-206(2)(b)(II), C.R.S., AND OF THE FEDERAL HEALTH CARE QUALITY IMPROVEMENT ACT OF 1986, AS AMENDED

…

B. PURPOSE: These rules have been adopted by the Nursing Board to clarify reporting requirements so that the Nursing Board is able to effectively and efficiently utilize and allow professional review committees and governing boards, in order to meet the Nursing Board's responsibilities under Colorado Revised Statutes Title 12, Article 30. These Rules will enable the Nursing Board to more effectively regulate the conduct of the practice of nursing or midwifery of those individuals licensed under Colorado Revised Statutes Title 12, Article 255 and granted authority as advanced practice registered nurses or Certified Midwives by encouraging prompt, accurate, and complete reporting by governing boards of authorized entities ("Authorized Entities") and their professional review committees. Reporting to the Nursing Board is required:

…

Adopted: April 23, 2013
Effective: June 14, 2013
Revised: January 24, 2024
Effective: March 16, 2024

1.22 RULES AND REGULATIONS CONCERNING RESPONSIBILITIES OF ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY WHO ENGAGE IN DRUG THERAPY MANAGEMENT WITH A COLORADO LICENSED PHARMACIST

…

1.23 RULES AND REGULATIONS REGARDING CONTINUING EDUCATION AND/OR TRAINING

…

B. PURPOSE: The purpose of these rules and regulations is to require advanced practice registered nurse with prescriptive authority or Certified Midwives with prescriptive authority to complete training to demonstrate competency in various aspects of substance use prevention.

C. SUBSTANCE USE PREVENTION TRAINING FOR LICENSE RENEWAL, REACTIVATION, OR REINSTATEMENT

1. Pursuant to section 12-30-114, C.R.S., every advanced practice registered nurse with prescriptive authority or Certified Midwife with prescriptive authority, except those

exempted under Section (C)(3) of Rule 1.25, is required to complete at least two hours of training per renewal period in order to demonstrate competency regarding the topics/areas specified in section 12-30-114(1)(a), C.R.S.

…

3. The Board shall exempt an advanced practice registered nurse with prescriptive authority or Certified Midwife with prescriptive authority from the requirements of this section who qualifies for either exemption set forth in section 12-30-114(1)(b), C.R.S.

4. This section shall apply to any advanced nurse with prescriptive authority or Certified Midwife with prescriptive authority applying for reinstatement of prescriptive authority pursuant to Section (K) of Rule 1.15.

...

6. The Board may audit compliance with this section. Advanced practice registered nurses with prescriptive authority or Certified Midwives with prescriptive authority should be prepared to submit documentation of their compliance with this substance use training requirement or their qualification for an exemption, upon request by the Board.

…

1.24 REQUIRED DISCLOSURE TO PATIENTS – CONVICTION OF OR DISCIPLINE BASED ON SEXUAL MISCONDUCT (Section 12-30-115, C.R.S)

…

1.25 ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES BY ADVANCED PRACTICE NURSES AND CERTIFIED MIDWIVES WITH PRESCRIPTIVE AUTHORITY

…

C. On or after July 1, 2021 and pursuant to section 12-30-111(1)(a), C.R.S., a prescriber, which is an advanced practice nurse with prescriptive authority or a Certified Midwife with prescriptive authority, shall prescribe a controlled substance as set forth in section 12-30-111(1)(a), C.R.S., only by electronic prescription transmitted to a pharmacy unless an exception in section 12-30-111(1)(a), C.R.S., applies.

…

1.26 RULES REGARDING THE USE OF BENZODIAZEPINES

…

C. These rules do not require or encourage abrupt discontinuation, limitation, or withdrawal of benzodiazepines. Licensees are expected to follow generally accepted standards of advanced practice nursing with prescriptive authority or of Certified Midwives with prescriptive authority as appropriate, based on an individual patient’s needs, in tapering benzodiazepine prescriptions.

1.27 CONCERNING HEALTH CARE PROVIDER DISCLOSURES TO CONSUMERS ABOUT THE POTENTIAL EFFECTS OF RECEIVING EMERGENCY OR NONEMERGENCY SERVICES FROM AN OUT-OF-NETWORK PROVIDER

…

1.28 RULES AND REGULATIONS FOR LICENSURE OF CERTIFIED MIDWIVES

…

F. LICENSURE BY ENDORSMENT

1. Pursuant to the Occupational Credential Portability Program under section 12-20-202(3), C.R.S., an Applicant is entitled to Licensure as a Certified Midwife by endorsement in Colorado if the Applicant has met the requirements of Sections (D)(1), (D)(2), (E)-(12) of Rule 1.28 and is currently licensed in Good Standing in another state or U.S. territory.

    a. The Applicant:

        (1) Has substantially equivalent experience or credentials that are required by Article 255 of Title 12, C.R.S.; or

        (2) Has held for at least one year a current and valid license as a Certified Midwife in a jurisdiction with a scope of practice that is substantially similar to the scope of practice for certified midwives specified in Article 255 of Title 12, C.R.S.

2. The Board may deny such license if:

    a. The Board demonstrates by a preponderance of evidence, after notice and opportunity for a hearing, that the Applicant:

        (1) Lacks the requisite substantially equivalent education, experience, or credentials for a license; or

        (2) Has committed an act that would be grounds for disciplinary action under Article 255 of Title 12, C.R.S.

G. REINSTATEMENT AND REACTIVATION

1. A licensee who does not renew his or her license within the 60 day grace period, as set forth in section 12-20-202 (1) (e) C.R.S., will have an expired license and will be ineligible to practice until such license is reinstated.

2. A Certified Midwife may elect inactive status in accordance with section 12-255-122, C.R.S. A licensee may not apply for inactive status to avoid disciplinary action. Upon inactivation any and all authorities attached to the license will be cancelled.

3. The licensee must apply for reinstatement or reactivation in a manner approved by the Board.

4. The licensee applying for reinstatement or reactivation must pay the application fee.

5. A licensee who has practiced on an expired or inactive license may be subject to disciplinary action.

6. A licensee whose Certified Midwife license has been expired or inactive must comply with ~~s~~Section (D)~~.~~(3)~~.~~ and (D)~~.~~(4)~~.~~ of this Rule 1.28.

7. The application for reinstatement or reactivation shall be denied if the Board determines:

   a. The Certified Midwife reinstatement or reactivation applicant has not actively practiced as a Certified Midwife in another state for the two-year period immediately preceding application, or

   b. The reinstatement or reactivation applicant does not provide evidence of an active certificate from the American Midwifery Certification Board (AMCB) or its successor entity.

…

I. REQUIREMENTS FOR PROFESSIONAL LIABILITY INSURANCE

1. Pursuant to the requirements of section 12-255-113(1), C.R.S., it is unlawful for any Certified Midwife to be engaged in an Independent Practice of midwifery to practice within the state of Colorado unless the Certified Midwife purchases and maintains or is covered by professional liability insurance in an amount not less than five hundred thousand dollars per claim with an aggregate liability for all claims during the year of one million five hundred thousand dollars.

2. Pursuant to these rules, a Certified Midwife whose Independent Practice falls entirely within one or more of the following categories is exempt from the professional liability insurance requirements set forth in section 12-255-113, C.R.S.:

   a. A federal civilian or military Certified Midwife whose practice is limited solely to that required by his or her federal/military agency.

   b. A Certified Midwife who is covered by individual professional liability coverage (or an alternative which complies with section 12-255-113(1), C.R.S.) or liability insurance that is maintained by an employer/contracting agency in the amounts set forth in section 12-255-113(1), C.R.S.

   c. A Certified Midwife who provides uncompensated health care; or

   d. A Certified Midwife who practices as a public employee under the “Colorado Governmental Immunity Act, sections 24-10- 101 to 118, C.R.S.”

3. In order to establish eligibility for an exemption from the statutory financial responsibility requirements, a Certified Midwife must provide such information as may be requested by the Board.

4. Failure to maintain professional liability insurance pursuant to section 12-255-113, C.R.S. may be grounds for discipline pursuant to section 12-255-120(1)(aa), C.R.S.

J. GENERAL GUIDELINES

1. A licensee who fails to maintain certification, or who practices on an expired or inactive license may be subject to disciplinary action.

2. For any~~A~~ licensee who fails to answer application questions accurately, the failure constitutes grounds for discipline under 12-255-120 (1)(v), C.R.S.

3. Any application not completed within one year of the date of receipt of the original application expires and will be purged.

K. CERTIFIED MIDWIFE SCOPE OF PRACTICE

1. A Certified Midwife scope of practice is set by the American College of Nurse-Midwives (ACNM) as set forth in the ACNM Core Competencies for Basic Midwifery Practice (effective March 20, 2020) and incorporated by reference. The standards and regulations incorporated by reference may be examined at the State Board of Nursing, 1560 Broadway, Suite 1350, Denver, Colorado 80202, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at cost upon request. The Program Director or the Program Director's designee will provide information regarding how the incorporated standards and regulations may be examined at any state public depository library. The standards and regulations are also available online from the agency, organization or association originally issuing the code, standard, guideline or rules as follows: ACNM-Core Competencies for Basic Midwifery Practice (effective March 20, 2020) at-https://midwife.org/standard-setting-documents/. ~~for midwifery scope of practice https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000266/Def Definition%20Midwifery%20Scope%20of%20Practice_2021.pdf (effective 2021); and Core Competencies for Basic Midwifery Practice (2020) https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000050/A CNMCoreCompetenciesMar2020_final.pdf. (effective 2020)~~

2. Certified Midwifery is not the practice of nursing.

L. **CHANGE OF NAME AND ADDRESS**

1. The licensee must supply the Board legal evidence of a name change within 30 days of the effective date of the name change.

2. The licensee must notify the Board within 30 days of any change of address. This notification may be submitted in writing or through the Board's on-line system.

3. Any notification by the Board to licensees required or permitted under The Nurse and Nurse Aide Practice Act sections 12-255-101 to 12-255-135, C.R.S., or the State Administrative Procedure Act sections 24-4-104 to 108 C.R.S., will be addressed to the last address provided in writing to the Board by the licensee and any such mailing will be deemed proper service on said licensee

Adopted: January 24, 2024
Effective: March 16, 2024

1.29 RULES AND REGULATIONS FOR PRESCRIPTIVE AUTHORITY FOR CERTIFIED MIDWIVES

A. **BASIS**: The authority for the promulgation of these rules and regulations by the State Board of Nursing ("Board") is set forth in sections 12-20-204(1), 12-255-107(1)(j), and 12-255-112, C.R.S., of the Colorado Revised Statutes (C.R.S.).

B. **PURPOSE**: Section 12-255-112(4)(a.5), C.R.S. sets forth the legal requirements for a Certified Midwife to obtain prescriptive authority in Colorado. First, the Certified Midwife must obtain Provisional Prescriptive Authority. Generally, those requirements are:

1. Midwife certification in good standing from the American Midwifery Certification Board or its successor entity; and

2. Professional liability insurance coverage of all acts within the scope of practice of a Certified Midwife in the amount of five hundred thousand dollars per claim with an annual aggregate liability for all claims of one million five hundred thousand dollars; and

3. Complete at least three years of combined clinical work as a Certified Midwife.

Upon receiving Provisional Prescriptive Authority, the Certified Midwife is legally authorized to prescribe medications and controlled substances schedules II-V to patients appropriate to the Certified Midwife's Role. Within three years of receiving Provisional Prescriptive Authority the Certified Midwife with Provisional Prescriptive Authority (hereinafter referred to as CMRX-P) must:

43. Complete a 750 hour Mentorship with a Physician or an Advanced Practice Registered Nurse (APRN) with Full Prescriptive Authority or with a Certified Midwife with Full Prescriptive Authority and experience in prescribing medications. The Physician or APRN or Certified Midwife shall have education, training, experience and an active practice that corresponds with the Role of the CMRX-P.

If the CMRX-P does not complete these additional requirements within three years of receiving Provisional Prescriptive Authority such authority will expire for failure to comply with statutory requirements.

~~4. Complete at least three years of combined clinical work experience as a Certified Midwife.~~

C. DEFINITIONS:

1. Advanced Practice Registered Nurse (APRN): A professional nurse who meets the requirements of section 12-255-111, C.R.S., who obtained specialized education or training and is included on the Advanced Practice Registry.

2. Applicant: A Certified Midwife who is licensed seeking Provisional Prescriptive Authority in the Role specified by the American Midwifery Certification Board or its successor entity.

3. Board: The State Board of Nursing.

4. Certified Midwife means an individual who meets the qualifications for practice as a Certified Midwife as specified by the American Midwifery Certification Board or its successor entity and who is currently licensed by the Board.

5. Clinical Work Experience: Any relevant experience accumulated as a Certified Midwife, including paid or unpaid work experience, volunteer work, or student work. The gratuitous care of friends or members of the family is not included in Clinical Work Experience.

6. DEA: Drug Enforcement Administration.

7. Disciplinary Sanction: Any current restriction, limitation, encumbrance or condition on the CMRX Mentor's midwifery license or on the Physician Mentor's medical license or on the RXN Mentor's nursing license or on the alternative to discipline program authorized by the Mentor's licensing board.

8. Full Prescriptive Authority: The authority granted to the CMRX to prescribe medications upon completion of the requirements set forth in Section (E)(2) of this Rule.

9. Mentor: Physician Mentor: A person who holds a license to practice medicine in Colorado or a physician who is otherwise exempted from licensure pursuant to section 12-240-107(3)(j), C.R.S. The physician's license must be in good standing without Disciplinary Sanction as defined in Section (C)(7) of this Rule ~~1.36~~. The Physician Mentor must be actively practicing medicine in the State of Colorado and shall have education, training, experience and a practice that corresponds to the Role of the CMRX-P. The Physician Mentor must also have an unrestricted DEA registration.

10. Mentor: RXN Mentor: A professional nurse who has met the qualifications for an APRN, is included on Colorado's advanced practice registry, has Full Prescriptive Authority in Colorado, and has experience prescribing medications with full prescriptive authority preceding the beginning of the Mentorship. The RXN Mentor's nursing license must be without Disciplinary Sanction as defined in Section (C)(7) of this Rule ~~1.36~~. The RXN Mentor shall have an active practice in Colorado and shall have education, training, experience and a practice that corresponds to the Role of the CMRX-P. The RXN Mentor must have an unrestricted DEA registration.

11. Mentor: CMRX Mentor. A Certified Midwife who is licensed and has Full Prescriptive Authority in Colorado and has experience prescribing medications with full prescriptive authority preceding the beginning of the Mentorship. The CMRX Mentor's license must be without Disciplinary Sanction as defined in Section (C) (7) of this Rule ~~1.29~~. The LCMRX Mentor shall have an active practice in Colorado and shall have education, training, experience and a practice that corresponds to the Role of the CMRX-P.The CMRX Mentor must have an unrestricted DEA registration.

12. Mentorship: A formal, Mutually Structured relationship between the CMRX-P as defined in Section (C)(1~~8~~3) of this Rule ~~1.29~~, and the Physician Mentor or RXN Mentor or CMRX Mentor to further the CMRX-P's knowledge, skill, and experience in prescribing.

13. Mentorship Agreement: A mutually structured agreement documented in writing and signed by the CMRX-P and the Mentor(s), which outlines a process and frequency for ongoing interaction and discussion of prescriptive practice throughout the Mentorship between the Mentor(s) and the CMRX-P to assure safe prescribing practice.

14. Mutually Structured: Developed, implemented, and agree upon by the CMRX-P and the Mentor(s).

15. Provisional Prescriptive Authority: The authority granted to the Applicant to prescribe medications within the Role and, if applicable, Population Focus of the Certified Midwife pursuant to Section (F)(1) and Section (J)(2) of this Rule ~~1.29.~~

16. Role: The advanced practice area for which the Applicant has been prepared including certified midwife (CM), nurse practitioner (NP), certified nurse midwife (CNM), certified registered nurse anesthetist (CRNA), and/or clinical nurse specialist (CNS).

17. CMRX: A Certified Midwife who is licensed and has been granted Full Prescriptive

18. CMRX Provisional (CMRX-P): A Certified Midwife who is licensed and who has been granted Provisional Prescriptive Authority by the Board.

19. Synchronous Communication: Real-time communication; existing or happening at the same time; occurring at the same moment of time; simultaneous. Synchronous Communication will be conducted in a secure manner to safeguard protected information. Synchronous Communication may include the use of electronic communication tools such as audio, web or video conferencing. Synchronous Communication does not include email communications.

20. Unencumbered: No current restriction to practice in the state of Colorado.

D. **NATIONAL CERTIFICATION REQUIREMENT**

1. Pursuant to section 12-255-112(4)(a)(IV), C.R.S., a Certified Midwife applying for prescriptive authority must obtain and maintain national certification from The American Midwifery Certification Board or its successor entity.

E. **REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY**

1. Requirements for Provisional Prescriptive Authority.

   a. Must apply in a manner approved by the Board;

   b. Pay application fee;

   c. Submit verification of National Certification as described in Section (D) of this Rule;

   d. An attestation of having professional liability insurance pursuant to section 12-255-113, C.R.S.

   e. An attestation stating the Applicant has completed at least three years of Clinical Work Experience, as defined in Section (C)(5) of this Rule.

   f. An attestation stating that the Applicant's Mentor(s) meets requirements in Section (C)(9) or (C)(10) or (C)(11) of this Rule; and

   g. Has an active Certified Midwife license that is in good standing and without disciplinary ~~sanctions or significant adverse prescribing as determined by the Board~~.

2. Requirements for Original Full Prescriptive Authority

a. Submit an application in a manner approved by the Board which includes:

(1) An attestation of successful completion of 750 hours of experience in a Mentorship

b. The application for Full Prescriptive Authority must be submitted within three years of being granted Provisional Prescriptive Authority.

~~(1) If the CMRX-P cannot meet the requirements in Section (E)(2)(a) of this Rule, the CMRX-P may petition the Board for an exception to demonstrate competence. Exceptions will be reviewed on a case-by-case basis. The decision to grant or deny such exception will be at the sole discretion of the Board.~~

3. Any application not completed within one year of the date of receipt of the application expires and will be purged.

F. **MENTORSHIP REQUIREMENTS**

1. To obtain Full Prescriptive Authority, the CMRX-P must complete 750 hours of ~~documented~~ experience in a Mentorship. The Mentorship shall be conducted with a Physician Mentor or RXN Mentor or CMRX Mentor [hereinafter referred to as Mentor(s)] as defined in Sections (C)(9), (C)(10) and (C)(11) of this Rule, respectively. The Mentorship must be completed within three years after Provisional Prescriptive Authority is granted.

a. To obtain Full Prescriptive Authority, the CMRX-P must submit to the Board verification of 750 hours of mentored experience on prescribing of drugs, devices, and other treatments based on clinical considerations, patient needs, and reasonable expectations of effectiveness for the individual patient and specific CMRX-P's role. All experiences of prescribing of drugs, devices, and other treatments must correspond with the CMRX-P's Role. As part of the verification, the Mentor(s) shall attest that the CMRX-P has completed their mentorship in prescribing in multiple pharmacological categories that are typically utilized in the Role for which the CMRX-P seeks Full Prescriptive Authority. ~~For the certified midwife (CM), the mentorship hours must cover the range of practice for the specific role.~~

b. Licensure occurs at the level of the Role. CMs may specialize but cannot be licensed soley within a specialty area. Experience gained while practicing within a particular specialty or specialties correspond and provide evidence of experience satisfactory to the Board of prescribing for patients under the CMRX-P's Role, regardless of specialty or specialties. Prior to beginning a mentorship for the purpose of obtaining full prescriptive authority, the CMRX-P shall submit to the Board, in a form and manner approved by the Board, documentation sufficient to allow the Board to determine, whether the proposed mentorship is sufficiently structured to assure the CMRX-P, upon successful completion of the mentorship, will have gained sufficient experience to meet the requirements for Full Prescriptive Authority within their Role. The documentation submitted to the Board for consideration pursuant to this subsection shall, at minimum, clearly describe the Role of the mentorship and how the CMRX-P's practice in the

mentorship will prepare the CMRX-P for prescribing to patients within the stated Role.

c. This Section (F) does not apply to the CM with prescriptive authority and at least 750 hours of prescribing experience in another state, US jurisdiction or United States military applying for Full Prescriptive Authority as set forth in Section (H)(2) of this Rule.

2. The Mentorship Agreement shall contain the following elements:

a. Is documented in writing and signed by the CMRX-P and the Mentor(s).

b. Outlines the prescribing practice within the Role requested within the mentorship of the CMRX-P.~~a process, documentation, and frequency for ongoing Synchronous Communication, interaction and discussion of prescriptive practice throughout the Mentorship between the Mentor(s) and the CMRX-P to provide for safe prescribing practice.~~

3. The Mentorship Agreement shall be retained for a period of three years by the CMRX and the Mentor(s) following completion of the Mentorship and shall be available to the Board upon request.

4. The CMRX-P and the Mentor(s) shall provide documentation of the successful completion of the Mentorship as requested by the CMRX-P to complete an application to obtain Full Prescriptive Authority. The Mentor(s) shall not, without good cause, withhold his/her signature or otherwise fail to attest to the completion of the Mentorship~~. Upon submission of the application, the CMRX- P may be granted Full Prescriptive Authority~~.

5. If a circumstance such as retirement, illness, relocation or other event precludes any Mentor from continuing in the Mentorship, the CMRX-P shall secure a replacement Mentor and enter into a new, Mutually Structured Mentorship. Any hours accrued during the period of time in which the CMRX-P does not have a Mentor will not be credited toward completion of the 750 hour Mentorship.

6. The Mentor(s) shall not require payment or employment as a condition of entering into the mentor relationship. The Mentorship relationship should not be financially burdensome to either party. In recognition of the Mentor(s) time and expertise, reasonable expenses may be paid. Compensation by the CMRX-P to the Mentor(s) should be agreed upon as part of the Mutually Structured Mentorship, shall comply with standards of fair market value, and shall not be onerous or otherwise present a barrier to completion of the Mentorship.

G. **OTHER REQUIREMENTS**

1. The CMRX-P or CMRX must hold a valid DEA registration to prescribe controlled substances, Schedule II through V, and must adhere to all DEA requirements.

2. Pursuant to section 12-255-112(7)(c)(II), C.R.S., nothing in this Rule shall be construed to require a Certified Midwife to obtain prescriptive authority to deliver anesthesia care.

3. Pursuant to section 12-255-112(9), C.R.S., nothing in this Rule shall be construed to permit dispensing or distribution, as defined in section 12-280-103(14) and (15), C.R.S., by the CMRX, except for receiving and distributing a therapeutic regimen of prepackaged

drugs prepared by a licensed pharmacist or drug manufacturer registered with the FDA and appropriately labeled, free samples supplied by a drug manufacturer, and distributing drugs for administration and use by other individuals as authorized by law.

H. **REQUIREMENTS FOR A CERTIFIED MIDWIFE WITH PRESCRIPTIVE AUTHORITY IN ANOTHER STATE TO OBTAIN FULL PRESCRIPTIVE AUTHORITY IN COLORADO**

1. Applicants must submit an application in a manner approved by the Board.

2. Applicants must be actively licensed as a Certified Midwife in the Role for which the Applicant seeks Prescriptive Authority.

3. Applicants must have Active Prescriptive Authority in another state or U.S. jurisdiction in the Role for which the Applicant seeks Prescriptive Authority.

    a. Prescriptive Authority credentials issued by the United States Military are deemed to be substantially equivalent to prescriptive authority in another state or jurisdiction.

4. Requirements to apply for Full Prescriptive Authority for applicants with prescriptive authority and at least 750 hours of documented experience prescribing medications in another state, U.S. jurisdiction, or U.S. military:

    a. Verification of prescriptive authority and 750 hours of documented experience prescribing medications, in another state, jurisdiction, or the U.S. military, in a manner approved by the Board. The acceptance of the documented hours of experience prescribing medications is at the sole discretion of the Board; and

5. Requirements to apply for Full Prescriptive Authority for applicants with prescriptive authority and less than 750 hours of documented experience prescribing medications in another state, jurisdiction, or the U.S. military:

    a. Active Provisional Prescriptive Authority granted pursuant to Section (E)(1) of this Rule.

    b. Completion of the additional hours, up to at least 750 hours, of experience prescribing medications within a Mentorship as set forth in Section (F) of this Rule.

    c. Submission of an application for Full Prescriptive Authority within three years of obtaining Provisional Prescriptive Authority, providing evidence of the following:

        (1) Verification of prescriptive authority and hours of documented experience prescribing medications, in another state, in a manner approved by the Board. The acceptance of the documented hours of experience prescribing medication is at the sole discretion of the Board; and

        (2) Additional mentored prescribing hours, up to at least 750 hours, completed within a Mentorship in Colorado.

    d. Upon petition by the applicant, and with due consideration of the need to protect the public, the Board may accept a substantially equivalent method of establishing the requirements set forth in this Section (H)(5) of this Rule. It is

anticipated that such alternative will rarely be used. The decision to accept such substantially equivalent method of establishing the requirements is at the sole discretion of the Board.

I. **REINSTATEMENT OF PRESCRIPTIVE AUTHORITY**

1. To apply for reinstatement of prescriptive authority the Applicant must possess an active, Colorado Certified Midwife license that is in good standing and without Disciplinary Sanction as defined in Section (C)(7) of this Rule.

2. A Certified Midwife applying to reinstate Full Prescriptive Authority must complete the reinstatement application for Full Prescriptive Authority and meet the requirements as set forth in Sections (D), (E), (F) and (G) of this Rule.

   a. If a Certified Midwife fails to meet the requirements as set forth in section 12-255-112, C.R.S., and the Provisional Prescriptive Authority expires by operation of law, the Certified Midwife must complete a new application for Provisional Prescriptive Authority and meet the current requirements as set forth in Sections (D), (E), and (F) of this Rule.

3. A Certified Midwife whose Provisional or Full Prescriptive Authority is withdrawn as the result of a disciplinary action under section 12-255-119, C.R.S., as set forth in Section (K)(2)(a) of this Rule, shall not be eligible to apply for Prescriptive Authority for two years after the date of the withdrawal of such Prescriptive Authority. After the end of the two year waiting period a Certified Midwife must complete a new application and meet all requirements as set forth in this Rule.

4. Every Certified Midwife with prescriptive authority applying for reinstatement, except those who qualify for an exemption, must fulfill the substance use prevention training requirements set forth in Section (C) of Rule 1.25.

J. **RENEWAL OF PRESCRIPTIVE AUTHORITY**

1. Renewal of Provisional or Full Prescriptive Authority is required at the time of the CMRX's Certified Midwife license renewal in Colorado. Certified Midwives granted Provisional or Full Prescriptive Authority by the Board shall be required to renew the Provisional or Full Prescriptive Authority every two years and shall be issued a specific expiration date for the Prescriptive Authority.

2. Every Certified Midwife with prescriptive authority applying for renewal, except those who qualify for an exemption, must fulfill the substance use prevention training requirements set forth in Section (C) of Rule 1.25.

K. **WITHDRAWAL OF PROVISIONAL OR FULL PRESCRIPTIVE AUTHORITY**

1. The CMRX may request that the Provisional or Full Prescriptive Authority be voluntarily withdrawn.

2. The Board may withdraw Provisional or Full Prescriptive Authority if the Certified Midwife no longer meets the requirements for Provisional or Full Prescriptive Authority or the

Certified Midwife is subject to discipline under section 12-255-120, C.R.S., in accordance with the procedures set forth in section 12-255-119, C.R.S.

a. The Certified Midwife whose Provisional or Full Prescriptive Authority has been withdrawn as a result of disciplinary action under section 12-255-119, C.R.S., shall not be eligible to apply for Prescriptive Authority for two years after the date of the Board's withdrawal of such Prescriptive Authority. For the purpose of this Section (K)(2)(a), withdrawal of Provisional or Full Prescriptive Authority shall include surrender or revocation of same.

3. If Provisional or Full Prescriptive Authority has been withdrawn, and the Certified Midwife wishes to apply for Provisional or Full Prescriptive Authority, the Certified Midwife must file a new application and meet all requirements as set forth in this Rule at the time of application.

L. **DISCIPLINE OF CERTIFIED MIDWIVES WITH PRESCRIPTIVE AUTHORITY**

1. CMRX and CMRX-P disciplinary proceedings shall be the same as set forth in section 12- 255-119, C.R.S., and the grounds for discipline are as set forth in section 12-255-120, C.R.S.

Adopted: January 24, 2024
Effective: March 16, 2024

Editor's Notes

History

Chapter 1 eff. 07/02/2007.
Chapters XIII; XX eff 10/01/2007. Chapter XVIII repealed eff. 10/01/2007.
Chapters I, IX, XI eff. 12/31/2007.
Chapter XII repealed eff. 06/01/2008.
Chapters I, VII, XVI eff. 10/01/2008.
Chapters I, XIV, XV eff. 12/30/2008.
Chapter X eff. 03/30/2009.
Chapters IX, XX eff. 06/30/2009.
Chapter XXI emergency rule eff. 07/14/2009
Chapter XXI eff. 10/14/2009.
Chapter II eff. 10/30/2009.
Chapter I eff. 12/30/2009.
Chapter XIX repealed eff. 12/30/2009.
Chapters II, III eff. 03/31/2010.
Chapter XIII eff. 06/30/2010. Chapter XXI repealed eff. 06/30/2010.
Chapters XIV, XV eff. 07/01/2010.
Chapters XII, XIX eff. 01/01/2010.
Chapter VII repealed eff. 03/17/2011.
Chapter I eff. 09/14/2011.
Chapters I, IX eff. 07/01/2012.
Chapter XV eff. 09/14/2012.
Chapters 1, 5, 10, 16, 19 eff. 12/15/2012.
Chapters 1, 2, 5, 10, 19 eff. 03/18/2013.
Chapters 20, 22, 23 eff. 06/14/2013.
Chapters 2, 11, 13 eff. 06/14/2014.
Chapters 10, 13 emer. rules eff. 08/05/2015.
Chapter 15 emer. rule eff. 09/01/2015.
Chapters 10, 13 eff. 09/14/2015.
Chapter 15 eff. 11/14/2015.
Chapter 24 eff. 12/30/2015.
Chapter 2 eff. 06/30/2016.
Chapter 13 eff. 06/14/2017
Chapters 5, 6, 14, 15 eff. 09/14/2017.
Chapter 2 eff. 06/14/2018.
Chapters 1, 20 eff. 03/17/2019.
Rules 1.15 K.4, 1.15 L.2, 1.25 eff. 12/15/2019.

Rule 1.26 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.27 emer. rule eff. 05/11/2020; expired 09/08/2020.
Rule 1.26 emer. rule eff. 08/30/2020.
Rule 1.27 emer. rule eff. 09/09/2020.
Rules 1.1-1.6, 1.10-1.17, 1.19-1.24 emer. rules eff. 10/28/2020.
Rule 1.26 emer. rule eff. 12/07/2020.
Rule 1.27 emer. rule eff. 12/28/2020.
Rules 1.1-1.6, 1.9 F.4, 1.10-1.17, 1.19-1.24, 1.28, Appendix A eff. 12/30/2020.
Rule 1.28 emer. rule eff. 01/11/2021.
Rule 1.26 emer. rule eff. 04/06/2021.
Rule 1.27 emer. rule eff. 04/27/2021.
Rule 1.28 emer. rule eff. 05/11/2021.
Rules 1.29, 1.30, Appendix A eff. 06/14/2021.
Rules 1.26, 1.27, 1.28 emer. rules eff. 07/12/2021.
Rule 1.31 emer. rule eff. 11/01/2021.
Rules 1.26, 1.27, 1.28 emer. rules eff. 11/02/2021.
Rules 1.1 F, G, 1.2 F, G, H, 1.5 A, 1.10 E, 1.13 H.7, 1.14 D, 1.15 B, F, G, 1.16 B, 1.31 eff. 12/15/2021.
Rules 1.26-1.28 emer. rules eff. 03/02/2022.
Rules 1.26-1.28 emer. rules eff. 05/24/2022; expired 09/21/2022.
Rules 1.26-1.28 emer. rules eff. 09/22/2022.
Rules 1.33, 1.34 emer. rules eff. 10/19/2022.
Rules 1.26-1.28 emer. rules eff. 11/11/2022.
Rules 1.26-1.28 emer. rules eff. 12/10/2022.
Rules 1.1 A,F, 1.10 A,E, 1.14 A,D, 1.31-1.34, Appendix B eff. 12/15/2022.
Rules 1.26-1.28 emer. rules eff. 01/09/2023; expired 05/09/2023.

Annotations

Rule 1.28 E.4 (adopted 10/28/2020) was not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

Rules 1.34 B. and 1.34 C. (adopted 10/19/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

Notice of Proposed Rulemaking

Tracking number

2025-00113

Department

700 - Department of Regulatory Agencies

Agency

736 - Division of Professions and Occupations - Board of Marriage and Family Therapist Examiners

CCR number

4 CCR 736-1

Rule title

MARRIAGE AND FAMILY THERAPIST EXAMINERS RULES AND REGULATIONS

Rulemaking Hearing

Date

04/18/2025

Time

09:30 AM

Location

Webinar only - See below

Subjects and issues involved

The Colorado State Board of Marriage and Family Therapist Examiners will hold a Rulemaking Hearing on Friday, April 18, 2025, at 9:30 A.M. (MDT), regarding proposed revisions to Rule 1.6 INFORMATION REQUIRED TO BE REPORTED TO THE BOARD ((C.R.S. § 12-245-226(8)), Rule 1.7 SUPERVISION OR MENTAL HEALTH PRACTITIONERS FOR NONLICENSURE PURPOSES AND SUPERVISORY RELATIONSHIPS (C.R.S. §§ 12-245-222(2), 12-245-224(1)(n)), Rule 1.10 RENEWAL OF LICENSE (C. .R.S. § 12-245-205(3)), Rule 1.11 AUTHORITY TO INVESTIGATE (C.R.S. § 12-20-204, 12-245-204), Rule 1.12 OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM (C.R.S. §§ 12-245-207, 12-20- 202(3)), Rule 1.13 REINSTATEMENT OF LICENSE (C.R.S. § 12-245-205), Rule 1.14 LICENSURE BY EXAMINATION (C.R.S. § 12-245-504), Rule 1.16 RECORDS REQUIRED TO BE KEPT AND RECORD RETENTION (C.R.S. . §§ 12-245-204(4), 12-245-224(1)(u)), Rule 1.18 CONTINUING PROFESSIONAL COMPETENCE (C.R.S. § 12-245-506) and Rule 1.19 INACTIVE LICENSE STATUS AND REACTIVATION OF LICENSE. The purpose is to implement Colorado House Bill 24-1045 (CONCERNING TREATMENT FOR SUBSTANCE USE DISORDERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION) and Colorado Senate Bill 24-115 (CONCERNING REQUIREMENTS TO PRACTICE AS A MENTAL HEALTH PROFESSIONAL).

Statutory authority

12-20-204, 12-245-204(4)(a), 12-245-222 and 24-4-103, C.R.S.

Contact information

Name

Maria Rascon Arana

Title

Regulatory Coordinator

Telephone

303-869-3409

Email

dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Board of Marriage and Family Therapist Examiners

MARRIAGE AND FAMILY THERAPIST EXAMINERS RULES AND REGULATIONS

4 CCR 736-1

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

…

1.6 INFORMATION REQUIRED TO BE REPORTED TO THE BOARD (C.R.S. § 12-245-226(8))

A. General. Marriage and family therapists are required to report violations of sections 12-245-224 and/or 12-245-228, C.R.S., to the appropriate Board once they have direct knowledge that a Licensee as defined by section 12-245-202(8), C.R.S., a certificate holder as defined by section 12-245-202(2), or a registrant as defined by section 12-245-202(16), C.R.S., has violated a provision of section 12-245-224, C.R.S., to include conversion therapy with a client under the age of 18 years old prohibited per section 12-245-224(1)(t)(V), C.R.S. Marriage and family therapists are not required to report when reporting would violate client/therapist confidentiality (refer to section 12-245-220, C.R.S.).

B. Terms.

1. Direct knowledge includes, but is not limited to the following:

   a. Having seen, heard, or participated in the alleged violation;

   b. Having been informed by the client/victim and obtained informed consent to release information as to the event or the client's name;

   c. Having been informed of a violation by the violator;

   d. Having been informed by a guardian of a minor or adult and obtained informed consent from the guardian to release information; or

   e. Having been informed by a professional organization, agency, or any other entity, that an alleged violation occurred.

2. "Has violated" means a reasonable belief that a licensed marriage and family therapist has engaged in a prohibited activity under section 12-245-224, C.R.S., or unauthorized practice as prohibited under section 12-245-228, C.R.S.

C. Procedures.

1. Once direct knowledge is established, the licensed marriage and family therapist must report the alleged violation as soon as possible or, absent unusual circumstances, no later than sixty days.

2. When direct knowledge of a violation of section 12-245-224 or 12-245-228, C.R.S., is obtained from ~~her/his~~their client, the licensed marriage and family therapist shall:

a. Inform the client a violation may have occurred;

b. Encourage the client to report the violation; and

c. Obtain the client's informed consent before reporting the alleged violation.

3. The report shall be in writing and shall include the specifics of the violation, to the degree known, and any and all relevant information and supporting documentation.

D. Nothing in this Rule relieves any mental health professional from adhering to any other mandatory reporting requirements required by statute.

1.7 SUPERVISION OF MENTAL HEALTH PRACTIONERS FOR NONLICENSURE PURPOSES AND SUPERVISORY RELATIONSHIPS (C.R.S. §§ 12-245-222(2), 12-245-224(1)(n))

A. General. Supervision provides a source of knowledge, expertise, and more advanced skills to the person being supervised. The nature of this relationship depends on the respective skills of the two professionals involved, the client population and/or the specific client being served. It is usually ongoing, required, and hierarchical in nature. This Rule does not apply to the supervision required prior to persons seeking licensure as a licensed marriage and family therapist.

B. Terms.

1. Clinical Supervision occurs when there is close, ongoing review and direction of a supervisee's clinical practice.

2. Consultation describes a voluntary relationship between professionals of relative equal expertise or status wherein the consultant offers ~~her/his~~ their best advice or information on an individual case or problem for use by the consultee as ~~s/he~~they deem~~s~~ appropriate in ~~her/his~~ their professional judgment.

3. Administrative supervisor is the person who bears responsibility for the non-clinical functioning of an employee, such as performance appraisals, personnel decisions, etc. The administrative supervisor may be held accountable for misconduct by a licensed marriage and family therapist when ~~s/he~~they knew or should have known of a violation of generally accepted standards of practice or any prohibited activity and when ~~s/he~~ they had responsibility for corrective administrative action and failed to act.

4. Modes of Supervision. Includes but not be limited to individual, group, telephone, electronic mail, audio-visual, process recording, direct observation, telesupervision, telecommunication (teleconferencing, fax, videotapes), and hospital rounds. The appropriate modality of supervision shall be determined by the training, education, and experience of the supervisee, and the treatment setting (i.e. urban/rural, or the availability of resources and at all times based on community standards and client needs). The level of supervision provided, including whether every case is directly supervised and whether the supervisor meets with the client, is determined by the education, training, and experience of the supervisee, the specific needs of the clients being served, and the professional judgment of the supervisor. Nothing in this Rule should be assumed to abridge the rights of the client to a reasonable standard of care.

B. Supervision Shall Include But is Not Limited to The Following:

1. Monitoring the supervisee's activities to verify ~~s/he is~~they are providing services that meet generally accepted standards of practice.

2. Verifying that it is the practice of any supervisee to provide the mandatory disclosure form as required pursuant to section 12-245-216, C.R.S.

3. If appropriate, verifying that clients are informed as to any changes in the supervisory relationship.

4. Giving an adequate termination of supervision notice to the supervisee.

5. Keeping records that document supervision that meet the generally accepted standards of practice.

6. Assisting the supervisee in becoming aware of and adhering to all legal, ethical, and professional responsibilities.

7. Assuring that no inappropriate relationships exist between the supervisor and supervisee, and supervisor and client.

8. Assuring that no inappropriate relationships exist between the supervisor and supervisee, and supervisor and client.

9. Assisting to assure that the supervisee is in compliance with the Mental Health Practice Act.

10. Verifying and assuring the supervisee is in compliance with any existing restricted licensure, certification or registration status or probation.

C. Supervisor Qualifications.

1. The supervisor shall have sufficient knowledge of legal, ethical, and professional standards relevant to the clients being served.

2. The supervisor shall have clinical experience and competence adequate to perform and direct the services provided by the supervisee, including but not limited to substantially

1.8 REPORTING CHANGE OF ADDRESS TELEPHONE NUMBER, OR NAME (C.R.S. §§ 12-20-204, 12-245-204, 12-245-206)

A. Licensees shall inform the Division of any name, telephone number or address change within thirty days of such change. Staff shall not change licensees' information without written notification from the Licensee. Notification via mail, fax, e-mail, and the online system is acceptable. Verbal notification is not acceptable.

B. Any of the following documentation is required to change a Licensee's name or correct a social security number or individual taxpayer identification number; marriage license, divorce decree, court order, or documentation from the Internal Revenue Service verifying the licensee's valid individual taxpayer identification number. A driver's license, social security card, or individual taxpayer identification number with a second form of identification may be acceptable at the discretion of the Division.

1.9 DUPLICATE OR REPLACEMENT LICENSE (C.R.S. §§ 12-20-204, 12-245-204, 12-245-206, 12-245-209)

A. Upon licensure and at renewal, the Division will issue only one license to a Licensee. The Division may issue a duplicate license if the Licensee submits a written request along with the required fee.

B. Justification for issuance of a duplicate license may include if the original was lost, stolen, damaged, never received, or printed with the incorrect information, or if the address or name has changed.

C. A duplicate license may also be issued for those licensees who require multiple licenses.

1.10 RENEWAL OF LICENSE (C.R.S. § 12-245-205(3))

A. Failure to Receive Renewal Notice. Failure to receive notice for renewal of license or registration from the Board does not excuse a Licensee from the requirement for renewal under the Act and this Rule.

B. Grace Period. Licensees shall have a sixty-day grace period after the expiration of ~~his or her~~their license to renew such license or registration without the imposition of a disciplinary sanction for practicing on an expired license. During this grace period a delinquency fee will be charged for late renewals. A Licensee who does not renew ~~his or her~~their license within the sixty-day grace period shall be treated as having an expired license and shall be ineligible to practice until such license is reinstated.

C. Continuing Professional Competence. Pursuant to section 12-245-506, C.R.S., and Board Rule 1.18, effective January 1, 2011, licensed marriage and family therapists shall demonstrate continuing professional competence in order to renew.

D. Military Active Duty. Licensees may be exempt from licensing requirements as provided in section 12-20-302, C.R.S.

1.11 AUTHORITY TO INVESTIGATE (C.R.S. § 12-20-204, 12-245-204)

An application for initial license or registration, for renewal of a license or registration, or for reinstatement of a license or registration is an express grant to the Board of full authority to make any investigation or personal contact necessary to verify the authenticity of the matters and information stated in the application. If the Board so requests, the applicant must supply verification, documentation and/or complete information on any disciplinary action taken against the applicant in any jurisdiction.

1.12 OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM (C.R.S. §§ 12-245-207, 12-20-202(3))

A. General. To be considered for licensure by endorsement pursuant to the Occupational Credential Portability Program under sections 12-20-202(3) and 12-245-207, C.R.S., an applicant must submit a completed application form, all supporting documentation, and the appropriate fee.

B. Complaints/inquiries, investigations, disciplinary actions. The Board may decline to issue a license to an applicant for licensure by endorsement pursuant to the Occupational Credential Portability Program if approving the license would violate an existing compact or reciprocity agreement or if the Board demonstrates by a preponderance of evidence, after notice and opportunity for a hearing, that the applicant:

1. Lacks the requisite substantially equivalent experience or credentials to practice marriage and family therapy; or

2. Has committed an act that would be grounds for disciplinary action under the law governing the practice of marriage and family therapy.

C. Criteria. In accordance with section 12-20-202(3), C.R.S., an applicant who possesses a current and unrestricted license, in good standing, to practice marriage and family therapy in another

state or United States territory or through the federal government, or who holds a military occupational specialty, as defined in section 24-4-201, C.R.S., may apply to the Board for licensure by endorsement pursuant to the Occupational Credential Portability Program. To apply for endorsement, the applicant must satisfy the following criteria:

1. Applicant submits to the Board:

   a. Satisfactory Proof that:

      (1) Applicant holds a master's or doctoral degree in marriage and family therapy from an accredited program or holds a master's or doctoral degree from a program that was equivalent to an accredited program in marriage and family therapy.

      (2) Applicant attests to having passed a national or state examination, the content of which tested competence to practice marriage and family therapy.

      (3) Applicant attests that ~~s/he~~they had at least two years of post- master's or one year of post-doctoral practice in individual and marriage and family therapy under CLINICAL supervision prior to licensure, certification, listing or registration in the jurisdiction through which applicant seeks licensure in Colorado; or applicant attests to the Board ~~her/his~~their active practice of marriage and family therapy for two years (as defined below); OR

   b. Satisfactory proof that the applicant has held for at least one year a current and unrestricted license, in good standing, to practice marriage and family therapy in another jurisdiction with a scope of practice that is substantially similar to the scope of practice for marriage and family therapists pursuant to Part 5 of the Mental Health Practice Act.

2. Applicant must attest that they:

   a. Have reported to the Board any injunction entered against her/him and any injunctive action pending against her/him on any license.

   b. Have reported any malpractice judgment, settlement, or claim, and any pending action or claim.

   c. Have reported any pending complaint, investigation, or disciplinary proceeding before the licensing, grievance, or disciplinary Board of any jurisdiction in which a license, registration, or certification to practice as a marriage and family therapist is held and where the complaint, investigation, or proceeding concerns the practice of marriage and family therapy.

   d. Have reported any applicable misdemeanor or felony conviction(s).

   e. Have reported to the Board any prior disciplinary action by another jurisdiction.

3. Submit verification of licensure from each jurisdiction(s) in which, and each federal agency and military branch through which, applicant has ever been licensed, registered, listed or certified. The verification can be retrieved by the applicant from the jurisdiction's or federal government agency's web site as long as the following information is included and can be verified if necessary:

a. Date license was originally issued.

b. Date of license expiration.

c. Disciplinary history, if applicable.

If the complete information is not available, then the Verification of License Form must be completed by each state or federal government agency.

4. Applicant submits proof that ~~she/he is~~they are at least twenty-one years of age

5. As used in this Rule, "active practice of marriage and family therapy" means applicant has engaged in the practice of marriage and family therapy at least twenty hours per week, averaged over the entire time ~~s/he has~~they have been in practice, with no more than a six month absence from the practice of marriage and family therapy. If applicant has taught marriage and family therapy, applicant may count the hours spent teaching marriage and family therapy (including time spent in preparation, meeting with students, and related activities) as hours of active practice of marriage and family therapy provided such teaching was in courses in the same or similar field of marriage and family therapy as the competence area claimed by applicant; teaching of marriage and family therapy shall not count more than one-third of the number of active practice hours claimed by applicant.

D. Jurisprudence Examination. Each applicant for both licensure and candidate registration shall pass a Board developed jurisprudence examination.

1.13 REINSTATEMENT OF LICENSE (C.R.S. § 12-245-205)

A. General. A license or registration that has expired is subject to the following reinstatement provisions.

B. Application requirements. To be considered for license or registration reinstatement, an applicant must submit a completed reinstatement application form and the reinstatement fee.

C. Required statements. Each applicant for reinstatement shall certify the following:

1. Every license, certificate, listing or registration to practice marriage and family therapy held by the applicant is in good standing;

2. Applicant has reported to the Board any injunction or disciplinary action completed or pending against ~~her/his~~their license, certificate, registration ,or listing to practice psychotherapy or marriage and family therapy;

3. Applicant has reported to the Board any malpractice judgment against her/him, any settlement of a malpractice action or claim against her/him, and any malpractice action or claim pending against her/him in which the malpractice alleged relates to ~~her/his~~their practice of psychotherapy or marriage and family therapy;

4. Applicant has reported to the Board any complaint pending, investigation being conducted by, or disciplinary proceeding pending before the licensing, grievance, or disciplinary board of any jurisdiction in which ~~he or she is~~they are licensed, certified, or registered or listed to practice psychotherapy or marriage and family therapy in which the complaint, investigation, or proceeding concerns ~~her/his~~their practice of psychotherapy or marriage and family therapy.

D. Pending discipline or complaints. The Board may decline to issue a license to an applicant for reinstatement if disciplinary action is pending or if there is an unresolved complaint.

E. Continuing Professional Competence. Pursuant to section 12-245-506, C.R.S., effective January 1, 2011, licensed marriage and family therapists shall demonstrate continuing professional competence in order to reinstate.

1. An applicant for reinstatement must comply with all Continuing Professional Development requirements pursuant to Board Rule 1.18 including the Professional Practice Survey, Learning Plan and documentation of having completed forty Professional Development Hours within the two years immediately preceding the application receipt date.

F. Criteria. The Board has established the following criteria for determining whether an applicant for reinstatement has demonstrated ~~her/his~~their competency to practice as required by section 12-20- 202(2)(c)(II), C.R.S. An applicant must meet all applicable criteria to establish ~~her/his~~their continued professional competence.

1. License expired more than two years. An applicant whose license has been expired more than two years shall pass a Board approved jurisprudence examination and demonstrate ~~her/his~~their continued professional competence by either:

a. A written statement detailing work experience related to the practice of marriage and family therapy or psychotherapy during the time the license has been expired. If work experience was in other jurisdiction(s), verification of licensure from each jurisdiction(s) is required; or

b. Retaking and passing the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) Examination; or

c. Completion of an additional ten Professional Development Hours as defined in Board Rule 1.18 for each year or portion thereof the license has been expired; or

d. Other means determined by the Board.

1.14 LICENSURE BY EXAMINATION (C.R.S. § 12-245-504)

A. Criteria for application.

1. The applicant must submit to the Board a completed application for licensure, all fees, official transcript(s), and all supporting documentation required by the Board in order for the Board to review the application for licensure.

2. Applicants must meet the experience requirements in effect at the time of the initial application. 3. Applications for licensure remain active for one (1) year. If the applicant fails to become licensed within this time period, ~~s/he~~they must submit a new application and fee and must meet the educational, experience, and examination requirements in effect at the time of the date of the new application. The Board, in its sole discretion, may extend an application upon written request accompanied by a showing of good cause.

3. An applicant for licensure must pass the required examination no more than five (5) years prior to the date of the application for licensure. Experience and supervision requirements that predate the application by more than five (5) years will not be accepted by the Board absent a showing of good cause, as determined by the Board. However, this may not apply in those exceptions allowable under statutes concerning marriage and family therapist candidates.

4. All applicants for licensure have a continuing obligation to update their application with information changes from the original application at any time prior to licensure.

B. Education and Training Requirements. Many graduate programs in marriage and family therapy go under other names. Some programs labeled as marriage and family programs are not primarily focused on marriage and family therapy. The Board has therefore established the following factors to determine whether or not a particular program from which an applicant for licensure received the master's or doctoral degree qualifies as a master's or doctoral program with a major in marriage and family therapy in compliance with sections 12-245-504(1)(c) and 12-245-503, C.R.S. To meet the statutory requirements, the master's or doctoral program must meet (1) below:

1. Accredited program. The applicant obtained a master's or doctoral degree from a program that was approved by the Commission on Accreditation for Marriage and Family Therapy Education; or

2. Equivalent program. ~~If the application is received by the Board prior to June 30, 2012, t~~The following requirements shall apply to be considered for equivalency: The applicant received a master's or doctoral degree from a graduate training program that, at the time ~~s/he was~~they were enrolled and received ~~her/his~~their degree, fulfilled the equivalency degree requirements used to define a marriage and family therapy graduate training program. An applicant asserting a program is equivalent to an accredited program in marriage and family therapy must furnish to the Board evidence in support of the asserted equivalency and has the burden of establishing equivalency. Evidence may include institutional documents published contemporaneously with the applicant's enrollment, appropriate certifications or affidavits from university officials, dissertation abstracts, and any other evidence the applicant deems useful. The Board may request additional information from the applicant.

   All of the following requirements shall be considered in order to establish equivalency:

   a. The required master's or doctoral level study and master's or doctoral degree were obtained from a regionally-accredited institution of higher learning;

   b. The program stood as a coherent and recognizable entity within the institution, offering an integrated and organized sequence of study planned to provide appropriate training for the practice of marriage and family therapy;

   c. There was an identifiable full-time faculty, with an individual responsible for the program who was a full-time faculty member and who met the requirements for approval as a supervisor or a person who presents proof satisfactory to the Board, that at the time of serving as the faculty member, ~~s/he~~they possessed essentially the same education, experience, and training as that necessary to qualify for licensure under the Act.

   d. The program had an identifiable body of students who were matriculated in that program for a degree;

   e. The master's or doctoral program included examination and grading procedures designed to evaluate the degree of mastery of the subject matter by the students;

3. Foreign-trained applicants. Foreign-trained applicants must submit educational credentials to a credentialing agency utilized by the Board for evaluation of equivalency. After course equivalency is established, the Board will evaluate the educational

credentials to determine whether or not the program is equivalent to an accredited MFT program of marriage and family therapy.

C. Post-Graduate Experience Requirements. The Board will approve post-master's or post-doctoral supervised practice as meeting the requirements for licensure set out in section 12-245-504(1)(d), C.R.S., when that practice satisfies the requirements of this subsection.

1. Definitions. As used in sections, 12-245-501(2.5), 12-245-504(1)(d), C.R.S., and this Rule unless the context indicates otherwise:

a. “Individual supervision” means supervision rendered to one individual at a time.

b. “Group supervision” means supervision rendered to not more than ten individuals at one time.

c. “Post-master's experience” or “post-doctoral experience” means experience under approved clinical supervision acquired subsequent to the date certified by the degree-granting institution as that on which all requirements for the master's or doctoral degree (whichever is applicable) have been completed.

d. “Practice in individual and marriage and family therapy” means all services included within the definition of psychotherapy in section 12-245-202(14), C.R.S., and particularly those services and practices included within the definition of marriage and family therapy in section 12-245-503, C.R.S.

e. “Supervision” means personal direction and responsible direction provided by a supervisor approved by the Board, that may be in-person or telesupervision.

(1) “Personal direction” means direction actually rendered by the approved supervisor.

(2) “Responsible direction” or “direction” means the approved supervisor has sufficient knowledge of all clients for whom supervision is provided, including face-to-face contact with the client when necessary, to develop and to monitor effective service delivery procedures and the supervisee's treatment plan. Further, all decisions requiring the special skill, knowledge, and/or training of a marriage and family therapist are made in collaboration with, and with the approval of, the approved supervisor. Such decisions include, but are not limited to: type, duration, effectiveness, and method of psychotherapy services provided; fees and billing procedures; approval of cases; and personal observation, evaluation, oversight, review, and correction of services provided by the supervisee.

(3) “Clinical Supervision” means the evaluation and modification or approval by a supervisor or the clinical practice of the person being supervised and a source of knowledge, expertise and more advanced skills made available to the person being supervised.

f. “Consultation” describes a voluntary relationship between professionals of relative equal expertise or status wherein the consultant offers ~~her/his~~their best advice or information on an individual case or problem for use by the consultee as ~~s/he~~ they deem~~s~~ appropriate in ~~her/his~~their professional judgment. Consultation is not supervision. Experience under contract for consultation will not be credited toward fulfillment of supervision requirements.

2. Certification of Completion. Each applicant shall file with the Board, upon forms supplied by the Board, a verified statement signed under penalty of law by their approved supervisor(s) attesting to the applicant's satisfactory completion of the required postmaster's or post-doctoral practice in individual and marriage and family therapy/psychotherapy under supervision and attesting to the applicant's having met the generally accepted standards of practice during the supervised practice.

3. Supervision.

   a. The Board may approve any of the following as a supervisor.

      (1) A marriage and family therapist or any other licensed mental health professional who, at the time of the supervision, possessed a license in good standing in the jurisdiction in which the applicant's services were rendered, and who, at the time of the supervision, had education, clinical experience, and clinical supervisory experience in the field of marriage and family therapy.

      (2) A marriage and family therapist who, at the time of the supervision, was an approved supervisor under the auspices of the American Association for Marriage and Family Therapy.

      (3) A person who presents proof satisfactory to the Board that, at the time of the supervision, ~~s/he was~~they were licensed in good standing as a marriage and family therapist, a professional counselor, a psychologist, or a clinical social worker or licensed addiction counselor under the Act and who, at the time of the supervision, had education, clinical experience, and clinical supervisory experience in the field of marriage and family therapy substantially equivalent to a licensed marriage and family therapist.

      (4) A marriage and family therapist may be approved as a supervisor, who, at the time of the supervision, was licensed at the highest possible level in another jurisdiction in which the applicant's services were performed. The Board will consider post-degree supervised experience obtained in another jurisdiction by an individual who is not certified or licensed as a marriage and family therapist in the other jurisdiction, if the jurisdiction in which such person was practicing did not provide for such certification, licensure, listing or registration. The applicant's supervisor shall document to the satisfaction of the Board ~~her/his~~their competence in the same field of marriage and family therapy as that in which the applicant is seeking licensure

   b. The approved supervisor shall keep records that will enable ~~her/him~~them effectively to train, evaluate, and credit the applicant for licensure with the exact number of hours of acceptable post-master's or post-doctoral practice of marriage and family therapy and the exact number of hours of supervision completed in compliance with this Rule.

4. Number of hours of post-master's practice in individual and marriage and family therapy under supervision.

   a. The post-master's experience and practice in individual and marriage and family therapy under supervision cannot be completed in fewer than twenty-four months

and may involve supervision by more than one supervisor as defined in these Rules.

b. The two years of post-master's practice in individual and marriage and family therapy under supervision required by section 12-245-504(1)(d), C.R.S., must include at least 2,000 hours of practice, including at least 1,500 hours of face-toface direct client contact, 1,000 of which shall be with couples and families for the purpose of diagnosis, assessment and intervention obtained in such a manner that they are reasonably uniformly distributed over a minimum of twenty-four months.

c. The teaching of the practice of individual and marriage and family therapy may count up to 300 hours of post-master's practice in marriage and family therapy under supervision and up to thirty hours of supervision, provided this teaching experience was supervised by a supervisor as defined in these Rules.

d. “Face-to-face direct client contact with couples and families” includes contact with individual members of the couples and families so long as the contact is done as part of and in furtherance of on-going work with the couples and families.

5. Number of hours of post-doctoral experience practice in individual and marriage and family therapy under supervision.

a. The post-doctoral experience practice in individual and marriage and family therapy under supervision cannot be completed in fewer than twelve months and may involve supervision by more than one supervisor as defined in these Rules.

b. The one year of post-doctoral experience practice in individual and marriage and family therapy under supervision required by section 12-245-504(1)(d), C.R.S., must include at least 1,500 hours of face-to-face direct client contact, including at least 1,000 hours of face-to-face direct client contact with couples and families for the purpose of diagnosis, assessment and intervention obtained in such a manner that they are reasonably uniformly distributed over a minimum of twelve months.

c. The teaching of the practice of individual and marriage and family therapy may count up to 300 hours of post-doctoral practice in marriage and family therapy under supervision and up to fifteen hours of supervision, provided this teaching experience was supervised by a supervisor as defined in these Rules.

d. “Face-to-face direct client contact with couples and families” includes contact with individual members of the couples and families so long as the contact is done as part of and in furtherance of on-going work with the couples and families.

6. Number of hours of post-master's or post-doctoral supervision.

a. For each 1,000 hours of supervised practice in individual and marriage and family therapy, applicants must receive a minimum of fifty hours of supervision. A minimum of twenty-five of the fifty hours must be face-to-face individual supervision, which may be in-person or telesupervision. The remaining hours up to the fifty hours may be by group supervision, which may be in-person or telesupervision. No other modes of supervision will be accepted.

b. The post-master's or post-doctoral supervision hours must be reasonably distributed over each 1,000 hours of supervised practice in individual and marriage and family therapy in a manner consistent with the accrual of the hours of supervised post-master's or post-doctoral practice.

c. With respect to supervision of the teaching of marriage and family therapy, the supervision hours must be reasonably distributed over the teaching experience in a manner consistent with the accrual of the hours of teaching experience.

~~d~~D. Examination. In accordance with sections 12-245-204(4)(b), 12-245-504(1)(e), and 12-245-504(3), C.R.S., the Board establishes these requirements for the licensing examination to demonstrate legal and ethical professional competence in individual and marriage and family therapy, including special knowledge and skill in marriage and family therapy.

1. Jurisprudence Examination. Applicants shall also be required to pass a Board developed jurisprudence examination.

2. National Examination. The examination in marriage and family therapy shall be the marriage and family therapy examination administered under contract with the Association of Marital and Family Therapy Regulatory Boards (AMFTRB).

a. Reexamination. In the event an applicant fails to receive a passing grade on the examination, ~~s/he~~ they may apply to the AMFTRB for reexamination and is subject to the requirements of AMFTRB.

3. Application. An applicant for licensure shall apply directly to the AMFTRB, or any other testing service the Board may contract with at the time, to sit for the appropriate examination.

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1.16 RECORDS REQUIRED TO BE KEPT AND RECORD RETENTION (C.R.S. §§ 12-245-204(4), 12-245-224(1)(u))

A. General. Except as provided in subsection (D) of this Rule, every licensed marriage and family therapist shall create and shall maintain records on the primary client(s). Every licensed marriage and family therapist shall retain a record as defined in subsection (B) of this Rule, on the primary client(s) for a period of seven years, commencing on the termination of marriage and family therapy/psychotherapy services or on the date of last contact with the client(s), whichever is later. Exception. When the client is a child, the record shall be retained for a period of seven years commencing either upon the last date of treatment or when the child reaches eighteen years of age, whichever is later.

B. Record. Every licensed marriage and family therapist shall create and shall maintain, as applicable to the mental health services rendered, a record for the primary client(s) containing the following information:

1. Name of treating therapist;

2. Client’s identifying data to include name, address, telephone number, gender, date of birth, and if applicable the name of the parent or guardian. If the client is an organization, the name of the organization, telephone number and name of the principal authorizing the mental health provider’s services or treatment;

3. Reason(s) for the psychotherapy services;

4. Mandatory disclosure statement(s);

5. Dates of service including, but not limited to the date of each contact with client, the date on which services began, and the date of last contact with client;

6. Types of service;

7. Fees;

8. Any release of information;

9. The records must be prepared in a manner that allows any subsequent provider to yield a comprehensive conclusion as to what occurred;

10. Name of any test administered, each date on which the test was administered, and the name(s) of the person(s) administering the test;

11. Information on each referral made to and each consultation with another therapist or other health care provider. This information shall include the date of referral or consultation, the name of the person to whom the client was referred, the name of the person with whom consultation was sought; the outcome (if known) of the referral, and the outcome (if known) of the consultation;

12. Records of counseling, interview notes, correspondence, audio or visual recordings, electronic data storage, and other documents considered professional information for use in counseling; and 13. A final closing statement (if services are over), if applicable.

C. Record storage. Every licensed marriage and family therapist shall keep and store client records in a secure place and in a manner that both assures that only authorized persons have access to the records and protects the confidentiality of the records and of the information contained in the records.

D. Transfer of records. Whenever a Licensee deems it necessary to transfer ~~her/his~~their records to another licensee or other health care provider, the Licensee making the transfer shall obtain the client's consent to transfer (when possible).

E. Disposition of records. If the licensed marriage and family therapist is not available to handle ~~her/his~~their own records, the licensed marriage and family therapist and/or ~~his/her~~their estate shall designate an appropriate person to handle the disposition of records. A plan for the disposition of records shall be in place for all licensed marriage and family therapists for the following conditions:

1. Disability, illness, retirement, or death of the licensed marriage and family therapist;

2. Termination of the licensed marriage and family therapist's practice;

3. Sale or transfer of practice.

The licensed marriage and family therapist or the estate designated representative shall make a reasonable effort to notify the primary client(s) of the transfer.

F. Record Destruction. Every licensed marriage and family therapist shall dispose of client records in a manner or by a process that destroys or obliterates all client identifying data. However, records cannot be destroyed until after seven years or as otherwise provided in these Rules or any other applicable statutes.

G. Record keeping in agency/institutional settings. A licensed marriage and family therapist need not create and maintain separate client records if the licensed marriage and family therapist practices in an agency or institutional setting and the licensed marriage and family therapist:

1. Sees the client in the usual course of that practice;

2. Keeps client records as required by the agency or institution; and

3. The agency or institution maintains client records.

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1.18 CONTINUING PROFESSIONAL COMPETENCE (C.R.S. § 12-245-506)

Pursuant to section 12-245-506, C.R.S., effective January 1, 2011, licensed marriage and family therapists shall demonstrate continuing professional competence through participation and compliance with the Continuing Professional Development program in order to renew, reinstate or reactivate a license to practice Marriage and Family Therapy in the State of Colorado.

Effective May 22, 2024, marriage and family therapist candidates shall complete continuing professional development and educational hours prior to a second or subsequent renewal of a marriage and family therapist candidate registration to maintain the marriage and family therapist candidate registration.

A. Definitions.

1. Continuing Professional Competence. Continuing Professional Competence (CPC) means the ongoing ability of a licensed marriage and family therapist or registered marriage and family therapist candidate to learn, integrate and apply the knowledge, skill, and judgment to practice according to generally accepted industry standards and professional ethical standards in a designated role and setting.

2. Continuing Professional Development. Continuing Professional Development (CPD) is the program through which a licensed marriage and family therapist or registered marriage and family therapist candidate satisfies the Continuing Professional Competence requirements set forth in section 12-245-506, C.R.S., to renew, reinstate or reactivate a license.

3. Continuing Professional Development Portfolio. The Continuing Professional Development Portfolio (CPD Portfolio) is an instructional guide and workbook for the CPD program.

4. Professional Development Hours. Professional Development Hours (PDH) are the units of measurement of active learning used to accrue credit in the CPD program. PDH are equivalent to clock hours.

5. Professional Development Activities. Professional Development Activities (PDA) are Board approved learning activities undertaken for the purpose of continuing professional development.

B. Requirements.

1. Licensed marriage and family therapists shall demonstrate continuing professional competence through participation and compliance with the Continuing Professional Development program in order to renew, reinstate or reactivate a license to practice Marriage and Family Therapy in the State of Colorado.

a. The registered marriage and family therapist candidate shall complete continuing professional development and educational hours prior to a second or subsequent renewal in order to renew the marriage and family therapist candidate registration in the State of Colorado.

2. Licensed marriage and family therapists and registered marriage and family therapist candidates must complete the following requirements in accordance with the current CPD Portfolio:

a. Professional Practice Survey;

b. Learning plan;

c. Documentation of their PDA and PDH.

C. Professional Practice Survey. The Professional practice survey should be completed prior to renewing, reinstating or reactivating a license or registration.

D. Learning Plan. Licensees shall draft a Personal Learning Plan based upon the Professional Practice Survey. The Learning Plan shall consist of PDA approved by the Board. Licensees shall execute their Learning Plan by completing all PDA and PDH before the date upon which they renew their license. Changes to the Learning Plan shall not be allowed after renewing, reinstating or reactivating a license.

E. Professional Development Hours. Licensed marriage and family therapists shall complete forty PDH each renewal cycle in order to renew their license or certification. Registered marriage and family therapist candidates shall complete sixty PDH at the second and all subsequent renewal cycles.

1. Licensees shall document their completion of their PDA and PDH according to the guidelines set forth in the current CPD Portfolio. Licensees should be prepared to submit documentation of their CPD compliance upon request by the Board.

2. No more than twenty PDH in a single Professional Development Activity shall be credited and recognized each renewal cycle.

3. Licensees receiving an original, reinstated or reactivated license, during the renewal cycle must accrue one point sixty six (1.66) PDH for each month or portion thereof they are licensed during the current renewal cycle.

4. A maximum of five PDH may be carried from the last renewal cycle to the next renewal cycle if the PDH were earned within three months of license expiration and are in excess of the forty PDH required for the current renewal cycle.

5. Licensees shall retain documentation of their CPD compliance for a minimum of five years from the license expiration date for the renewal cycle during which PDH were accrued.

F. Professional Development Activities. To qualify for PDH credit, Licensees must select PDA that have been approved by the Board.

1. The Board approves the following PDA:

a. Volunteering

b. Mentoring

c. Presenting

d. Supervision

e. Publishing

f. Coursework

g. Independent Learning

h. Group Learning

2. Professional Development Activities must enhance, improve or maintain your competence as a licensed marriage and family therapist or registered marriage and family therapist candidate. You should be able to show or describe how the activity either provided new knowledge or skills, or how you were able to sharpen or hone existing skills by synthesizing new knowledge.

3. It is within the discretion of the Board to deny credit for any PDH that does not meet the criteria set forth in the current CPD Portfolio or the definition of Continuing Professional Competence contained in section 12-245-506(3), C.R.S.

4. Unacceptable Professional Development Activities. The following types of activities are ineligible for credit: serving on a federal, state or municipal board or commission.

G. Deem Status.

1. To be eligible for Deem Status pursuant to section 12-245-506(1)(c), C.R.S., a State Department CPC program must satisfy the definition of Continuing Professional Competence pursuant to section 12-245-506(3), C.R.S. Employees and contractors of qualifying programs in State Departments shall be deemed to have met the CPC requirements.

2. Licensees deemed to have met the CPC requirements are subject to an audit. The audit shall review the program for which the Licensee has justified their Deem Status to ensure that it meets the definition of CPC outlined in section 12-245-506(3), C.R.S., and shall verify the Licensee's successful completion of the program.

3. Licensees found to have falsified their Deem Status or who attested their fulfillment of CPC requirements for an unqualified State Department program, are subject to discipline by the Board.

H. Exemptions.

1. Military Service. The Board may grant exemptions from the CPD program requirements for reasons of military service pursuant to section 12-20-302, C.R.S., including but not limited to, military personnel 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 from the payment of any professional or occupational license, certification or registration fees, including renewal fees, and from continuing professional competency requirements for a renewal cycle that falls within the period of service or within the six months following the completion of service in the war, emergency or contingency.

2. Dual Licensure. The Board may grant an exemption from the CPD requirement if the licensed marriage and family therapist has fulfilled the CPD requirements set forth in: sections 12-245-410, 12-245-606, or 12-245-806, C.R.S.

1.19 INACTIVE LICENSE STATUS AND REACTIVATION OF LICENSE

A. Inactive status. Pursuant to section 12-20-203, C.R.S., any Licensee may apply to the Board to be transferred to an inactive status. Such application shall be in the form and manner designated by the Board. The holder of an inactive license shall not be required to comply with the continuing competency requirements for renewal so long as ~~he or she~~they remains inactive.

1. During such time as a Licensee remains in an inactive status, ~~he or she~~they shall not perform those acts restricted to active licensure pursuant to section 12-245-505, C.R.S. The Board shall retain jurisdiction over inactive Licensees for the purposes of disciplinary action pursuant to section 12-245-222(1)(d), C.R.S.

2. Practicing with an inactive license shall constitute unlicensed practice and, therefore, may be grounds for disciplinary or injunctive action, up to and including revocation.

B. Reactivation requirements. To be considered for license reactivation, an applicant must submit a completed reactivation application and the reactivation fee.

C. Required statements.

1. Each applicant for reactivation shall certify the following:

a. Every license, certificate, or registration to practice marriage and family therapy held by the applicant is in good standing;

b. Applicant has no knowledge of any injunction or disciplinary action completed or pending against ~~her/his~~ their license, certificate, registration, or listing to practice psychotherapy or marriage and family therapy;

c. Applicant has no knowledge of any malpractice judgment against her/him, has no knowledge of any settlement of a malpractice action or claim against her/him, and has no knowledge of any malpractice action or claim pending against her/him, where the malpractice alleged relates to ~~her/his~~their practice of psychotherapy or marriage and family therapy;

d. Applicant has no knowledge of any complaint pending before, investigation being conducted by, or disciplinary proceeding pending before the licensing, grievance, or disciplinary board of any jurisdiction in which ~~he or she is~~they are licensed, certified, or registered to practice psychotherapy or marriage and family therapy where the complaint, investigation, or proceeding concerns ~~her/his~~their practice of psychotherapy or marriage and family therapy.

2. The Board may decline to issue a license to an applicant for reactivation if disciplinary action is pending or if there is an unresolved complaint.

D. Continuing Professional Competence. Pursuant to section 12-245-506, C.R.S., effective January 1, 2011, licensed marriage and family therapists shall demonstrate continuing professional competence in order to reactivate.

1. An applicant for reactivation must comply with Continuing Professional Development reactivation requirements pursuant to Board Rule 1.18 including the professional practice

survey, learning plan and documentation of having completed forty Professional Development Hours within the two years immediately preceding the application receipt date.

E. License inactive more than two years. The Board has established the following criteria for determining whether an applicant for reactivation has demonstrated competency to practice as required by section 12-245-205(3), C.R.S.

1. An applicant whose license has been inactive more than two years shall pass a Board approved jurisprudence examination and either:

a. A written statement detailing work experience related to the practice of marriage and family therapy or psychotherapy during the time the license has been inactive. If work experience was in other jurisdiction(s), verification of licensure from each jurisdiction(s) is required; or

b. Retaking and passing the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) Examination; or

c. Completion of an additional ten Professional Development Hours as defined in Board Rule 1.18 for each year or portion thereof the license has been inactive; or

d. ther means determined by the Board.

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APPENDIX A

MODEL SEXUAL MISCONDUCT DISCLOSURE STATEMENT

DISCLAIMER: This Model Sexual Misconduct Disclosure Statement is to be used as a guide only and is aimed only to assist the practitioner in complying with section 12-30-115, C.R.S., and Rule 1.22. As a licensed, registered, and/or certified health care provider in the State of Colorado, you are responsible for ensuring that you are in compliance with state statutes and rules. While the information below must be included in your Sexual Misconduct Disclosure Statement pursuant to section 12-30-115, C.R.S., you may to include additional information that specifically applies to your situation and practice.

A. Licensee, as defined in Rule 1.1E, information, including, at a minimum: name, business address, and business telephone number.

B. A listing of any final convictions of or a guilty plea to a sex offense, as defined in section 16-11.7-102(3), C.R.S.

C. For each such conviction or guilty plea, the licensee shall provide, at a minimum:

1. The date that the final judgment of conviction or guilty plea was entered;

2. The nature of the offense or conduct that led to the final conviction or guilty plea;

3. The type, scope, and duration of the sentence or other penalty imposed, including whether:

a. The provider entered a guilty plea or was convicted pursuant to a criminal adjudication;

b. The provider was placed on probation and, if so, the duration and terms of the probation and the date the probation ends; and

c. The jurisdiction that imposed the final conviction or issued an order approving the guilty plea.

D. A listing of any final agency action by a professional regulatory board or agency that results in probationary status or other limitation on the licensee's ability to practice if the final agency action is based in whole or in part on:

1. a conviction for or a guilty plea to a sex offense, as defined in section 16-11.7-102(3), C.R.S., or a finding by the professional regulatory board or Director that the provider committed a sex offense, as defined in as defined in section 16-11.7-102(3), C.R.S.; OR

2. a finding by a professional regulatory board or agency that the provider engaged in unprofessional conduct or other conduct that is grounds for discipline under the part or article of Title 12 of the Colorado Revised Statutes that regulates the provider's profession, where the failure or conduct is related to, includes, or involves sexual misconduct that results in harm to a patient or presents a significant risk of public harm to patients.

E. For each such final agency action by a professional regulatory board or agency the provider shall provide, at a minimum:

1. The type, scope, and duration of the agency action imposed, including whether:

a. the regulator and licensee entered into a stipulation;

b. the agency action resulted from an adjudicated decision;

c. the licensee was placed on probation and, if so, the duration and terms of probation; and d. the professional regulatory board or agency imposed any limitations on the licensee's practice and, if so, a description of the specific limitations and the duration of the limitations.

2. The nature of the offense or conduct, including the grounds for probation or practice limitations specified in the final agency action;

3. The date the final agency action was issued

4. The date the probation status or practice limitation ends; and

5. The contact information for the professional regulatory board or agency that imposed the final agency action on the licensee, including information on how to file a complaint.

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Editor's Notes

History

Rule 17(a) emer. rule eff. 10/26/2007; expired eff. 01/26/2008.
Rule 17 eff. 03/01/2008.
Purpose and Scope, rules 12, 15, 19, 20 emer. rules eff. 01/01/2011.
Purpose and Scope, rules 12, 15, 19, 20 eff. 02/01/2011.
Entire rule emer. rule eff. 12/09/2011.
Entire rule eff. 02/01/2012.
Rule 12 eff. 05/02/2016.
Rules 1.6 A, 1.14 A, 1.14 C.1, 1.14 C.6.a, 1.16 A emer. rules eff. 10/23/2020.
Rules 1.6 A, 1.12, 1.14 A, 1.14 C.1, 1.14 C.6.a, 1.16 A, 1.22, Appendix A eff. 12/15/2020.
Rules 1.6 A, 1.12 C-D, 1.22, Appendix A eff. 06/30/2021.
Rule 1.8 B eff. 12/30/2021.
Rules 1.24, 1.25 emer. rules eff. 10/28/2022.
Rules 1.12, 1.23-1.25, Appendix B eff. 12/15/2022.

Annotations

Rules 1.12 C., 1.12 D., 1.22 E.4. (adopted 10/23/2020) were not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

Rules 1.25 B. and 1.25 C. (adopted 10/28/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

Notice of Proposed Rulemaking

Tracking number

2025-00099

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-1

Rule title

REGULATIONS CONCERNING PREMIUMS AND INDIVIDUALS ELECTING COVERAGE

Rulemaking Hearing

Date

04/14/2025

Time

03:00 PM

Location

https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1

Subjects and issues involved

Rules regarding premiums and individuals electing coverage.

Statutory authority

C.R.S. 8-13.3-501 et seq.

Contact information

Name

Evan Grimes

Title

Policy Unit Manager

Telephone

‪(720) 442-0833‬

Email

evan.grimes@state.co.us

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING PREMIUMS AND INDIVIDUALS ELECTING COVERAGE

7 CCR 1107-1

1.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq. and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "FAMLI Act").

2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to premiums and individuals electing coverage.

3. ~~Article 12 of C.R.S. Title 5 (2024), Article 4 of C.R.S. Title 24 (2024), Articles 4, 13.3, and 70 of C.R.S. Title 8 (2024)~~50 U.S.C. §§ 3901-4043 (2024), 26 U.S.C. § 1402 (2024), 42 U.S.C. § 430 (2024), 38 U.S.C. § 4301-4334 (2024), 7 CCR 1103-1 (2024), 7 CCR 1107-4 (2024), 7 CCR 1107-9 (2024), and U.S. Department of Labor, Unemployment Insurance Program Letter No. 20-04 (May 10, 2004) are hereby incorporated by reference. Earlier versions of such laws and regulations may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes and regulations. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or 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 the statutes and regulations incorporated 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 the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

1.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.

2. "Calendar Quarter" has the same definition as C.R.S. § 8-70-103(6).

3. "Gross income from self-employment" means all gross income derived by an individual from any trade or business carried on by such individual, as used in 26 U.S.C. § 1402, plus all payments the individual receives from their trade or business that are reportable on IRS Form W-2 or Schedule E Part II, Section 28, including but not limited to S corporation earnings.

4. "Individual electing coverage" means either an employee of a local government that has declined participation in the family and medical leave insurance program or a self-employed person, who elects family and medical leave insurance coverage pursuant to C.R.S. § 8-13.3-514.

5. "My FAMLI+ Employer" means the online portal through which employers and individuals electing coverage will interact with the FAMLI Division. Activities completed through this portal include, but are not limited to, electing coverage, declining coverage, reporting wages, remitting premiums, and maintaining their accounts pursuant to the FAMLI Act and its implementing regulations.

6. "Premium" is defined as the money payments required pursuant to C.R.S. § 8-13.3-507 to finance the payment of family and medical leave insurance benefits and administer the family and medical leave insurance program.

7. "Self-employed person" or "self-employed individual" means a Colorado resident who either: (1) carries on a trade or business as a sole proprietor or an independent contractor; (2) is a member of a partnership that carries on a trade or business; or (3) is otherwise in business for himself or herself (including a part-time business or a "gig worker"). An individual who does not meet the FAMLI Act's two-prong exception to the definition of "employee" at C.R.S. § 8-13.3-503(7) is not a self-employed person or individual. The Division will presume that an individual is not self-employed with regard to any business of which they own less than twenty-five (25) percent. An individual can overcome this presumption by proving that they are primarily free from control and direction in the performance of the labor or services, both under the individual's contract for the performance of the labor or services and in fact, and are customarily engaged in an independent trade, occupation, profession, or business related to the labor or services performed.

8. "Tax transcript" means a full copy of the individual's "record of account transcript" from the Internal Revenue Service ("IRS").

9. "Wages" as used in the FAMLI Act and its implementing regulations means "gross wages," and includes monetary compensation described by C.R.S. § 8-4-101(14)(a), employer-provided paid leave pursuant to 7 CCR 1107-4 Section 4.2.2., and leave from a separate bank of time off solely for the purpose of paid family and medical leave as described by 7 CCR 1107-4 Section 4.2.5., if such leave is paid to the employee by the employer and not by a third party. "Wages" does not include compensation described by C.R.S. § 8-4-101(14)(b), compensation described by C.R.S. § 8-4-103(3), or any non-monetary payment except for the portion of any non-monetary payment used as credit toward the minimum wage pursuant to 7 CCR 1103-1 Sections 6.2.1 and 6.2.2. "Wages" for self-employed individuals who elected coverage means "gross income from self-employment" as defined in these rules.

10. Throughout the FAMLI Act and its implementing regulations, unless otherwise stated, entities that are employers and have different Federal Employer Identification Numbers ("FEIN") are different employers with separate rights and obligations. This does not impact the ability of private plan administrators to report aggregate data pursuant to 7 CCR 1107-5, Section 5.12.

1.3 Individuals Electing Coverage

1. Individuals electing coverage may elect coverage under C.R.S. § 8-13.3-514 for an initial period of coverage of three years.

    A. The individual electing coverage must create a My FAMLI+ Employer account and must submit their notice of election of coverage via My FAMLI+ Employer. For self-employed individuals, the notice of election must include a copy of their most recent tax transcript, as well as copies of any IRS Form W-2 issued to the individual by the individual's business or businesses for the same tax year reflected by the tax transcript. No

communication from a self-employed individual will constitute a notice of election without the required tax transcript and W-2 forms.

B. Elective coverage becomes effective on the date of filing the notice of election.

C. A period of coverage is defined as:

1. The three years following the first day of elective coverage or any gap in coverage; and

2. Each subsequent year.

D. Any individual electing coverage may file a notice of withdrawal within thirty calendar days after the end of a period of coverage.

E. The notice of withdrawal must include an effective date of the withdrawal, which must be no sooner than thirty days after the filing of the notice of withdrawal.

F. A notice of withdrawal from coverage must be submitted to the Division online or in another format approved by the Division.

G. Upon termination of coverage, due and unpaid premiums must be paid, as well as any interest or fines assessed.

H. Throughout a period of coverage, individuals electing coverage as a self-employed individual, and individuals electing coverage as an employee of a local government that has declined participation pursuant to C.R.S. § 8-13.3-522, must report wages, pay premiums, and otherwise comply with the FAMLI Act and its implementing regulations. This includes submitting wage reports for quarters in which no relevant wages are paid and submitting documentation as required by the FAMLI Act, its implementing regulations, or the Division.

I. If, during a period of coverage, an individual becomes no longer employed by a local government that has declined participation pursuant to C.R.S. § 8-13.3-522, or becomes no longer self-employed in Colorado, their coverage period does not end, and they must still comply with the FAMLI Act and its implementing regulations with regard to elective coverage. However, they may contact the Division and request a waiver of their quarterly wage reporting obligations, and the Division in its sole discretion may grant the waiver. The Division may revoke the waiver at any time.

2. Provisions specific to self-employed individuals electing coverage:

A. Starting with the second calendar quarter of 2025, self-employed individuals must submit supporting documentation with their quarterly wage reports except for quarters in which they receive no gross income from self-employment. The supporting documentation must substantiate the amount of wages reported. Supporting documentation may include bank account statements, invoices, pay statements, reports, receipts, or other relevant documentation. Wage reports without supporting documentation may be considered untimely and subject to fines.

B. If the documentation submitted does not clearly support the reported wages, or if other information available to the Division undermines the reliability of the reported wages, then the Division may revise the wage amount to reflect the Division's reasonable estimate of gross income from self-employment. A reasonable estimate may be, but is not limited to:

1. A prior quarter's wages; or

2. A prorated amount of gross income from self-employment reflected by the individual's tax transcripts and W-2 forms.

C. If the Division revises a wage amount pursuant to Section 1.3.2.B above, and the self-employed individual wants to challenge that revision, they must first request a reconsideration of that revision within forty-nine (49) days of the date of the revision. The deadline to request a reconsideration may be extended by up to a maximum of forty-nine (49) days for good cause. The self-employed individual may appeal the outcome of the reconsideration pursuant to 7 CCR 1107-9.

D. In addition to the tax transcript required in the notice of election, a self-employed individual electing coverage must annually submit to the Division the prior year's tax transcript and W-2 forms by December 1.

1. If the transcript and W-2 forms–prorated as appropriate–show a total amount of gross income from self-employment that is lower than the total the self-employed individual reported for that year, then the Division may evenly decrease each of that year's quarterly wage reports proportionate to the difference and adjust premium obligations and benefits payments accordingly.

2. If the transcript and W-2 forms–prorated as appropriate–show a total amount of gross income from self-employment that is higher than the total the self-employed individual reported for that year, then the self-employed individual may request the Division to evenly increase each of that year's quarterly wage reports proportionate to the difference and adjust premium obligations and benefits payments accordingly. Such a request must be received by December 1 of the following year. The Division may increase quarterly earnings pursuant to this rule regardless of whether it received a request to do so.

3. If the self-employed individual fails to submit complete and accurate tax transcripts and W-2 forms by Dec~~Nov~~ember 1 as required by these rules, then the Division may:

a. Remove their gross income from self-employment from any active claim;

b. Exclude gross income from self-employment from new claims for the entire period of time the tax transcripts and W-2 forms are due and absent; and

c. Assess a fine against the individual in an amount up to $500.00.

4. If the Division imposes a consequence described in Section 1.3.2.D.3 above, it shall withdraw that consequence if it receives the required tax transcripts and W-2 forms by December 1 of the following year.

3. All individuals electing coverage must report wages and remit premium payments quarterly, no later than the last day of the month immediately following the end of the calendar quarter for which the premiums have accrued. The Division may require additional information or documentation from any individual electing coverage in order to determine or verify wages or other information.

1.4 Premiums

1. Premiums must be paid not less than quarterly in the form and manner determined by the Division. Quarterly payments must include all premiums with respect to wages paid during the calendar quarter.

2. Premiums must be paid no later than the last day of the month immediately following the end of the calendar quarter for which the premiums have accrued. Payment will be considered timely if postmarked or received electronically on or before the due date. If the due date of premiums falls on a Saturday, Sunday, or legal holiday, payment will be considered timely if postmarked or received in person or electronically on the next business day.

3. If an individual electing coverage owes unpaid premiums, fines, penalties, or interest to the Division, the Division may recoup that amount via benefits offset.

4. If, as a result of an incorrect notification or computation by the Division of premiums due, an employer is required to make an additional payment of premiums, such additional payment will not accrue interest until thirty days after notification by the Division that such additional payments are due.

5. Unless stated otherwise by exemption:

    A. The first premium payment of any person or entity that becomes an employer subject to C.R.S. § 8.13.3-501 et seq., at any time during a calendar year must be paid on or before the last day of the month immediately following the calendar quarter in which such person or entity becomes an employer.

    B. Said payment must include premiums with respect to wages paid beginning the first day the person or entity becomes an employer.

6. An employer required to remit premiums pursuant to C.R.S. § 8-13.3-507 may not deduct more than the maximum allowable employee share of the premium from wages paid for a pay period. If an employer deducts more than the amount authorized by the FAMLI Act and its implementing regulations, the Division may assess a fine of up to $25.00 per employee per instance. Such excessive deductions also constitute a violation of C.R.S. § 8-4-105. If the Division issues a written determination concluding that the employer deducted more than the amount authorized by the FAMLI Act and its implementing regulations, such a determination may constitute a written demand pursuant to C.R.S. § 8-4-101(15).

    A. If an employer fails to deduct the maximum allowable employee share of the premium from wages paid for a pay period, the employer is considered to have elected to pay that portion of the employee share under C.R.S. § 8-13.3-507, and the employer cannot deduct this amount from a future paycheck of the employee for a different pay period. However, where there is a lack of sufficient employee wages to cover the employee share of premiums for a pay period, the employer may deduct the uncollected portion of the employee share from one or more paychecks for future pay periods.

    B. In the payment of any premiums to the Division, and in the collection of any premium contributions from an employee, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

7. Premium payments to the Division will be applied in the following order, starting with the oldest quarter to the most recent past calendar quarter in which a balance is owed:

    A. Fines;

    B. Fees;

C. Interest; and

D. Premiums.

8. If the Division receives payment in an amount that exceeds the total of any premiums, fines, interest, or other debt owed to the Division, then the Division will notify the payor and:

A. If the amount in excess is less than $50.00, it will be credited to future payments due; and

B. If the amount in excess is $50.00 or more, it may be refunded to the employer at the employer's request. Otherwise, it will be credited to future payments due.

9. If an employer or an individual electing coverage fails to remit premiums by the due dates described in these rules, the Division may assess upon the employer or individual a fine of up to $50.00 per individual whose premiums were not timely paid.

10. Pursuant to C.R.S. § 8-13.3-507(6), premiums will not be required for wages, including wages from self-employment, above the contribution and benefit base limit established annually for the federal social security administration for purposes of the federal old-age survivors, and disability insurance program limits pursuant to 42 U.S.C. § 430.

11. If the Division issues a reimbursement of premiums to an employer, the employer must return to its employees any portion of the reimbursed amount that it collected from its employees. If the employer fails to do so within sixty (60) days of a reimbursement of premiums, the Division may assess a fine against the employer in an amount up to $50.00 per employee owed a reimbursement, per day that the employer fails to do so.

1.5 Calculating Employer Size

1. For determining employer size for the purpose of determining premium liability pursuant to C.R.S. § 8-13.3-507(5), an employee counts toward the total number of employees if they are employed in any state of the United States, the District of Columbia, or any territory or possession of the United States during 20 or more workweeks in the preceding calendar year. A person is considered “employed” during a workweek for the purpose of determining premium liability if: (1) they perform any work for the employer during the workweek; or (2) they are on any type of paid or unpaid leave during the workweek, and the employer has a reasonable expectation that the employee will later return to active employment, including leave taken under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301-4334.

2. An employer's size for purposes of this rule will be calculated upon registration with the My FAMLI+ Employer portal and annually thereafter during the first calendar quarter of the year. It is the employer’s responsibility to notify the Division of its size upon registration and annually thereafter, and if the employer fails to do so, the Division may presume that the employer has ten or more employees. The FAMLI Division may, on its own initiative, determine an employer’s size based on a preponderance of evidence. If the Division makes an employer size determination pursuant to this rule, and the employer wants to challenge that determination, it must first request a reconsideration of that determination within forty-nine (49) days of the date of the determination. The deadline to request a reconsideration may be extended by up to a maximum of forty-nine (49) days for good cause. The employer may appeal the outcome of the reconsideration pursuant to 7 CCR 1107-9. The Division will not adjust an employer size based on fluctuations throughout the year.

3. If the Division determines the employer's status has changed as it relates to premium liability, the Division will notify the employer as to their premium liability.

1.6. Colorado Localization of Employees

1. An employee is localized to Colorado, and their wages will be subject to premiums, if

   A. The employee's entire service is performed within Colorado;

   B. The employee's service is performed both within and outside of Colorado, but the service performed outside the state is incidental to the employee's work within Colorado or, for example is, temporary or transitory in nature and consists of isolated transactions; or

   C. Services are not localized in any state, but some of the services are performed in Colorado, and

      1. The employee's base of operations is in Colorado, or if the employee has no base of operations, then the place from which such services are directed or controlled is in Colorado as established in C.R.S. § 8-70-117, or

      2. The employee's base of operations, or place from which some part of the service is directed or controlled by the employer is not in any state in which part of the service is performed, but the employee's residence is in Colorado.

2. An employer who has paid to another jurisdiction an amount as premiums properly payable to Colorado will not be delinquent if premiums properly payable to Colorado are paid within thirty days of the date on which the Division determines that such premiums are payable to Colorado.

3. Services are performed where the worker is physically located. For example, if an individual works from their Colorado home for a Nevada employer, the work is performed in Colorado.

4. In determining whether an employee is localized to Colorado, the Division is guided by Unemployment Insurance Program Letter No. 20-04 and its attachments, issued by the United States Department of Labor's Employment & Training Administration on May 10, 2004.

5. The provisions of the Servicemembers Civil Relief Act at 50 U.S.C. §§ 3901 et seq. have no impact on an employee's localization under these rules.

1.7 Assessments and Recomputations of FAMLI Premiums

1. If the report of wages included in an employer's premium report is incomplete or in error, the Division may require a further report, may examine the employer's relevant books and records, or may use other reasonable measures to the extent necessary to obtain an accurate report.

2. If an employer is delinquent in filing a wage report within the time prescribed by the Division, or fails to provide the Division with additional records needed to make a proper determination of an amount of indebtedness, the Division may, in its discretion:

   A. Use the information and knowledge available to the Division to estimate the wages paid by an employer during the premium period or periods. The amount of wages so determined will be deemed to have been paid by the employer;

   B. Assess the employer for premiums calculated on the basis of the estimated wages; and

   C. Issue a subpoena duces tecum to compel an employer to release books and records to the Division for use in obtaining the required information.

3. The Division will notify an employer who is delinquent in filing reports or paying premiums by sending a determination letter to the employer’s correct address. Any outstanding premiums past due shall accrue interest pursuant to C.R.S. § 5-12-102.

4. The Division may correct errors of computation whenever such erroneous computations are found or brought to the Division's attention.

Notice of Proposed Rulemaking

Tracking number

2025-00100

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-2

Rule title

REGULATIONS CONCERNING LOCAL GOVERNMENT PARTICIPATION WITH THE PAID FAMILY MEDICAL LEAVE PROGRAM

Rulemaking Hearing

Date

04/14/2025

Time

03:00 PM

Location

https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1

Subjects and issues involved

Rules regarding local government participation.

Statutory authority

C.R.S. 8-13.3-501 et seq.

Contact information

Name

Evan Grimes

Title

Policy Unit Manager

Telephone

‪(720) 442-0833‬

Email

evan.grimes@state.co.us

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING LOCAL GOVERNMENT PARTICIPATION WITH THE PAID FAMILY MEDICAL LEAVE PROGRAM

7 CCR 1107-2

2.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq. and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "FAMLI Act").

2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the FAMLI Act with regard to local governments.

3. ~~Article XII Section 13 of the Colorado Constitution (2024), Article 13.3 of C.R.S. Title 8 (2024), Article 4 of C.R.S. Title 24 (2024), Article 1 of C.R.S. Title 29 (2024), Article 50 of C.R.S. Title 24 (2024); and~ 7 CCR 1107-1 (2024) ~~are~~ is hereby incorporated by reference. Earlier versions of such laws and regulations may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes and regulations. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or 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 the statutes and regulations incorporated 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 the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

2.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.

2. "Governing Body" has the same meaning as in C.R.S. § 29-1-102(12).

3. "Local Government" has the same meaning as defined at C.R.S. § 8-13.3-503(14), and is limited to Colorado local governments. "Local government" does not include: (1) a governmental entity with one or more employees in the state personnel system pursuant to Art. XII Section 13 of the Colorado Constitution and the State Personnel System Act, C.R.S. § 24-50-101 et seq.; or (2) a governmental entity for which premiums were paid pursuant to C.R.S. § 8-13.3-518(4)(b).

4. "Premium" has the same meaning as in 7 CCR 1107-1 Section 1.2.6.

2.3 Process and Notification of Program Declination

1. Local government employers are permitted to decline participation in the family and medical leave insurance program after a written notice has been delivered to the Division memorializing the decision by an affirmative vote of the local government's governing body to decline participation in the program. Such a vote must follow the local government's procedures for other votes of the governing body for similar decisions.

    A. If a local government participates in the family and medical leave program on or after January 1, 2024, and later votes to decline participation, the declination will not take effect until at least 180 days after the vote, to allow individual employees the opportunity to opt into the benefits program pursuant to C.R.S. § 8-13.3-514, should individuals choose to elect coverage.

    B. Public notice must be given in the same manner as any similar business before the governing body, and the local government must take/hear public comment prior to the vote if the local government has established procedures for public comment for similar business. The local government's employees must also be notified in writing prior to the vote and provided both information regarding the vote process and the opportunity to submit comments through a public process to the governing body.

    C. Within 30 days following a local government declination vote, the local government must provide its local government employees with a written individual notice of the local government's declination vote and the impact toward coverage under the FAMLI Act, or other paid family and leave insurance coverage. The written notice, must at a minimum, explain the differences between benefits offered by the state program and any other paid leave plan offered by the local government. The notice must also state which employees, if any, are eligible for job protection under the federal Family and Medical Leave Act (FMLA) benefits or other local provisions where applicable. The notice must also be delivered to all new employees hired after the date of the declination vote.

    D. The written notice described at Section 2.3.1.C must contain information regarding the right of local government employees to voluntarily elect coverage pursuant to C.R.S. § 8-13.3-514, and the contact information for the Division. In addition to providing written notices to individual employees in accordance with Section 2.3.1.C of this rule, local government employers must also post a notice containing the information in a conspicuous and accessible place in each establishment where employees are employed; provided, however, in cases where the local government employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification must be sent via electronic communication or through a conspicuous posting in the web-based or app-based platform. The individual and posted notices required in Sections 2.3.1.C and 2.3.1.D must be in English and in any language representing the first language spoken by at least five percent of the local government employer's workforce. The Division will create and make available to local government employers posters and notices containing the information required in this regulation, and local government employers may use the posters and notices to comply with the requirements of this section.

        1. It is the responsibility of the local government employer to request printed materials from the Division. Local government employers may be responsible for the printing and mailing costs of such materials.

        2. It is the responsibility of the local government to provide written notification to the Division of the local government employers interpretation needs of printed notices for languages other than English or Spanish.

2. Local governments without employees are not employers, and as such, do not need to register, vote, decline coverage, or otherwise participate in the family and medical leave insurance program.

3. The Division may presume that an entity is not a local government if the entity does not appear on a public list of local governments published by the Office of the State Auditor's Local Government Audit Division, the Colorado Department of Local Affairs, or the Colorado Department of Education. An entity not on those lists may overcome the presumption by submitting documentation sufficient to establish that it is a local government.

2.4 Local Government Employer Participation

1. Local government employers are required to formally notify the Division in writing and provide both the date of the vote, and the local government's decision to decline participation in the family and medical leave insurance program.

   A. Local governments which have previously declined participation in the family and medical leave insurance program pursuant to C.R.S. § 8-13.3-522, may subsequently elect coverage at any time by a vote of the governing body.

   B. A local government may not decline participation in the family and medical leave insurance program in part. Any declination by a local government is a full declination of family and medical leave insurance program participation for that local government employer, except such an employer may enter into an agreement with an employee who elects coverage pursuant to C.R.S. § 8-13.3-514, whereby the employer agrees to provide administrative support to the employee with regard to the employee's program obligations, including but not limited to deducting premiums from the employee's wages and remitting premiums and wage reports to the Division on behalf of the employee.

2. A vote to decline coverage is not permanent. A local government which has previously declined coverage may vote to renew the declination no later than every eight years. The Division will notify the local government of the end of the eight-year declination period one year in advance. In the absence of a vote further declining coverage, the local government will become a covered employer immediately after the end of the eight-year declination period. The local government must inform the Division of a declination vote in writing which includes the date the vote was taken.

3. When a local government employer returns to coverage pursuant to these rules, the employer will be covered and subject to premium liability beginning on the earlier of: (1) the effective date specified by the local government employer in its notification to the Division; or (2) the first day after the local government employer's deadline to renew its declination has passed.

4. Local government employers that have previously declined participation and then subsequently elect or otherwise return to coverage under the family and medical leave insurance program pursuant to these regulations must remain in the program and pay premiums for a minimum of twelve complete calendar quarters after the elected coverage begins. If such an employer chooses to again decline participation, notice of such declination must be delivered in writing to the Division at least one complete calendar quarter in advance of the end of the twelve calendar quarter cycle pursuant to this regulation.

5. Employees must also be notified directly in writing, and at least 180 days before the pending or upcoming return to or withdrawal of coverage pursuant to this regulation.

   A. Local government employers must display a notice containing the information required in this regulation in a conspicuous and accessible place in each establishment where

employees are employed; provided, however, in cases where the local government employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification must be sent via electronic communication or through a conspicuous posting in the web-based or app-based platform.

B. The written notice and posting must contain an explanation of employee rights under the FAMLI program including but not limited to program requirements, benefits, claims process, payroll deductions and premiums, the right to job protection and benefit continuation under C.R.S. § 8-13.3-509, protection against retaliatory personnel actions or other discrimination, relevant contact information for the Division, and other pertinent information.

C. The notice and poster required by this regulation must be in English and in any language representing the first language spoken by at least five percent of the local governments employer's workplace. The Division will create and make available to local government employers posters and notices containing information required in this regulation, and local government employers may use the posters and notices to comply with the requirements of this section.

6. Local governments that decline participation in the family and medical leave insurance program are not subject to obligations or prohibitions contained in the FAMLI Act or its implementing regulations, except where otherwise expressly provided in the FAMLI Act or its implementing regulations. Local governments that decline participation in the family and medical leave insurance program are not entitled to any rights or protections contained in the FAMLI Act or its implementing regulations, except where otherwise expressly provided in the FAMLI Act or its implementing regulations.

2.5 Overpayments

In the event of an overpayment of premiums by a local government employee whose employer elects coverage after having previously declined coverage, any overpaid premiums will be repaid to the employee by the Division. The Division will ensure a continuation of coverage for local government employees who have individually opted into the benefits program pursuant to C.R.S. § 8-13.3-514, and ensure there is not a lapse in coverage prior to the local government’s reinstatement of coverage.

Notice of Proposed Rulemaking

Tracking number

2025-00101

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-3

Rule title

REGULATIONS CONCERNING BENEFITS AND EMPLOYER PARTICIPATION REQUIREMENTS

Rulemaking Hearing

Date

04/14/2025

Time

03:00 PM

Location

https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1

Subjects and issues involved

Rules regarding benefits and employer participation.

Statutory authority

C.R.S. 8-13.3-501 et seq.

Contact information

Name

Evan Grimes

Title

Policy Unit Manager

Telephone

‪(720) 442-0833‬

Email

evan.grimes@state.co.us

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING BENEFITS AND EMPLOYER PARTICIPATION REQUIREMENTS

7 CCR 1107-3

3.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501. et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. §§ 8-13.3-501 through 524 (the "Act").

2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to benefits and employer participation.

3. ~~Articles 13.3 and 70 of C.R.S. Title 8 (2024), Articles 4 and 11 of C.R.S. Title 24 (2024), Article 6 of C.R.S. Title 26 (2024), Article 1 of C.R.S. Title 29 (2024), Article 13 of C.R.S. Title 38 (2024),~~ 29 U.S.C. § 2601 et seq., 29 C.F.R. § 825, et seq. (2024), 7 CCR 1107-1 (2024), 7 CCR 1107-4 (2024), 7 CCR 1107-7 (2024), and 7 CCR 1107-9 (2024) are hereby incorporated by reference. Earlier versions of such laws and regulations may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes and regulations. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or 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 the statutes and regulations incorporated 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 the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

3.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.

2. "Application year" as used at C.R.S. § 8-13.3-505(1), and "benefit year" as used at C.R.S. § 8-13.3-521(1)(b) are both defined as "application year" under C.R.S. § 8-13.3-503(1). The 12-month period is measured forward from the date the claim is filed. Under this ''measured forward" method, an employee would be entitled to the leave amounts described at C.R.S. § 8-13.3-505(1) during the year beginning on the first date a claimant files for paid family and medical leave, and the next 12-month period would begin the first time the claimant files for paid family and medical leave after the completion of any 12-month period. Solely for the purpose of determining the application year, the date the claim is filed is the benefit start date.

3. "Benefit start date" means the first day the covered individual is unable to work for which benefits are approved.

4. "Benefit year," for purposes of applying the definitions of "base period" at C.R.S. § 8-70-103(2) and "alternative base period" at C.R.S. § 8-70-103(1.5), means "application year" as defined at Section 3.2.2 of these rules.

5. "Business Days" means Monday, Tuesday, Wednesday, Thursday, and Friday, and excludes any Colorado state holidays, as listed in C.R.S. § 24-11-101.

6. "Calendar week" means any period of seven consecutive days.

7. "Claimant" means a person who has filed a claim for paid family and medical leave insurance benefits, regardless of whether the person is a covered individual pursuant to C.R.S. § 8-13.3-503(3).

8. "Continuous leave" means one non-recurring uninterrupted period of leave.

9. "Days" means calendar days unless otherwise specified as a business day, as defined by these rules.

10. "Designated Representative" means a person legally authorized to make decisions on behalf of a claimant, with regard to the FAMLI program. That legal authorization may be through written designation from the claimant or through legal status as a parent, guardian, conservator, or power of attorney. If the claimant is unable to file a claim or authorize a designated representative due to the claimant's medical incapacitation, a claimant's family member may serve as a designated representative without prior authorization from the claimant. For safe leave applications, the alleged perpetrator of domestic violence, stalking, sexual assault, or sexual abuse may not be the claimant's designated representative.

11. "Good cause" shall exist if the Division determines that a reasonably prudent individual under the same or similar circumstances would have been prevented from complying with deadlines established by the FAMLI Act and its implementing regulations. In determining whether good cause exists, the Division shall consider all factors that it deems relevant, including but not limited to:

    A. Whether the requestor received timely and adequate notice of the need to act;

    B. Administrative error by the Division or its representatives, or the failure of the Division or its representatives to discharge its responsibilities;

    C. Factors outside the control of the requestor which prevented a timely action;

    D. The requestor's physical or mental impairment, particularly if the impairment is related to the request for paid leave;

    E. Whether the requestor acted diligently in submitting the request once the reason for the late request no longer existed;

    F. The total length of time that the action was untimely;

    G. Whether the delay affects the ability for the Division or private plan administrator to determine the validity of the request for paid family and medical leave insurance benefits; and

H. Good faith error, provided that in determining whether good faith error constitutes good cause, the Division or private plan administrator shall consider any prior history of such errors, whether the request is excessively late, and whether the requestor otherwise acted with due diligence.

12. "Health care provider" as defined by C.R.S. § 8-13.3-503(13) is limited to an individual licensed, certified, or registered under Colorado law to provide medical or emergency services or an individual with a National Provider Identifier ("NPI") number issued by the National Plan and Provider Enumeration Service ("NPPES") who is licensed, certified, or registered to provide medical or emergency services. A health care provider may only certify the need for FAMLI leave if such certification is within the diagnostic scope of their licensure, certification, or registration. "Medical or emergency services" means treatment for any physical or mental condition giving rise to a serious health condition.

13. "In loco parentis" means a relationship in which a person puts himself or herself in the situation of a parent by assuming and discharging the obligations of a parent to a child. Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand in loco parentis to a child as long as the relative satisfies the in loco parentis requirements. Persons who are in loco parentis include those with day-to-day responsibilities to care for or financially support a child. In determining in loco parentis status, the Division will consider the age of the child; the degree to which the child is dependent on the person; the amount of financial support, if any, provided; and the extent to which duties commonly associated with parenthood are exercised. The fact that a child has a biological parent in the home, or has both a mother and a father, does not prevent an employee from standing in loco parentis to that child. The FAMLI Act does not restrict the number of parents a child may have. The specific facts of each situation will determine whether an employee stands in loco parentis to a child.

14. "Intermittent leave" means leave taken in separate blocks of time due to a single qualifying reason.

15. "Reduced leave schedule" means a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

16. "Regular work schedule" means the number of weekly hours an individual works at any job, plus the number of weekly hours they would have worked but for any paid holidays and other paid leave, including paid family and medical leave. If the number of weekly hours cannot be determined, the average number of weekly hours worked over the four weeks prior to the benefit start date may be used. The individual's regular work schedule is calculated for each job individually and then aggregated to determine their aggregate regular work schedule for each week. For the purpose of calculating the individual's regular work schedule, "job" means any arrangement where an individual is paid for their services, including self-employment, gig work, and all employment, regardless of whether it is covered under the FAMLI Act.

17. "Self-employed individual" has the same meaning as in 7 CCR 1107-1.

18. "Wage replacement benefit" means the monetary weekly benefit amount described at C.R.S. § 8-13.3-506.

19. "Wages" has the same meaning as "wages" as defined in 7 CCR 1107-1.

20. "Wages subject to premiums" as used in C.R.S. § 8-13.3-503(3)(a) include wages paid to an employee by an employer with an approved private plan, wages paid to an employee by an employer under the state plan, and wages earned from either self-employment or local

government employment by individuals who have elected coverage pursuant to C.R.S. § 8-13.3-514.

21. "Willful" or "willfully" as used in the FAMLI Act or its implementing regulations means the employer or individual knew or showed reckless disregard for whether its conduct was prohibited by the FAMLI Act or its implementing regulations.

3.3 Employer Participation Requirements

1. Employers, including local government employers that decline participation in the FAMLI program, and employers who meet their obligations under the FAMLI Act through an approved private plan, must register with the FAMLI Division via "MyFAMLI+ Employer" by January 1, 2023, or when they become an employer, whichever occurs later. If the Division determines that an employer has violated this section, it may assess upon the employer a fine of up to $500.00.

    A. Any entity that registers one or more accounts with the FAMLI Division via "My FAMLI+ Employer" on behalf one or more employers is prohibited from registering unnecessary accounts, including but not limited to accounts for fake or illegitimate employers, and accounts for employers with no employees whose work is localized to Colorado pursuant to 7 CCR 1107-1, Section 1.6. If the Division determines that an entity registered unnecessary accounts, the Division may assess upon the entity a fine of up to $500.00 per violation.

    B. Any entity that bulk registers multiple accounts with the FAMLI Division via "My FAMLI+ Employer" on behalf of multiple employers must submit to the FAMLI Division a document describing the methods by which it (1) determines that a registrant is a legitimate employer, and not a fraudulent, fake, or illegitimate entity; and (2) determines that the employer needs to register an account with My FAMLI+ Employer in accordance with the FAMLI Act and its implementing regulations. This document is due initially upon the earlier of (1) March 31, 2025; or (2) upon the entity's first registration of multiple accounts. Additionally, this document must be submitted annually on November 1, and must describe any changes to the entity's employer verification details. If the Division determines that an entity has not submitted the required employer verification document, then the Division may assess upon the entity a fine of up to $500.00 per violation. In the event that the Division stops accepting bulk registration of employer accounts with My FAMLI+ Employer, these document requirements no longer apply.

2. Employers participating in the state plan must submit wage reports to the Division on the same quarterly schedule as they must submit premiums to the Division pursuant to 7 CCR 1107-1.

    A. If an employer fails to timely submit wage reports, the Division may assess upon the employer a fine of up to $50.00 per employee whose wages were not reported.

    B. If an employer submits an amended wage report after the due date to submit premiums pursuant to 7 CCR 1107-1, and the amended wage report increases premiums owed by twenty-five (25) percent or more, then the wage report shall not be considered timely regarding those employees whose wages were amended.

3. An employer must notify the Division within 10 business days if it ceases business operations in Colorado or otherwise ceases to employ Colorado employees, in accordance with the provisions of 7 CCR 1107-1 regarding localization of employees. An employer with no Colorado employees will not be required to remit premiums, submit wage reports, or otherwise participate in the FAMLI program. If the employer later resumes business operations or again employs workers in Colorado, it must register with the FAMLI Division via "MyFAMLI+ Employer." If the Division

determines that an employer has violated this section, it may assess upon the employer a fine of up to $250.00.

3.4 Clarifications Regarding Use of Paid Family and Medical Leave Insurance Benefits

1. The use of paid family and medical leave insurance benefits is restricted to absences caused by a qualifying condition described at C.R.S. § 8-13.3-504(2). If the absence is caused by a reason other than a qualifying condition described at C.R.S. § 8-13.3-504(2), paid family and medical leave insurance benefits are not available.

    A. If a covered individual is awarded continuous leave for an absence caused by a qualifying condition described at C.R.S. § 8-13.3-504(2), the awarded leave is not impacted by a subsequent separation from employment, except when the individual receives unemployment benefits in accordance with 7 CCR 1107-4, Section 4.4, or when the Division determines that the individual is ineligible for benefits in accordance with the FAMLI Act and its implementing regulations, in either which case the benefits award ends.

    B. If a covered individual is awarded intermittent leave or reduced leave schedule for an absence caused by a qualifying condition described at C.R.S. § 8-13.3-504(2), and subsequently becomes unemployed or changes employers, the awarded leave terminates upon unemployment or the change in employment, and the covered individual may apply for benefits upon reemployment. An individual becomes unemployed within the meaning of this rule if they are terminated, they resign, or no work is available to them due to a cessation in operations, the end of seasonal employment, the end of a temporary work assignment, or any other reason that causes the cessation of available work.

2. For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within a period of continuous leave has no effect; the time is counted as FAMLI leave and the employee will receive wage replacement benefits for that time. However, if an employee is using FAMLI leave in the form of intermittent leave or reduced leave schedule, the holiday will not count against the employee's FAMLI entitlement–and the employee will not receive wage replacement benefits for the holiday—unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employer's business activity or the employee’s position have temporarily ceased and the employee is not expected to report for work for one or more weeks, the days the employer's activities or the employee’s position have ceased do not count against the employee's FAMLI leave entitlement and the employee will not receive wage replacement benefits for them, unless they are on continuous leave that began before the cessation in operations.

3. Paid family and medical leave insurance benefits are available to an individual while taking paid family and medical leave from employment if the individual meets the definition of “covered individual” under C.R.S. § 8-13.3-503(3) and has a qualifying condition described at C.R.S. § 8-13.3-504(2).

    A. To determine whether an individual has met the $2,500.00 threshold described at C.R.S. § 8-13.3-503(3)(a)(I), the Division will rely on wages reported to the Division by the employer pursuant to these rules. If a claim for benefits is denied because the reported wages do not establish that the individual has met the $2,500.00 threshold, the individual may request a reconsideration pursuant to Section 3.11 of these rules.

    B. An individual claimant can meet the $2,500.00 threshold described at C.R.S. § 8-13.3-503(3)(a)(I) by earning wages subject to premiums from any combination of employers, and a claimant need not earn $2,500.00 from their current employer to meet the threshold

C. An individual meets the $2,500.00 threshold described at C.R.S. § 8-13.3-503(3)(a)(I) if the individual has been paid that amount of wages during either the individual's base period, as defined at C.R.S. § 8-70-103(2), or the individual's alternative base period, as defined at C.R.S. § 8-70-103(1.5).

4. Paid family and medical leave insurance benefits are available for absences occurring on or after January 1, 2024 caused by a qualifying condition described at C.R.S. § 8-13.3-504(2), regardless of the onset date of the qualifying condition.

5. "Serious health condition" determinations by the Division will be in accordance with the Family and Medical Leave Act's provisions regarding "serious health conditions" at 29 C.F.R. 825 et seq., except where those regulations conflict with the FAMLI Act or its implementing regulations.

6. To determine whether an individual is a family member under C.R.S. § 8-13.3-503(11)(e) because the individual is someone with whom the covered individual has a significant personal bond that is or is like a family relationship, the Division will look to the totality of the circumstances surrounding the relationship, including, but not limited to, the following non-dispositive factors:

   A. Shared financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;

   B. Emergency contact designations;

   C. The expectation of care created by the relationship and/or the prior provision of care;

   D. Cohabitation and the duration thereof; and

   E. Geographical proximity.

7. Clarifications regarding "caring for a new child" under C.R.S. § 8-13.3-504(2)(a):

   A. "Caring" includes bonding with and providing basic needs for a new child.

   B. "Child" means a person who is either under the age of 18, or between the ages of 18 and 21 and remains under the jurisdiction of a juvenile court.

   C. Benefits under C.R.S. § 8-13.3-504(2)(a) are limited to 12 weeks per qualifying condition, and are limited to biological parents, adoptive parents, foster parents, step-parents, individuals standing in loco parentis to the child, and domestic partners of any of the individuals listed in this Section 3.4.7.C.

   D. If a person has received benefits under C.R.S. § 8-13.3-504(2)(a) to care for a new child placed through foster care, and the person later adopts the child, the person is not entitled to again receive benefits under C.R.S. § 8-13.3-504(2)(a) in relation to the adoption of the same child.

8. Clarifications regarding "safe leave" under C.R.S. § 8-13.3-503(18) and 504(2)(e):

   A. To determine whether an individual is the victim of domestic violence, the victim of stalking, or the victim of sexual assault or abuse, for purposes of determining eligibility for safe leave, an individual need not prove that a court has determined that the individual was the victim of domestic violence, stalking, sexual assault, or sexual abuse.

   B. Benefits may be awarded based on the victim's good-faith attestation that the circumstances giving rise to the safe leave satisfy the elements of the offense.

C. If an individual is granted safe leave based on their good-faith attestations, and is later found by a court not to have been a victim of domestic violence, stalking, sexual assault, or sexual abuse, benefits paid for the leave will not be considered an overpayment unless a court's findings show that the attestations were not in good faith.

9. Pursuant to CRS 8-13.3-503(15), paid family and medical leave is leave taken from employment. If a claimant is not employed at the outset of their leave, then leave from employment is not possible and the claim for benefits will be denied. Examples of such denials include, but are not limited to, applications for leave to begin after the claimant has separated from their employer, applications for leave to begin during an off-season period in which a seasonal employee is not engaged in seasonal employment, and applications for leave to begin during periods of time between temporary placements by a staffing agency. A claimant must notify the Division if they become separated from employment before their benefit start date.

10. An additional four weeks of leave per benefit year for leave due to a serious health condition related to pregnancy complications or childbirth complications available under C.R.S. § 8-13.3-505(1) may not exceed four weeks per pregnancy.

11. Covered individuals are not eligible for benefits for any period in which they are not localized to Colorado pursuant to 7 CCR 1107-1, Section 1.6.

12. Paid family and medical leave includes travel time reasonably necessary to satisfy a qualifying leave reason under C.R.S. § 8-13.3-504(2).

3.5 Amount, Duration, and Format of Benefits

1. The Division will calculate a covered individual's average weekly wage in accordance with C.R.S. § 8-13.3-503(2) and 506(2) based on their wages subject to premiums. Wages from a current job will be excluded from the average weekly wage calculation only if the covered individual is not taking any paid family and medical leave from that job as of the benefit start date.

2. The Division will calculate the covered individual's weekly benefit in accordance with C.R.S. § 8-13.3-506(1)(a). The covered individual shall receive their weekly benefit amount multiplied by their FAMLI weekly usage for each week of leave, subject to limitations under C.R.S. § 8-13.3-505(3) and Section 3.5.5 of these rules.

3. FAMLI weekly usage shall be determined by dividing the number of hours of family and medical leave the individual takes per week by their aggregate regular work schedule for that week.

A. The hours of family and medical leave taken for any job cannot exceed the regular work schedule for that job.

B. If a covered individual is unable to provide the Division with the number of scheduled or worked hours for any job during their leave, the Division may, at its discretion and based on previous work schedules or other information available to it, assign a reasonably approximate regular work schedule.

C. If an individual's regular work schedule increases or decreases during their leave, the Division shall make any adjustments to benefit awards made necessary by that increase or decrease.

D. If the individual's work schedule for a job from which they are taking continuous family and medical leave decreases to zero (e.g. termination, resignation, suspension of position, scheduled academic break), the Division will not make adjustments to benefit awards based on that decrease.

E. Regular work schedule must be calculated as of the first date of the leave and, if applicable, upon notification from the claimant that their regular work schedule has changed.

4. To determine an individual's average weekly wage in accordance with C.R.S. § 8-13.3-503(2), the Division will rely on earnings reported to the Division pursuant to these rules. If the Division cannot sufficiently calculate an individual's average weekly wage based on earnings reported to the Division pursuant to these rules, the Division may request from the individual and/or the individual's current employer or employers documentation of the individual's earnings during the individual's base period or alternative base period, and may rely on that documentation and any other information that is reasonable or reliable.

5. Absences of less than 8 hours may be approved, but wage replacement benefits will be paid in accordance with C.R.S. § 8-13.3-505(3). The 8-hour threshold must be met with each claim and each recertification period.

6. The Division will recalculate wage replacement benefit awards for in-progress awards of paid family and medical leave if the state average weekly wage changes, a change in regular work schedule triggers a recalculation in accordance with these rules, or the outcome of an appeal results in a change in awarded benefits. If the recalculation increases or decreases the wage replacement benefit amount, the Division will notify the covered individual and will adjust future payments accordingly. If the covered individual's employer has made a valid request for benefit amounts in accordance with Section 3.8.9 of these rules, the Division will notify the employer of any increases or decreases in the covered individual's wage replacement benefit amount.

7. The Division will award benefits for a reasonable duration in accordance with the details in the application, the documentation submitted, and where applicable, known standards of care. The awarded benefits must not exceed the duration limits described at C.R.S. § 8-13.3-505(1).

8. The duration of leave taken for any week for the purpose of C.R.S. § 8-13.3-505 shall be equal to FAMLI weekly usage for that week. 100% FAMLI weekly usage shall count as one week of duration used.

9. Approved leave may be taken in increments of one hour or less, in accordance with C.R.S. § 8-13.3-505(3).

10. Approved leave for any qualifying condition may be in the form of continuous leave, intermittent leave, or reduced leave schedule. Prior employer approval is not needed to access continuous leave, reduced leave, or intermittent leave schedules.

11. The amount and duration of family and medical leave benefits may be impacted by the receipt of workers' compensation benefits or unemployment insurance benefits, as detailed in 7 CCR 1107-4.

12. Benefit awards for approved leave are not impacted by the end of the claimant's benefit year that occurs during the approved leave.

13. Claimants, employers, and private plan administrators must provide the Division with any information necessary for the Division to calculate benefits.

14. A claimant is not eligible for paid family and medical leave benefits for continuous leave from an employer during any period for which they have already been awarded benefits on a separate claim for leave from that same employer.

15. Family and medical leave approved by the Division and taken by the claimant is considered taken as part of the individual's maximum annual allotment of leave under C.R.S. § 8-13.3-505(1), and protected under C.R.S. § 8-13.3-509 and 7 CCR 1107-7, regardless of the benefit amount the covered individual is entitled to pursuant to the FAMLI Act and its implementing regulations.

3.6 Applying for Benefits

1. To request paid family and medical leave insurance benefits, the claimant or the claimant's designated representative must apply to the Division for benefits.

2. Applications may be submitted up to thirty (30) days prior to the benefit start date.

3. The claimant must provide any information necessary for the Division or private plan administrator to calculate benefits.

4. The Division will notify the claimant's employer of the application submission within five (5) business days.

5. Applications may be submitted up to thirty (30) days after the leave has begun. If the Division receives an application after thirty (30) days, but before ninety (90) days, the Division will consider the application if it includes evidence establishing good cause for the claimant's failure to submit the application within thirty (30) days.

6. Additional Documentation Requirements

   A. For leave necessary to care for a child because of birth, the claimant must submit the following documentation with their application:

      1. Proof of birth, which may include a birth certificate, an application for a birth certificate, documentation from a health care provider who provided care during the birth or recovery, or other vital records showing birth;

      2. Proof of parental status or~~A statement establishing~~ in loco parentis status; and

      3. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

   B. For leave necessary to care for a child because of adoption, the claimant must submit the following documentation with their application:

      1. Proof of adoption placement, which may include documentation from a court or an adoption agency; and

      2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

   C. For leave necessary to care for a child because of placement through foster care, the claimant must submit the following documentation with their application:

      1. Either:

         a. Proof that the claimant is either a licensed or certified foster parent and the child has been placed in their care; or

b. Documentation from a child placement agency as defined in C.R.S. § 26-6-903(6), the state department of human services, a county department of human services, or a court indicating a kinship or emergency placement was necessary to provide for the immediate care and safety of a minor child, and the person will be standing in loco parentis through a power of attorney or other legal designation; and

2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

D. For leave necessary to care for a family member with a serious health condition, the claimant must submit the following documentation with their application:

1. A “Serious Health Condition Certification - Family Member Form” completed and signed by the family member’s health care provider; and

2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

E. For leave necessary because of the claimant’s own serious health condition, the claimant must submit the following documentation with their application:

1. A “Serious Health Condition Certification - Self Form” completed and signed by the health care provider; and

2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

F. For leave due to a need for qualifying exigency leave, the claimant must submit the following documentation with their application:

1. A “Military Exigency Leave Attestation Form” completed by the claimant; and

2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

G. For leave due to a need for safe leave, the claimant must submit the following documentation with their application:

1. A “Safe Leave Attestation Form” completed by the victim or a family member of the victim; and

2. Any other reasonable information or documentation necessary to adjudicate the claim for benefits, as requested by the Division.

7. For applications for benefits requiring certification by a health care provider, the health care provider may not be the claimant or a family member of the claimant.

8. Applications may be submitted using the FAMLI Division’s online system, by mail, or by email.

9. Requirements for an application to be considered filed:

A. Upon receipt of an application for benefits, the Division will promptly review the application. If the Division needs more information or documentation to adjudicate the claim for benefits, it will make a reasonable effort to promptly obtain the additional

information or documentation. If the Division needs additional information or documentation from the claimant, it will make a reasonable effort to obtain it using the claimant's preferred language and method of contact. The Division will promptly review any additional information it receives.

B. An application will not be considered filed until all required information and documentation has been received by the Division, and the Division has been notified that the paid family and medical leave has begun.

C. If an application is not properly filed within sixty (60) days after the Division receives it, the application will be closed and the Division will take no further action on it, absent a finding of good cause based on evidence submitted by the claimant. The Division will notify the claimant prior to any such closure in their preferred language and method of contact, and will describe the claimant's opportunity to establish good cause to keep the application open.

D. Once an application is properly filed, the Division will notify the claimant and the employer of the proper filing within five (5) business days.

E. The FAMLI Division may at any time determine that it needs more information or documentation to adjudicate a claim, thereby rendering the claim not properly filed. The two-week (14-day) deadline described in C.R.S. § 8-13.3-505(2) and Section 3.9.1 below, does not begin until the claimant has responded to all Division requests for information and documentation, and the Division has been notified that the paid family and medical leave has begun. If the claimant has responded to all Division requests for information and documentation, it is presumed that the claimant has provided all necessary information and documentation to adjudicate the claim unless the Division requests additional information or documentation.

3.7 Requirements Regarding Notice to Employees

1. Employers participating in the state plan must display the program notice described by C.R.S. § 8-13.3-511 in a conspicuous and accessible place in each establishment where employees are employed; provided, however, in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification must be sent via electronic communication or through a conspicuous posting in the web-based or app-based platform.

2. In addition to displaying the program notice described by C.R.S. § 8-13.3-511, employers participating in the state plan must individually deliver the program notice to employees upon hiring and, absent extenuating circumstances, within five days after either~~upon~~ learning of an employee experiencing an event that triggers eligibility pursuant to C.R.S. § 8-13.3-504, or receiving from the employee a request for leave under the Family and Medical Leave Act at 29 U.S.C. § 2601 et seq. The employer shall deliver the program notice to the employee in the first language spoken by the employee if the employer is aware of the first language spoken by the employee; otherwise, the employer shall deliver the program notice in the first language spoken by the employee, upon the employee's request.

3. The program notice must be in English, Spanish, and in any language representing the first language spoken by at least five percent of the employer's workplace.

4. The Division will make a reasonable effort to provide a program notice in any language upon request from an employer.

5. If the Division determines that an employer has not posted or delivered the program notice in accordance with the FAMLI Act and its implementing regulations, the Division may assess upon the employer a fine of up to $500.00 per violation. Each day that an employer fails to post or deliver the program notice constitutes a separate violation.

3.8 Requirements Regarding Notice to Employers

1. A claimant must schedule leave in accordance with C.R.S. § 8-13.3-505(4), and must notify their employer or employers of the need for leave in accordance with C.R.S. § 8-13.3-505(5). For individuals on intermittent leave, these scheduling and notice requirements apply to each absence. Notification need not include any specific terms or reference specific provisions of the FAMLI Act or its implementing regulations, but must reasonably implicate qualifying leave under the FAMLI Act to satisfy the notification requirement at C.R.S. § 8-13.3-505(5).

2. If the need for leave is foreseeable, a claimant must consult with the employer and make a reasonable effort to schedule leave so as not to unduly disrupt the employer's operations. If the claimant does not do so, the employer may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject, where applicable, to the approval of the health care provider. An undue disruption requires significant difficulty or expense in relation to the resources and specific circumstances of the employer.

3. If the necessity for leave is not foreseeable, or providing 30 days' notice is not possible, the individual shall provide the notice as soon as practicable. As soon as practicable means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee becomes aware of a need for leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.

4. A claimant's failure to schedule leave in accordance with C.R.S. § 8-13.3-505(4) or properly notify their employer or employers of the need for leave in accordance with C.R.S. § 8-13.3-505(5) does not change the Division's obligations to pay benefits on an approved claim within two weeks after the claim is filed under C.R.S. § 8-13.3-505(2) and these rules.

5. The Division shall not deny a claimant benefits for a failure to comply with C.R.S. § 8-13.3-505(4) or (5).

6. Employers may require the notice to contain the anticipated start time, anticipated duration, and where applicable, anticipated frequency of leave.

7. Such notification must be in the same manner as the claimant and employer typically communicate work availability, and absent unusual circumstances, must comply with the employer's usual and customary notice and procedural requirements for leave, unless those requirements are contrary to rights, benefits, or protections afforded to the claimant under the FAMLI Act and its implementing regulations.

8. If an employer fails to post and deliver the program notice in accordance with C.R.S. § 8-13.3-511 and these rules, the employer may not punish or discipline an employee for failing to provide notice in accordance with C.R.S. § 8-13.3-505(5).

9. By submitting an application for benefits, the claimant consents to the Division sharing with the employer, upon the employer's request, limited information necessary for the employer to coordinate FAMLI benefits with other benefits for which the claimant is eligible, in accordance with the information-sharing provisions of 7 CCR 1107-4, including the wage replacement amount

and the reason for leave. The employer shall not request, and the Division will not provide, information that is not absolutely necessary for such benefit coordination, and a request for information not absolutely necessary for such benefit coordination may constitute discrimination, retaliation, and/or interference in violation of C.R.S. § 8-13.3-509. The employer must store and maintain the confidentiality of such information in accordance with all applicable federal, state, and local laws and regulations, and failure to do so may constitute discrimination, retaliation, and/or interference in violation of C.R.S. § 8-13.3-509.

10. Records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members created for purposes of the FAMLI must be maintained as confidential medical records in separate files/records from the usual personnel files. If the Division determines that an employer has not maintained such records confidentially and separately from usual personnel files, the Division may assess upon the employer a fine of up to $500.00 per violation. If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FAMLI containing family medical history or genetic information as defined in GINA shall be maintained in accordance with the confidentiality requirements of Title II of GINA (see 29 CFR 1635.9). If the Americans with Disabilities Act (ADA) is also applicable, such records should be maintained in conformance with ADA confidentiality requirements, except that:

    A. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

    B. First aid and safety personnel may be informed if the employee's physical or medical condition might require emergency treatment; and

    C. Division and/or other government officials investigating compliance with the FAMLI Act should be provided relevant information upon request.

11. Consistent with the timeframes set forth in C.R.S. § 8-13.3-505(5), a claimant must notify the employer from which they are taking leave whether they will take continuous leave, intermittent leave, and/or a reduced leave schedule. Notification need not use the terms continuous leave, intermittent leave, or reduced leave schedule, but must reasonably implicate the type of leave they are taking. Consistent with the timeframes set forth in C.R.S. § 8-13.3-505(5), a claimant must also give the employer reasonable details about their work and leave schedule.

12. A claimant must take reasonable steps to notify the employer in advance of any change in their planned work and leave schedule, which include following employer policies to request or change leave, unless those policies are contrary to rights, benefits, or protections afforded to the claimant under the FAMLI Act and its implementing regulations.

3.9 Division Review of Applications

1. After an application is properly filed, the Division will adjudicate the claim within two weeks after filing.

2. The Division will contemporaneously notify the claimant and the employer of the outcome of the adjudication, and will provide information on how the claimant can appeal the outcome.

    A. If the outcome is a denial of benefits, the Division will send separate notices to the claimant and to the claimant’s employer or employers. The notice to the claimant will explain the reason for the benefits denial and will identify information or documentation necessary to perfect their claim for benefits. The notice to the claimant’s employer or employers will state that the claim for benefits has been denied, include the date of the denial, and include a description of the claimant’s appeal rights.

B. If the outcome of the adjudication is to award benefits, the Division will send separate notices to the claimant and to the claimant's employer or employers. Both notices will include the leave start date, the leave duration, any denied segments of requested leave, the claimant's regular work schedule upon which benefits were based, and where applicable, a description of any approved reduced leave schedule or intermittent leave. The notice to the claimant will also include the benefit amount. Upon the employer's valid request, the Division will share with the employer the benefit amount and reason for leave, in accordance with Section 3.8.9 of these rules.

3. If the Division awards benefits, it will issue payment for the benefits within two weeks after the application is filed, and where applicable, at least every two weeks thereafter.

4. For applications approved in advance of the needed leave, the claimant must notify the Division once the leave begins.

5. A claimant may appeal an adverse claim determination pursuant to 7 CCR 1107-9.

6. An award of benefits does not preclude future investigation or oversight by the Division.

7. It is the individual's burden to prove by preponderance of the evidence that they are eligible for paid family and medical leave benefits.

3.10 Covered Individual Obligations During Leave

1. A covered individual or their designated representative must notify the FAMLI Division within ten (10) days after the occurrence of any event, or the foreseeability of any event, that could change the amount or duration of approved leave, including but not limited to the following:

A. A change in the covered individual's need to care for a new child, including death of the child, placement of the child in another home, or a caregiving arrangement whereby someone other than the covered individual provides care;

B. A change in the covered individual's own serious health condition or need to care for a family member with a serious health condition, including death of the family member or any increase or decrease in the care the covered individual must provide;

C. A change in the covered individual's need for exigency leave;

D. A change in the covered individual's need for safe leave;

E. Any event resulting in the covered individual no longer being localized to Colorado, pursuant to 7 CCR 1107-1 and its provisions regarding in-state status of employees;

F. An addition or loss of one or more jobs;

G. A change in the covered individual's regular work schedule;

H. Any change in employment, including unemployment, retirement, or any gained or lost source of employment or self-employment; or

I. Any filing or termination of a claim for family and medical leave insurance benefits with a private plan during a period of paid family and medical leave under the state plan.

2. If a covered individual notifies the Division of an event that would increase the amount, duration, or frequency of benefits, the Division may require the covered individual to submit additional documentation in support of their claim.

3. If information reported to the Division results in an increase or decrease in the duration or frequency of leave awarded to a covered individual, the Division will promptly and contemporaneously notify the employer and the covered individual of the change.

4. If a covered individual receives a reduced leave schedule or intermittent leave, the covered individual must submit documentation sufficient to recertify their need for leave every six months, or as requested by the Division for claim management purposes. Upon recertification, the Division will notify the covered individual and the employer or employers from which the covered individual is taking leave, and will include in that notification any changes in the duration or frequency of the approved leave. If an individual fails to recertify, the approval for the leave will expire and the Division will notify the employer or employers from which the covered individual was taking leave.

5. A covered individual receiving reduced leave schedule or intermittent leave must notify the Division of their regular work schedule and individual absences on a weekly basis in order to receive wage replacement benefits for the absences. If the individual does not report their regular work schedule by the deadline established by the Division, the Division will accept this as communication from the individual that their regular work schedule has not changed from the most recently reported regular work schedule. If the individual does not report absences for a week by the deadline established by the Division, the Division will accept this as communication from the individual that no approved absences occurred in that week. The Division may deny a claimant's request to modify a past notification of their regular work schedule or individual absences unless the claimant provides both good cause for their failure to provide timely notifications, and evidence supporting the modification.

6. A covered individual receiving continuous leave must notify the Division of any hours worked in any employment for which they are taking continuous leave within seven (7) days of performing that work.

3.11 Benefits Reconsiderations

1. A claimant or an employer from which a claimant is taking leave may request a reconsideration of a decision to award or deny paid family and medical leave benefits if they have a good-faith belief, supported by evidence, that the Division has granted and/or paid family and medical leave insurance benefits to a claimant in an amount, duration, or frequency not authorized by the FAMLI Act and its implementing regulations.

2. Requests for reconsiderations must be submitted within 49 days of the date of the original determination. The deadline to request a reconsideration may be extended by up to a maximum of forty-nine (49) days for good cause. If a deadline falls on a weekend or State holiday, the deadline shall become the next business day.

3. The claimant and all employers from which the claimant has applied to take paid family and medical leave will be notified of the request for reconsideration. Any party may submit additional documents, statements, or other evidence in support of their request.

4. Upon receiving a request for a reconsideration, the Division may request any reasonably necessary evidence.

5. After receiving the request for reconsideration and gathering any reasonably necessary evidence, the Division will issue a reconsideration of the claimant's eligibility for paid family and medical

leave benefits as soon as is practicable. The reconsideration will be sent to both the claimant and all employers from which the claimant has applied to take paid family and medical leave.

6. A request for a reconsideration of an initial benefits determination must be made before the Division will accept an appeal of such a determination pursuant to 7 CCR 1107-9.

7. No party may request a reconsideration of any determination made by the Division other than an initial benefits determination, unless otherwise provided by the FAMLI Act and its implementing regulations. All other determinations may only be challenged by filing an appeal pursuant to 7 CCR 1107-9.

8. Frivolous, unsubstantiated, or bad-faith requests for a reconsideration from an employer may constitute discrimination, interference, or retaliation in violation of C.R.S. § 8-13.3-509.

9. The Division may issue a reconsideration of an initial benefits determination on its own volition regardless of whether a reconsideration has been requested.

10. To initiate the Division's review of a private plan's initial benefits determination, a claimant must file an appeal pursuant to 7 CCR 1107-9.

3.12 Fitness for Duty

Nothing in the FAMLI Act or its implementing regulations prohibits an employer from requiring a covered individual to provide certification of his or her fitness for duty prior to returning to work from a FAMLI-approved absence, so long as such a requirement does not constitute discrimination, retaliation, or interference in violation of C.R.S. § 8-13.3-509.

3.13 Disqualification from Benefits

1. If the Division determines that a covered individual has willfully made a false statement or misrepresentation regarding a material fact in order to obtain family and medical leave insurance benefits, or has willfully failed to report a material fact in order to obtain family and medical leave insurance benefits, the covered individual will be disqualified from family and medical leave insurance benefits for one year after the effective date of the disqualification.

2. The Division will notify the claimant of any disqualification of benefits, and the claimant may appeal the disqualification in accordance with 7 CCR 1107-9.

3. If the claimant does not appeal the disqualification, the effective date of the disqualification shall be the earlier of:

   A. The day after the appeal deadline; or

   B. The day the Division receives notification from the claimant of the claimant's decision not to contest the disqualification.

4. If the claimant does not appeal the disqualification, or if the Division upholds the claimant's disqualification upon appeal, the Division will notify the claimant's employer or employers of the disqualification.

5. If the Division or a court upholds the claimant's disqualification upon appeal, the effective date of the disqualification shall become the date of the decision or order upholding the initial disqualification

6. If a claimant is disqualified from family and medical leave insurance benefits, the claimant's employer or employers remain obligated to remit premiums for the claimant in accordance with the FAMLI Act, and remain entitled to require premium contributions from the employee in accordance with the FAMLI Act.

3.14 Benefit Underpayments

If the Division identifies a benefit underpayment, it will make a reasonable effort to obtain accurate contact information from the underpaid individual, and will issue the underpaid amount to the individual as soon as practicable. If the Division cannot obtain accurate contact information from the underpaid individual, the Division will remit the underpaid amount to the Colorado Department of Treasury in accordance with the Colorado Revised Uniform Unclaimed Property Act, C.R.S. § 38-13-101 et seq.

3.15 Language Accessibility

The Division will make reasonable efforts to make forms and communications under these rules available in an individual's primary language, subject to the Division's sole discretion based on available resources.

Notice of Proposed Rulemaking

Tracking number

2025-00102

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-4

Rule title

REGULATIONS CONCERNING COORDINATION OF BENEFITS AND REIMBURSEMENT OF ADVANCE PAYMENTS

Rulemaking Hearing

Date

04/14/2025

Time

03:00 PM

Location

https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1

Subjects and issues involved

Rules regarding coordination of benefits.

Statutory authority

C.R.S. 8-13.3-501 et seq.

Contact information

Name

Evan Grimes

Title

Policy Unit Manager

Telephone

‪(720) 442-0833‬

Email

evan.grimes@state.co.us

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING COORDINATION OF BENEFITS AND REIMBURSEMENT OF ADVANCE PAYMENTS

7 CCR 1107-4

4.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "FAMLI Act").

2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to coordination of benefits and reimbursement of advance payments.

3. ~~Articles 4, 13.3, 40, and 70 of C.R.S. Title 8 (2024), Articles 4 and 34 of C.R.S. Title 24 (2024),~~ 29 U.S.C. § 2601 et seq. (2024), 7 CCR 1107-3 (2024), and 7 CCR 1107-9 (2024) are hereby incorporated by reference. Earlier versions of such laws and regulations may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes and regulations. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or 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 the statutes and regulations incorporated 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 the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

4.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.

2. "Employer-provided paid leave" means vacation leave, paid sick leave, paid personal leave, and any other employer-paid time off. Employer-provided paid leave does not include benefits under a short-term disability policy, long-term disability policy, or a separate bank of time off solely for the purpose of paid family and medical leave.

3. "Health care benefits" as used at C.R.S. § 8-13.3-509(2) means benefits provided to an employee by an employer related to the improvement or maintenance of the employee's health or the employee's family members' health, including but not limited to:

   A. Health insurance;

B. Dental insurance;

C. Vision insurance; and

D. Mental health, counseling, and addiction services.

4. "Paid sick leave" has the same meaning as in C.R.S. § 8-13.3-402(8).

5. "Separate bank of time off solely for the purpose of paid family and medical leave" means time off provided by an employer which may only be used for a purpose listed in C.R.S. § 8-13.3-504(2), including but not limited to, paid parental leave, and paid leave under C.R.S. § 24-34-402.7, and is separate from employer-provided paid leave defined in Section 4.2.2 of these rules.

6. No benefits received by an individual impact their eligibility for family and medical leave insurance benefits except for unemployment insurance benefits and workers' compensation benefits, as described in this rule.

4.3 FAMLI Benefits and Workers' Compensation Benefits

1. Benefits under the FAMLI Act and its implementing regulations are separate benefits claims from benefits under the Workers' Compensation Act of Colorado, C.R.S. § 8-40-101 et seq. or its implementing regulations (the "Workers' Compensation Act"). Regardless of an individual's status as a covered individual, if an absence from work is caused by circumstances that would entitle an individual to temporary total or partial indemnity benefits under the Workers' Compensation Act, the individual is not entitled to family and medical leave insurance benefits for that absence.

2. An individual applying for family and medical leave insurance benefits must disclose whether their serious health condition was caused by or otherwise related to a workplace injury or illness.

3. Health care providers, in completing a "Serious Health Condition Certification - Self Form," must disclose any information or belief that the individual's serious health condition was caused by or otherwise related to a workplace injury.

4. If either the individual applying for family and medical leave insurance benefits or the health care provider completing the "Serious Health Condition Certification - Self Form" indicates that the individual's serious health condition was caused by or otherwise related to a workplace injury, then the application for benefits will be denied unless the individual submits proof that they are either ineligible or no longer eligible for temporary total or partial indemnity benefits under the Workers' Compensation Act. The Division will accept and review the following documents as evidence an individual is not eligible or is no longer eligible for temporary total or partial indemnity Workers' Compensation benefits:

   A. A Final Admission of Liability with a mailing date that is at least 30 days prior to the benefit start date;

   B. A Final Order by an Administrative Law Judge showing temporary total or partial indemnity benefits under Workers Compensation Act have been denied or are no longer being paid; or

   C. A Notice of Contest issued to the claimant by a Workers' Compensation insurer.

5. An individual must notify the FAMLI Division if they receive any benefits under the Workers' Compensation Act during a period of family and medical leave and may be required to complete a release for records relating to the workers' compensation injury.

6. If an individual is paid or entitled to receive any temporary total or partial indemnity benefits under the Workers' Compensation Act during a period of family and medical leave, then any wage replacement benefits paid or owed to the individual in association with the same job and the same time missed as the temporary indemnity benefits under the Workers' Compensation Act will be considered an overpayment of family and medical leave insurance benefits.

7. The Division may recover an overpayment of paid family and medical leave insurance benefits due to an individual's entitlement to receive temporary total or partial indemnity benefits under the Workers' Compensation Act during a period of family and medical leave from either the individual overpaid or directly from the Workers' Compensation insurer that awarded the benefits.

8. An individual's failure to disclose either a workplace injury related to an application for family and medical leave insurance benefits, or the receipt of benefits under the Workers' Compensation Act related to an injury that is related to the receipt of family and medical leave insurance benefits, may constitute grounds for disqualification of benefits pursuant to C.R.S. § 8-13.3-513.

4.4 FAMLI Benefits and Unemployment Insurance Benefits

1. Benefits under the FAMLI Act and its implementing regulations do not run concurrently with benefits under the Colorado Employment Security Act, C.R.S. § 8-70-101 et seq., or its implementing regulations ("CESA").

2. Regardless of an individual's status as a covered individual, the individual is not entitled to family and medical leave insurance benefits for any hours the individual receives unemployment benefits pursuant to CESA for the same job.

3. An individual must notify the FAMLI Division if they apply for or receive any benefits under CESA during a period of family and medical leave.

4. If an individual is paid any benefits under CESA during a period of family and medical leave, then any family and medical leave wage replacement benefits paid to the individual for the same job during the same period of leave as the benefits received under CESA will be considered an overpayment.

5. An individual's failure to disclose either the application for or the receipt of benefits under CESA during any period of family and medical leave may constitute grounds for disqualification of benefits pursuant to C.R.S. § 8-13.3-513.

4.5 FAMLI Benefits and Employer-provided Paid Leave

1. The FAMLI Act and its implementing regulations do not entitle an employee to receive both wage replacement benefits under the FAMLI Act and employer-provided paid leave for the same hours absent, except that pursuant to C.R.S. § 8-13.3-510(1)(c), an employer and an employee may mutually agree that the employee may use any accrued employer-provided leave as a supplement to family and medical leave insurance benefits in an amount not to exceed the difference between the individual's wage replacement benefits under the FAMLI Act and the individual's average weekly wage.

    A. If employer-provided paid leave is used to supplement FAMLI wage replacement benefits, the employer may: (1) convert the dollar amount of the supplement into the corresponding number of employer-provided paid leave hours; and (2) subtract those hours from the employee's balance of accrued and unused employer-provided leave.

    B. The use of employer-provided paid leave to supplement FAMLI wage replacement benefits requires mutual agreement between the employer and the employee. If either

the employer or the employee does not so mutually agree, employer-provided paid leave may not be used to supplement FAMLI wage replacement benefits. Any such agreement must be in writing and must be retained by the employer. The employer may rely on one written agreement per employee that covers all future supplements, so long as the terms of the agreement expressly provide that it is revocable by the employee.

C. Mutual agreement between the employer and the employee is not necessary in order for an employee to use paid sick leave prior to receiving family and medical leave insurance benefits.

2. If an individual receives both wage replacement benefits under the FAMLI Act and employer-provided paid leave for the same hours absent, and the employer and the employee have mutually agreed to supplement FAMLI wage replacement benefits with employer-provided leave, then any employer-provided paid leave in excess of the amount authorized by Section 4.5.1 of these rules is an overpayment that the employer may recoup.

3. If an individual receives both wage replacement benefits under the FAMLI Act and employer-provided paid leave for the same hours absent, and the employer and the employee have not mutually agreed to supplement FAMLI wage replacement benefits with employer-provided leave, then any employer-provided paid leave for the same hours absent is an overpayment that the employer may recoup.

4. In the event of an overpayment pursuant to either Sections 4.5.2 or 4.5.3 of these rules:

A. The employer may recoup the overpayment by any legal means, including via one or more lawful deductions in accordance with C.R.S. § 8-4-105;

B. The employer must replenish the employee's bank of accrued employer-provided paid leave in an amount equal to the overpayment amount if the employee requests it or if the employer chooses to recoup the overpayment; and

C. If the employer-provided paid leave so recouped as an overpayment is paid sick leave, an employer's failure to replenish the employee's bank of paid sick leave in accordance with Section 4.5.4.B of these rules shall constitute a violation of the Healthy Families and Workplaces Act, C.R.S. § 8-13.3-401 et seq ("HFWA").

5. To the extent possible, the FAMLI Act and its implementing regulations shall not be read to reduce rights under HFWA and its implementing regulations, and HFWA and its implementing regulations shall not be read to reduce rights under the FAMLI Act and its implementing regulations.

6. If the Division determines that an employer has violated C.R.S. § 8-13.3-510(1)(c) or Section 4.5 of these rules, the Division may assess upon the employer a fine of up to $50.00 per employee per day.

4.6 Employer-provided benefits during paid family and medical leave

1. The FAMLI Act and its implementing regulations only require an employer to maintain health care benefits in accordance with C.R.S. § 8-13.3-509(2), and do not entitle an employee to the continued accrual of employer-provided leave or any other benefits during a period of family and medical leave.

2. With regard to a covered individual's obligation to pay their share of the cost of health benefits pursuant to C.R.S. § 8-13.3-509(2), the employer may collect such payment via:

A. Lawful deductions from employer-provided paid leave used to supplement FAMLI wage replacement benefits, in accordance with C.R.S. § 8-4-105;

B. Lawful deductions from wages paid upon the employee's return to work, in accordance with C.R.S. 8-4-105;

C. A repayment plan entered into by the employer and the employee; or

D. Any other legal means.

3. Pursuant to C.R.S. § 8-13.3-509(8), if a local government employer has declined coverage pursuant to C.R.S. § 8-13.3-522, FAMLI does not require the local government employer to maintain health care benefits during a period of family and medical leave for its employees who elect coverage pursuant to C.R.S. § 8-13.3-514.

4. If an employer and an employee mutually agree to supplement FAMLI wage replacement benefits with paid sick leave, then the extent to which the employer must maintain benefits beyond the requirements in C.R.S. § 8-13.3-509(2) and Rules 4.6.1 and 4.6.2 is governed by HFWA.

5. If the Division determines that an employer has violated C.R.S. § 8-13.3-509(2) or Section 4.6 of these rules, the Division may assess upon the employer a fine of up to $500.00 per employee, per day the employer failed to maintain health care benefits.

4.7 FAMLI Benefits, short-term disability benefits, long-term disability benefits, and benefits from a separate bank of time off solely for the purpose of paid family and medical leave

1. If family and medical leave is taken for a reason that also qualifies for benefits from a short-term disability policy, long-term disability policy, or a separate bank of time off solely for the purpose of paid family and medical leave offered by the employer, then so long as the employer satisfies the notice requirement of C.R.S. § 8-13.3-510(1)(b), the employer may count both the wage replacement amount and the duration of the family and medical leave against the remaining benefit amounts and leave duration provided under such policy or bank of time. The employer or policy may not count either the wage replacement amount or duration of the paid family and medical leave taken under FAMLI against past or future balances under such policy or bank of time.

2. If the employer requires family and medical leave insurance benefits to run concurrent with its short-term or long-term disability benefits, then the terms of the short-term or long-term disability policy shall govern whether the employer, the employee, or both must notify the policy's program administrator of concurrent paid family and medical leave insurance benefits received by the employee.

3. If the Division determines that an employer has violated C.R.S. § 8-13.3-510(1)(b) or Section 4.7 of these rules, the Division may assess upon the employer a fine of up to $500.00 per violation.

4.8 FAMLI Benefits and the FMLA and the Family Care Act

1. As provided in C.R.S. § 8-13.3-510(1)(a), leave taken with wage replacement under the FAMLI Act that also qualifies as leave under the "Family and Medical Leave Act," as amended, Pub. L. 103-3, codified at 29 U.S.C. sec. 2601 et. seq., or part 2 of article 13.3 of title 8 runs concurrently with leave taken under the "Family and Medical Leave Act" or part 2 of article 13.3 of title 8, as applicable.

2. If the qualifying reason for family and medical leave does not constitute a qualifying reason for leave under the Family and Medical Leave Act, then the extent to which family and medical leave

runs concurrently with leave taken under the Family and Medical Leave Act, if at all, is governed by the Family and Medical Leave Act and its implementing regulations.

3. If an employee requests leave under the Family and Medical Leave Act, the employer must notify the employee that they may be eligible for leave under the FAMLI Act.

4.9 Benefit Coordination Between Plans Providing Paid Family and Medical Leave Benefits

1. To allow for continuity of benefits for individuals covered under FAMLI or a private plan, when an employer changes plans, the previous plan is required to continue paying all approved leave (continuous, intermittent and reduced leave schedules) through the duration previously approved or until a recertification is required, after which the claimant may reapply for benefits with their new plan. However, the previous plan does not have to continue to pay benefits where the provisions of 7 CCR 1107-3, Section 3.4.1 provide for the termination of approved leave.

2. If an individual has multiple jobs and is covered under multiple plans, each plan must calculate benefits based on leave taken under that plan, but proportionate to the covered individual's aggregate regular work schedule pursuant to 7 CCR 1107-3 so that total benefits do not exceed the maximum weekly benefit provided by C.R.S. § 8-13.3-506(1)(b), and total duration does not exceed the number of weeks provided by C.R.S. § 8-13.3-505(1).

4.10 Reimbursement of Advance Payments by Employers

1. An employer may qualify for a reimbursement of advance payments made to an employee when:

   A. The employer pays FAMLI wage replacement benefits in advance of an adjudication decision without using any employer-provided paid leave;

   B. The employee applies for family and medical leave insurance benefits; and

   C. The employer requests reimbursement from the Division prior to the Division’s payment of benefits to the employee.

2. Any wage replacement benefits awarded pursuant to such an application are paid directly to the employer, not to the employee.

3. An employer assumes the risk that an employee for whom it paid FAMLI wage replacement benefits in advance will not apply for family and medical leave insurance benefits, that the FAMLI Division will award wage replacement benefits in an amount less than that which the employer advanced to the employee, or that the FAMLI Division will award no wage replacement benefits.

4. If an employer is not reimbursed, or is reimbursed an amount less than that which it paid an employee, it may not recoup from the employee the difference between the amount it paid and the amount it was reimbursed.

5. An employer’s prepayment of benefits does not modify the appeal rights or procedures described in 7 CCR 1107-9.

6. An employer must verify to the Division that it proactively paid the employee a payment designated as a family and medical leave benefit consisting of partial or full wage replacement prior to receiving reimbursement.

4.11 Language Accessibility

The Division will make reasonable efforts to make forms and communications under this rule available in English and Spanish. If an individual's primary language is neither English nor Spanish, the Division will make a reasonable attempt to accommodate that individual's language needs, subject to the Division's sole discretion based on available resources.

Notice of Proposed Rulemaking

Tracking number

2025-00103

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-5

Rule title

REGULATIONS CONCERNING PRIVATE PLANS

Rulemaking Hearing

Date

04/14/2025

Time

03:00 PM

Location

https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1

Subjects and issues involved

Rules regarding private plans

Statutory authority

C.R.S. 8-13.3-501 et seq.

Contact information

Name

Evan Grimes

Title

Policy Unit Manager

Telephone

‪(720) 442-0833‬

Email

evan.grimes@state.co.us

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING PRIVATE PLANS

7 CCR 1107-5

5.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA"), C.R.S. and the Paid Family and Medical Leave Insurance Act, sections C.R.S. § 8-13.3-501 et seq. (the "FAMLI Act").

2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to private plans.

3. ~~Articles 4, 13.3, and 70 of C.R.S. Title 8 (2024), Article 4 of C.R.S. Title 24 (2024),~~ 7 CCR 1107-1 (2024), 7 CCR 1107-3 (2024), 7 CCR 1107-4 (2024), 7 CCR 1107-9 (2024), and 7 CCR 1101-2 (2024) are hereby incorporated by reference. Earlier versions of such laws and regulations may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes and regulations. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver CO 80202. Copies may be obtained from this Division at a reasonable charge, or 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 the statutes and regulations incorporated 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 the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

5.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.

2. These rules govern employees who are localized to Colorado pursuant to 7 CCR 1107-1, and govern employers and private plan administrators with regard to employees who are localized to Colorado pursuant to 7 CCR 1107-1. These rules do not govern employees who are not localized to Colorado pursuant to 7 CCR 1107-1, and do not govern employers or private plan administrators with regard to employees who are not localized to Colorado pursuant to 7 CCR 1107-1.

3. "Additional conditions or restrictions" as used in C.R.S. § 8-13.3-521(1)(i) means material conditions or restrictions, and does not include incidental conditions or restrictions that do not interfere with, restrict, or lessen an employee's rights under FAMLI Act.

4. "Adverse determination" means either a complete denial of benefits, or a determination to award a claimant benefits in a frequency or duration less than the claimant requested, or a determination to award a wage replacement amount less than what the claimant believes they are entitled to under the FAMLI Act and its implementing regulations.

5. "Insurer approved by the state" as used in C.R.S. § 8-13.3-521(2)(c) and these rules means an insurance provider licensed by the Division of Insurance within the Colorado Department of Regulatory Agencies, and in good standing with the Division of Insurance in accordance with its regulations.

6. "Private plan administrator" means an entity or individual tasked with the administration of an approved private plan, and can include without limitation the employer, a third-party administrator, a labor union, and/or an insurer approved by the state.

7. "Rights, protections, and benefits provided to employees under this part 5" as used in C.R.S. § 8-13.3-521(1) includes any rights, protections, and benefits conferred by rules promulgated under the FAMLI Act and its implementing regulations.

8. "Wages" has the same meaning as in 7 CCR 1107-1, Section 1.2.9.

5.3 Private Plan Requirements

1. An employer may comply with the FAMLI Act by providing an approved private plan that provides all of the same rights, protections and benefits provided to employees by the FAMLI Act and its implementing regulations, including but not limited to:

   A. Allowing family and medical leave insurance benefits to be taken for all purposes specified in C.R.S. § 8-13.3-504(2);

   B. Providing family and medical leave insurance benefits to a covered individual for any of the purposes, including multiple purposes in the aggregate, as set forth in C.R.S. § 8-13.3-504(2), for the maximum number of weeks required in C.R.S. § 8-13.3-505(1) in a benefit year as defined in 7 CCR 1107-3 Section 3.2.4;

   C. Allowing family and medical leave insurance benefits under C.R.S. § 8-13.3-504(2)(b) to be taken to care for any family member as defined under C.R.S. § 8-13.3-503(11) and 7 CCR 1107-3 Section 3.4.6;

   D. Allowing family and medical leave insurance benefits under C.R.S. § 8-13.3-504(2)(c) to be taken by a covered individual with any serious health condition;

   E. Allowing family and medical leave insurance benefits under C.R.S. § 8-13.3-504(2)(e) to be taken for any safe leave purposes;

   F. Providing a wage replacement rate for all family and medical leave insurance benefits of at least the amount required by C.R.S. § 8-13.3-506(1)(a);

   G. Providing a maximum weekly benefit for all family and medical leave insurance benefits of at least the amount specified in C.R.S. § 8-13.3-506(1)(b);

   H. Allowing a covered individual to take intermittent leave as authorized by C.R.S. § 8-13.3-505(3) or a reduced leave schedule pursuant to 7 CCR 1107-3;

I. Imposing no additional conditions or restrictions on family and medical leave insurance benefits, or paid family and medical leave taken in connection therewith, beyond those explicitly authorized by the FAMLI Act or regulations issued pursuant to the FAMLI Act;

J. Allowing any employee covered under the private plan who is eligible for family and medical leave insurance benefits under the FAMLI Act to receive benefits and take paid family and medical leave under the private plan; and

K. Providing that the cost to employees covered by a private plan shall not be greater than the cost charged to employees under the state plan under C.R.S. § 8-13.3-507.

2. Subject to the limitations described at Section 5.5.3 of these rules, an approved private plan shall be in the form of either self-insurance or a policy obtained through an insurer approved by the state. An insurer shall not allow coverage for an employer under its policy to become effective earlier than thirty (30) days after the employer has received private plan approval from the FAMLI Division.

3. Private plans must offer benefits to all covered individuals employed by the employer. Nothing prohibits a private plan from covering multiple employers' workforces; however, if an employer intends to meet its obligations under the FAMLI Act and its implementing regulations with an approved private plan, it must apply for private plan approval, pay the administrative fee described in these rules, pay the maintenance fee described in these rules, and otherwise comply with these rules regardless of how many other employers use or intend to use the same private plan to meet their obligations under the FAMLI Act and its implementing regulations.

4. Private plans must not impede the ability of an employer, an employee, or a private plan administrator to comply with the provisions of the FAMLI Act or its implementing regulations.

5. The earnings requirement necessary to be a "covered individual" pursuant to C.R.S. § 8-13.3-503(3)(a)(I) is not "per-employer" and private plans may not deny or otherwise limit benefits to which the covered individual would otherwise be entitled. However, if the private plan administrator does not have verified wages from other employers, the private plan administrator may determine a claimant's wage replacement amount based on the private plan employer's wages, so long as the employee is able to appeal the benefit decision to provide accurate wage information for their other employment.

6. Employers who are approved to provide FAMLI benefits under a self-insured plan must establish and maintain a separate account for their localized Colorado employees: (1) into which all localized employee contributions are deposited and kept; and (2) from which all benefits for localized employees must be paid, and from which private plan administrative costs may be paid. Employers may not withdraw from the account except to pay benefits and private plan administrative costs. Upon any voluntary or involuntary termination of a self-insured plan, the employer must remit the remaining balance of the account to the Division.

7. All private plans must provide for the confidentiality of employee information related to FAMLI benefits, and such information must be kept separate from all other employment records.

8. By submitting an application for benefits to a private plan administrator, the claimant consents to the private plan administrator sharing with the employer, upon the employer's request, limited information necessary for the employer to coordinate FAMLI benefits with other benefits for which the claimant is eligible, in accordance with the information-sharing provisions of 7 CCR 1107-4, including the wage replacement amount and the reason for leave. The employer shall not request, and the private plan administrator shall not provide, information that is not absolutely necessary for such benefit coordination. An employer's request for information not absolutely necessary for such benefit coordination, or a private plan administrator's provision of information

not absolutely necessary for such benefit coordination, may constitute discrimination, retaliation, and/or interference in violation of C.R.S. § 8-13.3-509. The employer must store and maintain the confidentiality of such information in accordance with all applicable federal, state, and local laws and regulations, and failure to do so may constitute discrimination, retaliation, and/or interference in violation of C.R.S. § 8-13.3-509.

9. All private plans must provide that an employee shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the employee's claim for benefits within seven (7) days of the request. If the Division determines that an employee was not granted access and copies in violation of this section, the Division may assess upon the private plan administrator a fine of up to $250.00 per violation.

10. With regard to forms that claimants and/or health care providers will be required to complete in relation to a claim for benefits, all private plans shall either utilize the forms provided by the Division, or utilize forms that are no more onerous than the forms provided by the Division. If a private plan administrator makes changes to an approved form, they may submit the revised form to the Division for review and approval. If the Division determines that an employee had to, as a condition to access benefits, use a form more onerous than the forms provided by the Division, the Division may assess upon the private plan administrator a fine of up to $500.00 per violation, except that the Division shall not assess a fine for a form that it has approved.

11. Private plans must determine whether an application for benefits is properly filed, and must do so in a manner consistent with 7 CCR 1107-3 Section 3.6.8.

12. In accordance with C.R.S. § 8-13.3-521(7), in addition to the initial administration fee described in these rules, starting in 2025, an employer with an approved private plan must pay the Division an annual maintenance fee to cover amounts expended by the division for costs arising out of the administration of private plans.

    A. The Division will calculate a flat fee per employer with an approved private plan for all routine costs. The flat fee will be prorated for employers who did not have private plan approval from the Division for the entire period covered by the maintenance fee. Routine costs are costs that are incurred on all private plans, or costs that are incurred regardless of private plan administration, including, but not limited to, review of plan modifications necessary to comply with changes to the FAMLI Act, data reporting and analysis costs, data sharing across plans, review of continuing coverage requirements, and random audits. Technology development costs will be included in the flat fee and considered spent evenly over each of the five years after the division incurs them.

    B. The Division will calculate an individualized fee for each employer with an approved private plan for all non-routine costs. Non-routine costs are costs the Division incurs as a result of the private plan administration, including, but not limited to, appeals of private plan determinations, appeals of withdrawals of private plan approval, appeals of denials of private plan applications, retaliation and interference investigations, appeals of retaliation or interference determinations for employers with an approved private plan, surety bond reviews, review of private plan modifications not necessary to comply with changes to the FAMLI Act, and targeted audits. The individualized fee will not include any costs incurred in reviewing an employer's application for private plan approval.

    C. The maintenance fee shall cover all costs arising out of the employer's private plan for the prior fiscal year beginning July 1 and ending June 30.

    D. The Division will deliver an invoice of the maintenance fee to each employer no later than November 30 each year.

E. Private plan maintenance fees shall be due no later than December 31 each year. The Division may extend this deadline for good cause.

F. Private plan maintenance fee calculations may be appealed pursuant to 7 CCR 1107-9.

G. Employers who are members of a professional employer organization ("PEO") certified pursuant to C.R.S. § 8-70-114 do not have to pay an annual maintenance fee if the PEO has an approved private plan that covers all the employer's Colorado employees. The certified PEO will be assessed a maintenance fee for private plan costs attributable to its member employers.

13. Private plans must make reasonable efforts to make forms and communications under these rules available in an individual's primary language.

14. The internal reconsideration and appeals procedures under a private plan need not be equivalent or better than those procedures under the state plan, so long as the private plan provides for appeals to the Division and any court of competent jurisdiction, in accordance with C.R.S. § 8-13.3-521(5). However, all determinations under a private plan are appealable directly to the Division pursuant to 7 CCR 1107-9, and a private plan may not require a claimant to go through any internal review, reconsideration, or appeal before appealing a private plan determination to the FAMLI Division.

15. Private plans will not be reviewed or approved for any local government, or for any individual electing coverage pursuant to C.R.S. § 8-13.3-514.

16. An insurer approved by the state shall send notification to the Division within fourteen (14) days after any lapse in or end of coverage under the policy. The notification shall include:

A. The effective date of the lapse in or end of coverage;

B. The cause of the lapse in or end of coverage;

C. Whether the employer may reinstate the policy;

D. If eligible for reinstatement, the time period during which the employer has to reinstate; and

E. If eligible for reinstatement, the requirements for reinstatement.

17. An insurer approved by the state shall send notification to the Division within three (3) business days after the employer is sent notification of reinstatement. The reinstatement notification shall include:

A. The effective date of the reinstatement;

B. Whether there was a lapse in coverage; and

C. If there was a lapse in coverage, the dates coverage lapsed.

5.4 Application Requirements and Effective Date of New Private Plans

1. Private plans must be approved by the Division prior to implementation. Private plans in the form of an insurance policy issued by an insurer approved by the state must first be submitted to the Colorado Division of Insurance for approval.

2. To obtain approval of a private plan, an employer must first submit a completed application for private plan approval to the Division. Entities with separate federal employer identification numbers (FEINs) must submit separate applications and pay separate application fees, except that employers who are members of a professional employer organization ("PEO") certified pursuant to C.R.S. § 8-70-114 do not have to pay an application fee if they are covered by their PEO's private plan and their PEO has paid an application fee. Applications may be submitted at any time, and the Division will review applications as they are received.

3. An application for private plan approval must include:

   A. The employer's federal employer identification number ("EIN");

   B. The employer's name;

   C. The employer's business address;

   D. The employer's mailing address;

   E. A designated contact person, with that person's name and contact information;

   F. A copy of the employer's self-insured private plan, or if the private plan is in the form of an insurance policy provided by an insurer approved by the state, a copy of that insurance policy form;

   G. If the private plan is in the form of self-insurance, a surety bond, issued by a surety company authorized to transact business in Colorado, in an amount equal to one year of total premiums calculated pursuant to C.R.S. § 8-13.3-507, along with payroll documentation supporting the surety bond calculation;

   H. If the private plan is in the form of self-insurance, attestation that the employer has complied with the separate account requirements at Section 5.3.6 of these rules;

   I. An attestation, completed by the employer, that the employer understands, and the private plan satisfies, the requirements set forth in the FAMLI Act and its implementing regulations;

   J. An attestation, completed by the employer, that the forms used by the employees and/or health care providers will be no more onerous than the forms used by employees and/or health care providers under the state plan;

   K. A copy of the posted notice required by Section 5.9.4 of these rules;

   L. Other information as required on the application form; and

   M. An administration fee of:

      1. $500.00 for private plan applications received through 2024; and

      2. For private plan applications received in 2025 and later, the amount determined by the Director pursuant to C.R.S. § 8-13.3-521(7), and published on the Division's website.

4. Approved private plans must take effect no earlier than sixty days after the date of application so that the Division has sufficient time to review the application, and the employer has sufficient time to provide notice to employees in accordance with Section 5.9 of these rules.

5. The employer must submit to the Division any forms to be used by employees and/or health care providers under the approved private plan at least thirty (30) days prior to making them available to employees for usage.

6. Employers remain liable to the FAMLI Division for premiums on wages paid until the effective date of the approved private plan, and remain entitled under C.R.S. § 8-13.3-507(5) to withhold the employees' share of premiums from wages paid until the effective date of the approved private plan. Throughout the duration of an approved private plan, employers may withhold premiums deductions from employees in an amount not to exceed the amount authorized by C.R.S. § 8-13.3-507(5), if such a deduction is pursuant to the terms of the approved private plan.

7. Employees remain eligible for benefits under the FAMLI Act until the effective date of the approved private plan.

8. Benefits awarded to an employee must be paid by the plan that awarded the benefits for the full duration of the employee's approved FAMLI benefits claim, pursuant to 7 CCR 1107-4 Section 4.9.1.

   A. In the event of an approved private plan failing to pay benefits due to an insurance carrier's insolvency, if the policy is covered by an insurance guaranty association, the claims will be paid by the insurance guaranty association pursuant to their rules and procedures. If the policy is not covered by a guaranty association, then the employer will become responsible for paying all claims approved by the private plan prior to the date of insolvency. In either event, the employer shall immediately notify the FAMLI Division of the insolvency, the notice requirements under Section 5.14 of these rules are waived, and the employer will be deemed covered under the state system.

   B. If a self-insured employer fails to pay benefits as awarded and private plan approval is withdrawn pursuant to Section 5.16 of these rules, the Division shall execute upon the surety bond and use the proceeds and the remaining funds in the separate account established pursuant to Section 5.3.6 of these rules to pay benefits due for claims arising prior to the date of termination.

   C. If an employer fails to pay benefits as required by 5.4.8.A, or if the surety bond and remaining funds are insufficient to pay the benefits under 5.4.8.B, those claims shall be paid by the FAMLI Division. The employer is indebted to the Division for such amounts, and the Division may pursue all legal means to collect such amounts from the employer.

5.5 Review of Private Plan Applications

1. If the Division does not approve an application for a private plan, the Division shall notify the employer~~applicant~~ in writing of any issues that must be addressed in order for the private plan application to be approved.

2. The employer~~applicant~~ may request to meet and confer with the Division to discuss the issues and how they can be addressed, and the Division shall make a good faith effort to schedule a prompt meeting with the employer~~applicant~~ at a convenient time and in a convenient manner.

3. For applications for self-insured private plans received by the Division on or after January 1, 2025, the employer must use the self-insurance private plan template approved by the FAMLI Division and published on its website.

4. The ~~applicant~~ employer may submit another application for private plan approval after sufficiently addressing any identified issues.

5. No additional administrative fee will be assessed for an application received within one year of the initial application for private plan approval.

6. Each application is a separate application for purposes of determining the effective date of an approved private plan.

7. The outcome of a private plan application is subject to an appeal, in accordance with 7 CCR 1107-9.

5.6 Surety Bond Requirement for Employer Self-Insured Private Plan

1. The Division will only accept a surety bond issued by a surety company authorized by the Colorado Insurance Commissioner to transact such business in Colorado.

2. The bond amount must be an amount equal to one year of total premiums calculated pursuant to C.R.S. § 8-13.3-507.

3. The bond amount must be based on four quarters of projected wages, as represented by:

   A. The previous four quarters of wages reported by the employer to the Division, in accordance with 7 CCR 1107-3 Section 3.3.2; or

   B. If the employer has not reported four quarters of wages to the Division, the previous four quarters of wages reported by the employer to the Colorado Unemployment Insurance Division, in accordance with 7 CCR 1101-2, Section 7.2.4; or

   C. If the employer has not reported wages to FAMLI or the Colorado Unemployment Insurance Division for four quarters, the previous four quarters of wages paid to its employees; or

   D. If none of the above is possible, a reasonable estimate of one year of projected wages supported by documentation.

4. The Division may disapprove a private plan if an employer fails to provide documentation the Division deems necessary for purposes of calculating an appropriate surety bond amount. This disapproval is a determination subject to appeal pursuant to 7 CCR 1107-9.

5. If an employer has reason to believe that the amount calculated pursuant to Section 5.6.3 of this rule does not accurately reflect its projection of the next year of wages, the employer must notify the Division and provide an explanation as to why, along with any supporting documentation.

6. A surety bond shall be issued on a form prescribed by the Division.

7. The bond must include a statement that the bonding company must give ninety (90) days' notice of its intent to terminate liability to both the principal and the Division, except that if the bonding company is terminating liability because it is issuing a replacement bond, it may do so without providing prior notice. In the event of a replacement bond, the surety company and the employer must notify the Division no later than fourteen (14) days after its effective date.

8. The employer must maintain surety bond coverage for the duration of its approved self-insured private plan.

9. The Division will review the bond annually to ensure that the amount corresponds with the wage projections as described in this rule. The employer must provide the Division with any documentation necessary to review the bond amount. If the Division determines that the bond

amount must be increased, the employer must do so to maintain private plan approval. If the Division determines that the bond amount exceeds the projected wages as described in Section 5.6.3 of this rule, the employer may reduce the bond amount to match such projected wages.

10. The Division may execute on and collect the bond amount if the employer's private plan approval is terminated, voluntarily or involuntarily, pursuant to these rules.

    A. The Division may execute on and collect the entire bond amount, less any funds received from the employer within 30 days after the effective date of the termination of the private plan approval or as agreed upon by the employer and the Division.

    B. Funds so received by the Division from the employer and/or the surety, as well as funds received by the Division pursuant to Section 5.3.6 of these rules, will be deposited into the fund, and if applicable, will be credited toward the employer's obligations under Section 5.17 of this rule, and will not be refunded pursuant to 7 CCR 1107-1, Section 1.4.8.B.

5.7 Duration of Private Plan Approval; Renewal Requirements

1. Unless otherwise authorized by the Division pursuant to these rules, private plan approval expires after eight years from the date that the private plan went into effect.

2. Beginning in November 2024 and every November thereafter, employers with approved private plans must annually submit an attestation to the Division that their contact information is accurate and their approved private plan continues to satisfy the requirements of the FAMLI Act and its implementing regulations. Such attestation must be in the form and manner specified by the Division on its website. Failure to submit an attestation may result in the Division's withdrawal of the private plan approval.

3. Employers seeking renewal of their private plan approval must submit an application for renewal at least sixty (60) days before the expiration of their private plan approval. The Division will send to the employer's email address an expiration notice at least ninety (90) days before the expiration of the private plan's approval.

5.8 Partial Colorado Workforce Coverage Prohibited

If an employer meets its obligations under the FAMLI Act and its implementing regulations with an approved private plan, it must cover all of the employer's employees localized in Colorado in accordance with 7 CCR 1107-1.

5.9 Notice to Employees of Private Plan Benefits and Administration

1. No later than thirty (30) days before the effective date of an approved private plan, an employer must deliver to each of its employees a written notice of its election and approval by the Division to offer a private plan in lieu of participating in the state plan. For an employee whose start date or Colorado transfer is later than thirty (30) days before the effective date of an approved private plan, an employer must deliver the written notice to the employee immediately upon hire or transfer. Additionally, the employer must deliver the private plan notice to an employee within five days after either learning of an employee experiencing an event that triggers eligibility pursuant to C.R.S. § 8-13.3-504, or receiving from the employee a request for leave under the Family and Medical Leave Act at 29 U.S.C. § 2601 et seq., absent extenuating circumstances.

2. The written notice may be delivered to the individual employee electronically, in person, or via mail.

3. The written notice must include:

   A. The effective date of the approved private plan;

   B. A description of the private plan's wage replacement benefits;

   C. A description of the private plan's leave and employment protection benefits;

   D. A description of how employee eligibility is determined;

   E. A description of how any employee contributions are calculated and collected;

   F. A description of how and when an employee may file a claim for benefits under the approved private plan;

   G. A notification to the employee of the employee's appeal rights pursuant to the FAMLI Act, and if applicable, of the employee's optional alternative to appeal a benefits determination to the private plan administrator;

   H. Contact information for the FAMLI Division and the plan administrator; and

   I. A notification to the employee of the employee's rights under C.R.S. § 8-13.3-509.

4. In addition to delivering the written notice to each of its employees localized in Colorado, an employer must post a notice containing the same information.

   A. The notice must be posted in a conspicuous and accessible place in each establishment where employees are employed.

   B. The notice must be in English, Spanish, and any language that is the first language spoken by at least five percent of the employer's Colorado workforce.

   C. If the employer does not maintain a physical workplace, or an employee works remotely, the employer may satisfy the posting requirement by sending the notice via email or through a conspicuous posting in a web-based or app-based platform that the employee regularly uses.

5. If the Division determines that an employer has violated any part of Section 5.9 of these rules, the Division may assess upon the employer a fine of up to $500.00.

5.10 Collection of Employee Contributions Authorized

Where an employer lawfully deducts premium contributions from an employee's wages pursuant to C.R.S. § 8-13.3-507(5) or the terms of an approved private plan, then for the purposes of compliance with C.R.S. § 8-4-105, premium contributions are considered wages paid for the benefit of the employee, and collecting such premium contributions does not violate C.R.S. § 8-4-105(2). If an employer deducts premium contributions from an employee's wages, and subsequently receives a refund of premiums paid from the private plan, the employer must distribute the refund proportionately and in accordance with how it was collected. If an employee terminates employment with the employer, any premiums previously deducted remain part of the employer's approved private plan.

5.11 Calculation of Benefits Under Private Plans

Private plans must provide a wage replacement rate for all family and medical leave insurance benefits of at least the amount required by 7 CCR 1107-3 Section 3.5.

5.12 Recordkeeping and Reporting Requirements; Division Access to Records

1. A private plan administrator must keep and maintain documentation of the following for a minimum of six years:

   A. Applications for benefits;

   B. Benefits paid, including payment dates and amounts;

   C. Adverse determinations of benefits applications;

   D. Internal appeals received;

   E. The outcome of internal appeals received; and

   F. Documents, including wage data, containing the information upon which benefits determinations were based.

2. An employer must keep and maintain documentation of the following for a minimum of six years:

   A. Records of any premium contributions it collected from employees.

   B. Wage records.

3. A private plan administrator must, on a quarterly basis, submit to the Division a private plan administration summary of the previous calendar quarter. The private plan administration summary must be submitted no later than the last day of the month immediately following the end of the calendar quarter addressed by the summary. After an approved private plan has been effective for three years, the private plan administrator may, unless otherwise directed by the Division, submit its private plan administration summary annually, which will be due on January 30 of each year. Information received by the Division in the private plan administration summary will be aggregated so that the Division can comply with its reporting obligations at C.R.S. § 8-13.3-519. The private plan administration summary must include aggregate summaries of the following:

   A. Total number of benefits applications received;

   B. Total number of benefit applications approved, pending, denied, or closed.

   C. Total benefit amounts paid;

   D. Total number of employees covered under the private plan;

   E. The purposes for approved leave;

   F. The reported gender of individuals for whom leave was approved, and for whom leave was denied in whole or in part;

   G. The average weekly wage of individuals for whom leave was approved;

   H. If leave was taken to care for a family member, the relationship of that family member to the beneficiary;

   I. Total number of appeals received; and

J. Total number of appeals affirmed, reversed, modified, or withdrawn.

4. For private plan administrators who administer private plans for multiple employers, the aggregate summaries included in the private plan administration summaries may be aggregated across employers.

5. Within twenty-eight (28) days of the Division's written request, a private plan administrator or an employer with an approved private plan shall provide any documentation either is obligated to maintain pursuant to Section 5.12 of these rules. If the employer or private plan administrator requests an extension and provides good cause for the extension, the Division may extend the 28-day deadline. If the employer or private plan administrator does not provide the requested documentation by the deadline, the Division may withdraw its approval of the private plan.

5.13 Modification of a Private Plan

1. An employer shall notify the Division, in writing, of any material change to an approved private plan at least sixty (60) days before the change is to take effect. However, if an employer is changing from one approved private plan to another approved insurance carrier's private plan, the employer must notify the Division, in writing, of the change at least thirty-five (35) days before the change is to take effect. The notification shall include:

   A. A detailed explanation of all material changes; and

   B. For self-insured private plans, a statement describing how any material changes do not reduce benefits or impose new requirements on covered employees beyond what would be provided and required under the state plan.

2. The Division will review the material change to the approved private plan, and will determine whether the material change impacts private plan approval. The Division will make a good faith effort to confer with the employer regarding any impact to continued private plan approval, and to notify the employer of its determination within thirty (30) days of the employer's notification to the Division. In no event may an employer make a material change without first obtaining Division approval and providing at least thirty (30) days' notice to its employees.

3. Division review of material changes to a private plan may impact the calculation of an employer's annual maintenance fee.

4. Material changes to an approved private plan include, but are not limited to:

   A. Changing from one private plan to another;

   B. Changing the private plan to reduce benefits or leave types;

   C. Changing the private plan to increase claims adjudication timeframes;

   D. Changing the private plan to increase benefits payment timeframes; or

   E. Changing the private plan to increase the information collected from employees to apply for or receive benefits.

5. Material changes to an approved private plan do not include:

   A. Updating the private plan benefits application form in a way that does not make the form more onerous than the state's benefits application form;

B. Changing business or contact information;

C. Correcting typographical errors;

D. Increasing benefits or leave types; or

E. Updating the private plan to align with regulatory changes.

6. A change to an approved private plan will not extend the duration of its approval.

7. If the Division determines that an employer has not notified the Division of a material change in accordance with Section 5.13 of these rules, the Division may assess upon the employer a fine of up to $250.00. If the Division determines that an employer has not notified its employees of a material change in accordance with Section 5.13 of these rules, the Division may assess upon the employer a fine of up to $100 per employee per day.

5.14 Voluntary Termination of an Approved Private Plan by an Employer

1. Before terminating coverage under an approved private plan as part of a transition to the state plan, an employer must provide at least thirty (30) days advance written notice to its employees and to the Division. Coverage termination as part of a transition from one private plan to another is governed by Section 5.13 of this rule.

2. The Division will withdraw approval of an employer's private plan, effective the date coverage under the private plan was terminated~~later of the effective date described in the notification, or thirty (30) days after receiving the notification described in Section 5.14.1~~.

3. If the employer terminates coverage under an approved private plan without providing thirty (30) days advance notice to its employees and to the Division, the Division may assess upon the employer a fine of up to $500.00 per employee who did not receive timely advance notice. If the Division awards benefits to a private plan employer's employee with a benefit start date occurring before thirty days after the employer's notice to the Division, the Division may assess upon the employer a fine of up to $500.00.~~An employer must continue the approved private plan's coverage through the effective date of a withdrawal described in Sections 5.14 or 5.16 of these rules. If an employer does not continue the approved private plan's coverage through the withdrawal's effective date, the Division may assess against the employer a fine, per employee per day the employee was not covered through the withdrawal's effective date. The fine amount will be the lesser of (a) the daily total premium amount per employee, calculated by using the total annual premium amount paid by the employer and employee, divided by 365 or (b) $500.00.~~

5.15 Expiration of an Approved Private Plan

If an employer does not renew its private plan in accordance with Section 5.7 of these rules, the employer will be deemed to have voluntarily terminated its private plan, and will be subject to the requirements in Section 5.14 of these rules.

5.16 Involuntary Termination of a Private Plan by the Division

1. The Division will withdraw approval for a private plan when the terms or conditions of the plan have been violated. Causes for plan termination shall include, but not be limited to, the following:

A. Failure to pay benefits in the amount and duration required by the FAMLI Act and its implementing regulations;

B. Failure to pay benefits in the amount and duration required by the private plan, where the private plan provides benefits in a greater amount or duration than is required by the FAMLI Act and its implementing regulations;

C. Failure to pay benefits within the timeframes and in the manner specified by the FAMLI Act and its implementing regulations;

D. Failure to maintain an adequate surety bond in accordance with the FAMLI Act and its implementing regulations;

E. Misuse of private plan money, including the use of private plan funds for anything other than paying out and administering benefits, or transferring private plan funds from an account established pursuant to Section 5.3.6 of these rules to any account not exclusively for holding private plan funds;

F. Failure to submit reports or comply with other compliance requirements as required by the FAMLI Act and/or its implementing regulations;

G. Failure to pay the annual maintenance fee;

H. Failure to maintain private plan coverage; or

I~~H~~. Failure to otherwise comply with the FAMLI Act and its implementing regulations.

2. The Division will conclude that the terms or conditions of the plan have been violated, and therefore withdraw approval of the private plan, if the Division determines that the employer or the private plan administrator has repeatedly violated the private plan's terms and/or the FAMLI Act and its implementing rules, has willfully or recklessly violated the private plan's terms and/or the FAMLI Act or its implementing rules, or has otherwise violated the private plan's terms and/or the FAMLI Act or its implementing rules in such a way that indicates a widespread compliance concern.

3. If the Division withdraws approval of an employer's private plan, the Division will issue to the employer and the private plan administrator a Notice of Withdrawal of Private Plan Approval. The employer may appeal that withdrawal to the Division pursuant to 7 CCR 1107-9. If the employer does not appeal the withdrawal, the effective date is the day following the appeal deadline specified by 7 CCR 1107-9, except that if the Division withdraws approval because the employer failed to maintain private plan coverage, the effective date is the date coverage ended. The Division will stay the withdrawal of approval during an appeal unless the Division withdrew approval because the employer failed to maintain private plan coverage.

5.17 Employer Obligations After Termination of Private Plan Approval

1. Within seven (7) days of the effective date of a voluntary or involuntary termination of private plan approval, the employer must notify all Colorado employees of the termination, notify all Colorado employees that they are under the state plan as a result of the termination, and deliver to all Colorado employees the information contained in the program notice described at C.R.S. § 8-13.3-511.

2. If an employer's workforce becomes covered by the state plan because the employer's private plan approval was voluntarily or involuntarily terminated, the employer must remain covered by the state plan and pay premiums to the state for a period of at least three (3) years and deliver to the Division all remaining amounts in the account established pursuant to Section 5.3.6 of these rules.

3. If the employer returns to coverage under an approved private plan before the end of three (3) years, the employer must pay to the state the amount of premiums it would have been required to remit pursuant to C.R.S. § 8-13.3-507(5) through the remainder of the three-year period. The employer may choose to either remit the remainder as a lump sum based on a projection determined by the Division, or may continue to remit premiums based on actual wage data on a quarterly basis through the remainder of the three-year period.

4. If the Division determines that an employer has violated Section 5.17 of these rules, the Division may assess upon the employer a fine of up to $100.00 per employee per day.

5.18 Division Oversight of Private Plans

1. The Division may, at any time at its sole discretion, initiate a review of a private plan and its administration to determine whether the private plan and its administration are in accordance with the FAMLI Act and its implementing regulations.

2. Upon initiation of a review and request by the Division, the private plan administrator and the employer shall provide all information and documentation necessary to conduct the review.

3. The Division will ensure confidentiality of records.

4. Information and documentation requested by the Division must be provided within fourteen (14) days after the request. The Division may extend the deadline where good cause for such an extension exists.

5. Failure to provide information and documentation necessary for the Division's review of a private plan and its administration may result in the Division's withdrawal of the private plan's approval, and may result in a fine of up to $250.00 per employee whose information is requested, per day that it is late.

6. Upon determination that a private plan administrator is not administering private plans in accordance with the FAMLI Act and its implementing regulations, the Division may withdraw its approval of private plans administered by that private plan administrator, and may deny approval of future private plans administered by that private plan administrator. If the Division withdraws approval pursuant to this rule, it will make a reasonable effort to do so in a way that ensures employers can maintain consistent coverage for their employees. All withdrawals of private plan approval may be appealed pursuant to 7 CCR 1107-9.

5.19 Appeals

1. Claimants under an approved private plan may appeal any adverse determination made by the private plan administrator pursuant to 7 CCR 1107-9, including but not limited to:

   A. A private plan administrator's failure to issue a determination within two weeks of filing;

   B. A private plan's adverse determination of a claim for benefits;

   C. A private plan's failure to pay the full claim it approved;

   D. A private plan's closure of a claim based on its determination that the claim was not properly filed in accordance with 7 CCR 1107-3 Section 3.6.9;

   E. A private plan's determination that an employee is disqualified from benefits due to its conclusion that the employee willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits; or

F. A private plan's identification and/or collection of an overpayment.

2. A claimant under an approved private plan may file an appeal with the Division, or may choose to file an appeal with the private plan administrator if the private plan allows for a discretionary internal appeal mechanism. Regardless of whether there is an internal private plan appeal process, a claimant under an approved private plan may choose to file an appeal directly to the FAMLI Division in accordance with 7 CCR 1107-9.

3. If a claimant chooses to file an appeal with the private plan administrator, the claimant may appeal the outcome of that appeal to the Division in accordance with 7 CCR 1107-9.

4. If a covered individual appeals a benefit determination under an approved private plan, and the Division determines that the covered individual is entitled to additional payment, the Division will notify the private plan administrator, and the private plan administrator must pay the additional amount within the same time frames the Division would have to pay additional amounts pursuant to 7 CCR 1107-9.

5. The Division will specify the benefit amount due and when such additional payments are due in its determination.

6. If the Division overturns or modifies a benefits determination under an approved private plan, and the private plan administrator seeks judicial review of the Division's decision, the private plan administrator must still pay the additional amount within the timeframes above. However, if the Division's determination is overturned or modified by a court upon judicial review, the private plan administrator may:

   A. Deduct any overpayment from an employee's wages in accordance with C.R.S. § 8-4-105, if the private plan administrator is the employee's employer;

   B. Enter into a repayment plan with the employee; or

   C. File suit against the employee in a court of competent jurisdiction to recover the overpayment.

5.20 Fines

1. If, upon appeal or judicial review, the Division or a court determines that the private plan administrator owes additional payments to a covered individual, and the private plan administrator fails to issue payment of the benefits by the date or dates specified by the Division or the court in its determination, then the Division may assess fines upon the private plan administrator.

2. Each day after the due date that additional payments owed by a private plan to an individual claimant go unpaid constitutes a separate violation.

3. The Division may assess fines as follows:

   A. For the first day of nonpayment after the due date, a fine of up to $100.00 per individual claimant;

   B. For the second day of nonpayment after the due date, a fine of up to $200.00 per individual claimant;

   C. For the third day of nonpayment after the due date, a fine of up to $300.00 per individual claimant;

D. For the fourth day of nonpayment after the due date, a fine of up to $400.00 per individual claimant; and

E. For the fifth day of nonpayment after the due date, and for every additional day thereafter, separate fines of up to $500.00 per day per individual claimant.

Notice of Proposed Rulemaking

Tracking number

2025-00104

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-6

Rule title

REGULATIONS CONCERNING PROGRAM INTEGRITY

Rulemaking Hearing

Date

04/14/2025

Time

03:00 PM

Location

https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1

Subjects and issues involved

Rules regarding program integrity.

Statutory authority

C.R.S. 8-13.3-501 et seq.

Contact information

Name

Evan Grimes

Title

Policy Unit Manager

Telephone

‪(720) 442-0833‬

Email

evan.grimes@state.co.us

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING PROGRAM INTEGRITY

7 CCR 1107-6

6.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq. and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "Act" or "FAMLI").

2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to program integrity.

3. ~~Article 12 of C.R.S. Title 5 (2024), Article 13.3 of C.R.S. Title 8 (2024), Article 4 of C.R.S. Title 24 (2024),~~ 7 CCR 1107-1 (2024), 7 CCR 1107-3 (2024), 7 CCR 1107-4 (2024), 7 CCR 1107-5 (2024), 7 CCR 1107-8 (2024), and 7 CCR 1107-9 (2024) are hereby incorporated by reference. Earlier versions of such laws and regulations may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes and regulations. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver, CO 80202. Copies may be obtained from this Division at a reasonable charge, or 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 the statutes and regulations incorporated 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 the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

6.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the Act have the same definition as they do under the Act.

2. "Benefit Overpayment" means a payment in excess of the amount authorized by the Act and its implementing regulations.

3. "Claimant" has the same definition as 7 CCR 1107-3, Section 3.2.7.

4. "Correct Address" has the same definition as 7 CCR 1107-8, Section 8.2.6.

5. "Determination" has the same meaning as defined in 7 CCR 1107-9, Section 9.2.8.

6. "Equity and Good Conscience" means fairness as applied to each individual case after considering the totality of the circumstances. When determining whether an individual or entity shall pay an amount owed to the Fund (e.g. benefit overpayment, fines or interest), the Division or private plan administrator may consider the following factors to determine equity and good conscience, including, but not limited to:

   A. The individual's financial condition required that the amount owed be spent on reasonable and necessary living expenses;

   B. The individual's household income is below 200% of the federal poverty income guidelines;

   C. The individual or entity lacks the ability to pay the amount owed based on prior income level, current income and assets, and future earnings potential;

   D. Requiring repayment will cause extraordinary financial hardship by depriving the individual of the ability to provide for basic necessities that cannot be deferred such as food, shelter, clothing, utilities, and medical costs;

   E. The individual detrimentally changed their position in reliance on the receipt of the overpaid benefits including, but not limited to, entering into a financial and/or contractual obligation that they would not have entered except for the receipt of the overpaid benefits;

   F. The individual relinquished a valuable right in reliance on the receipt of the overpaid benefits, including the receipt of other governmental benefits for which they would have been entitled except for the receipt of the overpaid benefits. Although the individual is not required to apply for governmental benefits and be rejected from receiving them, they may be required to prove eligibility for such benefits by establishing their economic situation at the time family and medical leave insurance benefits were received as well as the requirements for receiving said benefits;

   G. The individual's knowledge or lack of knowledge regarding an employer's incorrect reporting of wages; and/or

   H. The individual's knowledge or lack of knowledge with regard to a provider who fails to meet the definition of health care provider, or who has provided a diagnosis or treatment outside of their licensed scope of practice, or has a license that has been suspended or revoked at the time the provider completes documentation regarding the individual's need for family and medical leave.

7. "Fees" means any additional charge by a private plan added to an outstanding amount owed.

8. "Party" or "Parties" means a claimant, employee, employer, or individual electing coverage involved in a proceeding.

9. "Qualifying Condition" means a reason for leave described at C.R.S. § 8-13.3-504(2).

6.3 Benefits Overpayments

1. A claimant who receives family and medical leave insurance benefits they are not entitled to receive shall be liable for repayment of the amount overpaid, unless otherwise relieved pursuant to section 6.3.7. Circumstances giving rise to a benefits overpayment include, but are not limited to a(n):

A. Division miscalculation that occurs without any fault from the claimant or is caused by a claimant's omission, willful misrepresentation, or fraud;

B. Determination by the Division that the claimant does not qualify for family and medical leave insurance benefits because they are not localized in Colorado pursuant to the in-state status provisions of 7 CCR 1107-1, are not a covered individual, do not have a qualifying condition, or are disqualified from receiving family and medical leave insurance benefits because of a willful false statement or misrepresentation pursuant to C.R.S. § 8-13.3-513;

C. Claimant's failure to notify the Division of an event that causes benefit payments to change pursuant to 7 CCR 1107-3, Section 3.10.1;

D. Claimant who, during time designated as FAMLI leave, performs work for the employer from which they are taking FAMLI leave;

E. Claimant who is receiving family and medical leave insurance benefits, continuous or intermittent, during a period of unemployment, except as described in 7 CCR 1107-3 Section 3.4.1.A;

F. Claimant receiving family and medical leave insurance benefits for an absence from work that is caused by circumstances that would entitle the claimant to temporary indemnity benefits under the Colorado Workers' Compensation Act in violation of 7 CCR 1107-4, Section 4.3;

G. Claimant receiving family and medical leave insurance benefits during any week the individual receives unemployment benefits for the same job pursuant to the Colorado Employment Security Act in violation of 7 CCR 1107-4, Section 4.4;

H. Claimant receiving family and medical leave insurance benefits when their family and medical insurance leave benefits have been exhausted;

I. Employer who incorrectly reports wages for the claimant, causing the claimant to receive family and medical leave insurance benefits in an amount greater than their actual wages would provide;

J. Self-employed individual who reports inflated wages on their own behalf, causing the claimant to receive family and medical leave insurance benefits in an amount greater than their actual wages would provide; or

K. Health care provider who fails to meet the definition of "health care provider" as defined by C.R.S. § 8-13.3-503(13), has provided a diagnosis, treatment, or leave certification outside of their licensed or certified scope of practice, or has a license or certification that has been suspended or revoked at the time the provider completes documentation regarding the individual's need for family and medical leave.

2. Benefit overpayments may be identified through any lawful means, including but not limited to Division audits, Division investigations, or external tips.

3. The Division will notify claimants of any determination of benefit overpayment by sending the claimant a determination letter to the claimant's correct address. If the claimant has provided an email address, the Division shall send the determination via email, and such delivery via email will satisfy the requirement to send the determination letter to the claimant's correct address.

4. The claimant may appeal a determination of benefit overpayment as detailed in 7 CCR 1107-9.

5. Any outstanding benefit overpayment owed to the Fund by the claimant is subject to recovery pursuant to 7 CCR 1107-8, Section 8.8.

6. Any outstanding balance past due shall accrue interest pursuant to 7 CCR 1107-8, Section 8.9

7. At its discretion, the Division may waive, in whole or in part, any amount of benefit overpayment owed to the Fund where such recovery would be against equity and good conscience, unless the overpayment resulted from the individual's willful misrepresentation or willful failure to disclose a material fact to the Division. A request to waive an overpayment is not an appeal, and waiver requests must be submitted through the benefits system. The Division's determination of equity and good conscience shall only be overturned upon a finding that the Division abused its discretion.

6.4 Premium Underpayments, Fines, and Interest.

1. An employer or individual electing coverage shall be liable for a premium underpayment. Circumstances giving rise to a premium underpayment include, but are not limited to a(n):

   A. Mistake in billing by the Division caused by a technical error;

   B. Employer who has incorrectly identified employees localized in Colorado, underreported the number of employees they have, misclassified employees as non-employees, or failed to register with FAMLI and pay premiums; or

   C. Individual electing coverage who has underreported their income or has failed to report their income.

2. A fine may be imposed for any violation, including a failure to undertake an action specifically required by the Act and its implementing rules, or by engaging in any activity specifically prohibited by the Act and its implementing rules.

3. Premium underpayments are identified through any lawful means including Division audits, investigations, and external tips.

4. The Division will notify an individual electing coverage or employer of any determination of premium underpayment or fine by sending a determination letter to the individual electing coverage or employer's correct address.

5. The party may appeal a determination of premium underpayment or fine pursuant to 7 CCR 1107-9.

6. Any outstanding premium underpayment fine or interest owed to the Fund by the party is subject to recovery pursuant to 7 CCR 1107-8, Section 8.8.

7. Any outstanding balance past due shall accrue interest pursuant to 7 CCR 1107-8, Section 8.9.

8. At its discretion, the Division may waive, in whole or in part, any fine or interest owed to the Fund where such recovery would be against equity and good conscience.

6.5 Private Plans and Benefit Overpayments

1. A claimant who receives benefits under a private plan that they are not entitled to receive shall be liable for repayment of the amount overpaid, unless otherwise relieved pursuant to this section. Circumstances giving rise to a benefits overpayment include, but are not limited to a(n):

A. Private plan miscalculation that occurs without any fault from the claimant or is caused by a claimant's omission, willful misrepresentation, or fraud;

B. Determination by the private plan that the claimant does not qualify for benefits because they are not localized in Colorado pursuant to the in-state status provisions of 7 CCR 1107-1, are not a covered individual, do not have a qualifying condition, or are disqualified from receiving benefits because of a willful false statement or misrepresentation pursuant to C.R.S. § 8-13.3-513;

C. Claimant's failure to notify the private plan of an event that causes benefit payments to change pursuant to 7 CCR 1107-3, Section 3.10.1;

D. Claimant who has not taken a leave of absence from the employment from which they are receiving benefits;

E. Claimant who is receiving benefits, continuous or intermittent, during a period of unemployment, except as provided by 7 CCR 1107-3, Section 3.4.1.A;

F. Claimant receiving benefits for an absence from work that is caused by circumstances that would entitle the claimant to temporary indemnity benefits under the Colorado Workers' Compensation Act in violation of 7 CCR 1107-4, Section 4.3;

G. Claimant receiving benefits during any week the individual receives unemployment benefits under the Colorado Employment Security Act for the same job in violation of 7 CCR 1107-4, Section 4.4;

H. Claimant receiving family and medical leave insurance benefits when their family and medical insurance leave benefits have been exhausted;

I. Employer who incorrectly reports wages for the claimant, causing the claimant to receive benefits in an amount greater than their actual wages would provide; or

J. Health care provider who fails to meet the definition of "health care provider" as defined by C.R.S. § 8-13.3-503(13), has provided a diagnosis or treatment outside of their licensed scope of practice, or has a license that has been suspended or revoked at the time the provider completes documentation regarding the claimant's need for family and medical leave.

2. The private plan administrator shall notify the claimant of any determination of benefit overpayment by sending a determination letter to the claimant's correct address. If the claimant has provided an email address, the private plan administrator shall send the determination via email, and such delivery via email will satisfy the requirement to send the determination letter to the claimant's correct address. For determinations of benefit overpayments totaling $25 or more, the private plan administrator shall additionally notify the Division by sending copies of such determination letters to the Division's correct address in accordance with the private plan administrator's reporting schedule as described in 7 CCR 1107-5, Section 5.12.3. If the Division determines that a private plan administrator did not notify the Division of an overpayment in accordance with these rules, the Division may assess upon the private plan administrator a fine of up to $50.00.

3. The claimant may appeal a determination of benefit overpayment by a private plan as detailed in 7 CCR 1107-9.

4. Any outstanding benefit overpayment owed to the private plan by the claimant is subject to recovery by any legal means available to the private plan.

5. A private plan shall exercise its discretion to waive, in whole or in part, any amount of benefit overpayment owed where recovery would be against equity and good conscience.

6. Any outstanding benefit overpayment owed to the private plan is subject to interest pursuant to C.R.S. § 5-12-101.

7. A private plan shall not subject an employee to any additional fees in addition to any outstanding benefit overpayment amounts owed.

6.6. Language Accessibility

The Division will make forms and communications under this rule available in English and Spanish. If an individual's primary language is neither English nor Spanish, the Division will make a reasonable attempt to accommodate that individual's language needs, subject to the Division's sole discretion based on available resources.

Notice of Proposed Rulemaking

Tracking number

2025-00105

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-7

Rule title

RULES CONCERNING EMPLOYEE JOB PROTECTION, ANTI-RETALIATION AND ANTI-INTERFERENCE

Rulemaking Hearing

Date

04/14/2025

Time

03:00 PM

Location

https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1

Subjects and issues involved

Rules regarding job protection, retaliation, and interference.

Statutory authority

C.R.S. 8-13.3-501 et seq.

Contact information

Name

Evan Grimes

Title

Policy Unit Manager

Telephone

‪(720) 442-0833‬

Email

evan.grimes@state.co.us

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING EMPLOYEE JOB PROTECTION, ANTI-RETALIATION AND ANTI-INTERFERENCE

7 CCR 1107-7

7.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-509 and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 et seq. (the "FAMLI Act"), C.R.S.

2. The general purpose of these Employee Job Protection and Anti-Retaliation and Anti-Interference rules is to exercise the authority of this Division to enforce and implement Colorado legislative enactments and accompanying rules protecting against retaliation for, or interference with, the exercise of protected rights, and requiring that employees receive various forms of notification of their rights under the Paid Family and Medical Leave Insurance Act (C.R.S. Title 8, Article 13.3, Part 5). These Rules are adopted pursuant to Division authority in C.R.S. § 8-13.3-509(7).

3. ~~Article 12 of C.R.S. Title 5 (2024), Article 13.3 of C.R.S. Title 8 (2024), Articles 1 and 3 of C.R.S. Title 18 (2024), Articles 4 and 34 of C.R.S. Title 24 (2024),~~ 29 C.F.R. 825, et seq. (2024), 29 U.S.C. § 2601, et seq. (2024), 38 U.S.C. § 4301, et seq. (2024), 42 U.S.C. § 2000ff et seq. (2024), 42 U.S.C. § 12101 et seq. (2024), 7 CCR 1107-3 (2024), 7 CCR 1107-5 (2024), and 7 CCR 1107-8 (2024) are hereby incorporated by reference. Earlier versions of such laws and regulations may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes and regulations. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver, CO 80202. Copies may be obtained from this Division at a reasonable charge or 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 the statutes and regulations incorporated 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 the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

7.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act. Terms defined under the federal Family Medical Leave Act of 1993 ("FMLA," 29 U.S.C. 2601, et seq. (1993)), or its implementing regulations (29 CFR § 825) shall be treated as persuasive, supplementary authority when those definitions are not facially inconsistent with the FAMLI Act or its implementing regulations.

2. "Complaint" has the same meaning as 7 CCR 1107-8, Section 8.2.5.

3. “Eligible employee” means an employee entitled to the protections described at C.R.S. § 8-13.3-509(1).

4. "Equivalent position" means a position that is nearly identical to the employee's former position as if the employee did not take paid family and medical leave. This includes pay, benefits and working conditions, privileges, perks, location, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

5. “Protected activity” means any activity described under C.R.S. § 8-13.3-509(4).

6. “Retaliation” means, and is synonymous with, discrimination based on or for protected activity, and it encompasses any act (whether an affirmative act, an omission, or a statement) that is intended to, and could, deter a reasonable person from engaging in, or impose consequences for, protected activity. Examples of unlawful retaliation may include, but are not limited to:

   A. Subjecting an employee to intimidation, threat, reprisal, harassment, or discrimination;

   B. Subjecting an employee to an adverse employment action, including discipline, discharge, suspension, transfer, or assignment to a lesser position in terms of job classification, job security, or another term or condition of employment;

   C. Reducing the pay or hours of work of an employee or denying an employee additional hours of work;

   D. Failing to hire an individual because they engaged in protected activity;

   E. Failing to reinstate an employee following a return from leave, in accordance with Section 7.3 of these rules;

   F. Failing to store and maintain the confidentiality of employee information related to requests for leave under the FAMLI Act or its implementing regulations, in accordance with all applicable federal, state, and local laws and regulations, and as provided by 7 CCR 1107-3, Section 3.8.9 and 7 CCR 1107-5, Section 5.3.8.

   G. Initiating an eviction proceeding or evicting an employee from employer-provided housing because they engaged in protected activity.

   H. Engaging in conduct that would reasonably have the effect of discouraging a reasonable employee from accessing family and medical leave insurance benefits;

   I. Enacting or enforcing an employer attendance policy that counts leave taken under the FAMLI Act as an absence that may lead to or result in discipline, demotion, or suspension. Such an attendance policy shall constitute per se retaliation under C.R.S. § 8-13.3-509. An employee working under this policy is entitled to appropriate legal and equitable relief under the FAMLI Act.

   J. Taking any effort to use a person’s immigration status to negatively impact the rights, responsibilities, or proceedings of any person or entity under the FAMLI Act. Such efforts shall constitute per se retaliation and/or extortion, based on statutory provisions including but not limited to the following that make it unlawful: for any person to “threaten[] to report to law enforcement officials the immigration status of the threatened person or another person” to “induce another person” to give up money “or another item of value” (C.R.S. § 18-3-207(1.5)), including inducing the surrender of any “tangible and intangible personal

property, contract rights, choices in action, [or] services, and any rights of use or enjoyment connected therewith" (C.R.S. § 18-1-901).

7. "Interference" means any act or omission that, regardless of intent, interferes with any right or protected activity under the FAMLI Act or its implementing regulations. Interference includes but is not limited to:

   A. Intimidating or threatening conduct intended to discourage an employee from accessing family and medical leave insurance benefits or family and medical leave, or which has the effect of discouraging an employee from accessing such benefits or leave;

   B. Providing false or misleading information intended to interfere with an employee's ability to access family and medical leave insurance benefits or paid family and medical leave, or which has the effect of interfering with an employee's ability to access such benefits or leave;

   C. Failing to provide notice, as required by C.R.S. § 8-13.3-511;

   D. Failing to reinstate an eligible employee to their position upon returning from leave as required under C.R.S. § 8-13.3-509(1) and Section 7.3;

   E. Information requests prohibited by 7 CCR 1107-3, Section 3.8.9 or 7 CCR 1107-5, Section 5.3.8;

   F. Requiring the production of information defined as confidential under these rules or other statutes including but not limited to the Healthy Family and Workplaces Act of 2020 ("HFWA," C.R.S. Title 8, Article 13.3, Part 4), the Family and Medical Leave Act of 1993 ("FMLA," 29 U.S.C. §§ 2601–2654 (2006)), the Americans With Disabilities Act of 1990 ("ADA," 42 U.S.C. § 12101 et seq. (1990)), and the Genetic Information Nondiscrimination Act of 2008 ("GINA," 42 U.S.C. § 2000ff et seq.);

   G. Failing to cooperate with the Division in processing a request for family and medical leave insurance benefits;

   H. Failing to cooperate with the Division's compliance activities that implicate an individual's rights under the FAMLI Act and its implementing regulations;

   I. Inducing or attempting to induce an individual to prospectively waive a right under the FAMLI Act or its implementing regulations;

   J. Taking any effort to use a person's immigration status to negatively impact the rights, responsibilities, or proceedings of any person or entity under the FAMLI Act; or

   K. Requiring an individual to perform work during a period of paid family and medical leave.

8. Except where expressly provided by the Act and its implementing regulations, these rules do not apply to local governments that have declined participation in the FAMLI program.

7.3 Clarifications Regarding Job Reinstatement

1. Pursuant to C.R.S. § 8-13.3-509(1), Any covered individual who has been employed with the covered individual's current employer for at least 180 days prior to the commencement of the covered individual's family and medical leave who exercises the covered individual's right to family and medical leave insurance benefits shall be entitled, upon return from that leave, to be restored by the employer to the position held by the covered individual when the leave

commenced, or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

A. An individual is considered employed on any day they work, on their days off, and during any leave, paid or unpaid, where the employer reasonably believes the individual will return to work. Where employment is seasonal, an individual is not considered employed between seasons.

B. The 180 days need not be consecutive. However, if a gap in employment exceeds 365 days, then the number of days employed resets to zero.

C. A change in the employee's status with their current employer does not reset or negate the number of days the employee was employed prior to the change in status (e.g., full-time to part-time, seasonal to full-time).

D. Leave taken under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA," 38 U.S.C. §§ 4301-4334 (1994)) is considered "employment."

E. The replacement of an employer by a "successor employer," as defined by C.R.S. § 8-13.3-503(8)(b)(II), does not interrupt an employee's accumulation of days employed.

F. Leave is considered to have "commenced" whenever an employee leaves work and utilizes paid family and medical leave.

1. Continuous leave commences once at the outset of the leave. This means that if a covered individual has not been employed with their current employer for at least 180 days before the beginning of the leave, they will not become entitled to the rights described at C.R.S. § 8-13.3-509(1) with regard to that employer during their continuous leave, regardless of whether their 180th day of employment occurs during their continuous leave.

2. Intermittent leave and reduced leave schedule commence upon each covered absence. This means that if a covered individual has not been employed with their current employer for at least 180 days before their first covered absence, but their 180th day of employment occurs before a subsequent covered absence, they will become entitled to the rights described at C.R.S. § 8-13.3-509(1) with regard to covered absences from that employer occurring after their 180th day.

2. An employer is not obligated to reinstate an employee:

A. Where the covered individual has not been employed with the current employer for at least 180 days prior to the commencement of the covered individual's family and medical leave;

B. Where the covered individual's family and medical leave extends beyond the maximum benefit duration provided by C.R.S. § 8-13.3-505;

C. Where the employee's return from family and medical leave coincides with an employer's scheduled cessation of operations for the season (e.g., ski resorts, waterparks) and the employer can show that the employee would not otherwise have been employed at the time of reinstatement;

D. Where the employee's written contract for employment with the employer has ended pursuant to its terms;

E. Where an employee's position is eliminated due to legitimate downsizing or reorganization;

F. Where the employee cannot perform the essential functions of their job any longer following the period of leave. An employee may be eligible to request reasonable accommodation under the Americans with Disabilities Act ("ADA"), C.R.S. § 24-34-402.3, or other applicable state or federal law;

G. Where the Division or a private plan administrator has made a determination that the employee applied for or was approved for family and medical leave insurance benefits based on a fraudulent certification;

H. Where the employee fails to provide notice pursuant to C.R.S. § 8-13.3-505(5) and CCR 7 CCR 1107-3, Section 3.8, unless the need for leave was not foreseeable and unusual circumstances justify the failure to comply; or

I. Where an employee on family and medical leave provides written notice of resignation.

3. An employer that chooses to deny reinstatement under this subsection to an employee on family and medical leave must notify the employee in writing as soon as the employer decides to deny reinstatement. The employer must serve this notice to the employee either in person or by certified mail. The notice must include:

A. A statement that the employer intends to deny employment reinstatement when the leave has ended;

B. The reasons behind the decision to deny reinstatement and the grounds for denying reinstatement as provided by subsection (2) of this rule;

C. An explanation that health benefits will still be paid for the duration of the leave; and

D. The date on which eligibility for employer-provided health benefits ends.

4. Under this Rule, an "equivalent position" as defined in Section 7.2 of these rules includes, but is not limited to:

A. Base pay - Providing an employee with equivalent base pay upon returning from family and medical leave. Base pay includes bonuses as described by 29 CFR Section 825.215(c)(2). Base pay does not include overtime or tips unless such overtime was regular or consistent. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from family and medical leave.

B. Benefits - Providing an employee with equivalent benefits upon returning from family and medical leave. Benefits include all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer through an employee benefit plan.

C. Proximate location - Permitting an employee to return to an equivalent location as worked prior to taking family and medical leave. If it is not possible to return the employee to the exact location, an employer may offer to return the employee to a proximate location or site where work is performed for and/or in connection with the employer's business. If the employer offers a position at a location different from the employee's original worksite,

the employee must be reinstated to a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance).

D. Approximate shift times - Providing an employee with a schedule that is equivalent to the employee's schedule prior to taking family and medical leave. Material changes to an employee's schedule upon return from leave may raise an adverse inference of retaliation (e.g., scheduling a historically day shift working employee to graveyard shifts, etc.). In returning a covered employee to their equivalent position, employers may be required to remove an employee temporarily working the covered employee's shift in order to comply with this section.

E. Approximate hours per week - An employee returning to work from family and medical leave shall be permitted to work the equivalent number of hours per week as was worked prior to the employee taking leave. Material changes to an employee's working hours that change the employment status of an employee may raise an adverse inference of retaliation (e.g., reducing an employee's hours from 40 hours per week to 25 hours per week, changing the employee's status from full-time to part-time).

5. Nothing in these Rules shall be construed to require an employer to extend or offer permanent or indefinite employment to a temporary or seasonal employee.

6. Employers shall not be prohibited from disciplining or terminating employees who have attendance issues unrelated to protected leave under the FAMLI Act (e.g., excessive tardiness), or employees who have violated company policies that comply with applicable local, state, and federal laws.

7. Nothing in these Rules requires an employer to ignore an employee's performance or retain an underperforming employee.

8. No employer shall be required to postpone or avoid legitimate layoffs or downsizing of a business solely to restore an eligible employee to their prior position upon returning from approved leave under the FAMLI Act.

9. An employee who is approved for and takes leave on an intermittent or reduced leave schedule and who fails to work during hours scheduled in accordance with that leave may be subject to employer discipline. In the event that an employee's utilization of intermittent leave or reduced leave schedule is inconsistent with the Division's or private plan administrator's approval, it shall not be considered retaliation under C.R.S. § 8-13.3-509(3) for an employer to request additional information related to the use of leave.

10. An employee's reinstatement to a position slated for elimination due to legitimate downsizing or reorganization would not meet the requirements of an equivalent position when the employee's original position is not slated for elimination due to downsizing or reorganization.

11. An employee is entitled to reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence unless the employer can demonstrate the circumstances fall within Sections 7.3.2 or 7.3.3.

12. Leave and employment protection provided by C.R.S. § 8-13.3-509(1) is limited to the benefit duration provided by C.R.S. § 8-13.3-505. An employer may not treat an absence that is subject to appeal or judicial review as an absence not protected by the FAMLI Act unless and until the leave is denied and the claimant exhausts any right to appeal or judicial review. However, if the outcome of an appeal or judicial review is pending outside of the benefits duration provided by C.R.S. § 8-13.3-505, it does not extend the duration of the leave available to the employee beyond the period approved by the Division or a private plan administrator.

7.4 Employment Agencies

1. When an employee is employed by an employment agency and the employment agency's client ("client employer"), both employers are responsible for compliance with the FAMLI Act.

2. Employees who are employed by both an employment agency and a client employer must be counted by both employers to determine employer status, and premium liability under the FAMLI Act and its implementing regulations, regardless of whether the employee is maintained on one or both of the employers' payrolls. However, only one of these parties need pay premiums pursuant to the agreement between the employment agency and the client employer.

3. Under these Rules, employment agencies are responsible for the following:

    A. Providing the required notice under C.R.S. § 8-13.3-511 to its employees;

    B. Maintaining any health care benefits during the family and medical leave benefit period as described by section C.R.S. § 8-13.3-509(2);

    C. Restoring an eligible employee to an equivalent position upon return from family and medical leave; and

    D. Maintaining all records by the FAMLI Act and its implementing regulations with respect to their employees.

4. Under these Rules, client employers are responsible for the following:

    A. Keeping basic payroll and personnel records with respect to any such employees; and

    B. Complying with the anti-retaliation and anti-interference provisions of C.R.S. § 8-13.3-509(4).

5. Employment agencies shall meet all of their obligations under the FAMLI Act even when their client employer is not in compliance with the law or does not provide support to the employment agency in meeting these responsibilities.

6. For purposes of calculating 180 days of employment pursuant to C.R.S. 8-13.3-509(1), an employment agency shall not include as part of its calculation any days on which a covered individual was awaiting a work assignment in a staffing pool.

7.5 Fines and Interest

1. In addition to any remedies available under C.R.S. § 8-13.3-509(6), the Division will assess a fine of $500 per covered individual, per each violation under C.R.S. § 8-13.3-509.

2. Awards for damages and equitable relief under C.R.S. § 8-13.3-509(6) will accrue interest from the date of the award pursuant to C.R.S. § 5-12-102.

7.6 Language Accessibility

The Division will make reasonable efforts to make forms and communications under these rules available in an individual's primary language, subject to the Division's sole discretion based on available resources.

Notice of Proposed Rulemaking

Tracking number

2025-00106

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-8

Rule title

REGULATIONS CONCERNING INVESTIGATIONS

Rulemaking Hearing

Date

04/14/2025

Time

03:00 PM

Location

https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1

Subjects and issues involved

Rules regarding investigations

Statutory authority

C.R.S. 8-13.3-501 et seq.

Contact information

Name

Evan Grimes

Title

Policy Unit Manager

Telephone

‪(720) 442-0833‬

Email

evan.grimes@state.co.us

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING INVESTIGATIONS

7 CCR 1107-8

8.1 Statement of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "FAMLI Act").

2. The general purpose of these rules is to exercise the authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to investigating and making determinations for violations of the FAMLI Act and its implementing regulations.

3. ~~Article 12 of C.R.S. Title 5 (2024), Article 13.3 of C.R.S. Title 8 (2024), Article 4 of C.R.S. Title 24 (2024),~~ 29 U.S.C. § 2617 (2024), 29 C.F.R. § 1602.14 (2024), 7 CCR 1107-3 (2024), 7 CCR 1107-7 (2024), and 7 CCR 1107-9 (2024) are hereby incorporated by reference. Earlier versions of such laws and regulations may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes and regulations. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver, CO 80202. Copies may be obtained from this Division at a reasonable charge, or 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 the statutes and regulations incorporated 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 the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

8.2 Definitions and Clarifications

1. "Aggrieved party" means a person who alleges that their rights under the FAMLI Act or its implementing regulations have been violated.

2. "Authorized representative" means a person designated by a party to an agency action or investigation to represent the party during any Division proceeding, including an investigation, hearing, or appeal. An authorized representative may be, but does not have to be, an attorney. To designate or change an authorized representative, the party must comply with the requirements of Section 8.3.8.

3. "Certified copy" means a copy of a final division decision (issued by a Division investigator or hearing officer) signed by the director of the division, or his or her designee, certifying that the document is a true and accurate copy of the final decision. A Division decision (issued by a

Division investigator or hearing officer) will not be certified unless: either (1) all appeal deadlines have passed and no appeal has been filed or (2) if an appeal was timely filed, the decision was not superseded on appeal.

4. "Charging Party" means an aggrieved party who files a complaint alleging violations arising under C.R.S. § 8-13.3-509.

5. "Complaint" means the official form submitted to the FAMLI Division by a named aggrieved party alleging a violation of C.R.S. § 8-13.3-509. ~~6~~

6. "Correct address" can include, but is not limited to, an email address reported to the Division or posted on a party's website, an address on file with the Colorado Secretary of State, the address of a registered agent on file with the Colorado Secretary of State, or an address provided to the Division by the party. A notice is deemed sent to a party when placed in the U.S. mail, sent by electronic means, personally delivered to a party or a party's representative, or personally delivered to a party's correct address.

7. "Determination" has the same meaning as defined in 7 CCR 1107-9, Section 9.2.8.

8. "Determination letter" means a letter detailing a decision by a Division compliance investigator upon the conclusion of an investigation.

9. "Good cause" has the same meaning as 7 CCR 1107-3, Section 3.2.11.

10. "Investigator" means a member of the Division staff tasked with the collection and discovery of factual information concerning the potential violations of the FAMLI Act and its implementing regulations. Investigators may also prepare determinations or dismissals arising out of an investigation.

11. "Motivating factor" means a standard that requires the Charging Party to show that the protected activity engaged in under the FAMLI Act and its implementing regulations was a motivating factor in the employer's adverse action. This does not mean it was the sole factor, but it must be one of the factors that influenced the Respondent's decision to take adverse action. This legal standard is applicable in cases where the Charging Party claims that FAMLI was one of the reasons for the Respondent's adverse action. Even if other legitimate reasons were also present, as long as protected activity under the FAMLI Act and its implementing regulations was a motivating factor, the Respondent could be found in violation of the law.

12. "Notice of Dismissal" under this Section means a written notification provided to a Charging Party and Respondent by the Division dismissing the complaint in part or in its entirety. A Notice of Dismissal may be issued at any time during the proceedings.

13. "Notice of Investigation" means a notice to an employer that identifies potential violations under investigation and includes an initial request for documentation and records.

14. "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.

15. "Other protected party," as to the rights and responsibilities under the FAMLI Act, means a person who has, or is perceived as having, any relationship protected against retaliation under the FAMLI Act, including but not limited to:

    A. a "family member" of an employee, as defined at C.R.S. § 8-13.3-503(11).

B. a “workplace relationship” with a covered employee which encompasses any person with whom the employee has interacted repeatedly in the scope of their employment, regardless of the person’s employer or employment status.

16. “Party” has the same meaning as 7 CCR 1107-9, Section 9.2.15.

17. “Position Statement” means a responsive statement to the Division that addresses all of the allegations in a Charging Party’s Complaint, provides relevant evidence to support the Respondent's position, and asserts any defenses that the Respondent believes are applicable and can help the Division accelerate the investigation and tailor its requests for additional information.

18. “Respondent” means an individual or entity against whom a complaint has been filed.

19. “Subject of an investigation'' means an individual or entity whose conduct has given rise to a Division-initiated investigation of potential violations of the FAMLI Act and its implementing regulations.

20. Except where explicitly provided by the FAMLI Act or its implementing regulations, these rules do not apply to local governments that have declined participation in the FAMLI program.

8.3 Filing a Complaint

1. Any person who alleges that their rights under the FAMLI Act or its implementing regulations have been violated may file a complaint with the Division by using the Division-approved form(s). The Charging Party shall comply with any other Division instructions as to information or submissions required by the Division.

2. If the Division receives written communication from a person alleging a violation of the FAMLI Act or its implementing regulations, and the contents of the communication suggest that the person would like the Division to initiate an investigation, the Division will send the person a complaint form and invite them to complete and return the complaint form. If the person returns a completed complaint form within thirty-five (35) days after the Division sends it, the complaint will be deemed to have been received on the date of the initial written communication. If the person returns a completed complaint form later than thirty-five (35) days after the Division sends it, the complaint will be deemed to have been received on the date the Division receives the completed complaint form.

3. A complaint shall include the Charging Party’s signature and contact information, Respondent’s contact information, and basis for the complaint. Failure to comply with this Rule may result in dismissal of the complaint without prejudice. Anonymous complaints will be accepted; however, the Division may choose to independently address anonymous complaints at its discretion. An anonymous complaint does not need to contain the complaining person’s contact information or signature.

4. The failure of a Charging Party to respond in a timely manner to informational or investigatory requests by the Division may result in dismissal of the complaint without prejudice. If the Division issues a Notice of Dismissal for failure to comply with this Rule, and the Charging Party provides the information within thirty-five (35) days of receipt of the notice, the Division may at its discretion reopen the complaint. A Charging Party may be required to file a new complaint if the Division receives their response more than thirty-five (35) days after the Division’s request for information. Nothing in this subsection shall be construed to extend the deadlines described at C.R.S. § 8-13.3-509(6)(c)-(d).

5. A Charging Party under this section may pursue relief for any violation arising under C.R.S. § 8-13.3-509 through either the court system or the Division's established procedures and processes.

6. Aggrieved parties under C.R.S. § 8-13.3-509 are not required to first pursue the Division's administrative remedies prior to initiating a lawsuit in the court system.

7. The Division does not have jurisdiction over any violation arising under this section that has been adjudicated or is currently being adjudicated by the court system or by another government administrative body. If the Charging Party files a civil action in a court of competent jurisdiction against an employer or any other individual or entity named as a Respondent to a pending complaint before the Division, and one or more of the alleged violations arise from the same facts or issues in both the civil action complaint and the Charging Party's Division complaint, the Division will dismiss the complaint pending before the Division in part or in its entirety.

8 Any party to a complaint may designate an authorized representative to represent the party during the Division's investigative, enforcement, and/or appeals process.

   A. The party may designate an authorized representative by filing the Division-approved form with the Division.

   B. The party may revoke the authorized representative's authority by contacting the Division in writing.

9. In any Division investigation, proceeding, or other action initiated for a reason other than the receipt of a named complaint, if information is provided to the Division by a source requesting confidentiality, and that information is used only as a basis for procuring other evidence, not offered as evidence itself, then the source shall remain confidential. Any such confidential source is unlawful to disclose (unless the source consents) in any administrative or judicial proceeding, in response to any records or information request, or in any other manner.

10. Within ninety (90) days of a complaint being filed (or within ninety (90) days of the effective date of these Rules, whichever is later), the Division will assess whether it will exercise its discretion to either investigate or dismiss the complaint. The Division will inform the parties of its decision in writing.

8.4 Filing, Notification, and Deadlines

1. A complaint to the Division is considered "filed" with the Division when it is sent via mail or online submission. Complaints shall be filed within the time limits specified by the Act and its implementing regulations. If the last date upon which a timely complaint may be filed falls upon a Saturday, Sunday, or State of Colorado legal holiday, the complaint shall be deemed timely if filed with the Division on the next regular business day. Any complaint received after 11:59 p.m. Mountain Standard Time is considered filed the next business day.

2. A complaint to the Division is considered "signed," or to have a "signature," if it has either an ink signature, a scanned signature, an electronically drawn or generated signature, a mark, or a typed name entered by the Charging Party in the signature area. By signing in any such fashion, the person is deemed to have agreed and assented that the document is signed by them.

3. Deadlines in these Rules may be extended a maximum of ninety [90] days for good cause.

8.5 Investigations

1. Generally

A. The Division has the authority and discretion to initiate investigations, audits, or any other compliance oversight activities related to any provision of the FAMLI Act and its implementing regulations upon its own initiative or upon the receipt of a complaint filed by an aggrieved party or their authorized representative. Nothing in the FAMLI Act or its implementing regulations limits the Division's authority to conduct pre-investigation fact-finding, facilitate settlements, or make referrals to other criminal or civil enforcement agencies.

B. Investigations initiated by the FAMLI Division may include potential violations of the FAMLI Act and its implementing regulations by any person, entity, or private plan.

C. The Division may utilize the following as part of an investigation:

1. Interviews of parties or witnesses;

2. Information gathering, fact-finding, and reviews of written submissions; and

3. Any other lawful techniques that enable the Division to assess compliance with the FAMLI Act and its implementing regulations.

D. Upon receipt of a Notice of Complaint or Notice of Investigation, the subject or Respondent shall preserve all personnel records relevant to the charge or action until final disposition of the charge or the action. For purposes of complaints arising under C.R.S. § 8-13.3-509, relevant "personnel records" include but are not limited to:

1. Records related to paid family and medical leave insurance benefits;

2. Records related to other benefits that relate to, impact, or are impacted by paid family and medical leave insurance benefits;

3. Requests or statements by the person that are claimed to be protected activity;

4. Responses to, or analyses of, such request(s) or statement(s);

5. Records related to the "equivalent position" factors described in 7 CCR 1107-7, Section 7.3.4; and

5. Policies or decisions, formal or informal, that may apply to such request(s) or statements(s).

E. All parties to an investigation are responsible for ensuring the Division has current contact information.

1. All parties must promptly notify the Division of any change in contact information, including mailing address, email address, and phone number.

2. Parties should not rely on the U.S. Postal Service to forward mail. Failure to respond to a notice because mail was not forwarded to a new address will not be excused.

F. The Division may exercise its discretion to consolidate complaints, or to have an investigation sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more determinations and/or phases of the investigation.

2. Investigations Initiated by the Division

A. Whenever the Division initiates an investigation, it shall send a Notice of Investigation to the subject of an investigation at their correct address.

B. The subject of an investigation may designate an authorized representative to represent it during the investigation.

C. Upon the receipt of a Notice of Investigation, the subject of an investigation or the subject's representative must submit a complete response to the Notice of Investigation within fourteen (14) calendar days of the date of the notice. The Division may extend the deadline upon a showing by the subject or their representative of good cause.

D. The Division may issue a determination in favor of the charging party if it determines that a violation of the FAMLI Act or its implementing regulations occurred. If the employer does not respond to the Notice of Investigation, then the Division may rely on any available, undisputed evidence.

E. If the Division initiates an investigation, then it will end the investigation by issuing either a determination or a Notice of Investigation Termination.

3. Investigations Initiated by a Job Protection & Retaliation Complaint Form

A. Investigations into complaints arising under C.R.S. § 8-13.3-509 shall include a thorough review of the circumstances under which the alleged violations occurred and any policies and/or practices that may appear to constitute retaliatory personnel action or interference with the Charging Party's rights under the FAMLI Act and its implementing regulations, even though they may not have not been expressly cited by the Charging Party in their Complaint.

B. Anytime the Division selects a Complaint for investigation, and prior to the commencement of an investigation into a complaint, the Division will send a Notice of Complaint to the Respondent at the Respondent's correct address. The Notice of Complaint will include a citation to each potential violation of the FAMLI Act and its implementing regulations. The Charging Party's complaint and non-confidential attachments will be provided with the Notice of Complaint. A Respondent must provide a Position Statement responding to the allegations contained within the Charging Party's complaint within thirty (30) days after a complaint is sent to them, unless an extension is granted for good cause.

1. If the Notice of Complaint cannot be delivered, a Division investigation cannot be commenced. If a correct address is located or provided, the Division will resend the Notice of Complaint, and the Respondent's deadline to respond will be calculated from the date of the subsequent notice.

2. If the Division cannot determine the Respondent's correct address, it may contact the Charging Party to request the Respondent's correct address. The Division may dismiss the complaint without prejudice if neither the Charging Party nor the Division can determine the Respondent's correct address.

C. Failure to respond to the Division's request for a Position Statement may result in a default judgment in favor of the Charging Party based solely on the undisputed allegations set forth in the Complaint.

D. Upon receipt of the Respondent's Position Statement, the Division shall review all of the documentation received. The Division will provide the Charging Party with a copy of the Position Statement and all evidence submitted in support thereof, unless information provided by the Respondent has been designated as confidential. The position statement itself cannot be marked as confidential in its entirety. It is the responsibility of the Respondent to ensure appropriate redactions and designations are made to the position statement before submission. The Division will review these attachments marked as confidential and assess the provided justification, as blanket or unsupported claims of confidentiality will not be accepted.

E. A Charging Party may provide a rebuttal disputing the Respondent's position within fourteen (14) days of the date the Division sent the Position Statement to the Charging Party. The Division may extend the deadline for good cause.

F. Subject to the approval of the Division, complaints arising under C.R.S. § 8-13.3-509 may be amended under certain circumstances. Amendments to the complaints may include but are not limited to: amendments to cure technical defects and errors or omissions, including failure to sign a complaint; to clarify or amplify the allegations therein; or to allege additional violations arising from the subject matter of the original complaint. Amendments related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first filed. If the Division uncovers additional potential violations during the course of a retaliation and interference investigation, it may unilaterally amend the complaint and add the additional violations to the investigation.

G. Amendments shall be filed in the same manner as provided by these Rules for the filing of the original complaint. If a complaint is amended, the Division will send a revised Notice of Complaint to the Respondent, and the Respondent must provide a Position Statement responding to the additional allegations contained within the amended complaint within thirty (30) days after the amended complaint is sent to them, unless an extension is granted for good cause.

H. An aggrieved party under C.R.S. § 8-13.3-509 may withdraw the complaint, or their participation in the complaint filed on their behalf, at any time prior to the issuance of a determination by notifying the Division in writing.

I. Complaints arising under C.R.S. § 8-13.3-509 may be settled at any time during the investigation. Any settlement reached shall be in writing and signed by both parties and shall identify the claims resolved.

J. Upon conclusion of an investigation under C.R.S. § 8-13.3-509, the Division will issue and deliver to the parties a written determination with appeal rights or a notice of dismissal. A Charging Party may not withdraw a complaint once a determination has been issued by the Division. A Notice of Dismissal is not a determination and does not prohibit a Charging Party from filing a civil complaint in a court of competent jurisdiction.

K. The Division shall keep a full and complete record of all proceedings in connection with any investigation for six (6) years after the completion of the investigation.

8.6 Burdens of Proof

1. The party seeking an award of benefits or damages, the imposition of a fine, penalty, fee or interest, or any other relief, has the burden of proof to show the relief should be granted by a preponderance of the evidence. Where the Division proves the grounds for imposing fines,

penalties, or fees, the amount of such fines, penalties, or fees shall be overturned or modified only if the employer or private plan proves that the Division abused its discretion.

2. Complaints alleging retaliatory personnel action under C.R.S. § 8-13.3-509 are analyzed as follows, with the preponderance of the evidence standard applying to all burdens of proof.

   A. The Charging Party has the burden of proving all elements of a claim, including that an unlawful retaliatory personnel action occurred. The Respondent must explain which, if any, allegations it disputes. Any evidence probative of a relevant issue may be submitted or considered. If an employer takes an adverse employment action, as described in 7 CCR 1107-7, Section 7.2.5.B, against an employee who engaged in protected activity or an other protected party within ninety (90) days of the employee engaging in protected activity, such adverse employment action creates a rebuttable presumption of retaliation.

   B. If the Charging Party proves unlawful retaliation or discrimination was a motivating factor for the complained-of practice, then a violation is proven. If the Charging Party cannot demonstrate that unlawful retaliation or discrimination was a motivating factor for the complained-of practice, then a violation has not been proven. However, if a violation is proven but the Respondent proves by a preponderance of the evidence that the complained-of practice would have occurred for another lawful reason, then the Division shall not award any damages as of the date the practice would have occurred.

   C. In determining whether a violation occurred or whether the complained-of practice would have occurred for another lawful reason, evidence the Division may consider includes, but is not limited to:

      1. Emails, written records, performance reviews, and other documentation that can be objectively evaluated;

      2. Comparing the treatment of the Charging Party with similarly situated employees who did not engage in the protected activity;

      3. Testimonies and statements from managers, supervisors, and other witnesses;

      4. Explicit statements or actions indicating discriminatory intent;

      5. Patterns of behavior, timing of adverse actions relative to the protected activity;

      6. Contradictory, inconsistent, or false statements made by the Respondent or its agents;

      7. An absence of contemporaneous or supporting evidence of the alleged basis for the adverse action.

3. Complaints alleging interference under C.R.S. § 8-13.3-509 are analyzed as follows, with the preponderance of the evidence standard applying to all burdens of proof.

   A. The Charging Party has the burden of proving all elements of a claim, including that unlawful interference occurred. The Respondent must explain which, if any, allegations it disputes. Any evidence probative of a relevant issue may be submitted or considered. Interference is established when a Charging Party shows the Respondent engaged in conduct that tends to or does result in at least slight harm to rights guaranteed by the FAMLI Act.

B. If the Charging Party meets its burden of proof, then a violation is proven. However, if a violation is proven but the Respondent proves by a preponderance of the evidence the violation resulted from circumstances beyond its control and that no alternative course of action was available, then the Division shall not award any damages.

4. Determinations must include a finding of fact on which the determination is based, the relevant section or sections of the law, and the date the determination was issued.

8.7 Remedies

1. Upon conclusion of an investigation, the Division will issue and deliver to the parties a written determination or a notice of dismissal.

2. Determinations issued by the Division may include the following remedies, depending on which, if any, the Division's findings support:

A. Monetary or other relief authorized by the FAMLI Act or its implementing regulations, including any remedies under C.R.S. § 8-13.3-509(6)(b)-(7);

B. An assessment of an amount owed (fines and interest); and/or

C. Orders to cease non-compliance, effectuate compliance, and/or otherwise redress direct or indirect consequences of violations of the FAMLI Act.

3. For the purpose of determining damages pursuant to C.R.S. § 8-13.3-509(6)(b), the value of paid family and medical leave benefits that an individual was unable to access because of unlawful retaliation or interference is included in 29 U.S.C. § 2617(a)(1)(A)(i)(I).

43. For any monetary award imposed under these rules, the Division shall issue a determination and Notice of Assessment and Requirement to Report Payments Made which will include:

A. Total damages owed to the Charging Party with calculations and a narrative explaining the Division's justifications for an award of damages;

B. Total fines owed to the Division and the relevant statutory or regulatory citations;

C. Total interest owed, including a description of the calculation and citations to the relevant statute and/or regulations.

D. Instructions for remittance of payment to the Charging Party and/or Division;

E. Instructions for the reporting to the Division payments made to the Charging Party; and

F. Deadlines to remit payment to the Charging Party and/or Division.

54. The person awarded relief or remedies under this section shall be issued a certified copy of the final Division decision imposing relief or remedies, signed by the Director of the Division, or their designee, certifying that the document is a true and accurate copy of the final decision. The person awarded relief or remedies may file the certified copy with the clerk of a court having jurisdiction over the parties, and such a filing will thereby have the effect of a judgment from which execution may be issued. Where practicable, the Division shall make reasonable efforts to assist in the filing of the certified copy.

65. An aggrieved party is not entitled to appeal a determination of the Division to a court of competent jurisdiction until the aggrieved party has exhausted all administrative remedies, including appeal to a Division hearing officer.

8.8 Recovery

1. Any outstanding amount owed to the Division as determined by a final agency action may be collected by the Division through any and all legal means available, including, but not limited to benefit offsets, garnishments, liens, or the Federal Treasury Offset Program.

2. The Division may share information with other criminal or civil enforcement authorities if it believes that a violation implicating their enforcement authority has occurred. However, the Division will not voluntarily provide any person or entity information concerning immigration status.

8.9 Interest

Any outstanding balance past due shall accrue interest at the rate allowed pursuant to C.R.S. § 5-12-102, until payment is received in full.

8.10 Determinations

1. What constitutes a “Determination” is defined in 7 CCR 1107-9, and includes determinations pursuant to the FAMLI Act or any of its implementing regulations.

2. The Division will issue and deliver determinations by U.S. first class mail or electronically to the parties at their correct addresses and include a statement regarding appeal rights.

3. The date of issuance of the Division's determination is the date the Division's determination is sent to the parties by mail or electronically to the parties, as indicated in the determination. Any reconsideration or appeal deadlines are calculated from the Division's date of issuance.

4. Determinations shall be deemed final, and any information contained in any document or notice issued by the Division shall be deemed correct unless a party requests a reconsideration, the Division issues a reconsideration on its own volition, or a party files a timely request for appeal according to these regulations.

5. No party can appeal a Division decision to a Division hearing officer unless the decision constitutes a determination. No party can appeal a determination of the Division to a court of competent jurisdiction until such party has exhausted all administrative remedies provided in these rules, including appeal to a Division hearing officer.

6. Determinations must include some explanation of the facts forming the basis for the determination, citation to relevant provisions of the law, and the date the determination was issued and a notice of appeal rights.

8.11 Language Accessibility

The Division will make reasonable efforts to make forms and communications under these rules available in an individual’s primary language, subject to the Division’s sole discretion based on available resources.

Notice of Proposed Rulemaking

Tracking number

2025-00107

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-9

Rule title

REGULATIONS CONCERNING APPEALS

Rulemaking Hearing

Date

04/14/2025

Time

03:00 PM

Location

https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1

Subjects and issues involved

Rules concerning appeals.

Statutory authority

C.R.S. 8-13.3-501 et seq.

Contact information

Name

Evan Grimes

Title

Policy Unit Manager

Telephone

‪(720) 442-0833‬

Email

evan.grimes@state.co.us

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

REGULATIONS CONCERNING APPEALS

7 CCR 1107-9

9.1 Statement of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq., and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the "APA"), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the "FAMLI Act").

2. The general purpose of these rules is to exercise authority of the Colorado Department of Labor and Employment's FAMLI Division (the "Division") to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to administrative determinations and hearing appeals.

3. ~~Article 13.3 of C.R.S. Title 8 (2024), Article 4 of C.R.S. Title 24 (2024),~~ 7 CCR 1107-3 (2024), 7 CCR 1107-5 (2024), and 7 CCR 1107-8 (2024) are hereby incorporated by reference. Earlier versions of such laws and regulations may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes and regulations. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver, CO 80202. Copies may be obtained from this Division at a reasonable charge, or 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 the statutes and regulations incorporated 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 the statutes. All Division Rules are available to the public at famli.colorado.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.

4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

9.2 Definitions

1. Unless otherwise indicated, terms used here that are defined in the FAMLI Act have the same definition as they do under the FAMLI Act.

2. "Administrative Decision" means a written decision made by the Division's administrative staff other than the hearings officers.

3. "Appeal" means a written statement challenging any part of a determination and submitted to the Appeals Unit for review by a FAMLI hearing officer after internal review has occurred, if required by statute or State regulation.

4. "Appellant" means the party making the request for a FAMLI hearing officer to review a determination or reconsideration, as those terms are defined in this Rule.

5. "Authorized representative" has the same meaning as 7 CCR 1107-8, Section 8.2.2.

6. “Claimant” means a person who has filed a FAMLI Claim, regardless of whether the person is a covered individual pursuant to C.R.S. § 8-13.3-503(3). If that person has a “designated representative,” as defined in 7 CCR 1107-3, Section 3.2.10, the designated representative is subject to the same deadlines and obligations as the claimant with regard to these regulations.

7. “Correct address” has the same meaning as 7 CCR 1107-8, Section 8.2.6.

8. “Determination” means an administrative decision or a private plan decision that is designated as a “determination” or ~~“reconsideration” or~~ is a written decision that (1) explicitly or effectively approves or denies all or part of a FAMLI Claim, (2) imposes fines, fees, ~~or~~ penalties, or any other monetary liability, (3) identifies an overpayment or requires repayment of benefits, (4) awards damages, or other remedies, (5) denies or grants all or part of the relief requested in an accepted grievance, investigation, or complaint, or (6) withdraws the approval of a private plan or finds that a private plan committed a violation of the FAMLI Act or its implementing regulations. “Determination” does not include a Division notice that only informs a claimant or applicant that an application is incomplete or requests additional information.

9. “Division” means the Paid Family and Medical Leave Insurance Division of the Department of Labor and Employment created pursuant to C.R.S. § 8-13.3-508.

10. “Documents” means any designated documents or electronically stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, computer screenshots, and other data or data compilations — stored in any medium from which information can be obtained either directly, or any designated tangible things.

11. “FAMLI Appeals Unit” or “Appeals Unit” means the work unit presently within the Policy and Appeals Branch of the FAMLI Division, authorized to resolve appeals of determinations and reconsiderations.

12. “FAMLI Claim” means a claim for “benefits” and “paid family and medical leave” as those terms are defined under the FAMLI Act, C.R.S. § 8-13.3-501 et seq.

13. "Good cause" has the same meaning as 7 CCR 1107-3, Section 3.2.11.

14. “Parties of record” means the appellant, the Division, parties listed on a notice of hearing, and any person added as a party by a hearing officer after a notice of hearing is issued.

15. “Party” means a person explicitly identified as a “party” in these rules or who has a right or a legally cognizable interest potentially affected by the outcome of an appeal. The Division is a party to any appeal filed with the Appeals Unit of the Division. A “private plan administrator,” as defined in 7 CCR 1107-5, is a party to any appeal involving a private plan.

16. “Person” includes natural persons and entities with a recognized legal status in Colorado.

17. “Reconsideration” is a decision that replaces a prior Division-issued determination following an internal review process.

9.3 Filing Appeals of Determinations

1. Any party adversely affected by a determination may appeal it to the Appeals Unit. Where required by statute or State regulation, a party must request an internal review and reconsideration before filing an appeal.

2. The Division does not have jurisdiction over any matter that has been adjudicated or is currently being adjudicated by the court system or by another government administrative body having jurisdiction over such matter. If a party has filed a civil action in a court of competent jurisdiction pertaining to the same subject matter as a determination previously issued by the Division, the Appeals Unit will dismiss the appeal of that determination.

3. An appeal is procedurally valid only if it: (a) is timely filed with the Division, (b) includes a copy of the determination or reconsideration at issue or sufficiently identifies the determination or reconsideration appealed and the date of issuance, and (c) has been signed or electronically verified by the party or the party's authorized representative.

4. The Division will only consider appeals filed within forty-nine (49) days of the date the Division issued the determination or reconsideration in question unless an extension of time is granted consistent with Rule 9.3.74.6.

5. An appeal to the Division is considered "filed" with the Division when the appeal is properly sent by U.S. first class mail or electronically. Any appeal to the Division sent after 11:59 p.m. (Mountain Time Zone) is considered filed the next business day.

6. An appeal to the Division is considered "signed," or to have a "signature," if it has either an ink signature, a scanned signature, an electronically drawn or generated signature, a unique mark belonging to a specific person, or a typed name entered by the party or authorized representative in the signature area. By signing in any such fashion, the individual is deemed to have agreed and assented that the document is signed by such party.

7. Unless otherwise specified, deadlines in this rule may be extended up to a maximum of forty-nine (49) days for good cause. If a deadline falls on a weekend or State holiday, the deadline shall become the next business day.

9.4 Preliminary Issues for Filed Appeals

1. Upon receiving an appeal, the Appeals Unit will determine as soon as practicable whether the appeal meets the requirements for a procedurally valid appeal. If the appeal is not procedurally valid, including if the appeal is untimely, the Appeals Unit will send a notice of the procedural deficiency and order to show cause providing the appellant seven (7) days to respond. The Appeals Unit can take any action it deems appropriate to address the deficiency, including dismissal of an untimely appeal. For good cause, the Appeals Unit may grant an extension of time not exceeding fourteen (14) days for a response to the notice of deficiency.

2. Once an appeal is determined to be procedurally valid, the Appeals Unit will send a notice to the appellant and the Division that the appeal has been accepted. The notice of acceptance will also be sent to any person that has received a notice of a determination or claim that is the subject of an appeal. The Appeals Unit will assign a hearing officer who will oversee the manner in which the appeal will be handled, including scheduling and sending a notice of any necessary hearings. A hearing will be scheduled to occur within thirty-five (35) days after an appeal is accepted as procedurally valid unless an extension of time is granted consistent with Rule 9.3.74.6. The filing of an appeal will not suspend or terminate a FAMLI Claim award unless and until a hearing officer modifies or overturns a determination at issue in an appeal.

3. Upon a request by a party of record or the hearing officer’s own initiative, the hearing officer may convene a prehearing conference to discuss the issues on appeal, questions related to party status, the evidence to be presented, requests for language interpretation or other reasonable accommodations, and any other relevant matters that may simplify the proceedings, including resolving issues without a hearing if the material facts are undisputed. Genuine disputes of any

material fact must be resolved at an evidentiary hearing or by stipulation of all the parties of record.

4. Motions to disqualify a hearing officer must be made and addressed at the earliest opportunity consistent with the provisions of C.R.S. § 24-4-105(3), including the requirement of a good faith affidavit explaining the alleged disqualifying reasons. An unreasonable delay in requesting a disqualification can be considered a waiver of any objection to the assignment of a claim to a hearing officer. Previous adverse rulings will not be considered as a valid basis for disqualification.

9.5 Discovery, Subpoenas, and Evidence for Hearings

1. Within seven (7) days after the parties have been notified that an appeal has been accepted and assigned to a hearing officer for review, the Division or private plan shall file with the Appeals Unit an initial disclosure of information and/or documents supporting the determination at issue unless such evidence cannot be sent to a party consistent with C.R.S. § 8-13.3-516 and 7 CCR 1107-3, Section 3.8.10. Confidential documents and information shall not lose any protections from disclosure solely because an appeal was filed. The hearing officer may take any action the hearing officer deems necessary to ensure confidentiality consistent with C.R.S. § 8-13.3-516 and 7 CCR 1107-3.

2. Only the appellant, the Division, persons admitted as parties to an appeal, authorized representatives, and witnesses they call may participate in appeal proceedings. Parties may submit relevant testimonial and documentary evidence to the hearing officer in accordance with deadlines imposed by the Division or the assigned hearing officer.

3. Whenever a party files any documents with the Appeals Unit, the party must also send the documents simultaneously to all parties of record. Evidence to be presented at a hearing must be sent to all parties of record at least ten (10) days before the hearing begins or as otherwise directed by a hearing officer. Failure to send documents to all other parties of record may be grounds for the hearing officer to limit issues or the presentation of evidence or both as determined by the hearing officer's sound discretion in the totality of circumstances. Only interested parties to an appeal shall have the right to access documents submitted for that appeal. Parties are responsible to provide relevant documents to their own witnesses.

4. No party may seek discovery without approval from the hearing officer and only upon a clear showing that the discovery is appropriate and necessary. To establish a clear showing, the party seeking discovery must (1) present sufficient evidence of a legitimate dispute of a material fact and (2) clearly articulate the need for and appropriateness of the requested discovery to resolve the factual dispute.

5. The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents deemed necessary as evidence to resolve the pending appeal.

6. If a party or witness fails to obey a subpoena issued by the hearing officer, a party may apply to any district court of this state to order compliance with the subpoena. The court may exercise its power to issue a contempt citation to a person who fails to obey the order.

9.6 Hearings

1. The hearing officer shall have the power and authority to schedule, preside at, conduct hearings, and ensure the appeal process is fair to all parties on a case-by-case basis. Hearings will be conducted virtually with internet and telephone access. The hearing officer has the power to administer oaths and affirmations, take depositions, certify to official acts, and to take any other

reasonable steps the hearing officer deems necessary to resolve the pending appeal and control the hearing.

2. The hearing officer shall not communicate with a party unless all parties are present or simultaneously receive the hearing officer's verbal or written communication. If such a communication occurs, the hearing officer shall immediately disclose it to all parties.

3. Hearings shall be conducted informally with as few technical requirements as possible. Only parties of record to the appeal, and authorized representatives, may appear at hearings and present evidence. The hearing officer shall control the evidence taken during a hearing in a manner consistent with the due process rights of all the parties and to provide a fair hearing.

4. A hearing officer may make a finding of fact based on hearsay evidence only if it is reliable, trustworthy, and probative. When deciding whether to accept hearsay as evidence, the hearing officer may consider some or all of the following non-exclusive factors:

   A. Whether the statement was written and signed;

   B. Whether the statement was sworn to by the declarant;

   C. Whether the declarant was a disinterested witness or had a potential bias;

   D. Whether the hearsay statement is denied or contradicted by other evidence;

   E. Whether the declarant is credible;

   F. Whether there is corroboration for the hearsay statement;

   G. Whether the case turns on the credibility of the witnesses;

   H. Whether the party relying on the hearsay offers an adequate explanation for the failure to call the declarant to testify; and

   I. Whether the party against whom the hearsay is used had access to the statements prior to the hearing or the opportunity to subpoena the declarant.

5. The hearing officer must preside impartially over administrative proceedings and hearings. The hearing officer may provide limited procedural guidance to parties so long as the hearing officer does not become an advocate for any of the parties.

6. Parties of record are entitled to at least fourteen (14) days advance notice of any hearing where parties will offer witness testimony and/or documentary evidence (an "evidentiary hearing"), and advance notice of the issues that may be considered at an evidentiary hearing according to the schedule ordered by the hearing officer. In setting an evidentiary hearing date, the hearing officer shall ensure that the parties of record have had reasonably sufficient opportunity to exchange exhibits and prepare for hearing. Upon mutual agreement of all the parties, the hearing officer can set an evidentiary hearing to occur with less than fourteen (14) days notice. The hearing officer shall not permit a party of record to present evidence on issues at a hearing that have not been disclosed to all other parties of record before the hearing except to prevent obvious injustice. The hearing officer has reasonable discretion to control the administrative proceedings and ensure that the parties of record receive a fair hearing, including postponing hearings and granting additional time to the parties of record where appropriate.

7. All testimony at a hearing must be recorded by the Division but need not be transcribed unless the hearing officer's decision is appealed.

9.7 Appeal Decisions and Burdens of Proof

1. After conducting appeal proceedings as necessary, the hearing officer shall decide each relevant issue properly raised during the proceedings and necessary to resolve the appeal. The hearing officer shall issue a written decision based solely on the evidence presented during the hearing and include findings of fact, conclusions of law, and an order. In deciding disputed issues of fact, the hearing officer shall not give deference to the Division's factual determinations. In deciding disputed issues of law, the hearing officer shall adhere to Department regulations and give some consideration to the Division's reasonable interpretations of the statute and regulations.

2. The party seeking to overturn or change a Division or private plan decision on a FAMLI claim award, or seeking damages, the imposition of a fine, penalty, fee or interest, or any other relief, has the burden of proof to show the relief should be granted by a preponderance of the evidence. Where the Division proves the grounds for imposing fines, penalties, or fees, the amount of such fines, penalties, or fees shall be overturned or modified only if the party proves that the Division abused its discretion.

3. The hearing officer's decision shall be made as soon as practicable after a hearing and constitutes a final agency action pursuant to C.R.S. § 24-4-106. The Appeals Unit shall promptly send a copy of the hearing officer's decision to each party of record.

4. The hearing officer will issue written decisions in compliance with C.R.S. § 8-13.3-516 and will not disclose protected health information, the reason for leave, and wage replacement benefit amounts beyond the information necessarily and appropriately disclosed to the parties during an appeal proceeding.

5. Any party of record in the administrative proceeding may appeal the hearing officer's decision only by commencing an action for judicial review in a district court of competent jurisdiction within thirty-five (35) days after the date the decision was sent to the party. Judicial review is limited to appeal briefs and the record designated on appeal.

6. If the Division or a court reverses or modifies a denial of a FAMLI claim, the Division or private plan will pay the benefits as soon as practicable but no later than five (5) business days after the order awarding benefits.

7. A hearing officer, on their own initiative or the motion of a party, may reconsider a decision within fourteen (14) days of issuance when it appears that a clear procedural or substantive error has been made or that obvious injustice would result.

9.8 Withdrawal and Dismissal of Appeals

1. If the party that filed the appeal does not participate in the appeal proceedings, the appeal may be dismissed if the hearing officers deems the appeal abandoned.

2. The appellant may withdraw their appeal at any time. If the appellant withdraws their appeal, they may not appeal the determination again unless the appellant demonstrates that denying the right to appeal will result in an obvious injustice in light of the totality of circumstances. If the appellant withdraws their appeal during the hearing, the hearing officer shall inform the appellant that withdrawal of their appeal will render the determination final.

Notice of Proposed Rulemaking

Tracking number

2025-00094

Department

1200 - Department of Agriculture

Agency

1202 - Inspection and Consumer Services Division

CCR number

8 CCR 1202-15

Rule title

RULES AND REGULATIONS PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE PET ANIMAL CARE AND FACILITIES ACT

Rulemaking Hearing

Date

04/24/2025

Time

09:00 AM

Location

Zoom - link in hearing notice

Subjects and issues involved

To implement the changes from Senate Bill 24-045, which amended § 35-80-106.4, C.R.S., and requires animal shelters and rescues to sterilize dogs and cats prior to adoption. In addition, this rulemaking adds new definitions, changes threshold numbers for the breeding, rescue and shelter of herptiles, updates enclosure requirements for some species, updates cleaning, sanitation and isolation rules, updates rules regarding commingling of animals, adds a new rule requiring certain vaccinations for dogs, cats and ferrets imported into Colorado, updates recordkeeping requirements for dogs and cats in grooming, boarding/training and pet handler facilities, and updates notification requirements of pet transporters.

Statutory authority

§ 35-80-109(2), C.R.S.

Contact information

Name

Madison Murphy

Title

Chief Administrative Officer

Telephone

7207953510

Email

cda_rulemaking@state.co.us

DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE PET ANIMAL CARE AND FACILITIES ACT

8 CCR 1202-15

Part 1. Definitions and Abbreviations

1.1. "Abnormality" means a malformity, deformity, irregularity, or behavioral characteristic that is atypical or out of the ordinary.

1.2. "Aggression" means the display of aggressive behavior including but not limited to: threat displays such as growling, hissing, piloerection, lunging, and baring teeth. It also includes biting. These displays can serve to intimidate and/or to harm a trigger, a human, or another animal. These behaviors can be defensive (distance increasing) or offensive (distance decreasing) in nature.

1.32. "Behavioral-control device" means any apparatus used to control a pet animal's behavior.

1.43. "Building" means any structure that has a roof and walls especially a permanent structure. It can be any structure that is designed or intended for support, enclosure, shelter or protection of persons, animals or property having a permanent roof that is supported by columns or walls.

1.54. "Cleaning" means mechanical removal of organic matter and waste through application of soap, detergent, or other cleaning agent followed by rinsing of all surfaces with clean water.

1.65. "Commissioner" means the Colorado Commissioner of Agriculture or the Commissioner's designee.

1.76. "Commingle" means combine animals from different owners in a common area or enclosure.

1.87. "Common area" means play yards or areas where dogs are commingled for exercise or social interaction.

1.98. "Crate" means an enclosure that, at a minimum, permits normal postural movement and allows the animal to stand, turn around, and lie down in a manner that is specific to the species held within the enclosure.

1.109. "Department" means the Colorado Department of Agriculture.

1.1110. "Direct supervision" means to be physically present ~~with the pet animals being supervised~~no doors, gates, or other barriers between the person supervising and the pet animals being supervised.

1.1211. "Facility" means all buildings, yards, pens, and other areas, or any portion thereof, at a single location in which any animal is kept, handled, or transported for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading, or otherwise transferring animals.

1.1211.1. "Animal rescue" means any firm, person, or corporation that accepts pet animals for the purpose of finding permanent adoptive homes for these animals and does not maintain a central facility for keeping animals.

1.12~~11~~.2. “Animal sanctuary facility” means a sub-classification of “animal shelter,” is any private facility that harbors pet animals, that is not used for impoundment purposes, and that is used ~~exclusively~~ for the purpose of caring for or housing pet animals indefinitely.

1.12~~11~~.3. “Animal shelter facility” means any firm, person, or corporation, whether public or private, that houses pet animals for impoundment purposes; or a centralized, private facility that accepts or houses pet animals and whose facilities are self-contained and used ~~exclusively~~ for the purpose of caring for and housing pet animals according to these Rules.

1.12~~11~~.4. “Bird breeder facility” means any firm, person, or corporation engaged in the operation of breeding and raising birds that produces or transfers more than 30 birds per 12-month period.

1.12~~11~~.5. “Boarding/training facility” means any firm, person, or corporation that cares for, or houses more than three pet animals at one time, or trains pet animals in the absence of the owner, or such owner's designee, and receives compensation for said services or correctional facility pet animal training programs regardless of compensation.

1.12~~11~~.6. “Cat breeder facility” means any firm, person, or corporation that is engaged in the operation of breeding and raising cats and that produces more than three litters of kittens or transfers more than 24 cats per 12-month period.

1.12~~11~~.7. “Commercial pet animal facility” means any firm, person, or corporation, whether on a permanent or temporary basis that uses pet animals exclusively for commercial exhibition, recreation or sporting purposes.

1.12~~11~~.8. “Dog breeder facility” means any firm, person, or corporation that is engaged in the operation of breeding and raising dogs and that produces more than two litters of puppies or transfers more than 24 dogs per 12-month period.

1.12~~11~~.9 “Groomer” means any person engaged in the operation of changing the physical appearance of the skin, coat, hair, or feathers of pet animals at a licensed pet animal groomer facility for compensation.

1.12~~11~~.10. “Groomer facility” means any permanent or mobile establishment where a person pays a fee to have his pet animal’s skin, coat, hair, or feathers cleaned, styled, or maintained or where a person pays to have his animal’s physical appearance changed.

1.12~~11~~.11. “Pet transporter” means any firm, person, or corporation that accepts pet animals for transportation or relocation for the purpose of adoption, rescue, selling, harboring, sheltering, trading, or otherwise transferring from one location to another.

1.12~~11~~.12. “Pet handler” means a firm, person, or corporation that does not maintain a central permanent facility for the purposes of training or housing dogs but that maintains a mobile or temporary facility for the purposes of transporting or training a pet in the absence of the owner and receives compensation for his services.

1.12~~11~~.13. “Pet animal dealership-retail” means any place or premises, used in whole or part, whether on a permanent or temporary basis, for the sole or ~~exclusive~~ purpose of retail selling, trading, bartering, or otherwise transferring pet animals directly to the public.

1.12~~11~~.14. “Pet animal dealership-wholesale” means any place or premises, used in whole or part, whether on a permanent or temporary basis, for the sole or exclusive purpose of

selling, trading, bartering, or otherwise transferring pet animals to a retail pet animal dealership.

1.12~~11~~.15. "Reptile/Amphibian (Herptile) breeder facility" means any firm, person, or corporation that is engaged in the operation of breeding and raising reptiles/amphibians (herptiles) and that produces or transfers more reptiles/amphibians (herptiles) than the maximum number established by the Commissioner by Rule for each particular species.

1.12~~11~~.16. "Retail aquarium only pet animal facility" means any place that trades, sells, barters, or otherwise transfers fish, hermit crabs, or aquatic pet animals to the public.

1.12~~11~~.17. "Small animal breeder facility" means any firm, person, or corporation that is engaged in the operation of breeding and raising small mammals and produces or transfers more small mammals than the maximum number established by the Commissioner by Rule for each particular species.

1.13~~12~~. "Enclosure" means any location within a facility where a pet animal is housed primarily for the purpose of eating and sleeping, which is not a common area used for exercise or social interaction.

1.14~~13~~. "Foster dam" means a lactating female animal placed with unweaned animals of similar species for the purpose of nutritional support.

1.15~~14~~. "Foster home" means a site that, through a written agreement with a licensed shelter or rescue facility, provides care for pet animals that are otherwise the responsibility of the shelter or rescue.

1.16. "Foster provider" means a site, not residential, that provides care, regardless of compensation, for pet animals that are otherwise the responsibility of a licensed shelter or rescue.

1.17. "Custodian home" means a residential site that, through a written agreement with a licensed breeder, provides care for pet animals that are otherwise the responsibility of the breeder.

1.18~~15~~. "Indoor" means the area or space inside a building or a mobile facility.

1.19~~16~~. "Infirm" means not physically or mentally strong, especially through age or illness.

1.20~~17~~. "Isolation" means the separation, for the period of communicability, of infected animals from others in such place and under such conditions to prevent the direct or indirect transmission of the infectious agent from those infected to those that are susceptible or that may spread the agent to others.

1.21~~18~~. "Isolation area" means a location where animals infected with disease may be placed to contain, control, and limit the spread of the disease.

1.22~~19~~. "Isolation room" means an isolation area enclosed with walls that reach ceiling to floor, a ceiling, and door, having separate ventilation to the outside.

1.23~~20~~. "Nonhuman primate" means all animals in the families lemuridae, indriidae, daubentoniidae, lorisidae, tarsiidae, cebidae, callithricidae, cercopithecidae, and pongidae.

1.24~~21~~. "Outdoors" means in or into the open air; outside a building or shelter.

1.25~~22~~. "PACFA" means the Pet Animal Care and Facilities Act, §§ 35-80-101 through 117, C.R.S.

1.2623. "Pool" means a man-made structure used to hold water that uses a filtration system and is chemically treated, or in which the water is changed as needed, to maintain adequate cleanliness.

1.2724. "Proactive enrichment" means an enrichment program that is designed to provide enrichment for every animal in care during the entirety of their stay. Proactive enrichment does not require that any assessments take place prior to its implementation and can be administered safely despite any known or unknown medical or behavioral concerns. The goal of proactive enrichment is to establish a baseline of behavioral care that is proactive against behavioral decline.

1.2825. "Quality of life"

1.2825.1. "Acceptable quality of life" means an animal is regularly eating and drinking; engaging in play; and engaging in rest. Animals should be provided with access and opportunities to socialize with people and other dogs, if desired. During these interactions they should not be exhibiting consistent fearful or aggressive behaviors.

1.2825.2. "Unacceptable quality of life" means an animal is not regularly eating or drinking; is not able to settle and rest (even absent triggers); displays stereotypic behavior; and/or self-mutilating behavior. When given the opportunity to engage with people the animal will always choose not to or will display aggressive or extreme fearful behavior. When given the opportunity to engage with other animals of the same species the animal will display aggression or extreme fearful behavior although choosing to cohabitate or not approach another animal is acceptable. Routine defecation when engaged socially may be cause for concern.

1.2926. "Research institute" means a governmental or private institution that uses or intends to use live animals in research, tests, or experiments for scientific investigation or in a systematic search for facts.

1.3027. "Self-mutilating behavior" means the occurrence of behavior that could result in physical injury to the animal's own body. Examples include but are not limited to: overgrooming, tail chewing, excessive licking, fracturing teeth, injury to the animal's nose resulting from repeated scraping or scratching.

1.3128. "Sink" means a wide bowl that has a faucet for water and a drain at the bottom and is usually positioned in a counter or on a pedestal.

1.3229. "Surgery" means the act of incising living tissue; an operative procedure.

1.3330. "Stereotypic behavior" means the frequent repetition of the same movement, gesture, posture, or vocal sound or utterance, often with no recognizable purpose, in response to stimuli (which may or may not be identifiable). Stereotypic behavior may be difficult to interrupt and/or, after interruption, the animal may be eager to return to that behavior. Examples include but are not limited to: pacing, bar biting, spinning, circling, wall climbing, chronic vocalization, over grooming, and avoidance behavior.

1.34. "Stray animal" means a pet animal that has been lost, abandoned, or separated from its owner.

1.3531. "Tailored/individualized enrichment," means an enrichment program that is designed in response to noted behavioral health issues, such as stereotypic behavior or quality of life concerns. The purpose of this approach is to assess what specific enrichment efforts meet the needs of the individual animal in order to respond to current/ongoing quality of life concerns or behavioral deterioration. Disposition of cats and dogs is at the discretion of the animal shelter or rescue pursuant to § 35-80-106.3(1), C.R.S.

1.3632. "Temporary facility" means any pet animal facility operating only as a temporary sales or adoption site.

1.3733. "Temporary single retail event" means a show or exhibit held once in a calendar year for a maximum of 48 hours, where animals are sold from a single temporary location.

1.3834. "Tether" means to restrain a pet animal by tying the pet animal to any object or structure, by any means, including, but not limited to, a chain, rope, cord, leash, or running line. Tether does not include using a leash to walk a dog.

1.3935. "Transfer" means adopt, sell, give away, trade, barter, exchange, return, or any other conveyance of ownership of a pet animal.

1.4036. "Water-resistant" means that which repels water.

1.4137. "Year" means any twelve-month period.

1.4238. "Zoological park" means a facility accredited by the American Zoo and Aquarium Association or licensed as a zoological park pursuant to § 33-4-102(13)(a), C.R.S., as amended.

Part 2. Application for Licensure and Conditions for Licensure

2.1. The 12 month-license period commences on March 1. An application for a renewal of licensure must be received in the Commissioner's office on or before March 1st the year following the year the license was issued.

2.2. Any person seeking a new license or a change or addition of a license category must apply for the change on a form furnished by the Commissioner. The applicant shall provide all information requested on the form, including, but not limited to, a valid mailing address where the applicant may be contacted and a valid premises address where animals, animal facilities, and records are located. All premises, facilities, or sites where an applicant operates or keeps animals must be shown on the application form. The application must be filed with the Commissioner and must be accompanied by the appropriate fee.

2.3. Temporary pet animal facilities must identify themselves as such on an application for licensure as a pet animal facility and provide a street address for each place or premises where they will keep or transfer pet animals.

2.4. Each separate physical facility that operates a pet care facility must obtain a separate license.

2.5. The Commissioner may issue a license to any applicant who has met the requirements of PACFA, paid the required annual license fee, and passed the application inspection or routine inspection, except as set forth in § 35-80-112 and 112.5, C.R.S., and Part 9. below.

2.5.1 In addition to all other requirements for licensure, an applicant for a pet animal facility license must successfully complete the required qualifying education course. Proof of course completion is required prior to license approval. The required qualifying education course will be an online, self-paced course designed and provided by the Colorado Department of Agriculture. The course shall be free, available to applicants and their staff, and the course may be accessed by contacting the PACFA program at the Colorado Department of Agriculture. The qualifying education course will cover topics including, but not limited to:

2.5.1.1 The Pet Animal Care and Facilities Act program overview;

2.5.1.2 Rule and regulations;

2.5.1.3 Cleaning, sanitation, veterinary care, animal care; and

2.5.1.4 Importation and transportation.

2.5.2 The applicant for a licensed pet animal facility must successfully complete a continuing education course, at least once during the span of two (2) 12-month license periods after the first initial license period has expired. Proof of course completion is required prior to license renewal. The required continuing education course will be an online, self-paced course designed and provided by the Colorado Department of Agriculture. The course shall be free, available to applicants and their staff, and the course may be accessed by contacting the PACFA program at the Colorado Department of Agriculture. The continuing education course will cover topics including, but not limited to:

2.5.2.1 Changes to PACFA statutes and rules;

2.5.2.2 Noncompliance trends by licensees;

2.5.2.3 Good practices that promote the health and welfare of pet animals; and

2.5.2.4 Other relevant topics related to the PACFA program.

2.5.3 A pet animal facility licensed prior to October 30, 2021 is required to take the qualifying education course to satisfy the continuing education requirement in Part 2.5.2 by a date prescribed by the Commissioner, but no later than December 31, 2024.

2.6. Any facility or person who houses or transfers, as set forth below, more animals than the limits set forth in this Part must have a license to operate a pet animal care facility. Specific licensing thresholds by species:

2.6.1. The thresholds for small animal and reptile/amphibian (herptile) breeders are:

2.6.1.1. Rat, mouse, gerbil, and hamster breeders: produce, house, or transfer more than 200 of any combination of these small mammals per year.

2.6.1.2. Rabbit and guinea pig breeders: produce, house, or transfer more than 65 of any combination of these small mammals per year.

2.6.1.3. Hedgehog, chinchilla, ferret, and sugar glider breeders: produce, house, or transfer more than 24 of any combination of these small mammals per year.

2.6.1.4. Snake breeders: produce, house or transfer more than 200~~400~~ of any combination of these herptiles per year.

2.6.1.5. Lizard and gecko breeders: produce, house or transfer more than 150~~300~~ of any combination of these herptiles per year.

2.6.1.6. Turtle and tortoise breeders: produce, house or transfer more than 100~~200~~ of any combination of these herptiles per year.

2.6.1.7. Amphibian breeders: produce, house or transfer more than 450~~900~~ of any combination of these herptiles per year.

2.6.2. The threshold for shelter of dogs and cats or any combination of these pet animals: more than 24 transfers per year or more than 15 housed in a central facility.

2.6.3. The threshold for shelter or rescue of birds: more than 30 transfers per year or more than 30 housed in a central facility.

2.6.4. The threshold for shelter or rescue of ferrets, hedgehogs, chinchillas, and sugar gliders or any combination of these pet animals: more than 24 transfers per year or more than 24 housed in a central facility.

2.6.5. The threshold for shelter or rescue of rabbits and guinea pigs or any combination of these pet animals: more than 65 transfers or more than 65 housed in a central facility more than of any combination of these pet animals per year.

2.6.6. The threshold for shelter or rescue of mice and rats: more than 200 rats, mice or gerbils housed in a central facility.

2.6.7. The threshold for a shelter or rescue of snakes: more than 200 transfers of any combination of these herptiles per year or more than 200 housed in a central facility.

2.6.8. The threshold for a shelter or rescue of lizards and geckos: more than 150 transfers of any combination of these herptiles per year or more than 150 housed in a central facility.

2.6.9. The threshold for a shelter or rescue of turtles and tortoises: more than 100 transfers of any combination of these herptiles per year or more than 100 housed in a central facility.

2.6.10. The threshold for a shelter or rescue of amphibians: more than 450 transfers of any combination of these herptiles per year or more than 450 housed in a central facility.

2.6.11~~7~~. The threshold for shelter of multiple species in aggregate is more than 50% of the threshold for breeder or shelter definition of 3 or more species housed in a central facility.

2.7. Pet animal grooming licensure conditions and exceptions.

2.7.1. Any licensed groomer may groom as an independent contractor at up to 3 PACFA-licensed grooming facilities with the same groomer license. On the application for licensure, such groomers shall identify themselves as such and shall provide a facility name and street address for each premises at which they groom pet animals. Any groomer who adds or removes a location or premises from which or at which he or she intends to groom shall notify the Department of any change within 15 days of such change.

2.7.2. Persons providing any of the following services exclusively do not require licensure with PACFA: dog and cat nail trims, pet animal oral hygiene, pet animal ear cleaning, or pet animal anal gland expression.

2.8. A retail pet animal dealership may submit a written request to the commissioner for an exemption to purchase animals from an unlicensed individual on a wholesale basis. Such exemption shall be granted at the sole discretion of the commissioner, and must be obtained before any purchase is made. Each purchase of an animal shall require a separate exemption. Any such submission must demonstrate adequate provisions and safeguards to protect the health and safety of the public and the animals in the facility.

Part 3. Facility License Requirements

3.1. Each location of a pet animal facility must be separately licensed. The classifications of licensure are: Retail and Wholesale Pet Animal Dealership; Temporary Retail Event; Dog Breeder Facility; Bird Breeder Facility; Cat Breeder Facility; Pet Grooming Facility; Pet Animal Boarding and/or Training Facility; Animal Rescue; Animal Shelter Facility; Reptile/Amphibian (herptile) breeder facility; Pet Animal Handler; Pet Animal Transporter; and, Small Animal Breeder Facility.

3.2. If a pet animal facility operates under more than one business name from a single location:

3.2.1. No additional pet animal facility license will be required for the different business names;

3.2.2. The pet animal facility operator must maintain separate records for each business name, pursuant to § 35-80-107, C.R.S., and to these regulations; and

3.2.3. The name of each business providing services that are related to those of a pet animal facility must be listed with the Commissioner on the application, in the form and manner designated.

3.2.4. The Commissioner may require that a separate fee be paid for each such business name.

3.3. If a pet animal facility owner operates more than one business from a single location, which businesses would constitute more than one classification of licensure:

3.3.1. The applicant for licensure will pay for the classification that has the highest annual fee and pay an additional fee for each license category.

3.3.2. Each business operated from a single location must comply with all Rules pertaining to each classification of licensure that would correspond to each business operated at the facility.

3.4. Licenses issued pursuant to PACFA and these Rules are not transferable.

3.5. A license issued under PACFA and these Rules is valid unless.

3.5.1. The license has been revoked or suspended pursuant to § 35-80-112, C.R.S., or Part 9. of these Rules;

3.5.2. The license is voluntarily surrendered by written request of the licensee to the Commissioner, and such surrender is accepted by the Commissioner;

3.5.3. The license has expired or has otherwise terminated by operation of law as set forth in § 35-80-106, C.R.S., and these Rules; or

3.5.4. The applicant or licensee failed to pay the license fee or the instrument of payment was returned by the bank.

3.6. There will be no refund of fees if a license is invalidated for any reason before its expiration.

3.7. All licenses expire each year on March 1. If the renewal application is not postmarked on or before March 1 for the year of renewal, a penalty fee of 10 percent (10%) of such renewal fee will be assessed. No license will be renewed until the renewal fee and any penalty fee are paid. Any person whose license has expired and who has not timely applied for renewal may not conduct any activity for which a license is required by PACFA until all requirements for issuing such license have been met and until a valid license has been duly issued.

3.8. No license that has expired and for which timely renewal has not been made may be reinstated. Any application for reinstatement or renewal after April 1 of the year following the year of issue will be treated as a new application, subject to the procedures required of new applicants for a license, as set forth in Part 2.

3.9. A license that is invalid under PACFA and Part 9 of these Rules must be returned to the Commissioner. If the license cannot be found, the licensee shall provide a written statement to the Commissioner so stating.

3.10. All licenses for psittacine leg bands must be renewed on or before March 1.

3.11. Each holder of a bird leg band number must pay an annual renewal fee on or before March 1 each year.

3.12. Each licensed pet animal facility shall display in a conspicuous place signage that contains contact information for the Colorado Department of Agriculture Pet Animal Care Facilities Program or other appropriate Department subdivision.

Part 4. License Fees

4.1. In addition to a completed application for a license or a license renewal, each applicant or licensee must submit to the Commissioner an annual license fee as set by the Commissioner.

4.2. Any applicant whose check is returned by the bank for any reason will be referred to collections through the state's collections process. An application or renewal that is accompanied by a check that is returned by the bank will be deemed an incomplete application or renewal, and no license will be issued.

4.3. If the license fee for a public animal shelter is overly burdensome, a public animal shelter may petition the Commissioner yearly, at each application, in written form, for the Commissioner to waive said fee.

4.4. The PACFA license fees are:

4.4.1. Aquarium only; $450

4.4.2. Bird Band Fee $17.50;

4.4.3. Cat Breeder; $400;

4.4.4. Commercial pet animal facility $450;

4.4.5. Bird Breeder $275;

4.4.6. Dog Breeder Large Scale Operation $550;

4.4.7. Dog Breeder Small Scale Operation; $450;

4.4.8. License category fee for each additional category per application $50;

4.4.9. Pet animal rescue

4.4.9.1 small, 100 or fewer transfers per year $325;

4.4.9.2 large, more than 100 transfers per year $425;

4.4.10. Pet Animal Shelter;

4.4.10.1. Small, 3000 or fewer transfers per year; $450;

4.4.10.2. Large, more than 3000 transfers per year; $600;

4.4.11. Pet Boarding/Training $500;

4.4.12. Pet Grooming facility; $400;

4.4.13. Independent contractor pet groomer: $350

4.4.14. Pet Handler; $225;

4.4.15. Pet Retail/Wholesale; $600;

4.4.16. Pet Transporter $350;

4.4.17. Reptile/amphibian (herptile) breeder $275;

4.4.18. Small Animal Breeder $425

Part 5. Annual Report by Licensee

In addition to the annual renewal application, the following facilities must also submit an annual report on form(s) furnished by the Commissioner: dog breeder facility, bird breeder facility, cat breeder facility, animal shelter, animal rescue, pet transporter, reptile/amphibian (herptile) breeder facility and small animal breeder facility. Annual report(s), if required, must be submitted to the commissioner prior to closing a licensed business.

Part 6. Copies of Rules and Regulations

A copy of PACFA and these Rules is available to all applicants, upon request, and at the expense of the applicant.

Part 7. Notification of Change Concerning Licensure Information

A licensee shall promptly notify the Commissioner in writing of any change in the name, address, business hours, substantial control or ownership in the operation of the licensed business, or of additional sites, within fifteen (15) days of any such change. Notification must be made to the department in writing within 15 days if any principal, partner or anyone with substantial control over daily operations has been charged with any animal related crimes as defined in § 35-80-112(b), C.R.S.

Part 8. Activity by Persons/Facilities Whose Licenses Have Been Suspended or Revoked

8.1. Any person whose license has been suspended or revoked may not conduct any activity for which a license is required by PACFA during the period in which the suspension or revocation is in effect.

8.2. Any person whose license has been suspended may apply in writing to the Commissioner for reinstatement of that person's license.

Part 9. Disciplinary Actions and Denial of Licensure

9.1. A license will not be issued to any applicant who:

9.1.1. Is not in total compliance with PACFA and these Rules and regulations, including payment of fees and any fines.

9.1.1.1. An initial applicant for licensure will be allowed a maximum of three (3) inspections within a time period to be determined by the Commissioner. Failure of these three inspections will result in denial of licensure, requiring the applicant to reapply. The initial license fee will not be returned upon denial of licensure. Any subsequent reapplication must be accompanied with the proper license fee.

9.1.1.2. An initial applicant must not conduct any activity for which a license is required by PACFA until such license is issued. An applicant may request an exemption from this requirement to the Commissioner, which request will be accepted only in written form.

9.1.1.3. Subsequent applications by a person who has been denied a license under this Part will be considered as an initial application, subject to the provisions of these Rules and regulations.

9.1.1.4. Persons denied a license under this Part may reapply after twelve (12) months from the date of the notice of the denial.

9.1.1.5. Any person who petitions the Commissioner for a hearing on any denial of the applicant's application may apply for re-licensure 12 months after the initial date of denial when the initial denial is upheld.

9.1.2. Has had a license revoked within the prior two years or whose license is currently suspended. The two-year period of ineligibility applies to a principal, officer, director, manager or any other person who has substantial control or authority over the daily operations of the entity, whether the person applies individually or as a principal, officer, director, manager or other person who has or would have substantial control or authority over the daily operations of the same or a different entity.

9.1.3 Has been convicted of a local, state or federal offense involving the theft, importation, capture, neglect, or abuse of an animal, or animal cruelty as defined in article 9 of title 18, C.R.S., or any similar statute of any other state. As used in this section, "convicted" means having entered a plea of guilty, including a plea pursuant to a deferred judgment and sentence under section § 18-1.3-102, C.R.S., or a plea of no contest, or a verdict of guilt from a judge or jury.

9.2. In addition to those grounds set forth in § 35-80-112, C.R.S., the Commissioner may issue letters of admonition, deny, suspend, refuse to renew, restrict, or revoke any license on the following grounds:

9.2.1. Submitting falsified information or making a material and deliberate misstatement on the application for any original license or for any renewal license, including, but not limited to, failing to identify all facilities, failing to provide full violation history, or providing a false name or address.

9.2.2. Making false or fraudulent statements or providing false or fraudulent records to the Commissioner.

9.2.3. Having been fined, sentenced to jail, convicted, or having entered a plea of guilty or plea of no contest under any local, state, or federal law pertaining to the importation or capture of animals, theft or cruelty, neglect, or abuse of animals. Having been convicted of a local, state, or federal offense involving the theft, importation, capture, neglect or abuse

of any animal, or cruelty to any animal as defined in article 9 of title 18, C.R.S., or any similar statute of any other state. As used in this section, “convicted” means having entered a plea of guilty, including a plea of guilty entered pursuant to a deferred judgment and sentence under section § 18-1.3-102, C.R.S., or a plea of no contest, or a verdict of guilt from a judge or jury.

9.2.4. Failure to comply with any provision of these Rules and regulations.

9.2.5 Refusal to allow the inspector designated by the Commissioner free and unimpeded access upon consent or upon obtaining an administrative search warrant to inspect those portions of all buildings, yards, pens, and other areas in which any animals are kept, handled, or transported for the purpose of carrying out any provision of PACFA or these Rules and regulations and to all records required to be kept and may make copies of such records for the purpose of carrying out any provision of PACFA or these Rules.

9.2.6. Failure on three (3) inspections within any twelve-month period.

Part 10. Inspections

10.1. All PACFA-licensed facilities may be inspected upon application, change or addition of a license category, facility remodel and routinely thereafter, and upon a complaint to the Commissioner or the Department about a particular facility. Only the portions of the facility used as a pet animal facility need meet the requirements of this Rule.

10.2. All licensees or applicants for licensure or license renewal must make their facilities, animals, and records available to the Commissioner for inspection during regular business hours. The licensee or applicant must also provide the inspector with sufficient space to examine records and write the inspector's report. If the licensee's or applicant's facilities, animals, procedures, or records do not meet the requirements of PACFA or these Rules, the licensee or applicant will be advised in writing of existing deficiencies and the corrective measure that must be performed in a timely manner to be in compliance with PACFA and these Rules. The licensee or applicant must submit a written correction report within 20 days of receiving the inspection report. Failure on three (3) inspections within any twelve month period will constitute a separate violation.

10.3. Should the licensee require the inspector to wear special clothing, or to perform special sanitization measures beyond those specified in the Rules that follow, the licensee must provide all such special clothing or special sanitization measures at the licensee's own expense.

10.4. If a separate breeding room is provided and there are birds in an active breeding cycle, the licensee must permit and make available, at a minimum, a visual inspection from a window or other non-invasive form of viewing.

10.5. Neither an applicant for a license, ~~nor~~ a licensee, nor employees of the licensed facility may interfere with, threaten, abuse (including verbal abuse), or harass any inspector, or state or federal official, while such inspectors or officials are carrying out their duties.

10.6. Refusal to allow reasonable access for inspection or complaint investigation may result in a failed inspection and follow-up inspection under the authority of an administrative search warrant.

Part 11. Physical Facility Standards

11.1. Facilities and all interior components must be constructed of building materials that will ensure the facility is of sound physical structure, be maintained in good repair, protect animals kept there

from injury, ensure containment of pet animals within the property, and restrict entry of other animals and humans from outside the property.

11.2. Interior Building Surfaces

11.2.1. In all facilities, and foster providers, ~~The~~ indoor building surfaces, including but not limited to floors, cages, counters, enclosures, tables, and tubs must be constructed and maintained so that they are water resistant and capable of being readily cleaned and sanitized. These surfaces need not extend more than 18 inches beyond the perimeter of any animal contact area.

11.2.2. In animal shelters and retail/wholesale facilities all indoor building surfaces must be water-resistant and capable of being readily cleaned and sanitized.

11.3. All materials used for construction of enclosures and common areas must be non-toxic.

11.4. Potable water must be provided with a backflow prevention device installed on any threaded faucet, submersible inlets, or on the source serving the facility.

11.5. Readily accessible washrooms or sinks must be provided, convenient to all work areas, to ensure maintenance of personal hygiene by animal caretakers. Single service soap and towels must be available at all hand-washing sinks.

11.6. A sink in good repair or a dishwasher that utilizes a sanitizing process must be provided for washing and sanitizing equipment.

11.7. Indoor pet animal facilities must be sufficiently heated or cooled to protect animals from cold or heat to provide for their health. Heating and cooling is required to keep~~Heating is required when the inside ambient temperature of the facility falls below 50 degrees Fahrenheit. Cooling is required when the temperature of the facility rises above 90 degrees Fahrenheit.~~ ~~t~~The interior ambient temperature ~~must be~~ consistent with the requirements of the specific species, breed, age, and condition of the animal. Indoor rabbit facilities need not be heated.

11.8. Pet animal areas must be adequately ventilated with fresh or filtered air to minimize odors and moisture, prevent mold, and provide for the health and comfort of the animal at all times. ~~and to provide for the health and comfort of the animal at all times.~~ Ventilation may be mechanical or natural.

11.9. Uniformly distributed natural or artificial lighting must be provided to permit routine inspections and to facilitate routine cleaning. Each pet animal must have light appropriate for the species.

11.10. Sewage and waste from indoor facilities must be disposed of by connection of drains to a sanitary sewer or other locally approved sewage-disposal system.

11.11. Floors must be constructed or maintained to prevent standing water in runs or walkways. Excess water must be removed immediately.

11.12. Outdoor Facility Standards:

11.12.1. Outdoor cat enclosures must be fully enclosed.

11.12.2. Elevated resting surfaces must be provided in each outdoor cat enclosure large enough to accommodate all cats in the enclosure simultaneously.

11.12.3. A shaded area must be provided to all animals in outdoor areas when the temperature rises above 70 degreeshoused in an outdoor enclosure. The shaded area provided must be of a size directly proportional to the size of the animals being protected and must be large enough to contain all the animals in the enclosure or common area simultaneously. The interior of a shelter structure may not substitute for a shaded area.

11.12.4. A shelter structure large enough to accommodate all animals simultaneously must be provided. Any shelter must allow the animals to remain dry and protect them from the direct effects of wind, rain, or snow.

11.12.5. Shelter must be a moisture-proof structure of suitable size to allow retention of body heat, made of durable material with a solid floor raised off the ground by an enclosed air space or other means to provide insulation.

~~11.12.6. Shelter and shade are not required during supervised exercise.~~

11.12.67. If the pet animal has a choice of immediate access to an interior portion of the facility, shelter and shade need not be provided.

11.12.78. Shelter structures in outdoor facilities must contain clean, dry bedding or a heat source when the temperature falls below 32 degrees Fahrenheit.

11.12.89. No infirm pet animals may be housed outdoors.

11.12.910. Outdoor areasenclosures must be designed and constructed in a manner that permits suitable drainage to eliminate natural or other excess water, regardless of surfacing material within the areaenclosure.

11.13. The physical facility must contain the pet animals within the pet animal facility and restrict entry of other animals and humans from outside either by a building, perimeter fence, or enclosures designed to be escape-proof.

11.14. Animal shelters housing animals in outdoor enclosures ~~or outdoor exercise areas~~ shall have a perimeter fence that is designed to be escape proof.

11.15. Grooming work areas at retail/wholesale, animal shelter, and boarding/training facilities must be physically separated from enclosures, animal food storage or preparation areas, and isolation areas. Anyone who desires an exemption from this requirement may make a request to the Commissioner, which request will be accepted only in written form.

~~11.16. At any facility where surgical procedures occur, there must be a room whose purpose is exclusively for surgery. Doors into and out of this room must be well-fitted and kept closed. Foot traffic into and through this room must be kept to a minimum.~~

11.1617. The physical facility must provide all environmental conditions necessary for the health and safety of the animals contained in them.

Part 12. Enclosures

All pet animal enclosures must meet these minimum requirements respective to species:

12.1. Dogs

Dogs: Enclosure Sizes (dogs over 22 weeks or over 30 lbs.)

Length: tip of nose to base of tail
Formula: (length of the dog in inches + 6) x (length of the dog in inches + 6)/144 = required sq. ft.
Up to 5 days: formula
>5 to 30 days: formula x 1.5
>30 days to 6 months: formula x 2
6+ months: formula x 3

12.1.1. When three or more dogs occupy an enclosure, space is to be calculated for the largest dog with the third, fourth, and fifth dogs each requiring an additional one-half of the space required for the largest dog.

12.1.2. The minimum height of the enclosure must be at least 6 inches higher than the head of the tallest dog in the enclosure when the dog is in a normal standing position.

12.1.3. Crates may be used in any facility for 14 hours or less within any 24-hour period with dogs housed in appropriately sized enclosure (based on length of stay) for the remaining hours in this period.

~~12.1.4. Housing boarded dogs in crates requires written consent of the owner.~~

12.1.45. Crates of the minimum dimensions set forth in these Rules may be used to house one dog only.

12.1.56. Puppies that are weaned and are under 22 weeks of age and under 30 pounds must be housed according to the puppy chart.

12.1.67. Dogs over 22 weeks or over 30 pounds shall be housed according to the adult dog chart.

Puppy		**Under 16 Weeks**	**16-22 Weeks**
Size	**Weight - lbs.**	**Sq. Ft.**	**Sq. Ft.**
X-Small	0-4	1.25	1.875
Small	>4 and up to 10	2	3
Medium	>10 and up to 20	2.5	3.75
Large	>20 and up to 30	5	7.5

12.1.78. The floor of the enclosure may be made of the following:

12.1.78.1. Wire, provided that the wire is of a gauge adequate to prevent sagging under the weight of the animal or injury to the feet and provided that the wire is coated and the mesh is small enough to prevent the foot from passing through and to prevent discomfort to the animal.

12.1.78.1.1. When wire flooring is used, a solid resting surface, large enough to allow all dogs to simultaneously lie recumbent, must be provided; and

~~12.1.8.1.2. Solid resting surfaces must be able to be easily cleaned and sanitized.~~

12.1.78.2. Approved flooring consisting of slatted flooring, galvanized, expanded metal flooring or expanded metal coated with a flexible plastic surface, or other surface approved by the Commissioner; or

12.1.78.3. Any solid material that is water-resistant and able to be cleaned and sanitized.

12.1.89. Standing water must be removed from enclosures and common areas.

~~12.1.10. Any request for an exemption from these minimum size requirements must be made to the Commissioner in writing and must be accompanied by a plan to provide exercise at a minimum of 60 minutes per animal, per day. To be considered for an exemption, the facility may have no pending disciplinary actions as contemplated by PACFA or these Rules.~~

12.2. Cats

Cats: In facility up to 90 Days		**Cats: Housed >90 Days**
Weight -lbs.	**Sq. Ft.**	**Sq. Ft.**
≤ 2	2.5	5
>2 and up to 6	3	6
>6 and up to 10	6	10
>10 and up to 15	7	10
>15	8	10

12.2.1. Each enclosure for housing cats must be at least 21 inches high and all space included in the enclosure space calculations must allow the cat to exhibit normal postural movement.

12.2.2. Each additional cat in the same enclosure requires additional square footage as designated by the chart.

12.2.3. Any space occupied by a litterbox may not be included in the calculated floorspace. The space occupied by any litter box with~~out~~ a flat hood that allows a cat to exhibit normal postural movement may ~~not~~ be included in the calculation of the total floor space.

12.2.4. All horizontal surfaces in~~The floors of~~ enclosures for cats must be constructed of solid material.

12.2.5. Outdoor enclosures for cats must include one or more shelter structures that are accessible to each cat in each enclosure and that are large enough to allow each animal housed within to sit, stand, lie in a normal manner, and to turn freely.

12.2.6. An elevated resting surface is required after a cat has been housed in a facility for longer than 90 days. The elevated resting surface must be positioned to allow the cat to exercise normal postural movements while perching on the elevated resting surface. The space underneath the elevated resting surface may be included in the calculation of the total floor space if the elevated area is high enough that the cat can exercise normal postural movements underneath it.

12.2.7. Litter boxes designed to capture a cat's excrement within an enclosure must be provided in sufficient number, be of adequate size, and be located in a manner to enable each cat within the enclosure access to the litter box.

12.2.8. Enclosures housing three or more cats are considered colonies and must provide a minimum of 10 square feet of floor space per cat over 22 weeks of age. In addition, an elevated solid resting surface or surfaces must be provided. The resting surface must be high enough so that the cat can fit underneath and minimally provide 1.5 square feet of additional space per cat. Kittens over 8 weeks of age and under 22 weeks housed in colonies must be provided 7.5 square feet of floor space per kitten with an additional square foot of resting surface space per kitten that is high enough for the kitten to get underneath.

12.2.9. No more than 25 cats or kittens may be housed in the same enclosure.

12.2.10. Kittens from weaning up to 22 weeks of age must be housed according to the kitten chart.

12.2.11. Cats over 22 weeks of age must be housed according to the adult cat chart.

Kittens		**Under 16 Weeks**	**16-22 Weeks**
Size	**Weight - lbs.**	**Sq. Ft.**	**Sq. Ft.**
Small	up to 3	1	1.5
Medium	over 3	2	3

12.3. Birds

Weaned Birds	**Days in the Facility**		
Length of each bird - inches	**Up to 10 days**	**10 days to 60 days**	**Over 60 days**
Up to 6	1 cubic ft. per 18" of bird in aggregate	x 2	x 4
Up to 24	(length of bird in inches) cubed = cubic inches required	x 2	x 4
Over 24	(length of bird in inches) cubed = cubic inches required	x 2	x 4

	1 cubic ft. = 1,728 cubic inches		

12.3.1. Unweaned birds must have enough space to exercise normal postural movement.

12.3.2. Sufficient perching space is required to allow all birds housed to perch simultaneously.

12.3.2.1. A single, well-placed perch may be adequate for Psittacines. Well-placed means that the bird can stand completely upright on the perch without having any head contact with the ceiling of the cage and, at the same time, without the tail touching the floor or grate of the cage.

12.3.2.2. At least two perches, one at each end of the cage, must be provided for all species that prefer flying or jumping rather than climbing.

12.3.2.3. Perches must be strategically placed to prevent droppings from contaminating other birds and the birds' food and water supply and also to prevent the birds' tails from making contact with the food and water.

12.3.3. The cage must be large enough to allow every bird to sit comfortably on a perch, fan its tail, and spread both wings without touching the sides of the cage or any other bird in the enclosure.

12.3.4. Cage measurements are based on the actual living space and do not include T-stands or perches attached to the outside of the cage or the space below the cage grate.

12.4. Rabbits

Rabbits	**Up to 30 Days**	**Over 30 Days**
Weight - lbs.	**Sq. Ft.**	**Sq. Ft.**
Up to 2	1	2.5
Up to 4	2	4
Up to 12	3	6
Up to 20	5	8

12.4.1. Each additional rabbit within the enclosure requires additional square footage as designated by the chart.

12.4.2. The floor of a rabbit's enclosure must be constructed of material that prevents pododermatitis (foot problems) and that can be adequately cleaned and sanitized. Mesh flooring must be small enough to prevent the animal's feet from passing through and to prevent discomfort to the animal.

12.4.3. Does with litters require 1.5 times the minimum square footage as designated by the chart.

12.4.4. Enclosures housing rabbits in colonies must provide a minimum of 10 square feet of floor space per rabbit over 4 months of age. Rabbits over 6 weeks of age and under 4 months

of age must be provided 7.5 square feet of floor space. No more than 25 rabbits may be housed in the same enclosure.

12.4.5. The minimum height for any rabbit's enclosure is 15 inches.

12.4.6. Enclosure must provide adequate ventilation to prevent odor build-up and to maintain appropriate ambient temperature for the rabbits.

12.5. Guinea Pigs

Guinea Pigs	
Weight – gms.	**Sq. In.**
Up to 350	60
350-500	90
501-550~~Over 500~~	120
751-1000	150
Over 1000	180

12.5.1. Each additional guinea pig within the enclosure requires additional space as designated by the chart.

12.5.2. Minimum height for enclosures is 12 inches.

12.5.3. The horizontal floors of enclosures for guinea pigs must be constructed of solid material.

12.5.4. Sows with litters require 1.5 times the minimum square footage per chart until weaned.

12.6. Chinchillas, Hedgehogs, and Sugar gliders

12.6.1. Enclosures must provide no less than 360 square inches of floor space per weaned~~adult~~ chinchilla, hedgehog, sugar glider or a female animal with one litter until weaned. When more than one hedgehog occupies an enclosure, each additional hedgehog requires one half of the space of the first hedgehog.

12.6.2. For chinchillas and sugar gliders, a security shelter is required ~~and a dust bath is required no less than twice weekly~~.

12.6.3. For chinchillas a dust bath is required no less than twice weekly.

12.6.4~~3~~. An elevated perching platform is required for chinchillas and sugar gliders.

12.6.5~~4~~. The horizontal floors of enclosures for chinchillas, hedgehogs, and sugar gliders must be constructed of solid material.

12.6.6~~5~~. Minimum height for enclosures for chinchillas and sugar gliders is 16 inches.

12.6.7~~6~~ Minimum height for enclosures for hedgehogs is 12 inches

12.7. Mice

Mice	
Weight in gms.	**Sq. In. per animal**
Up to 10	6
Up to 15	8
Up to 25	12
>25	15

12.7.1. The horizontal floors of enclosures for mice must be constructed of solid material.

12.7.2. Enclosure sizes based on the weight of the female are accepted for a mouse with 1 litter until weaned.

12.7.3. An enclosure's height must be a minimum of 3 ½ inches above the substrate.

12.7.4. No more than 200 mice may be housed in any enclosure at any time.

12.8. Rats

Rats	
Weight – gms.	**Sq. In. per animal**
Up to 100	17
Up to 200	23
Up to 300	29
Up to 400	40
Up to 500	60
>500	70

12.8.1. A rat's enclosure height must be at least 7 inches with a minimum of 5 ½ inches above the substrate.

12.8.2. The horizontal floors of enclosures for rats must be constructed of solid material.

12.8.3. Enclosure sizes based on the weight of the female are accepted for a rat with 1 litter until weaned.

12.8.4. No more than 200 rats may be housed in any enclosure at any time.

12.9. Hamsters and Gerbils

Hamsters and Gerbils	
Weight – gms.	**Sq. In. per animal**
Up to 60	10
Up to 80	13
Up to 100	16
>100	19

12.9.1. Hamsters' and gerbils' enclosures height must be 7 inches with a minimum of 5 ½ inches above the substrate.

12.9.2. The horizontal floors of enclosures for hamsters and gerbils must be constructed of solid material.

12.9.3. Enclosure sizes based on the weight of the female are accepted for a hamster or gerbil with 1 litter until weaned.

12.10. Ferrets

Ferrets	
Age	**Sq. Ft. Per Animal**
Up to 10 weeks	1
10-16 weeks	1.5
Over 16 weeks	2

12.10.1. Each additional ferret within the enclosure requires additional square footage as designated by the chart or for a jill with kits.

12.10.2. The horizontal floors of enclosures for ferrets must be constructed of solid material.

12.10.3. The minimum height for a ferret's enclosure is 18 inches.

12.10.4. No aquaria may be used to house ferrets.

12.10.5. Enclosures for ferrets when constructed using a steel mesh must be of small enough mesh to prevent humans from putting their fingers into the cage and to prevent the ferret from being able to get its snout through the mesh. Other suitable cage designs are subject to approval by the Commissioner. If enclosures do not meet these standards, there must be a sign attached to the enclosure stating that ferrets may bite.

12.11. Reptiles and Amphibians (Herptiles)

12.11.1. The floors of enclosures for herptiles must be constructed of solid material.

12.11.2. The enclosure must be constructed to maintain appropriate humidity and ventilation.

12.11.3. The bottom of the enclosures must be covered with a substrate material that is suitable for the particular species.

12.11.4. The enclosure must contain a variety of structures, materials, and plants, as appropriate, to meet the needs and satisfy behavioral characteristics of different species. Suitable landscaping must protect the animal, reduce stress, and help recreate the animal's natural habitat.

12.11.5. Security shelters, as appropriate to the species, must be provided in the enclosure to allow the animal security, protect the animal from stress, and help recreate the animal's natural habitat. Number and placement of shelters in the enclosure must ensure no animal is forced to choose between its security and maintaining its proper body temperature. After being housed in a facility for 90 days, all reptiles must have access to a security shelter.

12.11.6. When appropriate to the species, a basking area affording both heat and light must be provided. Enclosures must be large enough to provide a temperature gradient to allow for the animal's normal thermoregulation.

12.11.7. At least 30% of the floor space must be left open for the reptile to move about easily, feed, water, and defecate, and to make movements necessary for thermoregulation when appropriate to the species.

12.11.8. Temperature within the enclosure must be maintained as appropriate to the species. The facility must have the ability to measure the temperature within an enclosure.

12.11.9. Humidity within the enclosure must be maintained as appropriate to the species. The facility must have the ability to measure the humidity within an enclosure.

12.11.10. As appropriate to the species, UVB lighting must be provided as part of the enclosure. UVB bulbs must be metered to ensure appropriate output. The enclosure must be constructed to allow UVB light to penetrate the enclosure. Facilities housing reptiles must have the ability to meter the available UVB by means of a metering device. UVB lighting must be recorded monthly and anytime a new reptile is added to the enclosure.

~~12.11.11. Wholesale only facilities keeping herptiles fewer than 14 days may submit written request to the Commissioner for an exemption from the UVB requirement.~~

12.11.11~~12~~. Lizards

12.11.11~~12~~.1. Regardless of the minimum space required, the dimensions of the enclosure must allow all animals to exhibit normal postural movement and the enclosure must be appropriate to the species.

12.11.11~~12~~.2. The required space per lizard is to be calculated as: (1.5L)(L)(.5L) = required cubic inches for arboreal species or (1.5L)(L) = required square inches for terrestrial species.

12.11.1112.3. No enclosure may house more than 36 lizards regardless of calculated space.

12.11.1112.4. In addition to the minimum space requirement, a basking area is required as appropriate to the species.

12.11.1112.5. For lizards over 12 inches housed in groups of 2 or more the following space must be provided for each additional lizard:

(L = length of individual lizard in inches measured from tip of nose to tip of tail)

12.11.1112.5.1. Each lizard over 12 inches added to an enclosure must have at least an additional~~a minimum of~~ 500 cubic inches for arboreal species or 64 square inches for terrestrial species.

12.11.1112.5.2. Each lizard over 16 inches added to an enclosure must have at least an additional~~a minimum of~~ 1800 cubic inches for arboreal species or 144 square inches for terrestrial species.

12.11.1112.5.3. Each lizard over 20 inches added to an enclosure must have at least an additional~~a minimum of~~ 3000 cubic inches for arboreal species or 210 square inches for terrestrial species.

12.11.1112.5.4. Each lizard over 24 inches added to an enclosure must have at least an additional~~a minimum of~~ 5000 cubic inches for arboreal species of 289 square inches for terrestrial species.

12.11.1112.5.5. Lizards housed over 90 days shall have double the space for each lizard in the enclosure.

12.11.1213. Turtles

12.11.1213.1. Land Turtles must be provided clean, potable water at all times in a shallow pan that the turtle can easily get into or out of with a water depth no deeper than the turtle's chin when its head is straight out.

12.11.1213.2. Water turtles must have clean, potable water available at all times. The depth of water in the enclosure must be at least equal to the carapace length of the turtle with a gradual access leading to a basking area.

12.11.1213.3. Enclosure must provide minimum square footage of 70 square inches per 4 inches of carapace length per turtle.

12.11.1213.4. The following must be subtracted (not counted) from the square footage: basking area, food dish, water dish, and security shelter.

(All turtles must be measured by straight carapace length.)

12.11.1314. Frogs

12.11.1314.1. The length of the enclosure for hopping frogs must be four (4) times the length of the frog, and the height must be three (3) times the length of the frog.

12.11.1314.2. The length of the enclosure for tree frogs must be two (2) times the length of the frog, and the height must be three (3) times the length of the frog.

12.11.1415. For all other amphibians, the area of the enclosure must be five (5) square inches per inch of length of animal and must have a height of two (2) times the length of the animal.

12.11.1516. Snakes: At least 30% of the floor space must be left open for the snake to move about easily, feed, water, and defecate, and to make movements necessary for thermoregulation. Arboreal snakes must be provided with a perch. After being housed in a facility for 90 days, the enclosure length must be at least 50% of the length of the largest snake in the enclosure.

12.12. An enclosure containing poisonous or venomous animals must be clearly labeled "Poisonous." Or "Venomous." The enclosure must prevent injury to the public by the animal or escape by the animal.

12.13. Fish

12.13.1. Aquaria and ponds must maintain adequate water levels to sustain aquatic life.

12.13.2. Aquarium lids may not provide an airtight barrier.

12.13.3. Substrate material must cover the bottom of the freshwater aquarium if an underground filter is utilized. Filter-bed material must be a minimum of 1 inch thick across the entire bottom of the aquarium.

12.13.4. Harmful nitrogenous waste products must be managed by the use of biological or chemical filtration.

12.13.5. Labyrinth fish, such as Bettas, do not require the use of filtration systems, but the water in the enclosure must be changed weekly or more often if necessary.

~~12.13.6. Water chemistry must be tested and recorded weekly to make sure the following specific criteria are within prescribed limits for established aquaria:~~

~~12.13.6.1. Free ammonia concentration - the presence of free ammonia indicates that the biological filter is not working properly or the aquarium is overcrowded or overfed. The maximum acceptable level of free ammonia in a healthy aquarium is 1 ppm.~~

~~12.13.6.2. PH - measures the acidity or the alkalinity of the water. The PH reading can vary from 5.5 to 9.0 depending on the requirements of a particular species of fish.~~

~~12.13.7. Any time more than 30% of a tank's water is replaced with chlorinated water, the aquarium must be treated with a water conditioner that will specifically remove chlorine or chloramines.~~

12.13.68. Dead fish must be removed from the enclosure once daily or more often if necessary.

~~12.13.9. Water in aquaria must be maintained at a temperature appropriate to the species. Accurate water temperature will be measured by a suitable aquarium thermometer.~~

12.13.710. Fish must be fed food appropriate to the species on a routine basis to maintain good fish health and to maintain good water quality.

12.14. All enclosures must allow each pet animal to turn around, exercise normal postural movements, and experience necessary socialization with cage mates, when applicable.

12.15. Water chemistry must be tested for aquatic pets and recorded weekly to make sure the following specific criteria are within prescribed limits for established aquaria:

12.15.1. Free ammonia concentration – the presence of free ammonia indicates that the biological filter is not working properly, or the aquarium is overcrowded or overfed. The maximum acceptable level of free ammonia in a healthy aquarium is 1 ppm.

12.15.2. PH – measures the acidity or the alkalinity of the water. The PH reading can vary from 5.5 to 9.0 depending on the requirements of a particular species of fish.

12.15.3. Any time more than 30% of a tank's water is replaced with chlorinated water, the aquarium must be treated with a water conditioner that will specifically remove chlorine or chloramines.

12.15.4. Water in aquaria must be maintained at a temperature appropriate to the species. The facility must have the ability to measure temperature accurately.

12.16~~15~~. Pet animal holding or drying areas must be large enough to allow the animal to stand, lie down, and turn around.

12.17~~16~~. In exigent circumstances, impoundment facilities may provide minimum space that allows each pet animal to turn around and exercise normal postural movements. These circumstances may not be of a routine nature and must be approved by the Commissioner.

12.18~~17~~. Any enclosure or common area must be well-constructed, maintained in good repair, and constructed to allow animals to remain dry (when applicable) and clean.

12.19~~18~~. Enclosures and common areas must contain animals, protect them from injury, and keep predators out.

12.20~~19~~. Enclosures and common areas must provide all environmental conditions necessary for health and safety of the animals contained in them.

12.21~~20~~. All surfaces of indoor enclosures and common areas must be constructed of materials that are water-resistant and can be cleaned and sanitized. All play equipment and fixtures in outdoor enclosures and common areas must be water-resistant. Wood accessories for birds and small animals are accepted.

12.22~~21~~. Animal shelters must have solid walls between enclosures in all dog and cat housing areas. The walls in dog and cat housing areas must prevent water and waste material from flowing between enclosures and must be high enough to prevent nose-to-nose contact of animals between enclosures. After a pet dog or cat has been housed in a animal sanctuary facility for longer than 180 days (6 months), solid walls are no longer required for that animal's enclosure.

12.23~~22~~. Every facility must have the ability to accurately weigh each species of animal housed or transferred according to weight.

12.24~~23~~. The photoperiod and photo spectrum must be appropriate to the species.

12.25~~24~~. Cedar shavings must not be used as litter material.

12.2625. Minimum space requirements for other animals will be determined by the Commissioner on an individual basis.

Part 13. Cleaning and Sanitation

13.1. Sanitation of a facility may be achieved only by using one of the two methods listed below:

13.1.1. "Chemical Sanitation" means the application of a Disinfectant, per the manufacturer's label instructions, to a clean surface; or

13.1.2. "Heat Sanitation" means the application of heat to raise surface temperature to at least 160 degrees Fahrenheit.

13.2. All enclosures, common areas, cages, benches, tables, tubs, bedding, etc., must be cleaned and then sanitized/disinfected after any one animal or group of animals ceases to occupy the space and before any other animal or group of animals occupies the same space or more often if necessary to maintain clean and sanitary conditions. Animals that are housed indefinitely must have their enclosures cleaned and sanitized as often as necessary to maintain clean and sanitary conditions.

13.3. With the exception of enclosures of small animals and birds, visible animal wastes must be removed from enclosures and common areas daily or more often if necessary. All visible waste must be removed from the enclosures of small animals and birds at least weekly or more frequently if necessary to prevent contamination of the pet animals and to reduce disease hazards and odors.

13.4. Animals must be protected from exposure to water under pressure or to chemical solution used in cleaning the facility~~enclosure~~.

13.5. Litter boxes must be kept clean inside and out.

13.6. Food and water containers, including self-feeders and self-waterers, must be cleaned and sanitized at least weekly, or more often if necessary, and between use by different animals or groups of animals.

13.7. Disposable food and water containers may be used if discarded after each use.

13.8. All bird and small animal cage accessories (ladders, toys, perches, etc.) made of unsealed wood must be cleaned or replaced as often as necessary to maintain clean conditions. Perches, nests, or nest boxes in cages where birds are incubating eggs or brooding chicks must be cleaned and sanitized between breeding seasons or after all offspring have been permanently removed from the breeding cage.

13.9. All pet animal enclosures, cages, runs, isolation rooms, or areas that contain pet animal(s) (except fish) suspected or being treated for communicable disease must be cleaned and sanitized as often as necessary to maintain clean and sanitary conditions~~daily~~. Fish enclosures must be cleaned and treated as appropriate for the species.

13.10. Cross-contamination during cleaning of~~in~~ isolation rooms and areas must be minimized by limiting direct contact between animals, limiting handling of the animals, and taking precautions to prevent contaminating other animals.

13.11. Outdoor substrate~~gravel, sand, or soil~~ must be removed or replaced when permeated with urine or fecal matter, or when odors are present.

~~13.12. Towels used to dry pet animals in a grooming or boarding/training facility must be adequately laundered before they are used on any other pet animal.~~

13.12~~13~~. Equipment used in a grooming or boarding facility such as brushes, combs, and clipper blades must be cleaned and sanitized between uses on different animals.

13.13~~14~~. Hair on the floor around a grooming station must be removed after an animal is groomed and before any other animal may be groomed. Animals cannot have unrestricted access to the hair on the floor around grooming stations.

13.14~~15~~. Animal and food wastes, used bedding, debris, and any other wastes must be removed from the pet animal facility daily and must be removed from the premises weekly or more frequently as necessary to control infestation, odors, disease hazards, and nuisances.

13.15~~16~~. Unopened pet food must be stored in waterproof, closed containers or at least 4 inches off the floor. Opened pet food must be stored in waterproof, closed containers. Expired food must be immediately discarded.

13.16~~17~~. The building and grounds must be kept clean, in good repair, and free of trash and unnecessary or unused items.

13.17~~18~~. Weeds and grass must be mowed or cut down in and around enclosures and common areas where animals are kept or exercised.

13.18~~19~~. Pests must be controlled. Food or bedding contaminated by pests must be discarded.

Part 14. Classification and Separation

14.1. Pet animals exhibiting aggressive behavior must be housed in enclosures that prevent them from biting or injuring humans or other animals.

14.2. Pet animals suspected of having a communicable disease must be isolated from other susceptible animals and the public.

14.3. Pet animals housed together must be compatible and have similar environmental requirements.

14.4. Any animal boarded in a licensed retail facility must be physically separated from sale animals.

14.5. Dogs, cats, and other species in animal shelters and boarding/training facilities must be housed in separate rooms. Facilities may submit a written request to the Commissioner for an exemption from this requirement. Separate isolation for each species is not required.

14.6. Any facility that operates as both a boarding/training facility and an animal shelter must have separate ventilation and full-wall separation between the boarding/training and shelter areas. Facilities may submit a written request to the Commissioner for an exemption from this requirement. Any such submission must demonstrate provisions for the health and safety of the animals in the facility if such exemption were to be granted.

14.7. Puppies, kittens, and rabbits under the age of 22 weeks may not be housed in the same enclosure with adults other than their dam or foster dam, unless under direct supervision. Facilities may submit a written request to the commissioner for an exemption from this requirement. Any such submission must demonstrate adequate provisions and safeguards to protect the health and safety of the animals in the facility.

14.8. With the exception of a licensed breeding facility, females in season (estrus) must not be housed in enclosures or placed in common areas with other animals. In animal shelters, animals that have reached sexual maturity must be housed separately from the opposite sex unless spayed or neutered. Birds and reptiles are exempt from this requirement.

14.9. Any bitch or queen in whelp must be housed individually a minimum of one week prior to its whelping date.

14.10. Dog breeder facilities, animal shelters, animal sanctuaries, and commercial pet animal facilities may house no more than 5 dogs over 22 weeks of age, in an enclosure or common area, unless under constant and direct supervision. Dog breeder and commercial Dog breeder facilities, animal shelters, animal sanctuaries, and commercial pet animal facilities may submit written request to the Commissioner for an exemption from this requirement if the facility has no disciplinary matters pending. Any such submission must demonstrate provisions for the safety and well-being of dogs in the facility if such submission were to be granted.

14.10.1. Employees who are engaged in performing other tasks, including grooming other pet animals, do not satisfy the requirement for supervision.

~~14.10. Unless under constant and direct supervision, no more than 5 dogs over 6 months of age may be housed in any one enclosure or common area, with the following exceptions.~~

~~14.10.1. Dog breeder facilities may submit written request to the Commissioner for an exemption from this requirement if the facility has no disciplinary matters pending. Any such submission must demonstrate provisions for the safety and well-being of dogs in the facility if such submission were to be granted.~~

~~14.10.2. Boarding/training facilities, grooming facilities, and pet handlers may commingle dogs from different households in common areas, under constant and direct supervision, with the written consent of the owners.~~

14.11. Boarding/training facilities and pet handlers may commingle dogs from different households in common areas, under constant and direct supervision, with the written consent of the owners.

14.11.1.~~10.3.~~ There must be a minimum of one human supervisor (at least 16 years of age) present, at all times, who has immediate access to and is able to directly supervise and constantly view each common area where dogs from different owners are commingled. Under no circumstances will viewing by video camera or through windows be considered acceptable supervision to satisfy this requirement. Employees who are engaged in performing other tasks, including grooming other pet animals, do not satisfy this requirement.

14.11.2.~~10.4.~~ There must be at least one human supervisor for every 15 dogs commingled within each common area. If more than 15 dogs are commingled in a common area, then the supervisor-dog ratio becomes:

2-15 dogs – one supervisor;

16-30 dogs – two supervisors;

31-45 dogs – three supervisors;

45-60 dogs – four supervisors.

14.11.3.~~10.5.~~ No more than 60 dogs may be commingled in any enclosure or common area at any time.

14.11.4. Common areas used to commingle dogs must be a dedicated and appropriately sized area free from hazards. The area must have the space to allow dogs to display species typical behavior.

14.11.5. Commingled dogs must be compatible.

14.11.6. Dogs over 18 months of age must be sterilized before commingling with dogs from other households.

14.12. Only dogs may be commingled.

Part 15. Veterinary Care and Disease Control

15.1. Shelters, rescues, and retail/wholesale facilities that do not have a veterinarian on staff shall have a signed and dated written agreement with a licensed veterinarian for services and consultation regarding animal health needs. This agreement must be updated each year. The name and phone number of the veterinarian must be included. Pet animal grooming, boarding/training and breeding facilities shall have a working relationship with a veterinarian to provide timely veterinary care. The name and phone number of the veterinarian must be available to the inspector upon request.

15.2. Pet animals must be observed daily for signs of injury or illness by the person in charge of the facility or by an employee working under his/her direct supervision.

15.3. Sick, diseased, or injured animals~~, except for fish and invertebrates,~~ must be provided with timely veterinary care or euthanized in a humane manner under the direction of the facility's veterinarian. Euthanasia must be consistent with § 35-80-102(7), C.R.S.

15.3.1. Boarding/training, grooming, and pet handler facilities that seek veterinary care for animals must notify the owner that care was sought within 24 hours.

15.4. Grooming facilities may not administer tranquilizers, sedatives, or any other pharmaceutical drug or non-pharmaceutical drug designed to calm an animal during the grooming process.

15.5. Boarding/training facilities acting as agents for the owner may administer medication to pet animals being boarded as directed by the owner's veterinarian. If the operators agree to administer prescription medications, the medications must be in the original container issued by veterinarian or pharmacy and administered according to label directions. The label must include: client name/pet name, dosage, drug name, veterinarian's name, and date issued. All supplements or non-prescription medications must be in their original containers.

15.6. Boarding/training facilities may not administer tranquilizers, sedatives, or any other pharmaceutical drug or non-pharmaceutical drug or supplement designed to calm an animal unless the drug or supplement is administered under the direction of the animal's veterinarian, with a written prescription from the animal's veterinarian.~~, and with written permission from the animal's owner.~~

15.7. Prescription medication, including prescription bathing products, may only be administered to pet animals under the written direction of a licensed veterinarian.

15.8. Expired medication may not be administered to pet animals under any circumstance and must be discarded.

Part 16. Isolation

16.1. There must be an isolation area available for pet animals in boarding/training, dog breeder, cat breeder, and small animal breeder facilities. Facilities may submit written request to the Commissioner for an exemption from this requirement.

16.2. There must be an isolation room available for pet animals in animal shelter, bird breeder, and retail/wholesale facilities. The isolation room must be used exclusively for isolation purposes. Facilities may submit written request to the Commissioner for an exemption from this requirement.

16.3. This isolation room must have a separate wash sink with single service hand soap and towel dispenser. Facilities may submit written request to the Commissioner for an exemption from this requirement.

16.4. The minimum space requirements for each species must be applied while an animal is in isolation, unless otherwise directed by a veterinarian.

16.5. Cross-contamination in ~~during cleaning of~~ isolation ~~rooms and~~ areas must be minimized by ~~limiting direct contact between animals,~~ limiting handling of the animals~~,~~ and taking precautions to prevent contaminating other animals.

16.6. Equipment and supplies for isolation must be used and stored exclusively in isolation.

16.7. All surfaces in isolation must be water resistant and be able to be cleaned and sanitized. All occupied enclosures within isolation shall be cleaned and sanitized each day. Fish and amphibian enclosures must be cleaned and treated as appropriate for the species.

Part 17. Food and Water

17.1. Food

17.1.1. Pet animals must be fed in a manner that is consistent with the nutritional needs for the age, size, condition, and species.

17.1.2. Perishable food must be refrigerated.

17.2. Water

17.2.1. If potable water is not continually available to the pet animal, it must be offered as often as necessary to ensure health and well-being, but not less than twice daily.

17.2.2. Potable water must be available to birds, turtles, and amphibians at all times.

17.2.3. For reptiles, potable water must be provided as appropriate to the species for drinking, soaking, or defecation in a container large enough to accommodate the entire animal. Water must be offered in a form that will facilitate drinking.

17.3. Access

17.3.1. Animals must be provided food and water in containers except when otherwise appropriate to the species.

17.3.2. Open food and water containers must be accessible to the pet animal and located to minimize contamination of the food or water in the container.

17.3.3. Animal food and water containers must be safe, in sufficient number, of adequate size, of appropriate type, and located so as to enable each animal ~~in the enclosure~~ to be supplied with an adequate amount of food and water.

17.3.4. All mammals and birds must be fed at least once daily.

Part 18. Special Requirements

18.1. Pet animals must be groomed to prevent matted hair, overgrown nails, and overgrown beaks and so that they have freedom of movement and so that they may perform normal bodily functions and so that the health and welfare of the animal is protected.

18.2. Reasonable care must be taken to transfer only those pet animals that are free from undisclosed disease, injury, or abnormality.

18.3. Any pet animal, excluding reptiles, fish, and rodents, transferred into a PACFA-licensed facility from outside Colorado must be accompanied by a valid Certificate of Veterinary Inspection issued by an accredited veterinarian within the state of origin and within 10 days prior to the animal's arrival in Colorado. Facilities must meet all import requirements as determined by the Colorado state veterinarian.

18.4. Vaccination Requirements:

18.4.1. Rabies Vaccination: All dogs, cats, and ferrets transferred into a PACFA-licensed facility from outside of Colorado must have received a valid rabies vaccine prior to import. The vaccination date, vaccine manufacturer, and serial number must be listed on the CVI.

18.4.2. Parvovirus and Distemper Vaccinations: All dogs at least 6 weeks old transferred to a PACFA-licensed facility from outside of Colorado must be immunized against parvovirus and distemper not less than 14 days before entry. All ferrets at least 8 weeks old transferred to a PACFA-licensed facility from outside of Colorado must be immunized against distemper not less than 14 days before entry.

18.4.3. Feline Vaccinations: All cats at least 6 weeks old transferred to a PACFA-licensed facility from outside of Colorado must be immunized against Feline Viral Rhinotracheitis, Feline Calicivirus, and Feline Panleukopenia not less than 14 days before entry.

18.4.4. Temporary, limited vaccine exemptions:

18.4.4.1. Licensees may submit a written request to the Commissioner for a temporary limited exemption to be in place for no longer than 12 months from the date of the request.

18.4.4.2. Exemptions may only be granted for dogs, cats, and ferrets who are too young to be vaccinated based on vaccine label requirements.

18.4.4.3. Each exemption request must state the reason why the exemption is necessary and must demonstrate the licensee's procedures to secure the safety and well-being of the public and dogs, cats, and/or ferrets in the care of the facility if such submission were to be granted.

18.4.4.4. To qualify for an exemption, a licensed facility must meet the following requirements:

18.4.4.4.1. Have no pending or disciplinary matters prior to one year from the date of request.

18.4.4.4.2. Must hold an active PACFA license for at least 2 years.

18.4.4.4.3. Have submitted a Disease Control and Treatment Plan per Part 18.28.1. of this rule that is approved by PACFA.

18.4.4.5. If exemptions are approved, a licensed facility must;

18.4.4.5.1. Hold all dogs and cats imported for resale or adoption at the facility for a period of five days if they are six months of age or younger and for a period of 3 days if they are older than six months of age before being offered for resale or adoption.

18.4.4.5.1.1. This holding period may not take place in a foster provider. If the holding period is taking place in a foster home, the animals must be isolated in a room away from other dogs, cats, and children under 16 years old.

18.4.4.5.2. Maintain a list of all animals that are imported with the vaccination exemption.

18.4.4.5.3. Maintain a log of all persons who come into contact with all unvaccinated dogs and cats that have been imported into the state of Colorado that are available for adoption and/or resale under an exemption. The log must include the date of contact, name of the person who came into contact with the dog or cat, and that person's address and phone number. If the person is an employee of the facility or veterinary office, the log may use the address of the workplace.

18.4.4.5.4. Must immediately comply with state and local health department requirements for reporting, handling and/or testing of any dog, cat, or ferret that was imported under an exemption that was unvaccinated for rabies and is or was euthanized for showing symptoms associated with distemper or rabies infection. The facility must notify PACFA of an animal sent for rabies testing in writing within 24 hours.

18.4.5. The Commissioner has sole discretion to determine to grant, deny or modify the approval of any exemption. Failure to maintain compliance with the exemption requirements in this section will result in immediate termination of the exemption.

18.5~~4~~. It is unlawful to sell, transfer, or adopt dogs or cats under the age of eight weeks.

18.6~~5~~. The acceptance by a licensed pet animal shelter or rescue or exchange between licensed pet animal shelters or rescues of underage animals that have been abandoned or relinquished shall not constitute a transfer for the purposes of § 35-80-108, C.R.S. In such acceptance or exchange, the underage animals shall be kept with the dam, whenever possible.

18.7~~6~~. A facility may not sell, transfer, or adopt cats less than two pounds of body weight unless written documentation is provided by the facility's veterinarian stating that the cat has been examined and is of sufficient physical development and general health to be safely transferred or that the cat is greater than 12 weeks of age.

18.87. A facility may not sell, transfer, or adopt guinea pigs, hamsters, rabbits, or any other pet animal species as may be specified by the Commissioner, under the age of four weeks. This does not include birds.

18.98. No person or entity may sell, barter, exchange, or otherwise transfer, import or cause to be imported into this state any type of turtle with a straight carapace length of less than four inches.

18.109. Tethering of pet animals is prohibited except for dogs and cats for grooming and for dogs when cleaning their enclosures or for the purpose of training.

18.109.1. Tethering must be done in a manner that prevents the tethered animal from entanglement with other pet animals or other objects.

18.109.2. Dogs or cats tethered on a raised surface must have constant direct human supervision.

18.109.3. Tethers must be attached to the animal by means of a well-fitted and non-tightening collar or loop with a swivel on the collar or non-tightening loop.

18.10.4. Dogs tethered for the purpose of training must be under direct and constant supervision.

18.1110. Untethered dogs or cats groomed on a raised surface must have constant and direct human supervision.

18.1211. The use of dog houses with chains (tethering) as an enclosure is prohibited.

18.1312. Facilities that breed, train, or house Alaskan dog breeds or Alaskan breed crosses, specifically for the purpose of pulling dog sleds, and that have no current disciplinary matters pending before the Commissioner, may submit a written request to the Commissioner for a waiver from the prohibition against dog houses with chains (tethering) as an enclosure.

18.1312.1. Any request for waiver of the prohibition must be accompanied by a written plan for training and conditioning of the dogs for a license year, which plan will be in place for each successive year. The plan must be signed by the facility owner and the consulting, licensed veterinarian and compliance with the plan must be documented.

18.1312.2. If dog houses with chains are used as an enclosure, the facility must keep a record monthly of the training and conditioning of each dog, showing the number of months per year the dogs are used for pulling sleds, number of days per week spent pulling sleds, and average amount of time dogs spend pulling sleds.

18.1312.3. The facility must also record the number of months of the year the dogs are not used for pulling sleds, the number of days per week dogs are trained or conditioned off the tether when they are not pulling sleds, and for how much time each day the dogs are trained or conditioned during this time.

18.1312.4. The licensee must document in writing, and keep on file while the dog is in the facility, evidence of the exercise of these dogs.

18.1312.5. No female dogs in whelp or with puppies may be tethered.

18.1312.6. If dog houses with chains are used as enclosures for dogs kept outdoors, the chains used must be so placed or attached that they cannot become entangled with the chains of other dogs or any other objects. Such chains must be a minimum of 6 feet long

and of a type commonly used for the size of dog involved and must be attached to the dog by means of a well-fitted, non-tightening collar or harness. All tethering chains must have a swivel.

18.13~~12~~.7. If tethering is used, a fence perimeter must surround the entire tethering area to protect the tethered dogs from predators, stray animals, and humans.

18.14~~13~~. Whelping area

18.14~~13~~.1. A whelping area containing a whelping box with a solid floor is required for cats and dogs in whelp.

18.14~~13~~.2. The whelping box must allow the dam to lie stretched out on her side, permitting all puppies or kittens to nurse, and must be large enough to accommodate the puppies or kittens until weaned.

18.14~~13~~.3. The whelping area must be large enough to allow the dam to leave the whelping box.

18.14~~13~~.4. Nursery enclosures with wire flooring must have a solid resting surface large enough to accommodate all dogs housed in the enclosure simultaneously.

18.15~~14~~. Dryers that produce heat must be equipped with a timer that will automatically shut the dryer off after 30 minutes unless the dryer is used as a hand-held dryer or is a dryer directly attended by a person.

18.16~~15~~. Dryers with heating elements may not cover more than 20% of the total open area of the cage surface.

18.17~~16~~. Pet animals must be bathed in water at a temperature appropriate to the species/breed, age, and condition of the animal.

18.18. Pet animal facilities using a mobile unit to conduct licensed activities must have a carbon monoxide detector that is in good working order. The detector must be replaced according to manufacturer instructions.

18.19~~17~~. Each breeding dog or cat must be individually identified by collars, microchips, or tattoos. The Commissioner may approve alternate methods of identification upon written request.

18.20~~18~~. In animal shelters and commercial pet animal facilities each animal must be identifiable through cage/run cards, identifying collars, leg bands, or alternate methods of identification approved by the Commissioner.

18.21~~19~~. Behavioral control devices may be used for the safety of pet animals and handlers. Behavioral control devices must be humane and used humanely per the manufacturer's intended use. All self-tightening collars, pinch collars, muzzles or choke chains may be used when dogs are directly attended and otherwise must be removed.

~~18.20. Battery operated or electrical behavioral control devices, such as shock collars, shock prods, or electrical fences, as well as pinch collars and choke collars, may be used only with the written consent of the owner.~~

18.22~~21~~. Pools

18.2221.1. Whenever water in a pool is deeper than the height at the shoulder of the shortest dog in the pool area, an ingress-egress area shall be provided.

18.2221.2. No dog may have access to the pool or pool area without constant and direct supervision. Facilities may submit written request to the Commissioner for an exemption from this requirement if the facility has no disciplinary matters pending. Any such submission must demonstrate provisions for the safety and well-being of dogs in the care of the facility if such submission were to be granted.

18.2221.3. Facilities must be constructed, maintained, and managed to protect animals from illness, injury, and death resulting from access to pools or pool areas.

18.2221.4. Pools with a capacity of less than 100 gallons must have the water changed and be cleaned and sanitized daily.

18.2322. ~~Animal shelter and rescue facilities that use a system of fostering in private homes or keeping pet animals in licensed pet animal facilities.~~ No more than eight dogs or cats, or combination of dogs and cats, may be housed in any foster home at any time, including the foster's personal animals. No more than 5 of those 8 dogs and cats may be dogs. A female dog with puppies under 8 weeks of age or a queen with kittens under 8 weeks of age will be considered one adult. Facilities may submit a written request to the commissioner for an exemption from this requirement. Such an exemption shall be granted at the commissioner's sole discretion and only upon a finding that the rescue facility has demonstrated adequate provisions and safeguards that ensure the safety and well-being of the animals in the care of the foster home~~provider~~.

18.24. Prior to a dog and cat being placed in a foster provider the animal must be in the rescue or shelter's possession for at least 14 days.

18.2523. In the event a public shelter is unable to comply with any of the facility standards due to lack of funding, the public animal shelter must inform the Commissioner in writing, and the facility may request a waiver of the particular requirement with which it is unable to comply.

18.2624. Contingency Plans

18.2624.1. All facilities shall identify situations that would require an emergency contingency plan that would cover situations like~~including, but not limited to,~~ electrical outages, faulty HVAC systems, fires, mechanical breakdowns, animal escapes, and/or natural disasters or weather emergencies.~~;~~

18.2624.2. All facilities shall outline specific tasks required to be carried out in response to an emergency or disaster such as,~~including, but not limited to,~~ detailed animal evacuation instructions or shelter-in-place instructions and provisions for providing backup sources of food and water as well as sanitation, ventilation, bedding, and/or veterinary care;

~~18.24.3. All facilities shall identify a chain of command and the parties that will be responsible for completion of all tasks to be carried out in response to an emergency or disaster. Such identification shall include the name and title of each person in the chain of command, and;~~

18.26.3.~~24.4.~~ All facilities shall identify and complete all measures needed to be prepared for a future emergency or disaster such as,~~including, but not limited to,~~ training staff and volunteer work force and sourcing and storing materials and supplies needed in the event of an emergency or disaster.

18.26.4.~~24.5.~~ All facilities must conduct an annual review of the contingency plan and maintain documentation of their annual reviews, including documenting any amendments or changes made to their plan since the previous year's review, such as changes made as a result of recently predicted, but historically unforeseen, circumstances (e.g., weather extremes). Contingency plans, as well as all annual review documentation and training records, must be made available to the Commissioner upon request.

18.27~~25~~. Behavior and Enrichment Plans

18.27~~25~~.1. All animal shelters and pet animal rescues shall create and implement a written proactive enrichment plan for the dogs and cats in their care. The plan must be submitted to the Commissioner for approval. If the plan is modified or revised it must be re-submitted for Commissioner approval. The proactive enrichment plan shall be in place for each successive year unless it is modified or revised. All plans must address each environment where dogs and cats are housed, what enrichment will be provided, and the frequency the enrichment will be provided.

18.27.2.~~25.2.~~ Animal shelters and pet animal rescues must implement an individualized/tailored enrichment plan for any dog or cat housed in a shelter or boarding facility for longer than 30 days or any dog or cat exhibiting self-mutilating behavior, stereotypical behavior, or other behaviors indicative of an unacceptable quality of life, when legally viable pursuant to § 35-80-106.3 (1), C.R.S. The plan must include the enrichment to be provided and the frequency of the enrichment. Tailored enrichment plans must have a documented review every 30 days to evaluate the effectiveness of the plan.

18.28~~26~~. Disease Control and Treatment (DCAT) Plans

18.28~~26~~.1. Any licensee that transfers pet animals from a source organization for the purpose of sale or adoption must create and implement a Disease Control and Treatment (DCAT) plan. The plan must include procedures or protocols to address and mitigate the spread of communicable and/or zoonotic illness and disease prior to the acquisition of pet animals from a source organization either in this state or outside of Colorado. The plan must include protocols or procedures to address the quarantine and isolation of pet animals showing signs of illness or disease while in the possession of the facility~~licensee~~, including a plan for foster homes and foster providers to obtain timely veterinary care. It also ~~and in addition,~~ must include a plan for providing post-transfer ~~sale or adoption~~ support. The plan must be in writing and submitted to the Commissioner for approval. If the plan is modified or revised it must be re-submitted to the Commissioner for approval. The plan shall be in place for each successive year unless it is modified or revised.

Part 19. Recordkeeping

19.1. Each licensee must keep and maintain records in the form and manner designated by the Commissioner as set forth by these Rules. The licensee must maintain requisite records at the physical facility address specified in the license application for a period of two years after disposition of the animal for which the record was originally made. All required records must be made available to any inspector authorized by the Commissioner during an inspection or upon request. Animals within records must be easily identified through organization method or identifying number.

19.2. Acquisition records are required and must include, at a minimum: the date the animal was transferred; source or how acquired; name, address, phone number, and signature of the source if known, indicating a conveyance of ownership; number of animals received; animal breed or species; specific identifying characteristics if available; bird band number or other identification

approved by the Commissioner, if applicable; date of birth of dogs, cats, hamsters, rabbits, and guinea pigs.

19.2.1. The animal holding period for stray animals as defined by CRS 35-80-106.3 may only be completed by a licensed animal shelter that has open business hours for the public. A shelter must make a reasonable effort action to reunite a stray animal with it's owner.

19.3. Disposition records are required for all pet animals, except for fish, mice, rats, and invertebrates, ~~for dogs, cats, rabbits, guinea pigs, birds, hamsters and herptiles~~ and must include the date of birth for dogs, cats, rabbits, guinea pigs, and hamsters. The disposition records must include breed or species, gender, and physical description of the animal and name, address, phone number, date of transfer and signature of the recipient of the animal indicating a conveyance of ownership. For kittens under 12 weeks of age the weight at the time of transfer must be included. For psittacine birds, the bird band number must be included.

19.4. Facilities must record date of death or euthanasia for dogs, cats and psittacine birds. Records of euthanasia shall include species or breed, date, and method of euthanasia including dosage.

19.5. Maintenance

19.5.1. A maintenance record must be kept for each dog and cat housed permanently at a facility. These records must include the name, date of birth, breed, gender, color, any identifying characteristics, and required permanent identification information.

19.5.2. Records of animals boarded, trained, transported by a pet handler, ~~or~~ groomed, or animals exhibited that are not owned by the commercial pet animal facility must be kept by the facility and must include the name and address of the owner of the pet animal, date of transaction, species/breed, specific identifying characteristics, name, gender and age, and name of the owner's veterinarian.

19.5.3. Boarding/training, grooming, and pet handler facilities must have record of a current rabies vaccine for dogs, cats and ferrets over 16 weeks old, a current distemper, parvovirus, and Bordetella vaccine for dogs over 8 weeks old, and a current FVRCP vaccine for cats over 8 weeks old. Dogs and cats may be exempted from the vaccine requirements if a licensed veterinarian signs a statement saying that the vaccine would endanger the animal's life. Dogs that have been exempted may not be commingled with other dogs.~~A record must be kept of immunizations for each boarded animal at a facility, recording the date on which the immunization was given or the expiration date of the immunization. These records may be transferred to and kept on kennel forms.~~

19.6. Zoonosis

19.6.1. Any facility selling, adopting or otherwise transferring psittacine birds to the public must furnish the buyer or adopter of each psittacine bird a Psittacine Bird Sales Record approved by the Commissioner, giving the business name of the facility, the name, address and phone number of the person buying or adopting the bird, and the number, species and leg band identification number, or other identification approved by the Commissioner, for each bird. Printed on this sales record must be a warning to the buyer or adopter of a possible psittacosis hazard. This warning must include a description of the disease signs in birds, symptoms in humans, and a statement regarding the critical need for prompt medical diagnosis and treatment when symptoms are present.

19.6.2. Any facility selling, adopting, or otherwise transferring herptiles must have each retail purchaser or adopter of one or more reptiles read an educational document approved by the Commissioner. This educational document must state the possible salmonellosis

hazard to people and describe common hygienic practices to help prevent salmonella exposure to humans. The purchaser must sign a dated register provided by the pet animal dealer after reading this educational document.

19.6.3. Any facility selling, adopting, or otherwise transferring dogs, cats, or ferrets must provide an educational document prescribed by the Commissioner to each retail purchaser or adopter describing the benefits of rabies vaccination and the risk of rabies infection. This document must state the potential risk to humans posed by the rabies virus and the methods to prevent human and animal exposure. The retail purchaser or adopter must sign or initial that this document has been received.

19.7. In accordance with § 35-108-108(1)(i), C.R.S., no person may import or have in his possession for the purpose of selling, trading, giving away, or otherwise transferring any psittacine bird that has not been legally banded with a type of leg band authorized by the Commissioner and appropriate to the size and species of the bird. The Commissioner authorizes any traceable leg band or microchip.

19.7.1. No licensed pet animal facility may use another licensee's registered leg band, nor may a licensee sell or transfer his registered leg band to another person.

19.7.2. Application for a traceable leg band must be made to the Commissioner.

19.7.3. A leg band that is causing injury to a bird may be removed provided the Commissioner is notified in writing. Upon sale, trade, or other means of transfer, the bird must be accompanied with a traceable leg band approved by the Commissioner. If the bird is unable to wear a leg band, the band must be attached to a photograph of the bird to prove identification and be kept with the acquisition/disposition records.

19.7.4. The Commissioner may require other species of birds to be banded. In such event, the Commissioner will notify any licensee affected.

19.8. Written permissions

~~19.8.1. In boarding/training facilities and grooming facilities, pet animals of different ownership may be housed in the same enclosure, under constant and direct supervision, with the written consent of the owners.~~

19.8.1~~2~~. Housing boarded dogs in crates requires written consent of the owner.

19.8.2~~3~~. Products not labeled for use on pet animals may be used only with the written consent of the owner.

19.8.3~~4~~. Records for animals boarded, trained or transported by a pet handler must include a written agreement concerning veterinary care to treat diseased or injured animals and must address disposition of animals that die at the facility.

19.8.4~~5~~. Battery-operated or electrical behavioral control devices, such as shock collars, shock prods, or electrical fences as well as pinch-collars and choke collars, may be used only with the written consent of the owner.

19.9. Written disclosure

19.9.1. Written disclosure of all treatments and medical procedures received while in the care of the pet animal facility involving immunizations, medications, and any other veterinary treatments, administered prior to transfer, must be provided at the time of transfer to the

transferee for all pet animals ~~excluding fish, feeders, and invertebrates~~. A record detailing the product used, the dosage, and the date(s) administered must be included. Proof of disclosure, signed by the recipient of the animal, must be kept with facility records.

19.9.1.1. Written disclosure of any injury, illness or abnormality must be provided at the time of transfer to the transferee for all pet animals ~~excluding fish, feeders, and invertebrates~~. Proof of disclosure, signed by the recipient of the animal, must be kept with facility records.

19.9.2. For grooming, boarding/training and pet handler facilities, an incident file must be kept within each facility for animals sustaining injury or illness requiring veterinary care or death or for any escape. Each report must include date of incident, pet's name, breed/species, age, owner's name and contact information, description of incident, ~~and~~ course of action, the date and time when the owner was notified and the method of communication.

19.9.3. In the event of either death or escape at a boarding/training facility, pet handler, pet transporter or at a grooming facility, the licensee must notify PACFA in writing within 72 hours.

19.9.4. Treatment records must be kept on all pet animals ~~(except fish and invertebrates)~~ that receive any medications or immunizations used in the treatment or prevention of illness, or the treatment of injury, while in the care of the pet animal facility ~~or that are subject to an individualized/tailored enrichment plan while in the care of the pet animal facility~~. These records must include the identification of the pet animal receiving medical treatment, ~~or an individualized/tailored enrichment,~~ signs of illness, reason for medical treatment, ~~or enrichment,~~ or veterinary diagnosis, the name of the medication or immunization used, the amount of medication used, the time and date on which the medication or immunization was administered ~~and the enrichment provided~~.

19.9.4.1. Facilities that have implemented an individualized/tailored enrichment plan must keep a record that includes the identification of the pet animal receiving tailored enrichment and diagnosis or behavior that led to the tailored program. The facility must document the date, and the type of enrichment provided. The facility must also document any changes in behavior.

19.9.5. In connection with the adoption, sale or transfer, each pet animal facility shall provide, in good faith, the prospective purchaser/adopter, upon request at the time of sale or adoption, a written statement that contains the following information:

19.9.5.1. The date the animal was transferred; source or how acquired; name, and address of the breeder; animal breed or species; specific identifying characteristics if available; bird band number, USDA identifying tag, tattoo, microchip, or other identification approved by the Commissioner; if known, the date of birth of dogs, cats, hamsters, rabbits and guinea pigs; and any medical treatment or medication received prior to arrival at the pet animal facility, if known; and a statement that reads, "This facility is regulated by the Colorado Department of Agriculture's Pet Animal Care Facilities Act (PACFA) Program", the statement must include the PACFA webpage address, https://ag.colorado.gov/ICS/PACFA and/or a QR code and the PACFA Program main phone number.

19.9.5.2. The purchaser shall acknowledge in writing receipt of the information required in Part 19.9.5.1.

19.9.5.3. A record of the written disclosure and the receipt acknowledgement shall be retained by the facility.

19.9.6. Retail facilities (pet stores) that sell or offer for sale specific dogs or cats must:

19.9.6.1. Include on all advertisements, including website and social media posts, the purchase price of the dog or cat, and any applicable federal or state license numbers for the breeder of the dog or cat. If the dog or cat is not from a licensed breeder or kennel, the retail facility must state; “this dog/cat is from a breeder or kennel that is not required to be state or federally licensed”

19.9.6.2. Post on the front of the enclosure of each dog or cat, a card or other medium that is at least 3 inches by 5 inches in size that includes all the information required below at a minimum 11-point typed font. The card shall contain: the purchase price of the dog or cat and the following information on the dog or cat's breeder or kennel: full individual’s name; kennel name, if applicable; city; state; and any applicable state or federal license numbers. If the dog or cat is not from a licensed breeder or kennel, the retail facility must state on the written material; “this dog/cat is from a breeder or kennel that is not required to be state or federally licensed”. All disclosures required in this rule must be displayed in a clear and transparent manner.

19.9.6.3. Disclose to a prospective purchaser in writing, prior to the sale of a dog or cat, the following information about the dog or cat: the purchase price of the dog or cat; the interest rate or range associated with any financing or credit card offered to the prospective purchaser; and any applicable federal or state license numbers and an unredacted list of all violations of any federal or state law the dog or cat breeder, broker, or transporter received in the previous two years on a federal or state inspection report that is publicly available.

19.9.7. The need for an individualized/tailored enrichment plan is part of an animal’s treatment records. Shelters and rescues must document that individualized/tailored enrichment is taking place on a daily basis. This becomes the animal’s treatment record, and as such must be kept for two years. The individualized/tailored enrichment plan and treatment record must be disclosed to potential adopters.

19.10. Spay-Neuter

19.10.1. Unless expressly exempted by the commissioner, an animal shelter or pet animal rescue shall not release a dog or cat to a prospective owner unless the animal has been sterilized by a licensed veterinarian. A facility with limited access to licensed veterinarians, or public shelters eligible for waiver of licensing fees, can apply to the commissioner for an exemption to this rule and the requirements of section § 35-80-106.4, C.R.S.

19.10.2. An animal shelter or pet animal rescue may release an unsterilized dog or cat to a prospective owner if a licensed veterinarian declares in writing that a sterilization procedure could jeopardize the life or health of the dog or cat.

19.10.2.1. If a veterinarian licensed in Colorado declares in a writing that a sterilization procedure is likely to cause a secondary illness, injury, impairment, or physical condition that involves inpatient care or ongoing outpatient treatment, the procedure may be delayed until such time that a veterinarian determines that the dog or cat is fit to undergo the sterilization due to jeopardizing the health of the animal has been made prior to release, the animal shelter or pet animal

rescue may release the dog or cat to the prospective owner subject to this subsection. Any secondary illness, injury, impairment, or physical condition mentioned in the exemption must be one that would develop during the surgery, not one that would develop after the procedure is completed.

19.10.2.2. The declaration shall include the date of the examination, the species, description, estimated age of the examined animal, specific diagnosis that requires delaying the procedure, and the date by which the animal shall be sterilized. This declaration shall become part of the animal's medical record.

19.10.2.3. Animal shelters and pet animal rescues that release unsterilized dogs and cats shall obtain record of the sterilization procedure, or an additional declaration from a licensed veterinarian meeting the requirements of 19.11.1, within 60 days of the date by which the veterinarian declared the animal shall be sterilized.

19.10.2.4. Animal shelters and pet animal rescues that release any unsterilized dog or cat to a prospective owner with a declaration from a veterinarian must implement a written plan to ensure that those animals are sterilized.

19.10.2.5. Animal shelters and pet animal rescues that release any unsterilized dog or cat to a prospective owner with a declaration from a veterinarian shall reimburse adopters for the cost of spay and neuter up to $300 and must include the following statement in the adoption agreement: "Per the Pet Animal Care and Facilities Act, animal shelters and pet animals rescues that adopt dogs and cats that are not spayed or neutered must reimburse the cost of the sterilization procedure up to $300. The facility cannot restrict what veterinarian the adopter chooses to use."

19.10.2.6. At the time of license renewal, each animal shelter or pet animal rescue shall provide the department with information regarding animals exempted with veterinary declarations. The animal shelter or pet animal rescue shall provide the information in the form provided by the department and shall include the breed, age, category of exemption, reasoning for the exemption, name and Colorado license number of the veterinarian that made the exemption determination.

19.11. Custodian Homes

19.11.1. Breeder facilities using custodian homes must maintain a list containing the custodian's name, phone number, and current street address for each premises at which pet animals are housed. Name, breed/species, physical description, age, gender, and foster home location must be recorded for each pet animal in a custodian home. The Commissioner may, upon request, have access to any part of a custodian home in which fostered pet animals are kept.

19.11.2. The licensee shall conduct an in-person inspection of each custodian home at least once annually and before any animal is placed in the custodian home. The inspection record must include the date of the inspection, the number and species of pet animal that permanently reside at each custodian home, the signature of the custodian home, and the signature of the person inspecting the home.

19.11.3. The licensee shall obtain a written, signed custodian home agreement with each of its custodian homes before any animal is placed at the location and maintain such record at the physical facility address. The agreement shall include a statement that the

custodian home understands and agrees to adhere to all relevant zoning and animal control codes and ordinances, whether local, county, or state.

19.11.4. The licensee must provide written disclosure of all diseases, injuries or abnormalities in the written, signed custodian home agreement.

19.1211. Foster

19.1211.1. Shelter and rescue facilities using foster homes or foster providers ~~licensed pet animal facilities~~ to foster their pet animals, must maintain a list containing the name of the foster ~~care~~ provider or foster, phone number, and current street address for each place or premises at which pet animals are housed. Name, breed/species, physical description, age, gender, and foster home location must be recorded for each pet animal fostered. The Commissioner may, upon request, have access to any part of a foster home in which fostered pet animals are kept.

19.1211.2. The licensee shall conduct an in-person inspection of each of its foster homes and~~care~~ providers at least once annually and before any animal is fostered at the location and maintain a record of those inspections at the physical facility address. The inspection record must include the date of inspection, the number and species of pet animals that permanently reside at each foster home or foster~~care~~ provider, the signature of the foster or representative for the foster~~care~~ provider and the signature of the person inspecting the foster home or foster provider~~care facility~~. Licensees may submit a written request to the Commissioner for a temporary limited exemption from this requirement, if the licensee has no pending disciplinary matters. Any such submission must state why the exemption is necessary and must demonstrate provisions for the safety and well-being of any pet animals to be placed in foster care pursuant to this exemption.

19.1211.3. The licensee shall obtain a written, signed foster agreement with each of its foster care providers before any animal is fostered at the location and maintain such record at the physical facility address. Such foster agreement shall include a statement that the foster care provider understands and agrees to adhere to all relevant zoning and animal control codes and ordinances, whether local, county, or state.

19.1211.4. The licensee must provide written disclosure of all diseases, injuries or abnormalities in the written, signed foster agreement.

Part 20. Transportation

20.1. Animals transported by a vehicle must be secured within the vehicle by seatbelt harness or an enclosure that is secured to the vehicle. Unconfined transportation in the open bed of a pick-up truck or other open vehicle is prohibited.

20.2. Enclosures used to transport animals must be secured, water-resistant, well-constructed of cleanable material, and designed to protect the health and ensure the safety of the animals.

20.3. Enclosures must have appropriate heating, cooling, and ventilation to ensure the comfort and health of the animals at all times. The requirements of the specific species, age of the animal, and the specific health condition of the animal(s) must be accommodated.

20.4. Enclosures for transport

20.4.1. The openings of such enclosures must be accessible at all times for emergency removal of the animals.

20.4.2. The animals must be afforded protection from the elements.

20.4.3. Animals may not be placed in enclosures over other animals in transit unless the higher enclosure is fitted with a floor of material that prevents waste from entering lower enclosures.

20.4.4. Ingress of exhaust from the vehicle's engine must be minimized.

20.4.5. Enclosures must be large enough so that each animal has space to turn around, stand, and lie down.

20.5. Animals that are not conditioned to each other may not be transported in the same enclosure.

20.6. Multiple species may not be transported in the same enclosure with the exception of birds.

20.7. Enclosures must be cleaned and sanitized after each use or between animals, or more often if necessary.

20.8. Any vehicle used to transport an animal must be maintained in good repair and kept clean.

20.9. Dogs must be removed from the vehicle at least every 6 hours and allowed to urinate, defecate, and obtain food and exercise. The licensee must document evidence of the exercise of these dogs. Facilities may submit written request to the Commissioner for an exemption from this requirement if the facility has no disciplinary matters pending. Any such submission must demonstrate provisions for the safety and well-being of dogs in the care of the facility if such submission were to be granted.

20.10. Enclosures used to transport cats must have a solid floor and contain a mat, towel, or other soft covering.

20.11. If the trip is 6 hours or more in length, a litter box must be provided within each enclosure for cats. The litter box may not cover more than 50% of the enclosure floor.

20.12. Animals must be kept hydrated.

20.13. When transporting dogs and cats, a dated manifest must be kept to document number, species, and breed of animals being transported.

20.14. Facilities licensed as a pet transporter importing animals into Colorado must notify the department at least 72 hours in advance of a transport with the date of transport, location(s) animals are being transported too, and approximate time of arrival.

Part 21. Temporary Facilities

21.1. Temporary facilities must maintain a set of standard operating procedures, including, but not limited to: schedules and methods for feeding and watering; plans to maintain heating and cooling requirements; plans for cleaning and disinfection; and plans for hand washing.

21.2. Temporary facilities must limit the number and types of animals to comport with standard operating procedures and facility requirements.

21.3. Temporary facilities must comply with all other facility requirements within the physical facility, sanitation standards, food and water, isolation, and classification and separation standards of pet animal facilities, as needed.

21.4. Transfer records for each day for temporary facilities must be kept at the temporary location on said business day, during hours of operation. Thereafter, the records may be kept at the physical facility address.

21.5. Retail/wholesale facilities must notify the Commissioner in writing 10 working days in advance of all temporary event dates and locations of events in which they plan to participate.

Part 22. - 24. Reserved

Part 25. Statements of Basis, Specific Statutory Authority and Purpose

25.1. Adopted June 11, 2014 - Effective July 30, 2014

STATUTORY AUTHORITY:

The Commissioner of Agriculture adopts these rules pursuant to the authorities located at § 35-80-109(1), (2), and (4), C.R.S.

PURPOSE:

The purpose of these rules is to define the administration and enforcement of the Pet Animal Care and Facilities Act, § 35-80-101 through 117, C.R.S., ("PACFA"). The rule includes minimum standards of physical facility, sanitation, ventilation, heating, cooling, humidity, spatial and enclosure requirements, nutrition, humane care, medical treatment, sterilization of dogs and cats released to prospective owners from animal shelters and pet animal rescues, and method of operation, including the minimum holding period for and disposition stray or abandoned pet animals, that are, in the opinion of the Commissioner, necessary to carry out the provisions of this article; the minimum weight requirement for the transfer of cats; maintenance of records concerning health care, euthanasia, and transactions involving pet animals; the establishment of qualifications for any applicant and standards of practice for any of the licenses authorized under this article, including the establishment of classifications and sub-classifications for any license authorized pursuant to PACFA; the issuance and reinstatement of any license authorized by PACFA and the grounds for any disciplinary actions authorized by PACFA, including letters of admonition or the denial, restriction, suspension, or revocation of any license authorized by PACFA; the amount of any license fee for a pet animal facility license; and the annual date on which licenses and psittacine bird leg bands issued pursuant to PACFA expire.

FACTUAL AND POLICY ISSUES:

PACFA was created by statute in 1994. Between 1994 and the adoption of this rule, the program, animal care standards, and the statute have evolved. The previously adopted rule had become unwieldy with updates, corrections, and revisions. PACFA worked with its Pet Animal Advisory Committee pursuant to § 35-80-115, C.R.S., to streamline the rule to make it more efficient, responsive to new science and information, and user-friendly for licensees.

The existing rule was repealed and re-enacted. This new rule incorporates changes as a result of the Department's Regulatory Efficiency Review Process conducted in accordance with the Governor's Executive Order D 2012-002.

25.2. Adopted June 8, 2016 - Effective July 30, 2016

Statutory Authority:

The Commissioner of Agriculture adopts these Rules pursuant to the authorities located at §§ 35-80-109(1), (2)(a), (b.6), (c), (d), (e)(I), and 35-80-106.5(2), C.R.S.

Purpose:

The purpose of this rulemaking is to recodify the Rule from the Animal Health Division to the Inspection and Consumer Services Division. Other changes include: provide clarification in definitions that the regulated community found unclear since the repeal of these Rules in 2014, provide new definitions where necessary to aid with clarity, include new categories for “pet transporter” and “reptile/amphibian,” clarify license application and renewal dates, remove unnecessary licensure categories, update licensure fees, and harmonize all areas of the Rule to integrate the changes to definitions, categories, and licensure dates fully into the Rule. These revisions incorporate changes as a result of the Department’s Regulatory Efficiency Review Process.

Factual Policy and Issues:

The PACFA Advisory Committee and PACFA staff (the “Reviewers”) identified various terms that needed either clarification to their definitions or a new definition. In addition to refining the definitions, the Reviewers made changes throughout the Rule to how the words “commingle” and “enclosure” are used to bring clarity to the Rules. The Reviewers also received many comments from industry regarding the regulation of reptile and amphibian breeders. Responding to the concerns in those comments, the Reviewers drafted changes to incorporate reptile and amphibian breeders more specifically into PACFA with their own category and with clarified housing and reporting requirements.

Additionally, the transport of pets into Colorado to rescues and shelters from Texas, Oklahoma, Kansas, New Mexico and Utah has become a major consumer protection issue. Statistics for shelters and rescues show that in 2013 over 17,000 pets were transferred into the state, in 2014 over 24,000 and preliminary estimates of over 30,000 in 2015. The Reviewers identified a large and unregulated conduit by which pet animals enter into Colorado without appropriate records and without minimum health concerns addressed. The Reviewers created a category of licensure for these as “Pet Transporter.”

The Reviewers removed the unnecessary licensure category of “Network Boarding Facility” because it is not a category that is useful any longer. And, they removed the requirement to submit pre-licensure plans because the Department does not approve these plans. They also removed the definition of “sanitation” and amended the “Cleaning and Sanitation” Section to identify what type of sanitation is acceptable because licensees were not correlating the definition of the term with the requirement to sanitize in the Rule. Due to a lack of clarity with regard to licensure dates, the Reviewers modified language regarding when licenses expire and modified due dates for licensure applications.

With regard to discipline, the Reviewers determined it necessary to permit the Commissioner to issue disciplinary action against a licensee who has failed three inspections within one calendar year, changing that from three re-inspections for an original violation. On occasion, PACFA encounters facilities that fail inspections for different reasons each time. The Reviewers concluded that permitting a facility to continue to operate simply because it fails each inspection for different reasons each time is inequitable to the majority of licensees who are compliant or who remedy their non-compliance issues without adding additional factors of non-compliance.

Licensure fees throughout were adjusted to take into consideration equity and to accommodate the creation of new categories. Where two or more categories were collapsed into one or where a category was removed, the Reviewers made appropriate changes.

To provide additional protection to animals being groomed, the Reviewers found it necessary to indicate that untethered animals being groomed must be under constant supervision. Similarly for animal safety, the Reviewers added “muzzle” to the list of behavioral devices that require supervision.

Record keeping and identification requirements for psittacine birds were relaxed to allow for alternative forms of identification including microchips and photo identification when it is not possible to band a bird and to modify the requirement that a psittacine bird sales record form is only required for birds sold to the public and not for transfers of birds between licensed facilities. Reviewers also found it necessary to add that licensees must record a weight at the time of transfer for kittens under 12 weeks of age to meet the statutory requirement of two pounds. To reduce paperwork for licensed facilities, the reviewers relaxed the zoonosis disclosure in the record keeping requirements allowing facilities to provide their own forms, approved rather than prescribed by the Commissioner, for customers or adopters to initial that they have received the required disclosures for rabies and salmonella. In order to ensure that foster homes understand the necessity to comply with local regulations, the Reviewers found it necessary to require animal rescues to have a written foster agreement with all of their foster homes and include a statement on these agreements certifying that the foster home is in compliance with local zoning requirements and animal control codes.

Specific Purpose of this Rulemaking

Changes in these Rules include spelling and grammatical changes. Reviewers located the word “rail” in the chart in Section 12.00 Enclosures, paragraph A. Dogs when the word should have been “tail”, Section 14.00 Classification and Separation, paragraph J. the word “maybe” should be “may be”.

Additions and deletions have been made to Section 1.00 Definitions and Abbreviations to better define some concepts that have arisen out of the enactment of the new Rule in 2014 and remove definitions related to license categories that are no longer used and remove and move definitions to another Rule Section so they are more clearly defined. Formatting has also been updated to be consistent with other Department Rules.

New definitions include; paragraph B. building, paragraph E. the word commingle, paragraph F. creating a definition of common area, paragraph I.2 using the word “indefinitely” to better define what an animal sanctuary is, I. 5 adding correctional facilities that train dogs regardless of compensation to the boarding and training facility definition, removing the definition and category of I. 10 network boarding facility as it is not used by licensees, creating a new category and definition under I. 10 of Pet Animal Transporter to address the growing concerns of pet animals being imported into the state for adoption by shelters and rescues, in I. 13 adding the category and definition of reptile/amphibian(herptile) breeder to address the increase in breeding and selling of reptiles and amphibians, paragraph J. creating a definition of enclosure to better define the difference between common area and enclosure for supervising and separating animals during exercise or social interaction, paragraph M. defining indoor, paragraph N. defining the word infirm, paragraph S. defining outdoors and removing the definition of paragraph P. sanitation and moving it to Section 13.00 Cleaning and Sanitation and paragraph Y. striking 12-month and replacing it with calendar year for the definition of a temporary single retail event.

Changes to Section 2.00 Application for Licensure and Conditions for Licensure include; striking C. 4 since plans are no longer required to be submitted prior to operation, F.1 adding reptile/amphibian (herptile) breeder to the licensing threshold by species Section, F. 1 subsection d through g adding the threshold numbers for the breeding of reptiles and amphibians, G. 1 requiring groomers to provide premise change notification, striking H. as network boarding facility is being removed and Pet Handler is no longer a sub category of boarding/training.

Changes to Section 3.00 Facility License Requirements include; paragraph A. adding Reptile/Amphibian Breeder, Pet Handler and Pet Transporter to the list of facilities that need to be separately licensed, paragraph G. making the license year March 1 and paragraph J. making the license renewal for psittacine leg bands March 1.

Changes to Section 4.00 License Fees include; changes to paragraph D. 1 retail aquarium increased to $350 from $300 to bring it more in line with the retail/wholesale category, D. 4 and 17 combined common and uncommon bird breeder into one category called bird breeder and made the fee $200, D. 8 deleted Network Boarding Facility and the fee, created a new D. 8 to combine for profit and non-profit animal

rescue and made the fee $225, D. 11 added facility to the pet grooming category and added the sub categories of independent contractor pet groomer and self-wash only grooming facility, added the new categories of D. 14 pet transporter at $225 and D. 15 reptile/amphibian breeder at $225.

Changes to Section 5.00 Annual Report By Licensee include the additions of pet handler, pet transporter and reptile/amphibian breeder facility who are required to submit an annual report.

Changes to Section 9.00 Disciplinary Actions and Denial of Licensure include; paragraph A. 1 subsection b allowing applicants to request an exemption from the Commissioner why they await the pre-license inspection process, paragraph B. 6 striking original violation and changing the intent to only allow licensees three failed inspections before the initiation of disciplinary action.

Change to Section 10.00 Inspections to align with the wording in the statute, striking mutually agreeable to make licensees provide regular business hours for inspection.

Changes to Section 12.00 Enclosures include; paragraph G.3 for mice, striking 5 inches to align with industry standards to provide 3 ½ inches above substrate, K. 16 for snakes striking subsection a, b and c and creating a new subsection a requiring 30% of the floor space in the enclosure to be left open for the snake to move, feed, water, defecate, thermoregulate and requires a perch for arboreal snakes.

Changes to Section 13.00 Cleaning and Sanitation include: a new paragraph A. defining the methods of sanitation, adding wording to paragraph B. to better define the two step process of cleaning then sanitizing.

Changes to Section 14.00 Classification and Separation include; paragraph J. to make the Rule more clear adding with the following exceptions, J. 2 and 5 added the words commingled in common areas to address the intent of commingle animals in common areas for exercise and not in primary enclosures where animals eat and sleep.

Changes to Section 18.00 Special Requirements include; a new paragraph J to address groomers leaving untethered dogs or cats unsupervised on a raised surface, paragraph S. adding muzzles to the list of behavioral devices that require supervision while in use.

Changes to Section 19.00 Recordkeeping include; paragraph C. adding that the licensee must record the weight at time of transfer for kittens under 12 weeks of age, paragraph F. 1 Zoonosis adding to the public relaxing the Rule that transfers of psittacine birds between licensed facilities requires a psittacine bird sales record, F. 2 changed the wording prescribed to approved, F. 3 allowing licensed facilities to use their own forms with places for adopters or customers to initial that they have received the rabies or salmonella educational documents instead of requiring a register, paragraph G. revises the language to allow for additional identification for psittacine birds and revises the language to allow for photo identification for birds that can’t be banded, paragraph K. requires licensed facilities to have a written agreement with their foster homes and requires a statement on the agreement acknowledging that the foster home is in compliance with local zoning and animal control codes.

Changes to Section 20.00 include; paragraph I. adding that facilities may request an exemption from removing dogs from a vehicle every 6 hours during transportation if the facility has no disciplinary matters pending.

25.3. Adopted April 12, 2017 - Effective May 30, 2017

Statutory Authority:

The Commissioner of Agriculture adopts these Rules pursuant to the authorities located at §§ 35-80-109(2)(a) and (b), C.R.S.

Purpose:

The purpose of this rulemaking is to provide a new definition to aid with clarity; and revise enclosure requirements for puppies, and kittens.

Specific changes include: add definition for “Sink”; striking “and rescue” under the licensing requirements for facilities under Part 2.6.2; changing the threshold number under Part 2.6.6 for the sheltering of mice, rats and gerbils from 100 to 200 to be consistent with the threshold for mice and rat breeders; remove “Pet Handler” and adding the word “Facility” to the Reptile/Amphibian Breeder to make it consistent with the other breeders listed in annual reports; change the age from 16 weeks to 22 weeks in 12.1.6, 12.1.7, 12.2.8, 12.2.10 and 12.2.11 as facilities are housing these animals for longer periods of time; make revisions to the square footage requirements for the puppy and kitten charts to allow for more square footage for longer periods of time; revise the guinea pig and ferret charts to reflect more square inches for larger animals and more square feet for ferrets of certain ages that occupy the same enclosure; increase the age from 4 months to 22 weeks thereby increasing the age where puppies, kittens, and rabbits can be housed in the same enclosure with adults in 14.7; allow facilities to request an exemption for direct supervision of dogs in pools provided the facility demonstrate provisions to provide for the safety and well-being of any dog using smaller pools without supervision; change recordkeeping requirements by deleting the words “each animal” and specifically listing dogs, cats, rabbits, guinea pigs and hamsters in 19.3 to create consistency with 19.2 and the statute; and remove the phone number from the disclosure requirement in 19.9.5.1 to provide breeder information. Other changes include spelling, grammatical, non-substantive changes; updating the numbering system to be consistent with other Department Rules; and update internal citations to reflect new Rules.

Factual Policy and Issues:

The Reviewers removed the transfer and housing thresholds for animal rescues. The Reviewers made this change to the Rule to address a growing number of animal rescue groups that are using web-based mechanisms to move undisclosed numbers of animals around, while operating as an “animal rescue” without a license. With a growing number of unlicensed rescue groups in Colorado, the Reviewers determined that too many dogs and cats were passing through these rescue facilities where PACFA was not able to ensure that minimum standards of animal care may be ensured.

The Reviewers introduced an exemption to the requirement for direct supervision in conjunction with the use of pools at pet animal care facilities. This addition would allow the Commissioner to grant exemptions of specific rules provided the licensee who applies for the exemption is able to demonstrate provisions to provide for the safety and well-being of the animals should the Commissioner grant the requested exemption.

Enclosure sizes were revised and increased at the request of the pet retail/wholesale industry for puppies kittens and ferrets based on the age of the animals, revising the language from 4 months to 22 weeks and increasing the space for animals held for longer periods of time due to more facilities having to house animals for longer periods of time.

Two record keeping changes were made to the disclosure requirements, one to revise the list of animals that require a date of birth for disposition records and the other regarding facilities to provide the phone number of the breeder. The Reviewers felt that providing the phone number could open breeders up for harassment

25.4. Adopted September 17, 2019 – Effective October 30, 2019

Statutory authority:

The commissioner of agriculture adopts these rules pursuant to § 35-80-109(1) and (2), c.r.s.

Purpose:

The purpose of this rulemaking is to effect the changes from the 2018 Sunset Report and Senate Bill 19-158, including: changes to pet animal sterilization requirements; the addition of disciplinary actions related to convictions for violations of local, state or federal laws involving animal theft, importation, capture, cruelty, neglect or abuse in any jurisdiction; and the extension of a two-year period of ineligibility to all parties with substantial control over the daily operations of an entity. This rulemaking also adds new definitions, revises fees for all license categories, clarifies and adds requirements for small mammal and reptile enclosures, and updates reporting and recordkeeping requirements.

Factual policy and issues:

The changes from the 2018 Sunset Report and Senate Bill 19-158 simplify animal sterilization requirements and ensure licensees are compliant with all areas of law that affect animal welfare. The new sterilization requirements eliminate the option to re-home a dog or cat without sterilization by making a deposit and signing an agreement to have the animal sterilized in the future; this ensures dogs and cats are safely sterilized before they are re-homed. The addition of disciplinary actions related to convictions of local laws and specific animal-related laws ensures PACFA licensees are compliant with all animal welfare laws.

Additionally, the reviewers added new definitions, including a new license category for commercial pet animal facilities, and separate definitions for retail and wholesale facilities. A new category of commercial pet animal facility was added at the request of stakeholders to better represent exhibition, recreation and sporting businesses like hunt clubs and sled dog facilities that do not breed animals as part of their business model. A separate wholesale license category was added for hobby and other breeders that sell to retail establishments in an effort to improve the health and welfare of animals placed in commerce.

The reviewers also added a definition of ‘direct supervision’ to clarify that licensees must have staff members physically present in the same space as the animals being supervised to provide for animal safety and welfare; supervision from another location via a window or recording equipment is not sufficient.

Enclosure requirements were revised to better reflect industry standards for housing lizards, hedgehogs, chinchillas and sugar gliders. Additionally, weekly reporting requirements were added to aid inspectors in ensuring that enclosures for reptiles and fish are maintained properly for the health, safety and welfare of the animals.

Recordkeeping requirements were also revised to ensure accountability and document animal welfare. Licensees must now keep and maintain disposition records for herptiles, and facilities that use foster care providers must keep and maintain a foster agreement, that includes disclosure of disease, injury or other abnormality, before any animal is transferred to the care of a foster provider. These changes will limit the transmission of disease and improve traceability of disease. Additionally, any animals transferred from out of state must meet all import requirements of the Colorado State Veterinarian.

After the rulemaking hearing sugar gliders were added to the small animal enclosure requirement to provide security shelters; and non-pharmaceutical drugs and supplements were added to the list of items used to calm animals that require a prescription from a veterinarian prior to being administered in boarding/training facilities.

25.5. Emergency Rule Adopted March 21, 2020 – Effective March 21, 2020

Statutory Authority:

The Commissioner of Agriculture adopts these rules pursuant to §35-80-109(1) and (2), C.R.S. and §24-4-103(6), C.R.S.

Purpose:

This is a temporary emergency rule exemption to 19.11.2 intended to enable an emergency response to the outbreak of the COVID-19 virus. More specifically, this rulemaking will permit approved facilities to transfer pet animals to a foster care provider without first conducting a home inspection.

Factual Policy and Issues:

This temporary emergency rule will allow approved facilities to transfer pet animals quickly and to more homes than otherwise possible while also taking necessary protective measures against the COVID-19 virus. The outbreak of the COVID-19 virus has resulted in both an increase in pet animals being transferred to shelters, sanctuaries and rescues, and a shortage of facility staff to care for those animals. This exemption allows use of foster care homes without requiring staff to risk exposure or transmission of the virus, and is necessary for the preservation of public health, safety and welfare. This rulemaking does not comply with the requirements of section 24-4-103, C.R.S., because compliance at this time is contrary to public interest; immediate adoption is imperatively necessary for the preservation of public health, safety and welfare.

25.6. Emergency Rule Adopted August 12, 2020 – Effective August 12, 2020

Statutory Authority:

The Commissioner of Agriculture adopts this rule pursuant to §35-80-109(1) and (2), C.R.S. and §24-4-103(6), C.R.S.

Purpose:

This is a temporary emergency rule re-promulgating 19.11.2, which expired on July 19, 2020 with the March 21, 2020 emergency rule exemption.

Factual Policy and Issues:

On March 21, 2020, the Commissioner adopted an emergency rule exemption to Rule 19.11.2, which permitted approved facilities to transfer pet animals to a foster care provider without first conducting a home inspection. This emergency exemption expired on July 19, 2020 and resulted in the removal of the entire rule 19.11.2, not just the emergency exemption. This rulemaking will reinstate the original rule 19.11.2., which is imperatively necessary for the preservation of public, health, safety and welfare.

This rulemaking does not comply with the requirements of section 24-4-103, C.R.S., because compliance at this time is contrary to public interest; immediate adoption is imperatively necessary for the preservation of public health, safety and welfare.

25.7 Adopted October 14, 2020 – Effective December 15, 2020

Statutory Authority:

The Commissioner of Agriculture adopts these Rules pursuant to the authorities located at §35-80-109(2)(a) and (b), C.R.S.

Purpose:

The purpose of this rulemaking is to make permanent the emergency rule, Part 19.11.2, adopted on August 12, 2020.This rule requires inspections and recordkeeping of foster homes before any animals are fostered at the location. This rulemaking clarifies that such inspections must be conducted in person, unless a temporary limited exemption is granted, at the sole discretion of the Commissioner. The purpose

of this rule is to ensure that any animals housed in foster homes are placed in safe and appropriate environments before they are transferred, and to ensure the animals can be accounted for and traced once they have been placed. Part 19.11.2 is a long-standing rule that expired with an emergency rule on July 19, 2020; this rulemaking simply reinstates the original rule and provides an on-going option for an exemption should the Commissioner deem that one is necessary.

25.8. Adopted September 8, 2021 – Effective October 30, 2021

Statutory Authority:

The Commissioner of Agriculture adopts these rules pursuant to §35-80-109(2), C.R.S.

Purpose:

The Purpose of the rulemaking is to add qualifying and continuing education as an additional requirement for licensure found in subsection 2.5.

Factual Policy and Issues:

Many regulated professions that serve the general public require a level of qualifying and continuing education as a condition to licensure. Educational requirements for licensed professionals maintain a basic level of competency and establish consistent standards within the profession. Under Title 35, Article 80 of the Colorado Revised Statutes, the Commissioner has the authority to establish qualifications of any applicant for licensure and the ability to issue and renew any license based on established requirements. By incorporating qualifying and continuing education, licensees will have a better understanding of the regulatory requirements, industry standards, and best practices related to animal care; thereby, increasing compliance and improving the health and safety of pet animals throughout the state. The education courses will be required to be completed by the applicant who applies for a new license or to renew an existing license. However, facility staff may voluntarily take the courses at their own discretion.

25.9. Adopted April 13, 2022 – Effective June 15, 2022

Statutory Authority:

The Commissioner of Agriculture adopts these rules pursuant to §35-80-109(2), C.R.S.

Purpose:

The purpose of this rulemaking is to effect the changes from House Bill 21-1102, which implements disclosure requirements for retail pet animal dealerships (pet stores) that sell dogs and/or cats.

Factual Policy and Issues:

House Bill 21-1102 requires retail pet animal dealerships (pet stores) to disclose specific information to prospective purchasers of dogs and cats, on any advertisements or social media posts. Reviewers added that disclosures required on the enclosure would be required to be on at least media that is 3 inches by 5 inches and in at least 11-point font.

Additionally, House Bill 21-1102 requires retail pet animal dealerships (pet stores) to disclose to a prospective purchaser in writing, prior to the sale of a dog or cat, information about the purchase price and any financing offered; and any applicable federal or state license numbers and violations the breeder, broker, or transporter received in the previous two years on a federal or state inspection report that is publicly available.

Reviewers added additional requirements to the rule which require all facilities that adopt or sell pet animals to include a statement on the adoption or sales agreement that the facility is regulated by the Colorado Department of Agriculture's Pet Animal Care and Facilities Act (PACFA) Program.

25.10. Adopted March 16, 2023 – Effective May 15, 2023

Statutory Authority:

The Commissioner of Agriculture adopts these rules pursuant to §35-80-109(2), C.R.S.

Purpose:

The purpose of this rulemaking is to effect the changes from House Bill 21-1160, which requires animal shelters and rescues to provide for the behavioral needs of dogs and cats in their care. This rulemaking also implements requirements for all licensed facilities to create and enforce a contingency plan to address emergency situations, and requires licensed facilities that transport, move or import pet animals to have a Disease Control and Treatment (DCAT) Plan. In addition, these rule amendments update environmental conditions within facilities, remove the requirement to keep weekly records for the temperature and humidity control for herptiles, add pet handlers to the types of facilities that must get written permission to commingle dogs, add non-pharmaceutical drugs to the list of drugs that groomers cannot use, add minimum space requirements for animals in isolation, add isolation room cleaning requirements, limit the number of animals allowed in foster homes on behalf of animal shelters, and add a written disclosure requirement for any injury, illness or abnormality.

Factual Policy and Issues:

House Bill 21-1160 requires animal shelters and rescues to provide for the behavioral and enrichment needs of animals in their care, thereby improving the quality of life for pet animals in Colorado. The Commissioner received comments expressing concern that the proposed rule changes encouraged euthanasia. As such, the Commissioner removed language referencing euthanasia from Part 18.25.2 and Part 1.31. Disposition of cats and dogs is at the discretion of the animal shelter or rescue pursuant to 35-80-106.3(1), C.R.S.

This rulemaking also improves the safety of pet animals in Colorado by requiring the creation and enforcement written contingency plans for emergency situations and disasters, and a written Disease Control and Treatment (DCAT) plan for any facility that transfers, moves or imports animals.

Additionally, reviewers updated and added rules that reduce renewal penalty fees, require facilities provide for environmental conditions, require pet handlers to have written permission to commingle dogs, restrict groomers use of non-pharmaceutical drugs, limit animal shelters use of foster homes, and requires written disclosure of any injury, illness or abnormality by any facility adopting or selling pet animals.

25.11. Adopted Month Day, Year – Effective Month Day, Year

Statutory Authority:

The Commissioner of Agriculture adopts these rules pursuant to § 35-80-109(2), C.R.S.

Purpose:

The purpose of this rulemaking is to implement the changes from Senate Bill 24-045, which amended § 35-80-106.4, C.R.S., and requires animal shelters and rescues to sterilize dogs and cats prior to adoption. The amendments to Senate Bill 24-045 and the proposed rules clarify when an exemption can be granted, and the recordkeeping and reporting requirements for such exemptions. In addition, this

rulemaking adds new definitions, changes threshold numbers for the breeding, rescue and shelter of herptiles, updates enclosure requirements for some species, updates cleaning, sanitation and isolation rules, updates rules regarding commingling of animals, adds a new rule requiring certain vaccinations for dogs, cats and ferrets imported into Colorado, updates recordkeeping requirements for dogs and cats in grooming, boarding/training and pet handler facilities, and updates notification requirements of pet transporters.

Factual Policy and Issues:

This proposed rulemaking affects the changes from Senate Bill 24-045 and improves the safety and welfare of pet animals in Colorado. These rules clarify the grounds for an exemption to the sterilization requirements in § 35-80-106.4, C.R.S., thereby reducing the number of pet animals that are not sterilized for reasons unrelated to the health of the animal. In addition, these proposed rules clarify definitions, reduce threshold numbers for licensure, and update enclosure, cleaning and sanitation and commingling requirements, and update recordkeeping and notification requirements. These rules also establish vaccination requirements for animals imported into Colorado thereby reducing the risk of disease transmission and outbreak in the state, which safeguards not only pet animals but caretakers as well.

COLORADO
Department of Agriculture

Notice of Public Rulemaking Hearing

For Amendments to:

- **Rules Pertaining to the Administration and Enforcement of the Pet Animal Care and Facilities Act**
- 8 CCR 1202-15, Parts 1, 2, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.

Public Rulemaking Hearing

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

- **Date**: April 24, 2025
- **Time**: 9:00 a.m.
- **Location**: This hearing will be held via Zoom
- **Call Information**: 1-719-359-4580
- **Meeting ID**: 847 8579 1996
- **Passcode**: 146918

In order to maintain a proper hearing record

1. You are encouraged to pre-register by completing this Google form, OR
2. You may send your name and telephone number to cda_rulemaking@state.co.us.

   Note: Pre-registration is not required to participate in the hearing.

COLORADO
Department of Agriculture

Proposed Rule Amendment Summary

The Commissioner of Agriculture proposes these rule amendments to implement change from Senate Bill 24-045 which amended §35-80-106.4, C.R.S., and requires animal shelters and rescues to sterilize dogs and cats prior to adoption. These amendments clarify when an exemption can be granted, and the recordkeeping and reporting requirements for such exemptions.

Additionally, this rulemaking adds new definitions, changes threshold numbers for the breeding, rescue and shelter of herptiles, updates enclosure requirements for some species, updates cleaning, sanitation and isolation rules, updates rules regarding commingling of animals, adds a new rule requiring certain vaccinations for dogs, cats and ferrets imported into Colorado, updates recordkeeping requirements for dogs and cats in grooming, boarding/training and pet handler facilities, and updates notification requirements of pet transporters.

Public Comment

Any interested party may file written comments with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at cda_rulemaking@state.co.us.

Copies of the Rule

A copy of the proposed rule is available on the Department of Agriculture's website at ag.colorado.gov or may be obtained by calling 720-795-3510. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.

Notice of Proposed Rulemaking

Tracking number

2025-00118

Department

1200 - Department of Agriculture

Agency

1206 - Conservation Services Division

CCR number

8 CCR 1206-5

Rule title

RULES PERTAINING TO THE AGRICULTURAL STEWARDSHIP TAX CREDIT

Rulemaking Hearing

Date

04/18/2025

Time

09:00 AM

Location

Zoom - link in hearing notice

Subjects and issues involved

Section 39-22-561, et seq., C.R.S., creates an agricultural stewardship tax credit. The proposed rules provide guidance to administer the application submission and review process required to claim the tax credit; to specify requirements for implementing and demonstrating completion of the Qualified Stewardship Practice(s) described in the application; to set tax credit amounts and parameters affecting the same; and to issue a tax credit certificate.

Statutory authority

39-22-561(2)(b), (3)(a), and (8), C.R.S.

Contact information

Name

Madison Murphy

Title

Chief Administrative Officer

Telephone

7207953510

Email

cda_rulemaking@state.co.us

COLORADO DEPARTMENT OF AGRICULTURE

Conservation Services Division

Rules Pertaining to the Agricultural Stewardship Tax Credit

8 CCR 1206-5

1. Definitions

1.1. “Agricultural land” has the meaning set forth in section 39-1-102(1.6), C.R.S.

1.2. “Agricultural Stewardship Tax Credit” means that tax credit established by section 39-22-561, *et seq.*, C.R.S.

1.3. “Annual Practices" describes agricultural stewardship practices that are implemented on operations that plant and harvest crops within one season.

1.4. “Applicant” means the Qualified Taxpayer applying for an Agricultural Stewardship Tax Credit in a given year.

1.5. “Department” or “CDA” means the Colorado Department of Agriculture created in section 35-1-103, C.R.S.

1.6. "Farm” has the meaning set forth in section 39-1-102 (3.5), C.R.S.

1.7. “Notice of Completeness” means the written notice that the Colorado Department of Agriculture provides to an Applicant who has submitted a complete application for an Agricultural Stewardship Tax Credit.

1.8. “Perennial Practices” describes agricultural stewardship practices that are implemented on operations that focus on the cultivation and management of crops that are not harvested or replanted within one calendar year.

1.9. “Qualified Stewardship Practice” has the meaning set forth in section 39-22-561(2)(b), C.R.S.

1.10. "Qualified Taxpayer" has the meaning set forth in section 39-22-561(2)(c), C.R.S.

1.11. “Ranch” has the meaning set forth in section 39-1-102(13.5), C.R.S.

1.12. “Supplemental Practices” describe Qualified Stewardship Practices or exercises that are relevant to and can be implemented on any operation type and in combination with Annual or Perennial Practices.

1.13. “Tax Credit Certificate" or "Credit Certificate" means a credit certificate awarded under the Agricultural Stewardship Tax Credit program as defined at section 39-22-561(2)(a), C.R.S.

1.14. "Waitlist" means that list described in section 39-22-561(6)(a), C.R.S.

2. Tax Credit Application Process

2.1. The Department will post the full application, required documents, and the date the Tax Credit Certificate application opens on the Agricultural Stewardship Tax Credit website: https://ag.colorado.gov/ag-stewardship-tax.

2.2. An Applicant may only submit one application per calendar year. Any Tax Credit Certificate issued will apply to the tax year that begins during the calendar year for which it is awarded.

2.3. Applications will be reviewed in the order received, based on the date and time the Department receives an application.

2.4. An Applicant must submit a complete Tax Credit Certificate application and provide all required documents, materials, and any other information to support the claimed Qualified Stewardship Practice described in Section 7 below. Upon reviewing the application, the Department will notify an Applicant if the Applicant's application is incomplete or complete.

2.4.1. An Applicant will have 10 business days from the date of the Department's written notification of incompleteness to correct any deficiencies, after which the Department will deny the application.

2.5. The Department will issue tax credits in an aggregate amount of three million dollars per calendar year. After the Department has issued tax credits in an aggregate amount of three million dollars per calendar year, the Department will place additional claims in an aggregate amount of two million dollars per calendar year on a Waitlist. After the Department has placed additional claims in an aggregate amount of two million dollars per calendar year on a Waitlist, the Department will deny any remaining claims in that calendar year.

2.6. An eligible Applicant may only receive a tax credit for the calendar year in which the Applicant implemented the Qualified Stewardship Practice(s).

2.7. For an Applicant who submits a complete application, including the supporting documents for the identified Qualified Stewardship Practice(s) identified in Section 7 below, the Department will issue a Notice of Completeness, which will include the estimated dollar amount of the tax credit awarded to the Applicant, based upon the proposed Qualified Stewardship Practice(s) and the proposed acreage impacted. The Notice of Completeness will also include relevant deadlines based on the identified Qualified Stewardship Practice(s).

2.7.1. In order to be awarded a Tax Credit Certificate, Applicants must comply with the Department's demonstration requirements, including any deadlines. Failure to comply with any demonstration requirements or deadlines may constitute an immediate denial of the application.

2.7.2. If an eligible Applicant receives a Notice of Completeness and is unable to implement or complete the Qualified Stewardship Practice(s) within that calendar year, the Applicant must notify the Department in a timely manner.

2.8. Per section 39-22-561(3)(b)(I), C.R.S., an Applicant may only receive an Agricultural Stewardship Tax Credit for three income tax years.

3. Waitlist

3.1. After the Department has issued tax credits in an aggregate amount of three million dollars in a calendar year, the Department will place no more than two million dollars in applications for a tax credit on a Waitlist, in the following priority:

3.1.1. First, to a Qualified Taxpayer who has been issued a Tax Credit Certificate in the calendar year preceding the calendar year in which the Qualified Taxpayer is placed on the Waitlist.

3.1.2. Second, to a Qualified Taxpayer whom the Department previously placed on the Waitlist.

3.2. The Department will not place on the Waitlist an Applicant who has not complied with the Department's implementation or demonstration requirements.

3.3. The Department will notify an Applicant when the Applicant is on the Waitlist.

3.4. An Applicant on the Waitlist will be issued a Tax Credit Certificate for the following calendar year after the Applicant has implemented the Qualified Stewardship Practice(s) identified in the Applicant's application and successfully demonstrated implementation, as described in Section 4 below.

4. Implementing and Demonstrating Qualified Stewardship Practices

4.1. The Applicant will be responsible for submission of the supporting documentation for each Qualified Stewardship Practice(s) described below in Section 7, including complying with any of the deadlines described in the Notice of Completeness.

4.2. An Applicant who receives a Notice of Completeness per Section 2.7 above understands and agrees that the Department may conduct a site inspection to confirm that the Qualified Stewardship Practice(s) conforms to the Applicant's application.

4.3. Failure to comply with any demonstration requirements or deadlines may constitute an immediate denial of the application.

5. Tax Credit Certificate Issuance

5.1. The Department will only issue a Tax Credit Certificate to an Applicant who has documented successful implementation of the Qualified Stewardship Practice(s) described in the Applicant's application and consistent with any deadlines in the Notice of Completeness.

5.2. Pursuant to section 39-22-561(5), C.R.S., a Qualified Taxpayer must file the Tax Credit Certificate with the Qualified Taxpayer's state income tax return.

5.3. The final Tax Credit Certificate dollar amount issued by the Department will reflect only those Qualified Stewardship Practices and acreages identified in the application and Notice of Completeness and subsequently implemented and demonstrated in the calendar year for the tax year for which the Tax Credit Certificate is issued.

5.4. Per sections 39-22-561(6) and (7), C.R.S., if the tax credit exceeds the income tax due on the income of the Qualified Taxpayer for the taxable year, the excess credit may not be carried forward and must be refunded to the Qualified Taxpayer.

5.5. Per sections 39-22-561(6) and (7), C.R.S., Tax Credit Certificates are not transferable.

6. Tax Credit Certificate Award Structure

6.1. The amount of the Tax Credit Certificate issued to a Qualified Taxpayer will be based on a) the number of Qualified Stewardship Practices implemented per acre; b) the category assigned to those Qualified Stewardship Practices per 7 below; and c) the acreage upon which the Qualified Stewardship Practice(s) is implemented. No Tax Credit Certificate shall exceed the maximum allowable amounts in section 39-22-561(3)(a)(I) - (III), C.R.S.

6.2. **Number of Qualified Stewardship Practice Implemented Per Acre.** Applicants may implement more than one Qualified Stewardship Practice.

6.2.1. Total tax credit amount will be calculated by 1) calculating each dollar per acre for each Qualified Stewardship Practice, based on practice categories and acreage, and then 2) adding tax credit amounts together.

6.2.2. Not all Qualified Stewardship Practices are compatible. Section 7 below identifies which Qualified Stewardship Practices cannot be combined or otherwise implemented on the same acre of land.

6.3. **Practice Category.** Each Qualified Stewardship Practice is categorized into one of three categories. These categories are based on complexity to implement and ecosystem benefits associated with each Qualified Stewardship Practice. Section 7 below identifies the category assigned to each Qualified Stewardship Practice.

6.3.1. Category 1 Practices (those practices that are difficult to implement or have a greater benefit related to increasing soil health, improving water efficiency, or creating a more diverse and beneficial ecosystem) are eligible to receive a maximum of $50 per acre.

6.3.2. Category 2 Practices (those practices that are easier to implement or have a medium benefit related to increasing soil health, improving water efficiency, or creating a more diverse and beneficial ecosystem) are eligible to receive a maximum of $30 per acre.

6.3.3. Category 3 Practices (those practices that are the easiest to implement or have a reduced benefit related to increasing soil health, improving water efficiency, or creating a more diverse and beneficial ecosystem) are eligible to receive a maximum of $10 per acre.

6.4. **Application of Acreage to Tax Credit Certificate.** Tax Credit Certificate amounts will be based on total acres subject to a Qualified Stewardship Practice(s) as follows:

6.4.1. The first 10 acres subject to the Qualified Stewardship Practice(s) will receive the maximum tax credit amount per acre for the relevant category.

6.4.2. The next 90 acres (total 100 acres) will receive the maximum credit amount of the relevant category multiplied by 0.90.

6.4.3. The next 400 acres (total 500 acres) will receive the maximum credit amount of the relevant category multiplied by 0.80.

6.4.4. Any acreage above 500 acres will receive the maximum credit amount of the relevant category multiplied by 0.70.

6.5. All tax credit amounts will be rounded to the nearest dollar.

7. Qualified Stewardship Practices

7.1. Qualified Stewardship Practices are grouped below by type (Annual Cropping Systems, Perennial Cropping Systems, and Supplemental Practices that can be implemented on either annual or perennial systems) and by category as described above in Section 6.3.

7.2. Annual Practices

7.2.1. Category 1 Practices. The following Annual Practices are Category 1 Practices: No Tillage and Seasonal Cover Cropping and Seasonal Crop Rotation.

7.2.1.1. **No Tillage.** The management practice of growing an annual crop without disturbing the soil through tillage. Removing residue directly within the seeding or transplanting area before planting primary crop or cover crops is allowed. Types of equipment associated with no-till would include flail mowers and roller/crimpers to terminate cover crops and no-till drills for seeding. Roller crimpers, herbicides, or livestock can be used to terminate cover crops. In a no-till system, no tillage is performed at any time during the calendar year.

7.2.1.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application.

(a) Written plan specifically explaining how no-tillage practices will be implemented, including details about implement/equipment types to be used on the proposed land, and

(b) Map showing where practice will occur.

7.2.1.1.2. Supporting Documentation. The following will be required to demonstrate successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records or logs with specific focus on lack of tillage (can include records from specialized software),

(b) Geotagged and time-stamped photos showing field preparation, no-till planting, crop termination, etc. with no visible tillage marks throughout the growing season, and

(c) If applicable, records of herbicide or livestock used for terminating crops.

7.2.1.1.3. Eligible Combined Practices. This practice can be combined with any other Annual Practice and any Supplemental Practices except Minimized Tillage. It cannot be combined with any Perennial Practice.

7.2.1.2. **Seasonal Cover Cropping and Seasonal Crop Rotation.** The management practice of growing a crop between successive production crop plantings, companion planted into production crops, or alley cropping (i.e., growing trees/shrubs in alternating rows with other crops). These plantings are done within the relevant crop year to protect soil or fields that would otherwise be bare for certain periods of the year, increase species diversity within the cropping system, slow soil erosion, retain soil moisture, suppress weeds, and improve soil health. This practice is specific to annual cropping unless it is utilized as alley cropping in orchards, vineyards, or hops.

7.2.1.2.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A written plan with specific details about cover cropping, companion planting or alley cropping and that must specify species to be planted, seeding density, and method of planting, and

(b) Map showing where practice will occur.

7.2.1.2.2. Supporting Documentation. The following will be required to demonstrate successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records or logs with specific focus on cover cropping, companion plantings, or alley cropping (can include records from specialized software). Records must specify planting dates, species planted, seeding density, method of planting, and method of termination,

(b) Geotagged and time-stamped photos showing all planting activity, and

(c) Seed tags for all plantings.

7.2.1.2.3. Eligible Combined Practices. This practice can be combined with any other Annual Practice and any Supplemental Practices. It cannot be combined with Perennial Practices.

7.2.2. Category 2 Practices. The following Annual Practice is a Category 2 Practice: Minimized Tillage.

7.2.2.1. **Minimized Tillage.** A management practice specific to annual crop systems that limits soil-disturbing activities while growing and harvesting crops with targeted and appropriate tilling of field surfaces. This includes minimizing tillage frequency, depth, or total area disturbed within a field. Minimized tillage practices include strip-tilling, ridge-tilling, mulch-tilling, and vertical/shallow-tilling. Strip tilling involves only tilling the soil that is within the seeded row, therefore leaving soil structure outside of the bed undisturbed. Vertical tillage involves mixing and chopping plant residue into the topsoil; this tilling process is shallow and does not disturb lower layers of soil. In a minimal tillage system, the producer reduces the level of mechanical soil disruption while still preparing a suitable seedbed for planting and managing crop residues. Tillage should not exceed 3 inches in depth OR surface disturbance must not exceed 30% with a maximum tillage depth of 6 inches. In a minimal tillage system, no intensive tillage (any tillage that goes beyond 6 inches in depth or disturbs >30% of the soil surface) is implemented in the relevant calendar year.

7.2.2.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) Written plan which specifically outlines tillage frequency, depth, type of disturbance, type of equipment to be used, and termination plan, and

(b) Map showing where practice will occur.

7.2.2.1.2. Supporting Documentation. The following will be required to demonstrate successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records or logs of tillage equipment used (e.g., strip-till or shallow-till implements) and tillage depth (can include records from specialized software),

(b) Geotagged and time-stamped photos of land before, during, and after field prep, tillage, planting, and termination activities, and

(c) If applicable, records of herbicide or livestock used for terminating crops.

7.2.2.1.3. Eligible Combined Practices. This practice can be combined with any other Annual Practice and any Supplemental Practices except No Tillage.

7.2.3. Category 3 Practices. The following Annual Practices are Category 3 Practices: Managed Livestock Grazing on Cover Crop and Residue Management.

7.2.3.1. **Managed Livestock Grazing on Cover Crops.** The management practice of moving grazing livestock onto annual cropland to manage vegetation growth, increase or maintain forage production, and to improve animal, plant, and soil health. This practice is specific to producers that plant cover crops and then graze those crops with livestock.

7.2.3.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A written plan with specific details about cover cropping and livestock grazing those cover crops and that must specify what type of cover crop will be used, how many animals will graze the crop, and approximate timing of grazing events, and

(b) Map showing where practice will occur.

7.2.3.1.2. Supporting Documentation. The following will be required to demonstrate successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records with specific details about cover cropping and livestock grazing those cover crops (can include records from specialized software). The plan must specify what type of cover crop was planted, how many animals grazed the crop, and timing/length of grazing events, and

(b) Geotagged and time-stamped photos of livestock grazing the cover crop.

7.2.3.1.3 Eligible Combined Practices. This practice can be combined with any other Annual Practice and any Supplemental Practices except Residue Management.

7.2.3.2. **Residue Management.** The management practice of maximizing ground cover on annual cropland throughout dormant/fallow seasons by making decisions to actively retain a portion of all cash crop residue on the field where it originates. This practice includes light incorporation of residue to prevent residue from blowing away and moving grazing livestock onto cropland to utilize crop residue and to improve animal, plant, and soil health. This practice only qualifies if a producer has >30% ground cover from crop residue. When producers are grazing residue from their primary crop, animals must be removed before bare ground reaches >30%.

7.2.3.2.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) Written plan with specific details about how residue will be managed to maximize covered ground. The plan must specify what cash crop is grown, how the crop is harvested, and how the residue will be managed after harvest to leave no more than 30% of ground surface uncovered through dormant seasons, and

(b) Map showing where practice will occur.

7.2.3.2.2. Supporting Documentation. The following will be required to demonstrate successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records with specific details about how residue was managed to maximize ground cover (can include records from specialized software). Records must specify what cash crop was grown, how the crop was harvested, and how the residue was managed after harvest, and

(b) Geotagged and time-stamped photos showing crop residue levels before, during, and after grazing or incorporation.

7.2.3.2.3. Eligible Combined Practices. This practice can be combined with any other Annual Practice and any Supplemental Practice except Managed Livestock Grazing on Cover Crops. It cannot be combined with any Perennial Practice.

7.3. Perennial Practices

7.3.1. Category 1 Practices. The following Perennial Practices are Category 1 Practices: Orchard and Vineyard Netting, Pollinator Habitat, Conservation Cover, and Virtual Fencing.

7.3.1.1. **Orchard and Vineyard Netting.** The management practice of utilizing protective mesh netting over trees/vines to reduce pest pressure from insects and birds. This physical barrier prevents damage from common orchard pests like codling moths, Japanese beetles, and fruit-feeding birds, reducing the need for chemical controls and increasing fruit/berry yield and quality. Netting should be applied seasonally and removed in the dormant season.

7.3.1.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A written plan with specific details for proposed netting application on an orchard/block and that must specify the type of netting, application method, application timing, and why netting is being applied, and

(b) Map showing orchard or block where practice will occur.

7.3.1.1.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance a Tax Credit Certificate:

(a) Written records with specific details about all netting that was applied to an orchard/block (can include records from specialized software). Records must specify type of netting, application method, application timing, and why the netting was applied, and

(b) Geotagged and time-stamped photos of netting application and orchard/block conditions over time.

7.3.1.1.3. Eligible Combined Practices. This practice can be combined with Seasonal Cover Cropping and Seasonal Crop Rotation (Alley Cropping) and Supplemental Practices. It cannot be combined with any Perennial Practice.

7.3.1.2. **Pollinator Habitat Planting.** The management practice of planting perennial cover for the specific purpose of establishing multi-species habitat for pollinating insects. Species established should be a diverse mix of flowering plants with emphasis on staggered flowering times throughout the spring/summer/fall seasons. Specific to the relevant calendar year, pollinator plantings should not be harvested during times of the year when pollinators are active but can be grazed by livestock during times of pollinator dormancy.

7.3.1.2.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A written plan with specific details for proposed planting and seeding activities that must specify species to be planted, seeding density, method of planting, and estimated flowering windows for each species, and

(b) Map showing where practice will occur.

7.3.1.2.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records with specific details about planting and seeding efforts (can include records from specialized software). Records must specify planting dates, species planted, and seeding density,

(b) Geotagged and time-stamped photos of planting activities and field conditions over time, and

(c) Seed tags for all species planted.

7.3.1.2.3. Eligible Combined Practices. This practice can only be combined with Supplemental Practices. It cannot be combined with any Annual Practices or any Perennial Practices.

7.3.1.3. **Conservation Cover.** The management practice of establishing perennial vegetative cover on land that is not being used for crop production or livestock

grazing. Planting species should be chosen to provide feed or habitat for native wildlife. Ground covered on this practice can include field borders/corners or tracts specifically designated to provide wildlife habitat.

7.3.1.3.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A written plan with specific details for proposed planting and seeding activities that must specify species to be planted, seeding density, method of planting, purpose of cover, and long-term plans for maintenance of the stand, and

(b) Map showing where practice will occur.

7.3.1.3.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records with specific details about planting and seeding efforts (can include records from specialized software). Records must specify planting dates, species planted, seeding density, and method of planting, and

(b) Geotagged and time-stamped photos of planting activities and field conditions over time,

(c) Seed tags for all species planted.

7.3.1.3.3. Eligible Combined Practices. This practice can only be combined with Supplemental Practices. It cannot be combined with any Annual Practice or any Perennial Practice.

7.3.1.4. **Virtual Fencing.** The practice of utilizing virtual fencing as a precision livestock management practice that uses GPS technology and wireless communication to control animal movement without physical barriers. This system employs collars worn by livestock that emit auditory cues and mild electric stimuli to guide animals within designated boundaries, reducing the need for traditional fencing. Virtual fencing allows for dynamic grazing management, improved pasture utilization, and protection of sensitive environmental areas by easily adjusting containment zones through digital mapping. This practice enhances efficiency, reduces infrastructure costs, and supports sustainable grazing by promoting even forage distribution and minimizing overgrazing.

7.3.1.4.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A livestock management plan with specific details about the application of virtual fencing technologies. Plans should include head count for animals involved, when the technology will be implemented, and how the technology will be implemented to avoid the use of physical barriers and/or protect riparian/wetlands/sensitive areas. Plans/printouts from the provider company can be used for this application, and

(b) Map of all land to be included in the virtual fencing management plan.

7.3.1.4.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Reports generated by virtual fencing software systems showing livestock movement throughout the season. Reports should include head count of animals involved, when the technology was implemented, and how the technology was implemented to avoid the use of physical barriers and/or protect riparian/wetlands/sensitive areas, and

(b) Geotagged and time-stamped photos of livestock wearing collars, collar application, and base stations.

7.3.1.4.3. Eligible Combined Practices. This practice can only be combined with Rangeland Planting and Overseeding and Supplemental Practices.

7.3.2. Category 2 Practices. The following Perennial Practice is a Category 2 Practice: Prescribed Grazing.

7.3.2.1. **Prescribed Grazing.** A management practice that involves carefully planned and controlled livestock grazing to achieve specific land and ecological management goals. This practice is designed to optimize the health of the land, such as promoting plant diversity, controlling invasive species, improving soil health, and preventing overgrazing. It requires a strategic approach, with the timing, duration, and intensity of grazing tailored to the needs of the land and its ecosystem. This process must take into account forage availability, soil conditions, and local environmental factors to create a sustainable grazing plan. Fence placement, cross fencing, strategic placement of watering facilities, location of supplement/mineral stations, and/or bale/swath grazing are important tools in the implementation of this practice.

7.3.2.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A grazing management plan specifying intended stocking rates, grazing schedules, and rotation plans. The plan must specify how the use of paddocks, fencing, watering facilities, mineral/supplement stations, and/or bale/swath grazing will be used to control livestock movement patterns. Details should include intended efforts to protect riparian/wetlands and other sensitive areas that may be negatively impacted by livestock usage. Applicants must demonstrate intent to avoid overgrazing and allow for proper resting periods for fields or paddocks, and

(b) Map of all land included in grazing management plan.

7.3.2.1.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records of actual stocking rates, grazing schedules, and rotations (can include records from specialized software). Records must specify how the use of paddocks, fencing, watering facilities, mineral/supplement stations, and/or bale/swath grazing were used to control livestock movement patterns. Records should demonstrate that maximum efforts were implemented to protect riparian/wetlands and other sensitive areas,

(b) Written explanation of any deviation from plans described in the Applicant's application and why these deviations occurred (weather factors, accidental, etc.),

(c) Geotagged and time-stamped photos of land before, during, and after grazing events with specific emphasis on demonstrating that overgrazing did not occur, and

(d) Records of forage production, utilization, and rest periods for grazed areas.

7.3.2.1.3. Eligible Combined Practices. This practice can only be combined with Rangeland Planting and Overseeding and Supplemental Practices.

7.3.3. Category 3 Practices. The following Perennial Practices are Category 3 Practices: Rangeland Planting and Overseeding and Planting or Overseeding on Perennial Hayland.

7.3.3.1. **Rangeland Planting and Overseeding.** The management practice of planting and overseeding on rangeland to improve degraded range, reduce bare spots, increase species diversity, or increase forage quantity/quality for livestock.

7.3.3.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A written plan outlining specific details for proposed planting and seeding activities and that must specify species to be planted, seeding density, and method of planting, and

(b) Map showing where practice will occur.

7.3.3.1.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records with specific details about planting and seeding efforts (can include records from specialized software). Records must specify planting dates, species planted, and seeding density,

(b) Geotagged and time-stamped photos of planting activities and field conditions over time, and

(c) Seed tags for all species planted.

7.3.3.1.3. Eligible Combined Practices. This practice can only be combined with Prescribed Grazing or Virtual Fencing and Supplemental Practices.

7.3.3.2. **Planting or Overseeding on Perennial Hayland.** The management practice of planting and overseeding on perennial hayland to increase stand production, reduce bare spots, or increase species diversity. Hayland is defined as ground that may or may not have livestock integrated but that is cut and harvested for forage at least one time during the relevant calendar year.

7.3.3.2.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A written plan with specific details for proposed planting and seeding activities and that must specify species to be planted, seeding density, and method of planting, and

(b) Map showing where practice will occur.

7.3.3.2.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records with specific details about planting and seeding efforts (can include records from specialized software). Records must specify planting dates, species planted and seeding density,

(b) Geotagged and time-stamped photos of planting activities and field conditions over time, and

(c) Seed tags for all species planted.

7.3.3.2.3. Eligible Combined Practices. This practice can only be combined with Supplemental Practices. It cannot be combined with any Annual Practices or any Perennial Practices.

7.4. Supplemental Practices

7.4.1. Category 1 Practices. No Supplemental Practices are classified as Category 1 Practices.

7.4.2. Category 2 Practices. The following Supplemental Practices are Category 2 Practices: Soil Carbon Amendment, Irrigation Water Management, and Invasive Plant Management.

7.4.2.1. **Soil Carbon Amendment.** A practice aimed at improving soil health and increasing its carbon content through the application of organic materials like livestock manure, compost, compost tea, and compost extract. Biosolids (i.e., treated sewage sludge) may also be applied, provided biosolids are first composted by a state-certified facility to ensure safety and quality. Material applied under this practice must be done with consideration of nutrient content and to prevent nutrient runoff to local waterways, including testing for nutrient content and application in accordance with agronomic rates to avoid over-application.

7.4.2.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A written plan with specific details for the application of soil carbon amendments that must specify all materials to be applied, application methods, and application rates, and

(b) Map showing where practice will occur.

7.4.2.1.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records detailing all soil carbon amendment actions carried out, including specific materials applied, application methods, rates, and timing of applications (can include records from specialized software). Records must show that nutrient containing material was not overapplied (agronomic rate) compared to a soil analysis taken prior to application,

(b) Geotagged and time-stamped photos documenting all material application activities,

(c) Laboratory grade soil nutrient analysis taken before application, and

(d) Nutrient analysis for all applied materials.

7.4.2.1.3. Eligible Combined Practices. This practice can be combined with any Annual Practices, Perennial Practices, and Supplemental Practices.

7.4.2.2. **Irrigation Water Management.** A practice focused on improving the timing and efficiency of irrigation events to optimize water use and energy consumption while ensuring plants receive adequate water for healthy growth. This practice involves precisely timing irrigation events to align with the plant's water needs, minimizing waste, and preventing over-irrigation. To determine the optimal timing for irrigation, producers must utilize advanced techniques such as monitoring soil moisture levels or tracking evapotranspiration (ET), which provides insights into the plant's actual water requirements based on environmental conditions. This management practice can also include the use of variable rate irrigation systems, surge valves, and other irrigation. infrastructure/technologies designed to increase irrigation efficiency.

7.4.2.2.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A written irrigation management plan with proposed timing, frequency, and application amounts for all irrigation events that outlines strategies for optimizing irrigation timing and efficiency. The plan must outline these efforts by providing details for any novel irrigation technologies to be used, efforts to monitor soil moisture levels, time irrigation events using evapotranspiration (ET) rates, or other novel methods of assessing crop water needs, along with how irrigation schedules will be adjusted based on these devices and measurements. The plan should also include documentation of irrigation system specifications, including the type of irrigation system used (e.g., drip, sprinkler)

and any technologies or sensors in place for monitoring water use, and

(b) Map of all land included in the irrigation management plan.

7.4.2.2.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records showing the timing, frequency, and application rates for all irrigation events for the season with specific details about any novel irrigation technologies used, efforts to monitor soil moisture levels, efforts to time irrigation events using evapotranspiration (ET) rates, or any other novel methods of assessing crop water needs that were used throughout the irrigation season. These records can include printouts from soil moisture monitoring systems, data from ET gauges (local to the field), data from weather stations with automated ET calculations (local to the field), ET calculations from CSU weather stations, or other types of software used for the electronic tracking of irrigation water management, and

(b) Geotagged and time-stamped photos of all devices used towards irrigation efficiency, including soil moisture monitoring systems, ET gauges, variable rate sprinkler systems, surge valves, etc.

7.4.2.2.3. Eligible Combined Practices. This practice can be combined with any other Annual Practices, Perennial Practices, or Supplemental Practices.

7.4.2.3. **Invasive Plant Management.** A management practice focused on eliminating, controlling, or preventing the spread of invasive plant species that threaten local ecosystems, agricultural productivity, and biodiversity. For the purposes of this Qualified Stewardship Practice, "invasive plant species" means any weed species, including state-listed noxious weeds or locally designated noxious weeds, whose introduction or presence causes or is likely to cause economic or environmental harm or harm to human health. This term includes kochia, Russian thistle, pigweed, and palmer amaranth, but does not include sagebrush, yucca, cactus, milkweed, or other native plants that provide or can provide critical habitat to wildlife. Effective control requires a management plan specific to fields claimed for the tax credit that identifies target species, assesses the infestation level, and outlines appropriate methods for control, including cultural, mechanical, biological, or chemical approaches. Management of state-listed noxious weed species under this practice must align with state management objectives in accordance with the Noxious Weed Act, § 35-5.5-101, *et seq.*, C.R.S., and any local government’s weed management plan. Regular monitoring and follow-up are essential to assess the success of the plan and to adapt strategies as needed.

7.4.2.3.1. Supporting Documents. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A management plan outlining strategies to eliminate, control, and prevent the spread of invasive plant species. All plans must identify the target species, provide an assessment of infestation levels and details for intended control methods, as well as details

for follow-up monitoring with management strategies for observed results,

(b) Plans featuring biological control must specify control species to be utilized and provide details of control species introduction, and

(c) Map of all land included in the management plan.

7.4.2.3.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records detailing all efforts taken to eliminate, control, and prevent the spread of invasive plant species (can include records from specialized software). Records must identify the species targeted, explain what control methods were employed, and include all followup monitoring and management efforts that occurred in the calendar year,

(b) Geotagged and time-stamped photos of all efforts taken under the management plan to control invasive plant species, including chemical control methods, manual removal, and biocontrol releases, and

(c) Geotagged and time-stamped photos taken before and after management efforts were enacted.

7.4.2.3.3. Eligible Combined Practices. This practice can be combined with any other Annual Practices, Perennial Practices, or Supplemental Practices.

7.4.3. Category 3 Practices. The following Supplemental Practice is a Category 3 Practice: Nutrient Management.

7.4.3.1. **Nutrient Management.** A practice aimed at optimizing fertilizer use to enhance soil health and crop productivity while minimizing environmental impact. Producers must employ advanced techniques such as split fertilizer applications, slow-release fertilizers, fertigation, or other smart application methods that ensure nutrients are delivered efficiently, in sync with the crop's needs, and at the appropriate times. These targeted applications are based on a soil analysis specific to the field, ensuring that the amounts applied meet or do not exceed the fertilizer requirements for that particular field and crop.

7.4.3.1.1. Supporting Documentation. The following will be required when an Applicant submits a Tax Credit Certificate application:

(a) A written plan with specific details for all proposed fertilizer applications that specifies fertilizer types, application methods, and application rates. To qualify for this practice, the written plan must demonstrate some form of application efficiency, such as the use of a fertigation system or timing applications with crop needs via split applications or slow-release fertilizers, and

(b) Map showing where practice will occur.

7.4.3.1.2. Supporting Documentation. The following will be required to document successful implementation of this practice prior to the issuance of a Tax Credit Certificate:

(a) Written records detailing the nutrient management practices carried out, including specific fertilizer types used, application methods, rates, and timing of applications (can include records from specialized software). Records must show that fertilizer was not overapplied (agronomic rate) compared to a soil analysis taken prior to application,

(b) Geotagged and time-stamped photos documenting fertilizer application activities and specifically showing the efficiency efforts outlined in the Applicant's application,

(c) Laboratory grade soil nutrient analysis taken before application of fertilizer(s), and

(d) Material safety data sheets for fertilizers applied.

7.4.3.1.3. Eligible Combined Practices. This practice can be combined with any other Annual Practices, Perennial Practices, or Supplemental Practices.

8. General Provisions

8.1. Applicants are responsible for complying with any applicable local, state, or federal laws and for operating within the scope of any necessary license, registration, permit, approval, or agreement. Applicants are responsible for obtaining any necessary local, state, or federal regulatory review associated with implementation of the Qualified Stewardship Practice(s) identified in the Applicant's application.

8.2. A Qualified Taxpayer who receives a Tax Credit Certificate understands and agrees that the Department may conduct further site inspections to review implementation of the Qualified Stewardship Practice(s) identified in the Applicant's application.

9. Statements of Basis, Specific Statutory Authority, and Purpose

9.1. **Adopted Month Day, Year – Effective Month Day, Year**

Statutory Authority

The Commissioner of the Colorado Department of Agriculture ("Department") adopts these rules pursuant to the Commissioner's authority under sections 39-22-561(2)(b), (3)(a), and (8), C.R.S.

Purpose

Section 39-22-561, *et seq.*, C.R.S., creates an agricultural stewardship tax credit to encourage qualified taxpayers to actively practice one or more Qualified Stewardship Practices on a farm or ranch, including any practice that increases soil health, improves water efficiency, or creates more diverse and beneficial ecosystems while maintaining the productivity of the farm or ranch. The Commissioner adopts these rules to administer the application submission and review process required to claim the tax credit; to specify requirements for implementing and demonstrating completion of the Qualified Stewardship Practice(s) described in the application; to set tax credit amounts and parameters affecting the same; and to issue a tax credit certificate consistent with the process described in the rules.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. As required by section 39-22-561(8), C.R.S., the Department held multiple virtual and in-person stakeholder engagement sessions between August 28, 2024 and February 21, 2025 wherein the Department requested and received feedback on: a) which Qualified Stewardship Practices to include; b) the Tax Credit Certificate application process; and c) the requirements for implementing and demonstrating Qualified Stewardship Practices. Incorporating the feedback received at those stakeholder meetings, Section 7 includes descriptions of various Qualified Stewardship Practices, as well as the supporting documentation required to demonstrate completion of those practices.

2. In identifying the Qualified Stewardship Practices described in Section 7, the Department relied upon the definition of Qualified Stewardship Practice in section 39-22-561(2)(b), C.R.S., practices commonly implemented by landowners participating in the Colorado Soil Health Program, and common stewardship practices described by the National Resources Conservation Service (NRCS), an agency within the United States Department of Agriculture (USDA) that provides technical and other assistance to landowners to help them conserve and improve soil, water, air, and other natural resources on private lands. All Qualified Stewardship Practices identified in Section 7 either increase soil health, improve water use efficiency, or create more diverse and beneficial ecosystems in accordance with section 39-22-561(2)(b), C.R.S.

3. When developing the Tax Credit Certificate award structure, the Department researched current costs to implement the Qualified Stewardship Practices described in Section 7, reviewed reimbursement requests from producers enrolled in the Colorado Soil Health Program and other Department programs, and considered USDA-NRCS's reimbursement rates for various conservation practices. The Department also incorporated feedback received from farmers, ranchers, researchers, and other conservation practice experts during the stakeholder engagement process in order to estimate the effect that different stewardship practices have on soil health, water quality, and resiliency, diversity, and functionality of ecosystems.

4. The Qualified Stewardship Practices defined in Section 7 differ with respect to operational complexity; length of time, ease, or cost to implement; and anticipated short- or long-term effect on soil health, water efficiency, surrounding ecosystems, and farm or ranch productivity. Therefore, Section 6.3 defines three categories of Qualified Stewardship Practices based on degree of impact and ease of implementation, and Section 7 assigns each Qualified Stewardship Practice to one of these three categories. This category assignment is taken into account when determining the Tax Credit Certificate amount associated with a given Qualified Stewardship Practice. The Department developed these categories and assigned each Qualified Stewardship Practice to a specific category based upon input from stakeholders, consultation with NRCS, the Colorado State Conservation Board, representatives from Colorado State University, and data from the Colorado Soil Health Program and USDA-NRCS programs.

5. The cost to implement a Qualified Stewardship Practice differs depending on the size of the farm or ranch implementing the practice. Because there is a cost efficiency for implementing Qualified Stewardship Practices on larger farm or ranch operations (i.e., more acres), the total acres impacted by the Qualified Stewardship Practice factor into the final Tax Credit Certificate amount. Therefore, Section 6.2 describes that the maximum credit amount is allotted to the first 10 acres under that Qualified Stewardship Practice(s), and that credit amount per acre decreases as the affected acreage increases. The Department included the specific acreage ranges that appear in Section 6.4 based upon farm census data showing approximate farm size in Colorado.

6. Although sections 39-22-561(3)(a)(I) - (III), C.R.S., increase the maximum credit amount claimed when there is more than one Qualified Stewardship Practice implemented on a piece of land, there are certain Qualified Stewardship Practices that are incompatible due to their definition and conflicting management strategies and stewardship outcomes. For example, the "No Till" Qualified Stewardship Practice requires no tillage to disturb the land during the calendar year, and thus it cannot be combined with a "Minimized

Till" Qualified Stewardship Practice, which requires tillage. Similarly, Qualified Stewardship Practices that require grazing (i.e., Prescribed Grazing) cannot be combined with Qualified Stewardship Practices that prohibit grazing (i.e., Pollinator Habitat or Conservation Cover). Finally, Annual Practices are commonly practiced on annual systems (croplands), while Perennial Practices are commonly practiced on perennial operations (hayland, rangeland), and thus Annual and Perennial Practices would not be compatible on the same acreage. In contrast, Supplemental Practices can be implemented on any type of operation and thus are compatible with all other practices. To account for such realities, the Department has included in each description of a Qualified Stewardship Practice in Section 7 whether that practice can or cannot be combined with other practices.

7. Section 39-22-561(6), C.R.S., establishes a Tax Credit Certificate waitlist that the Department will manage each year. Therefore, as described in Part 3.1, after issuing tax credits in an aggregate amount of three million dollars for a given calendar year, the Department will place no more than two million dollars in claims on a waitlist to receive a tax credit for the next calendar year. Placement on this waitlist will follow the order of priority established in section 39-22-561(6), C.R.S., and set forth in Part 3.2 and will only occur once an applicant has submitted a complete application with all required supporting documentation necessary to demonstrate implementation of the Qualified Stewardship Practice(s) described in the applicant's application. Notification of placement on the waitlist and issuance of a Tax Credit Certificate to waitlisted applicants for the next calendar year will occur as described in Part 3.

COLORADO
Department of Agriculture

Notice of Public Rulemaking Hearing

For creation of

- **Rules Pertaining to the Agricultural Stewardship Tax Credit**
- Expected 8 CCR 1206-5

Public Rulemaking Hearing

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

- **Date**: April 18, 2025
- **Time**: 9:00 a.m.
- **Location**: This hearing will be held via Zoom
- **Call Information**: 1-309-205-3325
- **Meeting ID**: 84529761796
- **Passcode**: 798157

In order to maintain a proper hearing record

1. You are encouraged to pre-register by completing this Google form, OR
2. You may send your name and telephone number to cda_rulemaking@state.co.us.

   Note: Pre-registration is not required to participate in the hearing.

COLORADO
Department of Agriculture

Proposed Rule Summary

The Commissioner of Agriculture proposes these rules to govern the Agricultural Stewardship Tax Credit, created by HB24-1249.

Public Comment

Any interested party may file written comments with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at cda_rulemaking@state.co.us.

Copies of the Rule

A copy of the proposed rule is available on the Department of Agriculture's website at ag.colorado.gov or may be obtained by calling 720-795-3510. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.

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 04/14/2025

Effective date

04/14/2025

BASIS AND PURPOSE FOR RULE 8

The purpose of Rule 8 is to establish playing rules for blackjack and procedures for conducting blackjack games in compliance with section 44-30-302 (2). The statutory basis for Rule 8 is found in sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-816, C.R.S., and 44-30-818, C.R.S.

RULE 8 RULES FOR BLACKJACK

30-899.09 The play – Buffalo Blackjack Bonus.

Buffalo Blackjack Bonus is a trademarked blackjack variation game, the rights to which are owned by Galaxy Gaming, Inc., of Las Vegas, Nevada and which may be transferred or assigned. Buffalo Blackjack Bonus shall be dealt and played following the standard rules of blackjack, except as follows:

(1) Buffalo Blackjack Bonus may be played only on tables utilizing a Buffalo style table layout. The game shall be played using one, two or six standard 52 card decks and is dealt from a dealing shoe when using six decks. Operators may choose to have the game dealt from a dealing shoe or hand dealt when using one or two decks.

Note to publisher: All previously existing paragraphs of Regulation 30-899.09 should remain a part of this Regulation.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2025-00005

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Gaming - Rules promulgated by Gaming Commission

on 02/20/2025

1 CCR 207-1

GAMING REGULATIONS

The above-referenced rules were submitted to this office on 02/24/2025 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.

March 10, 2025 13:00:05

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Banking

CCR number

3 CCR 701-7

Rule title

3 CCR 701-7 MONEY TRANSMITTERS 1 - eff 04/14/2025

Effective date

04/14/2025

MO3 Records [Section 11-110-111, 11-110-114, and 11-110-201, C.R.S.]

A. Quarterly NMLS Money Service Business Call Reports

All licensees must submit, using the NMLS portal, the NMLS Money Service Business Call Report on a calendar quarterly basis, as outlined below:

1. Licensees must complete the standard section, which includes the Permissible Investment Report and, if applicable, any expanded section of the NMLS Money Service Business Call Report.

2. The quarterly NMLS Money Service Business Call Report is due within forty-five (45) calendar days of the end of the calendar quarter.

3. Failure to properly submit a NMLS Money Service Business Call Report in a timely manner as outlined above, may result in a Late Filing Fee as set forth in the Division's Fee Schedule.

B. 1. Each licensee must make, keep, and preserve the following Records for a period of seven (7) years:

a. A general ledger containing all asset, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly.

b. Financial institution statements and reconciliation records.

2. Each licensee must make, keep, and preserve the following other Records for a period of five (5) years:

a. Record or Records of payment instruments sold, and money transmitted as required by the licensee's normal business practices.

b. Settlement sheets received from agents, if any.

c. Records of outstanding payment instruments and money transmitted.

d. Records of each payment instrument paid, and money transmitted within the period.

e. A list of the names and addresses of all of the licensee's agents, as well as copies of each agent contract.

C. NMLS Agent Report

1. Each licensee shall annually report information for each agent performing money transmission services for Colorado consumers. The annual reporting requirement will be satisfied by the quarterly agent information submission to the NMLS Portal, and the submission must include:

a. Business name of agent.

b. Street address, City, State, and Zip code of agent.

c. Telephone number of agent.

d. Money transmission services provided at the location.

2. An agent of a licensed money transmitter involved in selling or adding additional

money to Stored Value issued by the licensed money transmitter or to corporations organized under the general banking, savings and loan, or credit union laws of Colorado or the United States, is not subject to this Paragraph of this Rule.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00637

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Banking

on 02/20/2025

3 CCR 701-7

MONEY TRANSMITTERS

The above-referenced rules were submitted to this office on 02/21/2025 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.

March 12, 2025 08:23:36

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Banking

CCR number

3 CCR 701-10

Rule title

3 CCR 701-10 FINANCIAL INSTITUTION ADMINISTRATIVE RULES 1 - eff 04/14/2025

Effective date

04/14/2025

AR4 Protests to Applications for Charter, Service Area Definition, and Economic Feasibility Studies [Section 11-102-201, C.R.S., Section 11-103-304, C.R.S., Section 11-109-306, C.R.S.]

A. Any person, firm, or corporation desiring to protest an application for charter for a proposed state bank or trust company shall file with the Commissioner a notice of protest in accordance with the following schedule:

Notice of Hearing on Application for Charter Given Prior to Hearing	Notice of Protest Due to be Filed with Commissioner Prior to Hearing	Motion to Dismiss Due to be Filed with Commissioner Prior to Hearing
30-60 days	20 days	15 days
60-90 days	40 days	30 days
90 days or more	60 days	45 days

B. Any protest desiring to file a motion to dismiss a charter application based upon defects in the application or in the notice of filing pursuant to Section 11-103-303(3), C.R.S. shall file such motion within the time provided in the schedule in Paragraph (A) of this Rule.

C. Any de novo state bank, conversion to a state bank, or trust company granted preliminary approval subsequent to the published notice of hearing shall not be barred by this Rule from protesting an application for charter if the requirements of this Rule are not met in a timely manner.

D. Failure to comply with the requirements (A) - (C) of this Rule may result in the denial of the right to appear, be heard, and introduce testimony at a charter application hearing.

E. Each applicant for charter shall file with the Commissioner and deliver to each person, firm, or corporation that has filed a notice of protest, at least sixty (60) calendar days prior to the hearing on the application, a definition of the primary service area for the proposed bank and a definition of the secondary service area, if any, that the proposed bank or trust company intends to serve.

F. If the applicant for charter intends to offer a study of the economic feasibility of the proposed bank or trust company at the hearing, it shall be filed in the office of the Commissioner and delivered to each person, firm, or corporation that has filed a notice of protest at least thirty (30) calendar days prior to the hearing.

G. If the protestant intends to offer a study of the economic feasibility of the proposed bank or trust company at the hearing, such study shall be filed in the office of the Commissioner and delivered to the applicant twenty (20) calendar days prior to the hearing.

H. If the applicant for charter has any rebuttal economic feasibility material on which the applicant intends to rely, that is made necessary by a protestant's economic feasibility study, such rebuttal economic feasibility material shall be filed in the office of the Commissioner and delivered to each person, firm, or corporation that has filed a notice of protest at least ten (10) calendar days prior to the hearing.

I. Mailing, with proof of mailing, three (3) calendar days prior to a delivery date shall be deemed to constitute delivery on the required date.

J. Failure to comply with (E) - (I) of this Rule may cause the Commissioner to exclude the study, and testimony based thereon, from the hearing or to continue the hearing to another date.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00636

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Banking

on 02/20/2025

3 CCR 701-10

FINANCIAL INSTITUTION ADMINISTRATIVE RULES

The above-referenced rules were submitted to this office on 02/21/2025 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.

March 12, 2025 08:22:27

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

3 CCR 702-4 Series 4-2 LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General) 1 - eff 04/14/2025

Effective date

04/14/2025

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Regulation 4-2-103

CONCERNING TRANSPARENCY IN COVERAGE REPORTING REQUIREMENTS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-16-109, 10-16-168(3)(b), 10-16-168(4)(d) and 10-16-169, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to outline the form and manner of the price transparency files required by Section 10-16-168(4), C.R.S. and the prescription drug data collection files required under Section 10-16-169, C.R.S.

Section 3 Applicability

This regulation applies to all carriers and plans subject to the Transparency in Coverage federal rule found at 45 CFR 147.212 and Section 204 of the Consolidated Appropriations Act, 2021 (CAA) Public Law 116-260 (2020). This regulation applies to all carriers subject to the reporting requirements related to prescription drug and health care spending found at 45 CFR 149.

Section 4 Definitions

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

B. “HIOS identifier” or “HIOS Plan ID” means (i) the plan’s 14-digit health insurance oversight system identifier; or (ii) if the 14-digit identifiers are not available, the employer identification number (EIN) associated with the plan.

C. “JSON” means JavaScript Object Notation.

D. “NPI” or “national provider identifier” shall have the same meaning as found at §25.5-4-420(1)(b), C.R.S.

E. “Pharmacy benefit management firm”, “pharmacy benefit manager”, or “PBM” shall have the same meaning as found at § 10-16-102(49), C.R.S. and includes all PBMs doing business in the state.

F. “Provider” shall have the same meaning as found at § 10-16-102(56), C.R.S.

Section 5 Format and Submission

A. Beginning July 1, 2025, and January 1, 2026, and each July and January thereafter each carrier shall make publicly available and submit to the Division via secure file transfer three JSON files with information regarding:

1. Table of contents file in accordance with Section 6.B.;

2. Negotiated rates for all covered items and services between the carrier and in-network providers in accordance with the requirements of Section 6 of this regulation; and

3. Unique out-of-network allowed amounts and billed charges for covered items and services furnished by out-of-network providers in accordance with 45 CFR 147.212(b)(I)(ii) and filtered to only include data for Colorado.

If a carrier can demonstrate a material challenge with creating a JSON file, the carrier may request a different format for submission from the Division.

B. Beginning July 1, 2025, and on or before each July 1 thereafter, each carrier and/or PBM shall submit to the Division via secure file transfer a plan list (P1, P2, and/or P3), eight data files (D1-D8), and a narrative response regarding prescription drugs and health care spending in accordance with Section 204 of the Consolidated Appropriation Act, 2021, also known as the RxDC report, and accompanying templates from Centers for Medicaid and Medicare Services in accordance with the requirements in Section 7. Files D1 and D2 do not apply to PBMs.

C. Carriers shall include with each submission where they are located on the carrier’s website (if applicable) and contact email for questions regarding the data. RxDC files are not required to be posted on a carrier’s website.

Section 6 Transparency in Coverage File Submission Requirements

A. The files specified in Section 5(A) shall contain information on individual and group market coverage. Carriers may provide data on plans in which they operate as a third-party administrator, provided that carriers identify clearly to the Division when they are submitting data as a third-party administrator.

B. The files specified in Section 5(A)(2) regarding in-network rates shall contain a Colorado specific Table of Contents file that includes the following standardized labels:

1. Carrier name;

2. Plan name;

3. Market segment using the following categories:

a. Individual;

c. Small Group;

d. Large Group; or

e. Third Party Administrator or TPA, if applicable.

4. Group EIN or HIOS Plan ID;

5. File size including the number of rows and file size;

6. Date files were generated; and

7. URL Link to plan specific file on the carrier's website.

C. The files shall be filtered to include:

1. Only plans issued or delivered in Colorado;

2. Only group or billing NPIs with a corresponding Colorado zip code; and

3. Only negotiated rate and procedure code combinations for providers with 20 or more services performed in the last year, at the procedure code level not accounting for modifiers. Modifiers must be included but do not change the count of claims a billing provider has for each procedure code.

Section 7 Prescription Drug Data Collection (RxDC) Report

The file shall contain information on individual and group market coverage.

The data contained in the files shall be filtered to only contain data specific to plans in Colorado.

If the Centers for Medicaid and Medicare Services makes changes to the RxDC reporting template, the Division will accept files in the new format.

Section 8 Confidentiality and Open Records Requests

Information submitted by carriers and/or PBMs to the Division in accordance with this regulation are subject to public inspection only to the extent allowed under the "Colorado Open Records Act" §§ 24-72-201, et seq., C.R.S.

A. For the files listed in Section 5(A), no files shall be labeled as confidential.

B. For the files listed in Section 5(B), a carrier and/or PBM shall submit a “Confidentiality Index” if the carrier and/or PBM desires confidential treatment of files submitted under Section 5(B), identifying which files and columns within the files are confidential and the justification for confidentiality. Any information not marked as confidential or information provided to the Division as required by Sections 5, 6, and 7 of this regulation is presumed to be a public record and open for inspection, subject to restrictions specifically provided by law, including, but not limited to the requirements of the Colorado Open Records Act.

Section 9 Severability

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

Section 10 Incorporation by Reference

45 CFR § 147.212 published by the Government Printing Office shall mean 45 CFR § 147.212 as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 147.212. A copy of 45 CFR § 147.212 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 CFR § 147.212 may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

Public Law 116-260 (2020) published by the Government Printing Office shall mean Public Law 116-260 (2020) as published on the effective date of this regulation and does not include later amendments to or editions of Public Law 116-260 (2020). A copy of Public Law 116-260 (2020) may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of Public Law 116-260 (2020) may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

45 CFR § 149 published by the Government Printing Office shall mean 45 CFR § 149 as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 149. A copy of 45 CFR § 149 may be examined during regular business hours at the Colorado Division of

Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 CFR § 149 may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

Section 11 Enforcement

Noncompliance with this Regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 12 Effective Date

This new regulation shall be effective on April 14, 2025.

Section 13 History

New regulation effective April 14, 2025.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00611

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Insurance

on 02/18/2025

3 CCR 702-4 Series 4-2

LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)

The above-referenced rules were submitted to this office on 02/19/2025 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.

March 10, 2025 10:11:24

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-3

Rule title

4 CCR 723-3 RULES REGULATING ELECTRIC UTILITIES 1 - eff 04/14/2025

Effective date

04/14/2025

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

* * * *

[indicates omission of unaffected rules]

3407. Discontinuance of Service.

* * * *

[indicates omission of unaffected rules]

(e) A utility shall not discontinue service, other than to address safety concerns or in exigent circumstances, if one of the following is met.

* * * *

[indicates omission of unaffected rules]

(VII) Weather provisions.

(A) A utility shall postpone service discontinuance to a residential customer on any day when the National Weather Service local forecast between 6:00 a.m. and 9:00 a.m. predicts that the temperature will be 32 degrees Fahrenheit (32°F) or lower at any time in the following 24 hours, or during any additional period in which utility personnel will not be available to restore utility service in accordance with rule 3409. Nothing prohibits a utility from postponing service discontinuance when temperatures are warmer than these criteria.

(B) A utility shall postpone service discontinuance to a residential customer on any day when the National Weather Service local forecast between 6:00 a.m. and 9:00 a.m. predicts that the temperature will be 95 degrees Fahrenheit (95°F) or higher at any time in the following 24 hours, or during any additional period in which utility personnel will not be available to restore utility service in accordance with rule 3409. Nothing prohibits a utility from postponing service discontinuance when temperatures are cooler than these criteria.

(C) A utility shall postpone service discontinuance to a customer during an emergency or safety event or circumstance impacting the local area.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00565

Opinion of the Attorney General rendered in connection with the rules adopted by the

Public Utilities Commission

on 02/18/2025

4 CCR 723-3

RULES REGULATING ELECTRIC UTILITIES

The above-referenced rules were submitted to this office on 02/19/2025 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.

March 10, 2025 10:05:42

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-4

Rule title

4 CCR 723-4 RULES REGULATING GAS UTILITIES 1 - eff 04/14/2025

Effective date

04/14/2025

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-4

PART 4
RULES REGULATING GAS UTILITIES

*** * * ***

[indicates omission of unaffected rules]

4407. Discontinuance of Service.

* * * *

[indicates omission of unaffected rules]

(e) A utility shall not discontinue service, other than to address safety concerns or in exigent circumstances, if one of the following is met.

* * * *

[indicates omission of unaffected rules]

(VII) Weather provisions.

(A) A utility shall postpone service discontinuance to a residential customer on any day when the National Weather Service local forecast between 6:00 a.m. and 9:00 a.m. predicts that the temperature will be 32 degrees Fahrenheit (32°F) or lower at any time during the following 24 hours, or during any additional period in which utility personnel will not be available to restore utility service in accordance with rule 4409. Nothing prohibits a utility from postponing service discontinuance when temperatures are warmer than these criteria.

(B) A utility shall postpone service discontinuance to a customer during an emergency or safety event or circumstance impacting the local area.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00566

Opinion of the Attorney General rendered in connection with the rules adopted by the

Public Utilities Commission

on 02/18/2025

4 CCR 723-4

RULES REGULATING GAS UTILITIES

The above-referenced rules were submitted to this office on 02/19/2025 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.

March 10, 2025 10:08:24

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-6

Rule title

4 CCR 723-6 RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE 1 - eff 04/14/2025

Effective date

04/14/2025

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-6

PART 6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

TOWING CARRIER RULES

6501. Definitions.

In addition to the general definitions in rule 6001, the following definitions apply to all towing carriers and to all Commission proceedings and operations concerning towing carriers, applicants for a towing carrier permit, employees of towing carriers, and tow truck drivers.

* * * *

[indicates omission of unaffected rules]

(x) "Signature" means the name of the person, in a verifiable written or electronic format, submitted by that person physically or electronically.

* * * *

[indicates omission of unaffected rules]

6503. Towing Carrier Permit Application.

(a) In addition to completing the Commission-prescribed permit application form available on the Commission's website, an applicant must:

(I) pay an application fee, as administratively set by the Commission;

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

(III) pay the required annual fees or, if applicable, shall be in compliance with the UCR Agreement.

(IV) Each principal may be required to possess a valid Colorado-issued driver's license or identification card.

(b) A towing carrier that submits a permit application or renewal application shall disclose all principals, as defined in paragraph 6001(iii), of the towing carrier.

(c) Prior to each renewal of a towing carrier permit, a towing carrier shall submit accurate operational information, for the previous calendar year, as follows:

(I) the number of tow trucks the towing carrier operated;

(II) the volume of tows by category, including consensual, nonconsensual, and law enforcement-ordered tows;

(III) the pricing for consensual tows, if applicable; and

(IV) any other information, as determined by the Commission.

(V) This operational information shall be submitted on or before February 1 of each year, or such other date as determined by the Commission, and in such form as prescribed by the Commission.

6504. Criminal History Checks and Public Interest Determinations.

(a) This rule applies to principals, as defined in paragraph 6001(iii), of a towing carrier.

(b) Qualification determination for a towing carrier permit.

(I) Upon the Commission's receipt of results obtained from a criminal history record check, Commission staff shall make a qualification determination regarding the towing carrier's qualification status. In making this determination, Commission staff is authorized to request from the towing carrier, and the towing carrier shall provide, additional information that will assist Commission staff in making the determination. If the towing carrier either does not provide such additional information requested by Commission staff, or explain why it is unavailable, within 15 days of the request, Commission staff may deny any pending permit application or renewal application.

(II) A permit application or renewal application submitted by a towing carrier shall be denied by Commission staff, if a principal of the towing carrier has:

(A) a conviction in the state of Colorado, within the five years preceding the date the criminal history record check is completed, of any felony under any Title of C.R.S. or any towing-related offense; or

(B) an offense in any other state or in the United States that is comparable to any offense listed in subparagraph (A) within the same time periods as listed in subparagraph (A).

(III) For purposes of this rule, a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.

(IV) The Commission and Commission staff may consult and use any commercially or governmentally available information source in conducting criminal history record checks.

(c) Commission staff shall not issue a towing carrier permit to a towing carrier if a disqualifying criminal history record is found for a principal subject to this rule.

(d) Commission staff may deny a permit application or renewal application submitted by a towing carrier based on a determination that it is not in the public interest for the towing carrier to possess a permit.

(e) If a disqualifying criminal history record or public interest determination is found for a principal subject to this rule, the associated towing carrier may file a petition to qualify within 60 days of Commission staff's notification.

(I) Upon the filing of a petition for qualification, Commission staff shall be an indispensable party.

(II) The towing carrier shall bear the burden of proving that disqualification is not supported by fact or law. If the Commission qualifies a towing carrier upon petition, paragraph (b) or (d), as applicable, shall be waived as to qualification determinations for future applications regarding the events upon which Commission staff's disqualification was based.

(f) Commission staff may suspend or revoke a current towing carrier permit, as appropriate, pursuant to this rule.

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[indicates omission of unaffected rules]

6506. Equipment and Accessories.

In addition to complying with all applicable safety regulations, all tow trucks shall meet the following minimum requirements.

(a) Basic tow truck requirements.

(I) A towing carrier shall equip its tow truck(s) with engines, transmissions, differentials, driveline components, brake systems, frames, steering components, and suspensions of sufficiently heavy construction to safely winch, lift, tow, load, and transport the towed motor vehicle.

(A) A towing carrier shall not tow a motor vehicle unless it has the necessary equipment to safely conduct the tow, in accordance with the requirements in Title 42, C.R.S., and 49 C.F.R. If separating a power unit and trailer, in combination, is necessary to safely tow the motor vehicle, it must be done in accordance with paragraph 6511(h).

(II) A towing carrier shall maintain its tow truck(s) in a manner ensuring the safe winching, lifting, towing, loading, and transporting of the towed motor vehicle.

(III) A towing carrier shall ensure its tow truck(s) have each of the following:

(A) a GVWR of at least 10,000 pounds;

(B) fender coverings for front and rear wheels;

(C) the following operational electric lights:

(i) one spotlight, mounted behind the cab, capable of lighting the scene of legal disability and/or the motor vehicle to be moved (reverse/back-up lights of the tow truck shall not be used in lieu of the spotlight); and

(ii) one portable, combination light system capable of being securely attached on the rear of the towed motor vehicle; consisting of (with an equal number on each side) two tail lamps, two stop lamps, and two turn signals; and operated in conjunction with analogous lights on the tow truck.

(iii) Warning lights or overhead lighting. A towing carrier shall use yellow, opaque white, or clear white warning and overhead lights only and no other color, unless the tow truck has been approved as an authorized emergency vehicle, as set forth in § 42-1-102(6)(b), C.R.S. In order to be approved as an authorized emergency vehicle, the towing carrier must have a Colorado Department of Revenue Form DR2490 for this classification, approved by the Director of the Commission or the Director's designee, and must follow the requirements of §§ 42-4-213 and 42-4-214(2), C.R.S., and any other requirements the Commission may deem necessary.

(D) one steering wheel tying device free from cracks, fraying, or deterioration; and

(E) for any towing carrier that performs tows from accident scenes:

(i) one shovel; and

(ii) one broom.

(b) Winching, lifting, towing, and carrying equipment shall be maintained in a manner to ensure the safe winching, lifting, towing, loading, and transporting of the towed motor vehicle, and shall include at least one of the following.

(I) Winch and crane: A power-driven winch and crane with a capacity of not less than 6,000 pounds with a winch cable capable of withstanding a test of not less than 10,000 pounds at breaking point or hydraulic system vehicle lift and a cradle, with a tow plate or sling, equipped with safety chains and chains with J-hooks of sufficiently heavy construction to ensure the safe lifting of the motor vehicle;

(II) Wheel-lift system: A wheel-lift system with a stinger, L arm brackets, safety chains and tie-down straps, or a mechanical wheel retainer device forming an integral part of the L-arm bracket, of sufficiently heavy construction to secure the motor vehicle to the wheel-lift unit and to ensure the safe lifting and towing of the motor vehicle; or

(III) Rollback system: A rollback system with a winch and cable as described in subparagraph (I) of this paragraph, safety chains, tie-down equipment, and truck bed of sufficiently heavy construction to ensure the safe loading and transporting of the motor vehicle.

(c) A towing carrier shall not tow a motor vehicle that is so extensively damaged as to be unmovable on its own wheels, unless the tow truck is equipped with dollies, a wheel-lift system, or a rollback

system of sufficiently heavy construction to ensure the safe loading and towing of the damaged motor vehicle.

(d) A towing carrier shall not tow a motor vehicle without attaching required operational electric lights on the rear of the towed motor vehicle. This requirement does not apply to motor vehicles placed on a flatbed or trailer, as long as the motor vehicle being towed does not extend four feet beyond the rear of the tow truck.

(e) A towed motor vehicle shall be secured to the tow truck, in accordance with the C.R.S. and the Code of Federal Regulations, for the purpose of transporting the vehicle.

6507. Storage Facilities.

(a) Disclosure of storage facility location. For nonconsensual tows of a motor vehicle, within 30 minutes of moving the towed motor vehicle from its location, or such lesser time as may be required by law, a towing carrier shall notify the responsible law enforcement agency having jurisdiction over the place from where the motor vehicle was towed. The notification shall contain the following information: the name and permit number of the towing carrier; the location of the storage facility where the towed motor vehicle is located; and a description of the towed motor vehicle, including the make, model, color, year, VIN, and license plate information, including the number, issuing state, and expiration date. A towing carrier is deemed to have complied with this requirement if:

(I) the location of the storage facility was provided to the responsible law enforcement agency when obtaining authorization for the tow; or

(II) two or more documented attempts to notify the responsible law enforcement agency were made, within the 30-minute time period, but were unsuccessful for reasons beyond the control of the towing carrier. The towing carrier must still notify the responsible law enforcement agency as soon as possible, after the unsuccessful attempts.

(b) Disclosure for abandoned motor vehicles. A towing carrier which places an abandoned motor vehicle in a storage facility shall also disclose the location of the storage facility by complying with the procedure for abandoned motor vehicles in Parts 18 and 21 of Article 4 of Title 42, C.R.S.

(c) Disclosure for all towed motor vehicles. Upon request of the authorized or interested person of the motor vehicle, a towing carrier which places a motor vehicle in a storage facility shall also disclose the location of the storage facility, the total amount of the charges, and accepted forms of payment, as provided in rule 6512.

(d) Signage at storage facility.

(I) A towing carrier shall maintain a clearly visible sign at the entrance to any storage facility where a motor vehicle has been towed as a nonconsensual tow. Such sign shall state the name of the business, telephone number, and hours of operation.

(II) All signs posted to provide notice pursuant to this rule shall comply with any applicable municipal ordinance, to the extent not inconsistent with this rule. Signs shall also, at a minimum:

(A) be no less than two square feet in size;

(B) have lettering not less than two inches in height;

(C) have lettering that contrasts sharply in color with the background on which the letters are placed; and

(D) be printed in English.

(E) If the storage facility contains motor vehicles that were towed as a Residential PPI, the signs must also contain the following statement:

"If a vehicle is nonconsensually towed from private property, the authorized or interested person may retrieve the contents of the vehicle even if the authorized or interested person does not pay the towing carrier's fees. If the authorized or interested person fills out the appropriate form, the authorized or interested person may retrieve the vehicle after paying a reduced fee, but the authorized or interested person still owes the towing carrier the balance of those fees."

(e) Lighting for release. A towing carrier shall maintain an area at each storage facility location on file with the Commission with illumination levels during all hours adequate to inspect a motor vehicle for damage prior to its release from storage.

(f) Towing carrier responsibility. During and after a tow, the towing carrier is responsible for the security and safety of the towed motor vehicle until it is released to an authorized or interested person.

(I) Evidence of the towing carriers' commercial liability insurance coverage, including cargo liability coverage, garage keeper's liability coverage, if applicable, and motor vehicle liability coverage shall be provided, upon request, to an authorized or interested person.

(II) If a towing carrier utilizes video and/or audio surveillance equipment in their tow trucks or at their storage facilities, such recordings must be made available to the Commission consistent with paragraph 6007(e).

6508. Authorization for Towing of Motor Vehicles.

(a) Towing carrier acting as authorized agent for the property owner.

(I) A towing carrier is prohibited from acting as the authorized agent for the property owner for a Residential PPI. For a Commercial PPI, a towing carrier may act as the authorized agent for the property owner under a written tow agreement to that effect, provided the tow agreement is compliant with this paragraph (a). The tow agreement shall contain at least the following accurate information in order for the tow to be properly authorized:

(A) the name, physical address, telephone number, email address, if applicable, and towing carrier permit number of the towing carrier;

(B) the name, address, email address, if applicable, and telephone number of the property owner;

(C) the address of the property from which the tows will originate;

(D) the name of each individual person who is authorized to sign the tow authorization except tow carrier drivers where the carrier is authorized to act as the property owner agent under this rule;

(E) the address and phone number of the storage facility where the vehicle owner may retrieve the motor vehicle;

(F) the beginning date and ending date of the tow agreement. Provisions that provide for automatic renewal of the tow agreement are permissible provided all signature parties on the original tow agreement remain the same and are still valid at the time of renewal;

(G) a statement that the maximum rates for a nonconsensual tow from private property, and the maximum drop charge if the motor vehicle is retrieved before removal from the private property, are set by rule of the Public Utilities Commission;

(H) the name, title, phone number, and signature of the person entering into the tow agreement on behalf of the property owner and on behalf of the towing carrier; and

(I) the date the tow agreement is signed.

(II) Nothing in this paragraph (a) shall preclude a towing carrier who has been paid for the tow by the property owner at proper rates from collecting the charges from the authorized or interested person and reimbursing said charges to the property owner.

(III) No agency provided for in this paragraph (a) shall affect any obligation, liability, or responsibility of the property owner to any third party. Any provision attempting to affect such obligation, liability, or responsibility shall be void.

(IV) Nothing in this paragraph (a) shall preclude a towing carrier or property owner from adding addendums to the tow agreement that modify any term of the tow agreement, so long as the addendums are in compliance with these rules and agreed upon by both the tow company and the property owner. Each addendum must be signed by both the tow company and the property owner and are required to be maintained with the original tow agreement.

(V) For purposes of this rule, any company owned or operated by a towing carrier, or having principals or owners with a controlling financial interest in a towing carrier, is prohibited from acting as the authorized agent for the property owner for a Residential PPI.

(b) Authorization to perform a tow.

(I) A towing carrier shall not tow any motor vehicle unless one of the following conditions is met:

(A) the towing carrier is directed to perform a tow by a law enforcement officer;

(B) the towing carrier is requested to perform a tow by an authorized or interested person of the motor vehicle; or

(C) the towing carrier is requested to perform a tow upon the authorization of the property owner. For a Residential PPI, only the owner or lessee of the private property, their direct employees, or direct employees of a retained property management company may authorize a tow.

(II) A towing carrier may not come in contact with, hook-up to, or tow a motor vehicle that is occupied, unless the towing carrier is performing rescue or recovery operations for said occupant(s).

(III) Property owner authorization. The authorization from the property owner shall be documented on a Commission-prescribed form.

(A) The authorization shall be filled out in full, signed by the property owner, and given to the towing carrier before the motor vehicle is removed from the property, but not greater than 24 hours prior to the tow. The property owner may sign using a verifiable employee identification number or code name in lieu of the person's proper name. If the authorization is signed by the towing carrier as agent for the property owner, then a verifiable employee identification number or code name shall not be used. Documentation of such authority must be carried in the tow truck at all times while performing the tow. At a minimum, such documentation shall contain:

(i) the name, address, email address (if applicable), and telephone number of the property owner;

(ii) the address of the property from which the tows will originate; and

(iii) the name of each individual person who is authorized to sign the tow authorization.

(B) A towing carrier shall not have in their possession, accept, or use blank authorizations pre-signed by the property owner or authorizations that have been automatically generated.

(C) The authorization required under this rule may not be substituted by the tow record/invoice requirements in rule 6509 or any other document.

(D) A towing carrier shall have a separate, individual authorization for each tow it performs.

(E) A towing carrier shall retain a copy of the authorization for three years after the tow commenced, whether it is maintained in electronic or multi-copy paper form, and provide it to an authorized or interested person, upon request.

(IV) With the exception of law enforcement-ordered tows, a towing carrier that is requested to perform a tow upon the authorization of a property owner must immediately deliver the towed motor vehicle that is being removed from the property to a storage facility location on file with the Commission without delay. No motor vehicle may be relocated off of the private property from which it is towed to a location other than to such a storage facility.

(V) In the case of law enforcement-ordered tows, a towing carrier may relocate a motor vehicle to another location at the order of a law enforcement officer.

(VI) The relocating of a motor vehicle from one part of a private property to another part of the same private property, as authorized by the property owner, is allowed, so long as the motor vehicle is at no point removed from the private property and the authorized or interested person of the motor vehicle is not assessed any fees or charges.

(c) Expired vehicle registration. For a Residential PPI, unless the tow is ordered by a peace officer, a towing carrier shall not tow a motor vehicle from private property because the rear license plate of the vehicle, or the record obtained using the system described in § 42-4-2103(3)(c)(III), C.R.S., indicates that the motor vehicle's registration has expired.

(d) 24-hour notice.

(I) For a Residential PPI, a towing carrier shall not perform a nonconsensual tow of a motor vehicle from a parking space or common parking area without the towing carrier or property owner giving the vehicle owner or authorized operator 24-hours' written notice, unless:

(A) the vehicle owner or authorized operator has received two previous notices for parking inappropriately, as defined by § 40-10.1-405(3)(b)(V), C.R.S., in the same manner, within the past six months;

(B) the motor vehicle blocks a driveway or roadway enough to effectively obstruct a person's access to the driveway or roadway;

(C) the motor vehicle is parked in violation of § 42-4-1208(4), C.R.S. or is parked in reserved parking for people with disabilities without displaying an identifying placard or an identifying plate, as those terms are defined in §§ 42-3-204(1)(f), and (g), C.R.S., that is currently valid or has been expired for no more than 60 days;

(D) the motor vehicle is parked in or effectively obstructing a designated and marked fire zone;

(E) the motor vehicle is occupying, without permission, or effectively obstructing access to or from an individually designated, rented, or purchased parking space of a resident; or

(F) the motor vehicle is parked without authorization in a parking lot marked for the exclusive use of residents or invited guests.

(II) If a motor vehicle is being towed without 24-hours' notice, pursuant to subparagraphs 6508(d)(I)(E) or 6508(d)(I)(F), additional signage is required, as described in § 40-10.1-405(3)(c), C.R.S. If this additional signage is not present, 24-hours' written notice must be provided, consistent with this rule.

(III) The towing carrier or property owner shall provide the 24-hours' written notice, as described in this rule, by placing it on the windshield of the motor vehicle at least 24 hours before towing the motor vehicle. At its discretion, a towing carrier may place the notice on other areas of the vehicle, such as the driver-side window, so long as it is in addition to, not in lieu of, the windshield placement. The notice must clearly state:

(A) that the motor vehicle will be towed without consent if the motor vehicle remains parked inappropriately;

(B) a description of the inappropriate parking that has caused the notice to be given;

(C) the time the motor vehicle will be towed if it is not moved to appropriate parking or the inappropriate parking has been corrected; and

(D) that continuing to park inappropriately in the same manner may lead to the motor vehicle being towed without notice.

(e) Photographs.

(I) For a Residential PPI, a towing carrier shall document the motor vehicle's condition and the reason for the tow before connecting to the motor vehicle.

(II) In order to properly document the motor vehicle's condition, a towing carrier shall take at least four photographs, as follows:

(A) from the front of the motor vehicle;

(B) from the rear of the motor vehicle;

(C) from the driver-side of the motor vehicle; and

(D) from the passenger-side of the motor vehicle.

(E) These photographs must show the entire motor vehicle from the required angles, have the motor vehicle fill at least three-fourths of the photograph, measured from side-to-side, be rendered in a resolution of at least 2,000 pixels by 2,000 pixels, and contain the date and time the photographs were taken.

(III) In order to properly document the reason for the tow, a towing carrier shall take at least one photograph, that meets the following requirements:

(A) identifies the specific reason for the tow;

(B) shows the position of the vehicle in relation to the reason, including any sign, that the vehicle was towed;

(C) can be rendered in a resolution of at least 2,000 pixels by 2,000 pixels; and

(D) contains the date and time the photograph was taken.

(IV) Upon demand by an authorized or interested person, a towing carrier shall provide copies of the photographs, as described in this rule. The copies of the photographs may be provided in physical or electronic format. A towing carrier may not assess any fees associated with providing copies of the photographs.

(V) If a towing carrier fails to produce a photograph of the reason for the tow, as described in this rule, it creates a rebuttable presumption that the towing carrier did not have authorization to tow the motor vehicle.

(f) Patrolling and monitoring private property. For a Residential PPI, a towing carrier shall not patrol or monitor private property to enforce parking restrictions on behalf of the property owner.

6509. Tow Record/Invoice, Charge Notification, and Warning Signage.

(a) A towing carrier shall use and complete all applicable portions of a tow record/invoice form for all nonconsensual tows, whether the motor vehicle is removed from private property or retrieved before removal (commonly known as a drop), and law enforcement-ordered tows. The tow record/invoice form shall contain accurate information, as follows:

(I) the unique serial number of the tow record/invoice;

(II) the name, address, towing carrier permit number, and telephone number of the towing carrier that is on file with the Commission;

(III) the address of the storage facility used by the towing carrier that is on file with the Commission, including the telephone number for that storage facility if the number is different than the telephone number of the towing carrier;

(IV) the date and time of the drop, the date and time of commencement of the tow, the date and time of completion of the tow, the date and time notice was given to the appropriate law enforcement agency, the date and time the towed motor vehicle was placed in storage, and the date and time the towed motor vehicle was released from storage, as applicable;

(V) the make, model, year, complete VIN (if available), and license plate number (if available) of the towed motor vehicle;

(VI) the origin address of the tow, the destination address of the tow, and the one-way mileage between such addresses;

(VII) the unit number or license number of the tow truck;

(VIII) the printed name and signature of the tow truck driver;

(IX) an itemized invoice of all charges assessed;

(X) the signature of the authorized or interested person to whom the motor vehicle is released. The towing carrier may write “refused to sign” on the tow record/invoice if the authorized or interested person to whom the motor vehicle is released is provided opportunity to sign the tow/record invoice, but refuses to do so;

(XI) on at least the authorized or interested person’s copy of the tow record/invoice, the following notice in a font size of at least ten: “Report problems to the Public Utilities Commission at (303) 894-2070”. For a Residential PPI, this notice must not be in a type face or font that is smaller than the other numbers or words on the tow record/invoice, as applicable; and

(XII) for all nonconsensual tows, the case report number or other identifiable entry provided by the law enforcement agency to which the tow was reported, in accordance with the requirements in § 42-4-2103(2) C.R.S., and paragraph 6507(a).

(b) The tow invoice, as provided to the authorized or interested person, shall include, at a minimum, the items listed in subparagraphs 6509(a)(I) through (VII) and (IX) through (XIII). The towing carrier shall retain the copy of the tow record/invoice bearing all required original signatures for authorization and release for three years after the tow commenced, whether it is maintained in electronic or multi-copy paper form.

(c) The tow record/invoice must be filled out to contain the information required in paragraph 6509(a) by the tow truck driver, prior to the tow truck leaving the location of the tow origination with the towed motor vehicle, unless impracticable due to safety concerns. If safety concerns delay recording the information, the towing carrier shall record the information as soon as reasonably possible.

(d) The towing carrier shall deliver a copy of the tow record/invoice to the authorized or interested person immediately upon request, but no later than 48 hours after the request is made. For a Residential PPI, the tow record/invoice must also show each charge and the rate for each fee that has been incurred as a result of a nonconsensual tow.

(e) For a Commercial PPI, the towing carrier shall provide a charge notification card to the authorized or interested person of the motor vehicle to be towed, if the authorized or interested person is on the property prior to or after commencement of the tow, but before the motor vehicle has been removed from the property. The charge notification card shall contain all the information listed on the Commission-prescribed form available on the Commission's website.

(f) A towing carrier may place a warning sign on the driver-side window of a motor vehicle to be towed or, if window placement is impracticable, in another location on the driver-side of the motor vehicle, prior to commencement of the tow. The warning sign shall be at least eight inches by eight inches square or diameter, yellow or orange in color, and state the following: "WARNING: This vehicle is in tow. Attempting to operate or operating this vehicle may result in criminal prosecution and may lead to injury or death to you or another person."

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[indicates omission of unaffected rules]

6511. Rates and Charges.

(a) Drop Charge. A towing carrier is prohibited from assessing a drop charge for a Residential PPI. For a Commercial PPI, a towing carrier may assess a drop charge if the authorized or interested person of the motor vehicle that is parked without the authorization of the property owner appears in person to retrieve the motor vehicle prior to or after commencement of the tow, but before the motor vehicle has been removed from the property.

(I) The maximum drop charge is as follows for each vehicle weight classification:

(A) $79.40 for motor vehicles with a GVWR less than or equal to 10,000 pounds;

(B) $102.08 for motor vehicles with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds;

(C) $136.11 for motor vehicles with a GVWR greater than 19,000 pounds and less than or equal to 33,000 pounds; and

(D) $158.79 for motor vehicles with a GVWR greater than 33,000 pounds.

(E) Maximum drop charges may be less than these amounts if required by municipal ordinance or by the tow agreement with the property owner and shall be enforced by the Commission pursuant to this rule.

(II) The maximum drop charge shall be adjusted for inflation annually, starting March 15, 2022, and effective March 15 of each year thereafter, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately preceding calendar year. These adjustments shall be compounded annually. For reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule.

(III) The minimum drop charge is $0.00.

(IV) The towing carrier shall halt any tow in progress, including preparation therefor, prior to removal from the private property, and advise the authorized or interested person of the motor vehicle that he or she may offer payment of the towing carrier's drop charge. The towing carrier shall concurrently advise the authorized or interested person of the motor vehicle of acceptable forms of payment under rule 6512. Such advisements shall be provided via delivery of a charge notification card, in addition to any other means desired by the towing carrier.

(V) If the towing carrier does not advise the authorized or interested person of the motor vehicle of the acceptable forms of payment under rule 6512 or accept such forms of payment, the towing carrier shall not charge or retain any fees or charges for the services it performs. Any money collected must be returned to the authorized or interested person of the motor vehicle.

(b) The towing rates for PPI tows include the following elements: a base rate for the tow; a mileage charge, including any applicable fuel surcharge; a charge for motor vehicle storage; a charge for release from storage pursuant to paragraph 6511(e), if applicable; and any other charges allowed by state statute or Commission rule.

(I) The base rates for PPI tows are as follows for each vehicle weight classification:

(A) $203.90 for motor vehicles with a GVWR less than or equal to 10,000 pounds;

(B) $234.48 for motor vehicles with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds;

(C) $316.05 for motor vehicles with a GVWR greater than 19,000 pounds and less than or equal to 33,000 pounds; and

(D) $356.83 for motor vehicles with a GVWR greater than 33,000 pounds.

(II) The base rates shall be adjusted for inflation annually, starting March 15, 2022, and effective March 15 of each year thereafter, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately

preceding calendar year. These adjustments shall be compounded annually. For reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule.

(III) The maximum mileage charge a towing carrier may assess for a PPI tow of a motor vehicle is $3.80 per mile for each mile that the motor vehicle is towed, subject to the following limits: The maximum mileage that may be charged for a PPI tow is 12 miles for tows within ten miles of either side of U.S. Interstate Highway 25, and 16.5 miles for mountain areas and eastern plains communities that lie farther than ten miles from U.S. Interstate Highway 25.

(IV) An additional fuel surcharge may be assessed when the price per gallon of diesel fuel exceeds a base rate of $2.60. The Commission shall, each month, adjust the maximum mileage charge when the price per gallon of diesel fuel exceeds the base rate. The surcharge shall be based on the United States Department of Energy "weekly retail on-highway diesel prices" for the Rocky Mountain region (DOE's Weekly Diesel Price). The fuel surcharge adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in the DOE's Weekly Diesel Price, or a one-percent decrease in the mileage rate for every ten-cent decrease in the DOE's Weekly Diesel Price, but in no event decreasing below the base rate.

(V) A towing carrier shall not charge or retain any additional fees not identified in state statute or Commission rule for the nonconsensual tow of a motor vehicle from private property.

(c) Maximum towing rates for law enforcement-ordered tows and recovery operations are to be calculated on an hourly basis, per required tow truck, as follows, with no additional fees, charges, or surcharges permitted, except as allowed by state statute or Commission rule.

(I) The maximum hourly rates for tow truck and driver, billable in ¼ hour increments after the first hour, for the towing or recovery of motor vehicles, are as follows for each vehicle weight classification:

(A) $232.52 per hour for motor vehicles with a GVWR less than or equal to 10,000 pounds;

(B) $277.89 per hour for motor vehicles with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds;

(C) $362.96 per hour for motor vehicles with a GVWR greater than 19,000 pounds and less than or equal to 33,000 pounds; and

(D) $419.67 per hour for motor vehicles with a GVWR greater than 33,000 pounds.

(E) The recovery of a motor vehicle requiring the use of a Heavy Rotator (60+ tons) shall not exceed $663.53 per hour.

(II) The maximum hourly rates for tow truck and driver shall be adjusted for inflation annually, starting March 15, 2022, and effective March 15 of each year thereafter, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately preceding calendar year. These adjustments shall be

compounded annually. For reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule.

(III) Mileage and fuel surcharges authorized elsewhere in rule 6511 do not apply to law enforcement-ordered tows or recovery operations.

(IV) Any towing carrier billing greater than one hour for any tow truck and driver for a given tow shall:

(A) include, in addition to requirements of rule 6509, the following information on the tow record/invoice, recorded at the time of occurrence: the time of dispatch; the time the tow truck leaves the yard or other staging location; the time the tow truck arrives on scene; the time the tow truck leaves the scene, and the time the towed motor vehicle is unhooked from the tow truck;

(B) include an advisement on the tow record/invoice that documentation of costs billed in excess of one hour for any tow truck and driver for such tow are available, upon request, from the towing carrier;

(C) only begin billing from a time not earlier than the towing carrier leaves their yard or staging area en route to the scene of the requested tow until the towed motor vehicle is unhooked;

(D) not bill more than the reasonable time necessary to perform the tow at hourly rates for one tow truck and driver, plus the towing carrier's actual and reasonable cost of recovery equipment and labor in excess of one tow truck and driver, plus an additional twenty-five percent of those actual and reasonable costs;

(E) provide the authorized or interested person of the motor vehicle documentation of the actual and reasonable costs billed in excess of one hour for any tow truck and driver for such tow, upon request; and

(F) not, under any circumstances, bill rates and charges provided in paragraph (b) for a PPI tow.

(d) Storage for nonconsensual and law enforcement-ordered tows.

(I) Storage charges shall not exceed the following maximum rates, based on a 24-hour period, for the following weight classifications:

(A) $39.18 for motor vehicles with a GVWR of less than or equal to 10,000 pounds;

(B) $48.32 for motor vehicles with a GVWR greater than 10,000 pounds; or

(C) in lieu of the storage rates provided above, and at the option of the towing carrier, storage may be charged according to the motor vehicle's length, including the tongue of a trailer, at $1.50 per foot or portion thereof.

(D) For a Commercial PPI, only the first 24 hours of storage, prorated on an hourly basis, may be assessed until such time as the notification, pursuant to § 42-4-2103, C.R.S., has been completed. Storage fees may not be assessed

retroactively once the notification has been completed, except for the first 24 hours of storage. After the notification has been completed, storage charges may be assessed for each 24-hour period or any portion of a 24-hour period. By way of example, the second 24 hours of storage may be assessed when the notification has been completed and the third 24 hours of storage may be assessed 24 hours after the notification has been completed.

(E) For a Residential PPI, only the first 24 hours of storage, prorated on an hourly basis, may be assessed until such time as the notification, pursuant to § 42-4-2103, C.R.S., has been completed. Storage fees may not be assessed retroactively once the notification has been completed, except for the first 24 hours of storage. After the notification has been completed, storage charges must continue to be prorated, on an hourly basis, with the combined hourly rate not to exceed the maximum rate for an entire 24-hour period.

(F) For a law enforcement ordered tow, storage charges may be assessed for each 24-hour period or any portion of a 24-hour period. By way of example, the first 24 hours of storage may be assessed when the towed motor vehicle enters the towing carrier's storage facility and the second 24 hours of storage may be assessed 24 hours after the towed motor vehicle entered the towing carrier's storage facility.

(II) The storage charges shall be adjusted for inflation annually, starting March 15, 2022, and effective March 15 of each year thereafter, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately preceding calendar year. These adjustments shall be compounded annually. For reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule.

(III) Storage charges shall not be charged, collected, or retained for any time during which garage keeper's liability insurance coverage is not kept in force.

(IV) Storage charges after the tow and storage of an abandoned motor vehicle subject to Part 21 of Title 42, C.R.S., shall not be accumulated beyond 120 days after the notification has been completed, pursuant to § 42-4-2103, C.R.S.

(e) For nonconsensual and law enforcement-ordered tows, the maximum additional charge for release of a motor vehicle from storage at any time other than the towing carrier's business hours is $86.19. The release charge shall be adjusted for inflation annually, starting March 15, 2022, and effective March 15 of each year thereafter, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately preceding calendar year. These adjustments shall be compounded annually. For reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule.

(f) Noncompliance. If a tow is performed, or storage is provided, in violation of state statute or Commission rule, the towing carrier may not charge or retain any fees or charges for the services performed with respect to the motor vehicle. Any motor vehicle that is held in storage must be

released, without charge, to an authorized or interested person. Any money collected must be returned to the authorized or interested person of the motor vehicle.

(I) Within 48 hours after a tow is determined to have been performed in violation of state statute or Commission rule, a towing carrier shall return the motor vehicle back to the location from where it was towed. This requirement does not apply if:

(A) the authorized or interested person notifies the towing carrier that they prefer to retrieve the motor vehicle from the towing carrier's storage facility; or

(B) returning the motor vehicle to the location from where it was towed is impractical, including, but not limited to, when the motor vehicle did not have permission to park at the location from where the vehicle was towed.

(g) Abandoned motor vehicles.

(I) Notifications. The charges for notification(s) to the vehicle owner(s) and the lienholder(s) of the motor vehicle held in storage shall be in accordance with §§ 42-4-1804 and 42-4-2103, C.R.S., and the rules of the Colorado Department of Revenue. For purposes of notification, any motor vehicle in possession of the towing carrier, including motor vehicles incidental to the tow (for example, loaded on a trailer when the trailer was towed) shall comply with the notification requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S.

(II) Consequences of failure to notify. A towing carrier holding a motor vehicle in storage who cannot demonstrate that it has made a good faith effort, as set forth in §§ 42-4-1804 and 42-4-2103, C.R.S., to comply with the notification requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S., shall not charge, collect, or retain any fees associated with the tow or storage of the motor vehicle.

(III) Sale of an abandoned motor vehicle to cover the outstanding towing and storage charges must be done in accordance with the notice and procedural requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S. Upon the effective date of a future Commission decision providing further guidance under this subparagraph 6511(g)(III), all towing carriers may be required to provide to the Commission a copy of the completed Private Tow Vehicle Information Request and Motor Vehicle Bill of Sale forms within 30 days of abandoned motor vehicle sales resulting from a nonconsensual tow.

(IV) Additional costs that may be charged when a stored motor vehicle is sold.

(A) When a stored motor vehicle is sold, a towing carrier may charge the costs of maintaining that motor vehicle while in storage in accordance with § 38-20-109, C.R.S.

(B) When a stored motor vehicle that does not come within the provisions of § 38-20-109, C.R.S., is sold, a towing carrier may charge the costs of maintaining that motor vehicle, up to a maximum of $90.00.

(C) "Cost of maintaining a motor vehicle" means a documented cost that is incurred by the towing carrier and that keeps a motor vehicle in safe and operable condition.

(D) Certified VIN verification procedure. When an abandoned motor vehicle that is less than five model years old and that the Colorado Department of Revenue cannot find in its records must be sold, the towing carrier may charge for all documented expenses of obtaining the certified VIN verification.

(h) Trailers.

(I) No additional fees may be charged for the towing of a power unit and trailer in combination as a single motor vehicle. A power unit and trailer in combination may be separated and conducted as separate tows for a specific articulable and reasonable cause, which must be included on separate tow records/invoices. The rates and charges for each respective tow must be consistent with rule 6511.

(II) A motor vehicle or cargo in or on a trailer is considered in combination as a single unit.

6512. Release of Motor Vehicle and Personal Property.

(a) The towing carrier shall immediately accept payment of the drop charge, towing, storage, release charges, and any other appropriate charges, if payment is offered by an authorized or interested person. The towing carrier must accept payments in cash or by valid major credit card. For purposes of this rule, a major credit card includes MasterCard and Visa. Accepted forms of payment may be annotated on the tow record/invoice, so long as the required options noted in this rule are offered to the authorized or interested person to whom the motor vehicle is being released. The towing carrier shall release the motor vehicle to an authorized or interested person.

(b) A towing carrier that accepts for storage a motor vehicle that has been towed as a nonconsensual or law enforcement-ordered tow shall provide access to or release of the motor vehicle to an authorized or interested person of the motor vehicle either:

(I) with one hour's notice during all times other than the towing carrier's business hours that occur within the first 24 hours of storage; or

(II) upon demand during the carrier's business hours.

(c) Failure to notify. A towing carrier holding a motor vehicle in storage who cannot demonstrate that it has made a good faith effort, as set forth in §§ 42-4-1804 and 42-4-2103, C.R.S., to comply with the notification requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S., shall release the motor vehicle at no charge to an authorized or interested person.

(d) Release of personal property for nonconsensual and law enforcement-ordered tows. A towing carrier shall release personal property, upon request, to an authorized or interested person, if such request is made at any point after the vehicle has been towed, but no later than 30 days after notification, as set forth in §§ 42-4-1804 and 42-4-2103, C.R.S. Requests made outside of business hours shall follow the standards in paragraph 6512(b).

(I) For purposes of this rule, personal property includes any items that are not attached to or part of the equipment of the motor vehicle.

(II) For a Residential PPI, the towing carrier may not charge for the removal of personal property.

(III) For a Commercial PPI or law enforcement-ordered tow, the towing carrier may charge up to $100.00 for each hour or any portion of an hour for the removal of personal property.

(A) The maximum rate for the removal of personal property, for a Commercial PPI or law enforcement-ordered tow, shall be adjusted for inflation annually, effective March 15 of each year, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately preceding calendar year. These adjustments shall be compounded annually. For reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule.

(IV) The provisions of this rule shall not apply during any period when the personal property is subject to a hold order issued by a court, district attorney, law enforcement agency, or law enforcement officer.

(V) Any fees allowable under this rule shall not be assessed for any of the items addressed under paragraphs 6512(g), (h), (i), and (j).

(e) The towing carrier, at its discretion, need not comply with paragraphs 6512(a) through (d) to release a motor vehicle or allow for removal of personal property if:

(I) the towing carrier is reasonably certain that, at the time the motor vehicle is to be released from storage, the driver of the motor vehicle is not capable of safely driving the motor vehicle due to the influence of drugs or alcohol;

(II) the towing carrier that is to remove the motor vehicle from storage does not have a valid towing carrier permit;

(III) a hold order is in place on the motor vehicle by a court, district attorney, law enforcement agency, or law enforcement officer;

(IV) the release of the motor vehicle does not comply with the release procedures agreed to, in writing, between the towing carrier and the applicable law enforcement agency; or

(V) the towing carrier, upon notification for the release of or access to a motor vehicle at other than the carrier's business hours, has immediately contacted an appropriate law enforcement agency and, in the interest of public order, has requested a law enforcement officer's presence during the release of the motor vehicle. This exception is applicable when the towing carrier has reason to believe that the person to whom the motor vehicle or personal property is to be released may disrupt the public order.

(f) A towing carrier shall release a motor vehicle held in storage to a person presenting a current driver's license who attests to being the authorized operator of the motor vehicle and produces two of the following: keys to the motor vehicle; proof of insurance; vehicle registration; VIN; and knowledge of the location from where the motor vehicle was towed. Such attestation must be provided on the "Vehicle Release Form" available on the Commission's website, which the towing carrier shall provide to the authorized operator, upon request.

(g) Whether on the property where the tow originates or at the towing carrier's storage facility, a towing carrier shall not refuse to relinquish prescription medicines, medical equipment, medical

devices, or any child restraint system. The towing carrier shall immediately relinquish such items to an authorized or interested person of the motor vehicle, without requiring payment and without additional charge, upon demand during business hours and, during the first 24 hours after commencement of the tow, within one hour's notice outside of business hours.

(h) Whether on the property where the tow originates or at the towing carrier's storage facility, a towing carrier shall not refuse to relinquish credit cards and cash for immediate payment of the amount due to the towing carrier. The towing carrier shall immediately relinquish such items to an authorized or interested person of the motor vehicle, without requiring payment and without additional charge, upon demand during business hours and, during the first 24 hours after commencement of the tow, within one hour's notice outside of business hours.

(i) Whether on the property where the tow originates or at the towing carrier's storage facility, a towing carrier shall not refuse to relinquish state or federal issued identification to the owner of the identification or to an authorized or interested person of the motor vehicle. The towing carrier shall immediately relinquish such items, without requiring payment and without additional charge, upon demand during business hours and, during the first 24 hours after commencement of the tow, within one hour's notice outside of business hours.

(j) Whether on the property where the tow originates or at the towing carrier's storage facility, a towing carrier shall not refuse to relinquish a cellular telephone to an authorized or interested person of the motor vehicle. The towing carrier shall immediately relinquish such item, without requiring payment and without additional charge, upon demand during business hours and, during the first 24 hours after commencement of the tow, within one hour's notice outside of business hours.

(k) For nonconsensual and law enforcement-ordered tows, a towing carrier shall not assess any additional fees or charges not specifically identified in state statute or Commission rule.

(l) For a Residential PPI, a towing carrier shall immediately retrieve the motor vehicle that has been nonconsensually towed or allow the vehicle owner or authorized operator to retrieve the motor vehicle if the following conditions have been met:

(I) the vehicle owner or authorized operator pays 15 percent of the fees, not to exceed $60.00, owed to the towing carrier for the nonconsensual tow; and

(II) the vehicle owner or authorized operator completes and signs the "Towed Vehicle Release Notice: Retrieval with Payment Owed" form available on the Commission's website, which the towing carrier shall provide to the vehicle owner or authorized operator, upon request.

(III) The remaining balance owed to the towing carrier shall be due no sooner than 90 days after the motor vehicle has been released to the vehicle owner or authorized operator.

(IV) A towing carrier must strictly comply with this rule and shall not impose any additional obligation, requirement, or approval process on the vehicle owner or authorized operator, as a condition of releasing a motor vehicle.

6513. Notice.

(a) A towing carrier may not perform a nonconsensual tow of a motor vehicle, other than an abandoned motor vehicle, from private property unless:

(I) notice of the applicable parking limitations, regulations, restrictions, and prohibitions was provided to the motor vehicle operator at the time the motor vehicle entered the private property and parked; and

(II) notice that any motor vehicle parked in violation of the applicable parking limitations, regulations, restrictions, and prohibitions is subject to tow at the vehicle owner's expense was provided to the motor vehicle operator at the time the motor vehicle entered the private property and parked. The towing carrier must retain evidence that such notice was provided for three years from the date of completion of the tow and provide it to the Commission or an enforcement official upon request.

(b) Abandoned motor vehicles. A towing carrier may not perform a nonconsensual tow of an abandoned motor vehicle from private property unless the motor vehicle was left unattended for a period of 24 hours or more and is presumed to be abandoned pursuant to § 42-4-2102(1), C.R.S. A towing carrier is responsible for demonstrating that the motor vehicle was left unattended on the private property for at least 24 hours before conducting the tow.

(I) A towing carrier may demonstrate that a motor vehicle has been abandoned on private property by placing a warning sign or notice on the motor vehicle at least 24 hours before the motor vehicle is towed. The warning sign or notice, which must include the date and time it is posted on the motor vehicle, shall state that the motor vehicle must be removed from the private property within 24 hours or it will be subject to tow.

(c) The notice required in paragraph (a) is presumed to be met through signage if a permanent sign is conspicuously posted visibly at each point of entrance to the private property and inside the private property at reasonable intervals, as determined by the property owner.

(d) A towing carrier that enters into a tow agreement with a property owner to nonconsensually tow motor vehicles shall verify signage at the applicable private property from where the tows will originate. The signage shall, at a minimum:

(I) be no less than two square feet in size;

(II) have lettering not less than one inch in height;

(III) have lettering that contrasts sharply in color with the background on which the letters are placed and the structure the signs are placed on;

(IV) state the following information in the order listed below:

(A) the restriction or prohibition on parking;

(B) the times of the day and days that the restriction or prohibition is applicable or "Authorized Parking Only" if the restriction or prohibition applies at all times; and

(C) the name and telephone number of the towing carrier authorized to perform tows from the private property;

(V) be printed in English and Spanish;

(VI) at the entrance to the private property, face outward toward the street and be visible prior to and upon entering the private property;

(VII) inside the private property, face outward toward the parking area;

(VIII) not be obstructed or placed in such a manner that prevents visibility; and

(IX) not be placed higher than ten feet or lower than three feet from the ground surface closest to the sign's placement.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00444

Opinion of the Attorney General rendered in connection with the rules adopted by the

Public Utilities Commission

on 02/18/2025

4 CCR 723-6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

The above-referenced rules were submitted to this office on 02/19/2025 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.

March 10, 2025 09:59:54

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-9

Rule title

5 CCR 1001-9 REGULATION NUMBER 7 CONTROL OF EMISSIONS FROM OIL AND GAS EMISSIONS OPERATIONS 1 - eff 04/14/2025

Effective date

04/14/2025

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 7

Control of Emissions from Oil and Gas Emissions Operations

5 CCR 1001-9

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

Outline of Regulation

Pursuant to Colorado Revised Statutes § 24-4-103 (12.5), materials incorporated by reference are available for public inspection during normal business hours, or copies may be obtained at a reasonable cost from the Air Quality Control Commission (the Commission), 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. The material incorporated by reference is also available through the United States

Government Printing Office, online at www.govinfo.gov. Materials incorporated by reference are those editions in existence as of the date indicated and do not include any later amendments.

PART A Applicability and General Provisions

I. Applicability

I.A.

I.A.1. The provisions of this regulation shall apply as follows:

I.A.1.a. All provisions of this regulation apply to the Denver 1-hour ozone attainment/maintenance area, to any nonattainment area for the 1-hour ozone standard, to the 8-hour Ozone Control Area, and to northern Weld County.

I.A.1.b. (State Only) All provisions of this regulation apply to any ozone nonattainment area, which includes areas designated nonattainment for either the 1-hour or 8-hour ozone standard, unless otherwise specified in Section I.A.1.c. Colorado's ozone nonattainment or attainment maintenance area maps and chronologies of attainment status are identified in Appendix A of this regulation.

I.A.1.c. The provisions of Part B, Sections II., III., IV., V., VI. except VI.E., VII., and VIII. apply statewide. The provisions of Part B, Sections II., through VIII. and any other sections marked by (State Only) are not federally enforceable, unless otherwise identified.

I.A.2. REPEALED

I.A.3. REPEALED

II. General Provisions

II.A. Definitions

II.A.1. "8-Hour Ozone Control Area" means the Counties of Adams, Arapahoe, Boulder (includes part of Rocky Mountain National Park), Douglas, and Jefferson; the Cities and Counties of Denver and Broomfield; and the following portions of the Counties of Larimer and Weld:

II.A.1.a. For Larimer County (includes part of Rocky Mountain National Park), that portion of the county that lies south of a line described as follows: Beginning at a point on Larimer County's eastern boundary and Weld County's western boundary intersected by 40 degrees, 42 minutes, and 47.1 seconds north latitude, proceed west to a point defined by the intersection of 40 degrees, 42 minutes, 47.1 seconds north latitude and 105 degrees, 29 minutes, and 40.0 seconds west longitude, thence

proceed south on 105 degrees, 29 minutes, 40.0 seconds west longitude to the intersection with 40 degrees, 33 minutes and 17.4 seconds north latitude, thence proceed west on 40 degrees, 33 minutes, 17.4 seconds north latitude until this line intersects Larimer County's western boundary and Grand County's eastern boundary.

II.A.1.b. For Weld County, that portion of the county that lies south of a line described as follows: Beginning at a point on Weld County's eastern boundary and Logan County's western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County's western boundary and Larimer County's eastern boundary.

II.A.2. "Denver 1-Hour Ozone Attainment/Maintenance Area" means the Counties of Jefferson and Douglas, the Cities and Counties of Denver and Broomfield, Boulder County (excluding Rocky Mountain National Park), Adams County west of Kiowa Creek, and Arapahoe County west of Kiowa Creek.

II.A.3. "Northern Weld County" means the portion of the county that does not lie south of a line described as follows: Beginning at a point on Weld County's eastern boundary and Logan County's western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County's western boundary and Larimer County's eastern boundary.

II.A.4. "Volatile Organic Compound (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, except those listed in Section II.B. as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method, or by procedures specified under 40 CFR Part 60 (July 1, 2022). A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the compounds listed in Section II.B. when determining compliance with a standard if the amount of such compounds is accurately quantified, and such exclusion is approved by the Division. As a precondition to excluding such compounds as VOC, or at any time thereafter, the Division may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Division, the amount of negligible-reactive compounds in the source's emissions.

II.B. Exemptions

Emissions of the organic compounds listed as having negligible photochemical reactivity in the common provisions definition of Negligibly Reactive Volatile Organic Compound are exempt from the provisions of this regulation. However, the hydrocarbon threshold in Part B, Section I.L. and natural gas emissions standards in Part B, Sections III.C.1. and III.C.2. are used as indicators for the volatile organic compound emission reduction measures in Part B, Sections I.L., III.C.1., and III.C.2., and are enforceable provisions of this regulation.

(State Only) Notwithstanding the foregoing exemption, hydrocarbon emissions from oil and gas operations, including methane and ethane, are subject to this regulation as set forth in Part B.

II.C. New Sources

All new sources shall utilize controls representing RACT, pursuant to applicable provisions in Regulation Number 7, Regulation Number 24, Regulation Number 25, Regulation Number 26 and Regulation Number 3, Part B, Section III.D., upon commencement of operation.

II.D. Alternative Control Plans and Test Methods

II.D.1. Sources subject to specific requirements of this regulation shall submit for approval as a revision to the State Implementation Plan:

II.D.1.a. Any alternative emission control plan or compliance method other than control options specifically allowed in the applicable regulation. Such alternative control plans shall provide control equal to or greater than the emission control or reduction required by the regulation, unless the source contends that the control level required by the regulation does not represent RACT for their specific source.

II.D.1.b. Any alternative test method or procedure not specifically allowed in the applicable regulation.

II.D.2. No alternative submitted pursuant to this Section II.D. is effective until the alternative is approved as a revision to the State Implementation Plan.

Appendix A Colorado Ozone Nonattainment or Attainment Maintenance Areas

I. Chronology of Attainment Status

Denver Metropolitan Area Only

1978 Denver 1-hour Ozone Nonattainment Area designation first becomes effective in 7-county Denver Metropolitan Area

10/11/01 Denver 1-hour Ozone Attainment Maintenance Area designation replaces non-attainment designation and becomes effective in 7-county Denver Metropolitan Area

9/2/05 1-hour Ozone National Ambient Air Quality Standard is Revoked in Colorado except for the Denver 1-hour Ozone Attainment Maintenance Area.

Denver Metropolitan Area and North Front Range

10/11/01 1-hour attainment maintenance area replaces non-attainment designation for the Denver Metro Area/North Front Range Area

4/15/04 EPA designates the Denver Metro Area/North Front Range region as an 8-hour ozone non-attainment area, designation deferred due to the implementation of the Early Action Compact

11/20/07 Denver 8-hour ozone non-attainment designation (1997 NAAQS) becomes effective in 9 county Denver Metropolitan Area

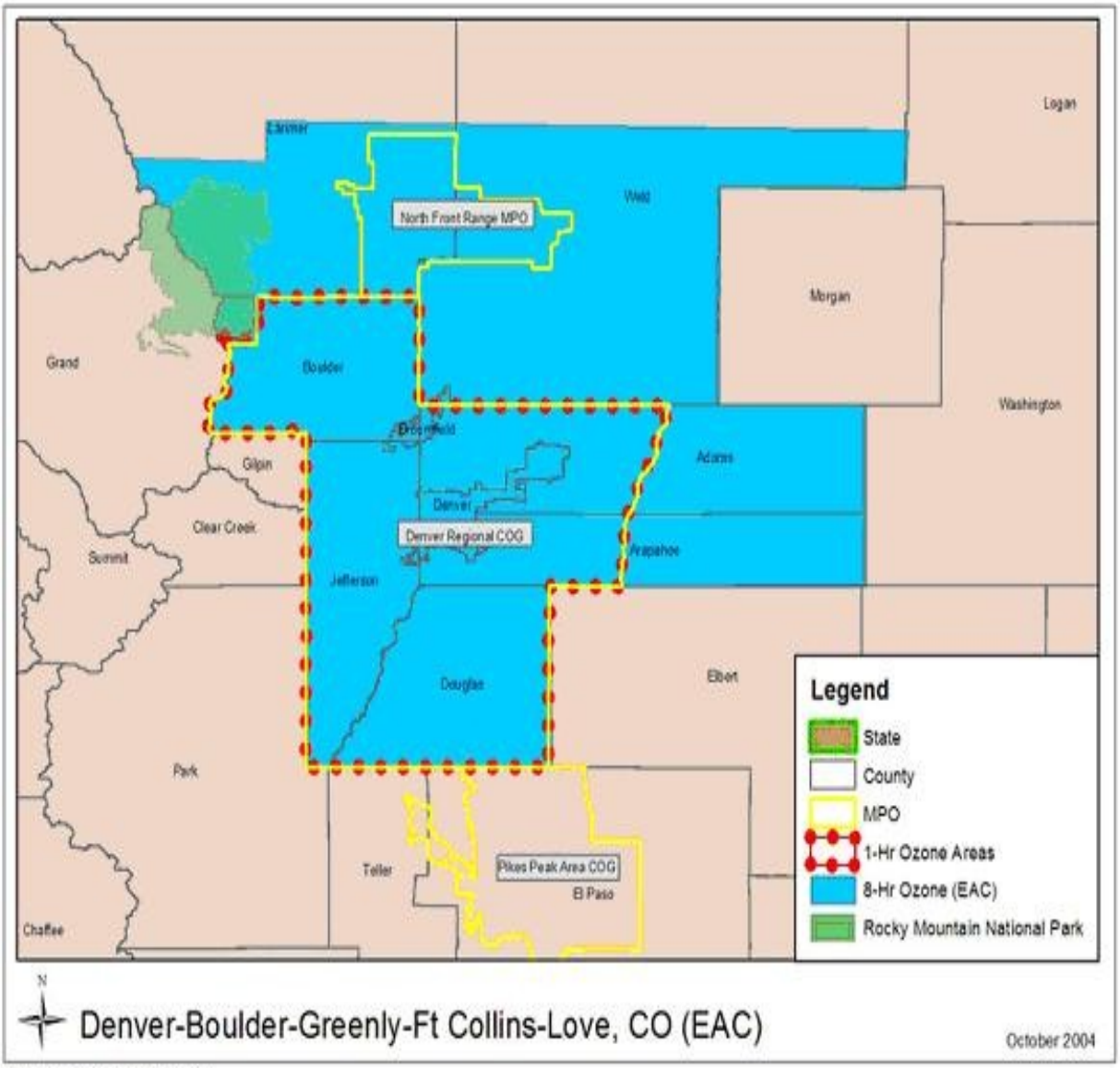
7/20/2012 Denver 8-hour ozone non-attainment designation (2008 NAAQS) becomes effective in 9 county Denver Metropolitan Area

8/3/2018 Denver 8-hour ozone nonattainment designation (2015 NAAQS) becomes effective in 9 county Denver Metropolitan Area

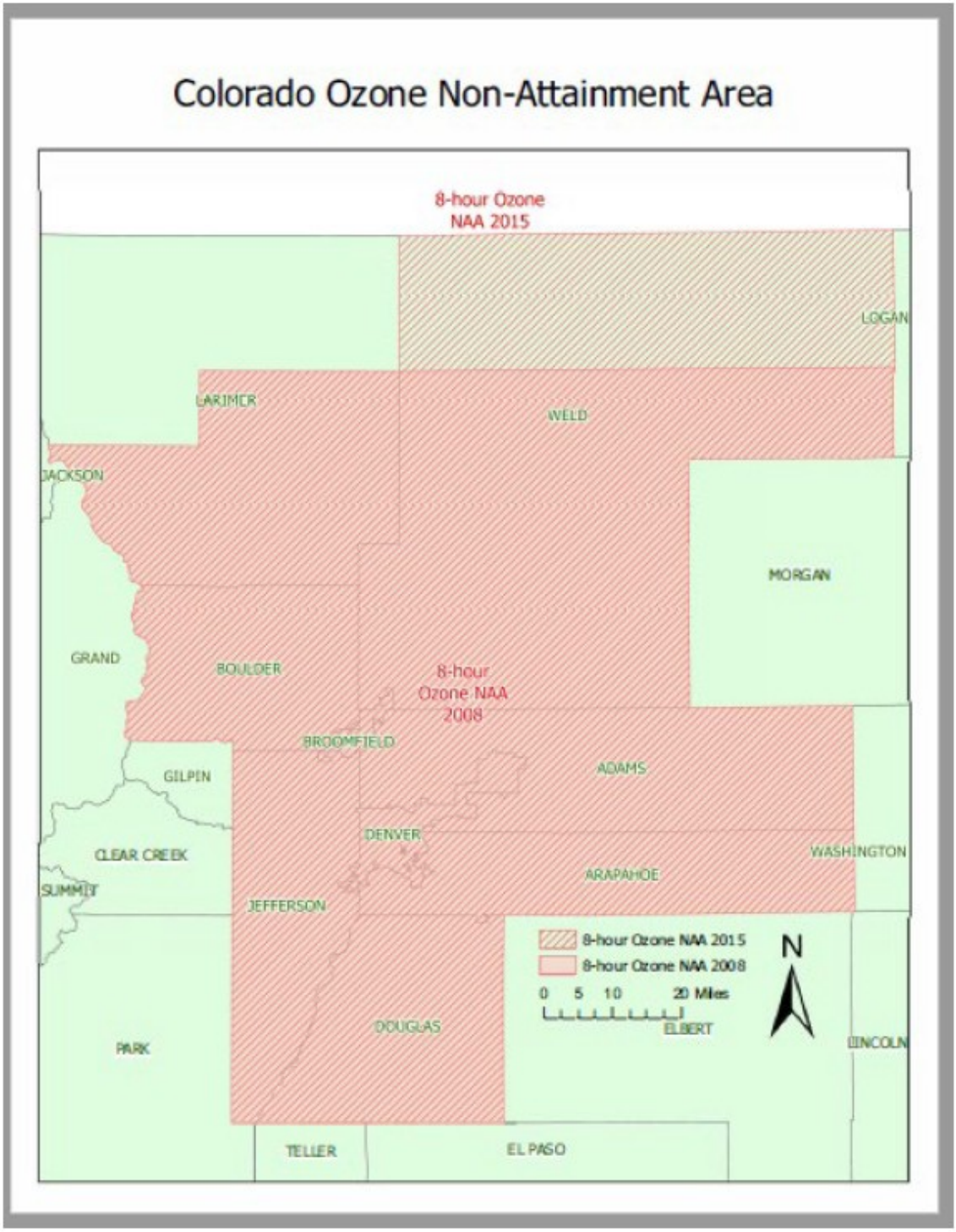
12/31/2021 EPA modification of the 9 county Denver Metropolitan Area 8-hour ozone nonattainment designation (2015 NAAQS) to include the portion of northern Weld County defined in Part A

II. Maps

Denver Metropolitan Area and North Front Range (2008 Ozone NAAQS)



Denver Metropolitan Area and North Front Range and northern Weld County (2015 ozone NAAQS)



PART B Oil and Natural Gas Operations

I. Volatile Organic Compound Emissions from Oil and Gas Operations

I.A. Applicability

I.A.1. Except as provided in Section I.A.4., this section applies to oil and gas operations that collect, store, or handle hydrocarbon liquids or produced water in the 8-hour Ozone Control Area and that are located at or upstream of a natural gas plant.

I.A.2. Except as provided in Section I.A.4., beginning February 14, 2023, this section applies to oil and gas operations that collect, store, or handle hydrocarbon liquids or produced water in northern Weld County and that are located at or upstream of a natural gas plant.

I.A.3. Beginning February 14, 2023, this section applies to centralized oil stabilization facilities that emit or have the potential to emit VOC emissions greater than or equal to 25 tpy as of November 7, 2022, located in the 8-Hour Ozone Control Area.

I.A.4. Beginning February 14, 2023, Sections I.B. through I.F. and I.M. apply to class II disposal well facilities that emit or have the potential to emit VOC emissions greater than or equal to 25 tpy as of November 7, 2022, located in the 8-Hour Ozone Control Area.

I.A.5. Oil refineries are not subject to Section I.

I.B. Definitions specific to Section I.

I.B.1. “Affected Operations” means oil and gas exploration and production operations, natural gas compressor stations and natural gas drip stations, to which Section I. applies.

I.B.2. “Air Pollution Control Equipment”, as used in Section I., means a combustion device or vapor recovery unit. Air pollution control equipment also means alternative emissions control equipment, pollution prevention devices, and processes that comply with the requirements of Section I.D.4. that are approved by the Division.

I.B.3. “Approved Instrument Monitoring Method” means an infra-red camera, EPA Method 21, or other instrument based monitoring method or program approved in accordance with Section I.L.8. If an owner or operator elects to use Division approved continuous emission monitoring, the Division may approve a streamlined inspection, recordkeeping, and reporting program for such operations.

I.B.4. “Atmospheric Storage Tanks or Atmospheric Condensate Storage Tanks” means a type of condensate storage tank that vents, or is designed to vent, to the atmosphere.

I.B.5. “Auto-Igniter” means a device which will automatically attempt to relight the pilot flame in the combustion chamber of a control device in order to combust volatile organic compound emissions.

I.B.6. “Calendar Week” means a week beginning with Sunday and ending with Saturday.

I.B.7. “Class II Disposal Well Facility” means a facility that injects underground fluids which are brought to the surface in connection with natural gas storage operations or oil or natural gas production and that may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection. Class II disposal well facilities do not include wells which inject fluids for enhanced recovery of oil or natural gas or for storage of hydrocarbons which are liquid at standard temperature and pressure.

I.B.8. “Commencement of Operation” means when a source first conducts the activity that it was designed and permitted for. In addition, for oil and gas well production facilities, commencement of operation is the date any permanent production equipment is in use and product is consistently flowing to sales lines, gathering lines, or storage tanks from the first producing well at the stationary source, but no later than end of well completion operations (including flowback).

I.B.9. “Condensate Storage Tank” means any tank or series of tanks that store condensate and are either manifolded together or are located at the same well pad.

I.B.10. “Centralized Oil Stabilization Facility” means a facility that receives high-vapor-pressure crude oil (post-separation) from well production facilities through a pipeline oil-gathering system and stabilizes the crude oil for storage in tanks and/or for pipeline transportation.

I.B.11. “Centrifugal Compressor” means any machine used for raising the pressure of natural gas by drawing in low pressure natural gas and discharging significantly higher pressure natural gas by means of mechanical rotating vanes or impellers. Screw, sliding vane, and liquid ring compressors are not centrifugal compressors.

I.B.12. “Component” means each pump seal, flange, pressure relief device (including thief hatches or other openings on a controlled storage tank), connector, and valve that contains or contacts a process stream with hydrocarbons, except for components in process streams consisting of glycol, amine, produced water, or methanol.

I.B.13. “Connector” means flanged, screwed, or other joined fittings used to connect two pipes or a pipe and a piece of process equipment or that close an opening in a pipe that could be connected to another pipe. Joined fittings welded completely around the circumference of the interface are not considered connectors.

I.B.14. “Custody Transfer” means the transfer of crude oil or natural gas after processing and/or treatment in the producing operations or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation.

I.B.15. “Downtime” means the period of time when a well is producing and the air pollution control equipment is not in operation.

I.B.16. “Existing” means any atmospheric condensate storage tank that began operation before February 1, 2009, and has not since been modified.

I.B.17. “Glycol Natural Gas Dehydrator” means any device in which a liquid glycol (including, ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water.

I.B.18. “Hydrocarbon liquids” means any naturally occurring, unrefined petroleum liquid. Hydrocarbon liquids does not include produced water.

I.B.19. “Infra-red Camera” means an optical gas imaging instrument designed for and capable of detecting (or producing a detectable image of) hydrocarbons. The instrument must be capable of imaging a gas that is half methane, half propane at a concentration of 10,000 ppm at a flow rate of < 60 grams/hour from a quarter inch diameter orifice. The instrument must be capable of detecting at a viewing distance of 2 meters and a delta-T of 5 degrees Celsius in an environment of calm wind conditions around 1 meter per second or less.

I.B.20. “Modified or Modification” means any physical change or change in operation of a stationary source that results in an increase in actual uncontrolled volatile organic compound emissions from the previous calendar year that occurs on or after February 1, 2009. For atmospheric condensate storage tanks (and beginning March 1, 2020, for all storage tanks), a physical change or change in operation includes but is not limited to drilling wells and recompleting, refracturing or otherwise stimulating existing wells.

I.B.21. “Natural Gas Compressor Station” means a facility, located downstream of well production facilities, which contains one or more compressors designed to compress natural gas from well pressure to gathering system pressure prior to the inlet of a natural gas processing plant.

I.B.22. “Natural Gas-Driven Diaphragm Pump” means a positive displacement pump powered by pressurized natural gas that uses the reciprocating action of flexible diaphragms in conjunction with check valves to pump a fluid. A pump in which a fluid is displaced by a piston driven by a diaphragm is not considered a diaphragm pump. A lean glycol circulation pump that relies on energy exchange with the rich glycol from the contactor is not considered a diaphragm pump.

I.B.23. “Natural Gas Processing Plant” means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-

Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

I.B.24. “New” means any atmospheric condensate storage tank that began operation on or after February 1, 2009.

I.B.25. “Northern Weld County” means the portion of the county that does not lie south of a line described as follows: Beginning at a point on Weld County’s eastern boundary and Logan County’s western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County’s western boundary and Larimer County’s eastern boundary.

I.B.26. “Produced Water” means water that is extracted from the earth from an oil or natural gas production well, or that is separated from crude oil, condensate, or natural gas after extraction.

I.B.27. “Reciprocating Compressor” means a piece of equipment that increases the pressure of process gas by positive displacement, employing linear movement of the piston rod.

I.B.28. “Stabilized” when used to refer to stored hydrocarbon liquids, means that the hydrocarbon liquids have reached substantial equilibrium with the atmosphere and that any emissions that occur are those commonly referred to within the industry as “working and breathing losses”.

I.B.29. “Storage tank” means any fixed roof storage vessel or series of storage vessels that are manifolded together via liquid line. Storage tanks may be located at a well production facility or other location.

I.B.30. “Storage vessel” means a tank or other vessel that contains an accumulation of hydrocarbon liquids or produced water and is constructed primarily of nonearthed materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support. A well completion vessel that receives recovered liquids from a well after commencement of operation for a period which exceeds 60 days is considered a storage vessel. Storage vessel does not include vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges, or ships) and are intended to be located at the site for less than 180 consecutive days; process vessels such as surge control vessels, bottom receivers, or knockout vessels; or pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

I.B.31. (State Only) “Surveillance System” means monitoring pilot flame presence or temperature in a combustion device either by visual observation or with an electronic device to record times and duration of periods where a pilot flame is not detected at least once per day.

I.B.32. "System-Wide Control Strategy" means the collective emissions and emission reductions from all atmospheric condensate storage tanks under common ownership within the 8-hour Ozone Control Area for which uncontrolled actual volatile organic compound emissions are equal to or greater than two tons per year.

I.B.33. "Well Production Facility" means all equipment at a single stationary source directly associated with one or more oil wells or natural gas wells upstream of the natural gas processing plant. This equipment includes, but is not limited to, equipment used for storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and flowline.

I.C. General Provisions

I.C.1. General Requirements

I.C.1.a. All air pollution control equipment used to demonstrate compliance with this Section I. must be operated and maintained consistent with manufacturer specifications and good engineering and maintenance practices. The owner or operator must keep manufacturer specifications and documentation of compliance with maintenance practices on file. In addition, all such air pollution control equipment must be adequately designed and sized to achieve the control efficiency rates required by this Section I. and to handle reasonably foreseeable fluctuations in emissions of volatile organic compounds. Fluctuations in emissions that occur when the separator dumps into the tank are reasonably foreseeable.

I.C.1.b. All hydrocarbon liquids and produced water collection, storage, processing, and handling operations, regardless of size, must be designed, operated, and maintained so as to minimize emission of volatile organic compounds to the atmosphere to the maximum extent practicable.

I.C.1.c. All air pollution control equipment used to demonstrate compliance with Sections I.D., I.J., and I.K. must meet a control efficiency of at least 95%. Failure to properly install, operate, and maintain air pollution control equipment is a violation of this regulation,

I.C.1.d. If a flare or other combustion device is used to control emissions of volatile organic compounds to comply with Sections I.D., I.J., and I.K. it must be enclosed, have no visible emissions, and be designed so that an observer can, by means of visual observation from the outside of the enclosed flare or combustion device, or by other convenient means, such as a continuous monitoring device, approved by the Division, determine whether it is operating properly.

I.C.1.e. All combustion devices used to control emissions of volatile organic compounds to comply with Sections I.D., I.J., and I.K. must be equipped with and operate an auto-igniter as follows:

I.C.1.e.(i) (State Only) For condensate storage tanks that are constructed or modified after May 1, 2009, and before January 1, 2017, and controlled by a combustion device, auto-igniters must be installed and operational, beginning the date of first production after any new tank installation or tank modification.

I.C.1.e.(ii) (State Only) For all existing condensate storage tanks controlled by a combustion device in order to comply with the emissions control requirements of Section I.D.1., auto-igniters must be installed and operational beginning May 1, 2009, for condensate storage tanks with actual uncontrolled emissions of greater than or equal to 50 tons per year, and beginning May 1, 2010, for all other existing condensate storage tanks controlled by a combustion device, or within 180 days from first having installed the combustion device, whichever date comes later.

I.C.1.e.(iii) All combustion devices installed on or after January 1, 2017, must be equipped with an operational auto-igniter upon installation of the combustion device.

I.C.1.e.(iv) All combustion devices installed on or after January 1, 2018, and used to comply with Sections I.J. or I.K. must be equipped with an operational auto-igniter upon installation of the combustion device.

I.C.1.f. (State Only) If a combustion device is used to control emissions of volatile organic compounds, surveillance systems must be employed and operational as follows:

I.C.1.f.(i) (State Only) Beginning May 1, 2010, for all existing condensate storage tanks with uncontrolled actual emissions of 100 tons per year or more based on data from the previous twelve consecutive months.

I.C.1.f.(ii) (State Only) For all new and modified condensate storage tanks controlled by a combustion device for the first 90 days surveillance systems must be employed and operational beginning 180 days from commencement of operation after the tank was newly installed, or after the well was newly drilled, re-completed, re-fractured or otherwise stimulated, if uncontrolled actual emissions projected for the first twelve months based on data from the first 90 days of operation from the condensate storage tank are 100 tons or more of uncontrolled VOCs.

I.C.2. The emission estimates and emission reductions required by Section I.D. must be demonstrated using one of the following emission factors:

I.C.2.a. In the 8-Hour Ozone Control Area

I.C.2.a.(i) For atmospheric condensate storage tanks at oil and gas exploration and production operations, a default emission factor of 13.7 pounds of volatile organic compounds per barrel of condensate must be used unless a more specific emission factor has been established pursuant to Section I.C.2.a.(iii). The Division may require a more specific emission factor that complies with Section I.C.2.a.(iii).

I.C.2.a.(ii) For atmospheric condensate storage tanks at natural gas compressor stations and natural gas drip stations a source may use a specific emissions factor that was used for reporting emissions from the source on APENs filed on or before February 28, 2003. The Division may, however, require the source to develop and use a more recent specific emission factor pursuant to Section I.C.2.a.(iii) if such a more recent emission factor would be more reliable or accurate.

I.C.2.a.(iii) Except as otherwise provided in Section I.C.2.a.(i), a specific emission factor is one for which the Division has no objection, and which is based on collection and analysis of a representative sample of the hydrocarbon liquids or produced water pursuant to a test method approved by the Division.

I.C.2.a.(iv) For storage tanks storing produced water or hydrocarbon liquids other than condensate, the most recent Division-approved default emission factors must be used unless a more specific

emission factor has been established pursuant to Section I.C.2.a.(iii).

I.C.2.a.(v) If the Division has reason to believe that a specific emission factor is no longer representative, or if it deems it otherwise necessary, the Division may require the use of an alternative emission factor that complies with Section I.C.2.a.(iii).

I.C.2.b. (State Only) For any other Ozone Nonattainment Area or Attainment/Maintenance Areas

I.C.2.b.(i) (State Only) For storage tanks at oil and gas exploration and production operations, the source must use a default basin-specific uncontrolled volatile organic compound emission factor established by the Division unless a site-specific emission factor has been established pursuant to Section I.C.2.b.(iii). If the Division has established no default emission factor, if the Division has reason to believe that the default emission factor is no longer representative, or if it deems it otherwise necessary, the Division may require use of an alternative emission factor that complies with Section I.C.2.b.(iii).

I.C.2.b.(ii) (State Only) For storage tanks at natural gas compressor stations and natural gas drip stations, the source must use a site-specific volatile organic compound emission factor established pursuant to Section I.C.2.b.(iii). If the Division has reason to believe that the site-specific emission factor is no longer representative, or if it deems it otherwise necessary, the Division may require use of an alternative emission factor that complies with Section I.C.2.b.(iii).

I.C.2.b.(iii) (State Only) Establishment of or Updating Approved Emission Factors

I.C.2.b.(iii)(A) (State Only) The Division may require the source to develop and/or use a more recent default basin-specific or site-specific volatile organic compound emission factor pursuant to Section I.C.2.b., if such emission factor would be more reliable or accurate.

I.C.2.b.(iii)(B) (State Only) For storage tanks at oil and gas exploration and production operations, the source may use a site-specific volatile organic compound emission factor for which the Division has no objection, and which is based on collection and analysis of a representative sample of hydrocarbon liquids or produced water pursuant to a test method approved by the Division.

I.C.2.b.(iii)(C) (State Only) For storage tanks at natural gas compressor stations and natural gas drip stations, a source may use a volatile

organic compound emissions factor that was used for reporting emissions from the source on APENs filed on or before February 28, 2003, or an alternative site-specific volatile organic compound emission factor established pursuant to Section I.C.2.b.

I.C.2.b.(iii)(D) (State Only) A default basin-specific volatile organic compound emissions factor must be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of hydrocarbon liquids or produced water or an alternative method, pursuant to a test method approved by the Division, except as otherwise provided in I.C.2.b.(i).

I.C.2.b.(iii)(E) (State Only) A site-specific volatile organic compound emissions factor must be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of hydrocarbon liquids or produced water pursuant to a test method approved by the Division.

I.D. Storage Tank Emission Controls

I.D.1. Repealed (December 16, 2022)

I.D.2. Repealed (December 16, 2022)

I.D.3. Storage Tank Control Strategy

I.D.3.a. Applicability

I.D.3.a.(i) Owners or operators of storage tanks with uncontrolled actual emissions of VOCs equal to or greater than four (4) tons per year based on a rolling twelve-month total must collect and control emissions from each storage tank by routing emissions to and operating air pollution control equipment that achieves a VOC control efficiency of 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for VOC, except where the combustion device has been authorized by permit prior to March 1, 2020.

I.D.3.a.(ii) Owners or operators of storage tanks with uncontrolled actual emissions of VOCs equal to or greater than two (2) tons per year based on a rolling twelve-month total and not subject to Section I.D.3.a.(i) must collect and control emissions from each storage tank by routing emissions to and operating air pollution control equipment that achieves a VOC control efficiency of 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for VOC, except where the combustion device has been authorized by permit prior to March 1, 2020.

I.D.3.a.(iii) Internal floating roof tanks subject to Part B, Section IV. at centralized oil stabilization facilities are not subject to Section I.D.3.

I.D.3.a.(iv) Owners or operators of storage tanks at class II disposal well facilities for which the use of air pollution control equipment would be technically infeasible without supplemental fuel may apply for

an exemption from the control requirements of Section I.D.3. Such request must include documentation demonstrating the infeasibility of the air pollution control equipment.

I.D.3.b. Compliance Deadlines

Sections I.D.3.b.(i) through I.D.3.b.(viii) do not apply to storage tanks in northern Weld County or at a centralized oil stabilization or class II disposal well facility specified in Sections I.A.3. or I.A.4.

I.D.3.b.(i) A storage tank subject to Section I.D.3.a.(i) and constructed on or after March 1, 2020, must be in compliance by commencement of operation of that storage tank.

I.D.3.b.(ii) A storage tank subject to Section I.D.3.a.(ii) and constructed on or after March 1, 2020, must be in compliance by commencement of operation of that storage tank.

I.D.3.b.(iii) A storage tank subject to Section I.D.3.a.(i) and constructed before March 1, 2020, must be in compliance by May 1, 2020, or by commencement of operation of the storage tank, whichever comes later.

I.D.3.b.(iv) A storage tank subject to Section I.D.3.a.(ii) and constructed before March 1, 2020, must be in compliance by May 1, 2020, or by commencement of operation of the storage tank, whichever comes later.

I.D.3.b.(v) A storage tank subject to Section I.D.3.a.(i) and not otherwise subject to Sections I.D.3.b.(i). or I.D.3.b.(iii) that increases uncontrolled actual emissions to four (4) tons per year VOC or more on a rolling twelve-month basis after March 1, 2020, must be in compliance within sixty (60) days of the first day of the month after which the storage tank VOC emissions exceeded four (4) tons per year on a rolling twelve-month basis.

I.D.3.b.(vi) A storage tank subject to Section I.D.3.a.(ii) and not otherwise subject to Sections I.D.3.b.(ii) or I.D.3.b.(iv) that increases uncontrolled actual emissions to two (2) tons per year VOC based on a rolling twelve-month basis after March 1, 2020, must be in compliance within sixty (60) days of the first day of the month after which the storage tank VOC

emissions exceeded two (2) tons per year on a rolling twelve-month basis.

I.D.3.b.(vii) If air pollution control equipment is not installed by the applicable compliance date in Sections I.D.3.b.(iii) or I.D.3.b.(v), compliance with Section I.D.3.a.(i) may alternatively be demonstrated by shutting in all wells producing into that storage tank by the date in Sections I.D.3.b.(iii) or I.D.3.b.(v) so long as production does not resume from any such well until the air pollution control equipment is installed and operational.

I.D.3.b.(viii) If air pollution control equipment is not installed by the applicable compliance date in Sections I.D.3.b.(iv) or I.D.3.b.(vi), compliance with Section I.D.3.a.(ii) may alternatively be demonstrated by shutting in all wells producing into that storage tank by the date in Sections I.D.3.b.(iv) or I.D.3.b.(vi) so long as production does not resume from any such well until the air pollution control equipment is installed and operational.

I.D.3.b.(ix) This Section I.D.3. does not apply to storage tanks at natural gas-processing plants subject to Section I.G. or qualifying natural gas compressor stations subject to Section I.I.

I.D.3.b.(x) A storage tank in northern Weld County at a centralized oil stabilization or class II disposal well facility specified in Sections I.A.3. or I.A.4. meeting the applicability in Sections I.D.3.a.(i) or I.D.3.a.(ii) and constructed before February 14, 2023, that is not already controlled under Section II.C.1.c. must be in compliance by May 1, 2023.

I.D.3.b.(xi) A storage tank in northern Weld County at a centralized oil stabilization or class II disposal well facility specified in Sections I.A.3. or I.A.4. meeting the applicability in Sections I.D.3.a.(i) or I.D.3.a.(ii) and constructed on or after February 14, 2023, must be in compliance by commencement of operation.

I.D.3.b.(xii) A storage tank in northern Weld County at a centralized oil stabilization or class II disposal well facility specified in Sections I.A.3. or I.A.4. meeting the applicability in Sections I.D.3.a.(i) or I.D.3.a.(ii) that increases uncontrolled actual emissions to two (2) tons per year VOC based on a rolling twelve-

month basis after February 14, 2023, must be in compliance within sixty (60) days of the first day of the month after which the storage tank VOC emissions exceeded two (2) tons per year on a rolling twelve-month basis.

I.D.3.b.(xiii) If air pollution control equipment is not installed by the applicable compliance date in Sections I.D.3.b.(x) through I.D.3.b.(xii), compliance with Sections I.D.3.a.(i) or I.D.3.a.(ii) may alternatively be demonstrated by shutting in all wells producing into that storage tank by the date in Sections I.D.3.b.(x) through I.D.3.b.(xii) so long as production does not resume from any such well until the air pollution control equipment is installed and operational.

I.D.4. Alternative emissions control equipment and pollution prevention devices and processes installed and implemented after June 1, 2004, shall qualify as air pollution control equipment, and may be used in lieu of, or in combination with, combustion devices and/or vapor recovery units to achieve the emission reductions required by this Section I.D., if the following conditions are met:

I.D.4.a. The owner or operator obtains a construction permit authorizing such use of the alternative emissions control equipment or pollution prevention device or process. The proposal for such equipment, device or process shall comply with all regulatory provisions for construction permit applications and shall include the following:

I.D.4.a.(i) A description of the equipment, device or process;

I.D.4.a.(ii) A description of where, when and how the equipment, device or process will be used;

I.D.4.a.(iii) The claimed control efficiency and supporting documentation adequate to demonstrate such control efficiency;

I.D.4.a.(iv) An adequate method for measuring actual control efficiency; and

I.D.4.a.(v) Description of the records and reports that will be generated to adequately track emission reductions and implementation and operation of the equipment, device or process, and a description of how such matters will be reflected in the records and reports required by Section I.F.

I.D.4.b. Public notice of the application is provided pursuant to Regulation Number 3, Part B, Section III.C.4.

I.D.4.c. EPA approves the proposal. The Division shall transmit a copy of the permit application and any other materials provided by the applicant, all public comments, all Division responses and the Division's permit to EPA Region 8. If EPA fails to approve or disapprove the proposal within 45 days of receipt of these materials, EPA shall be deemed to have approved the proposal.

I.E. Monitoring of Storage Tanks and Air Pollution Control Equipment

I.E.1. Applicability

I.E.1.a. The owner or operator of any storage tank that is being controlled pursuant to this Section I.

I.E.2. Monitoring Requirements

I.E.2.a. The owner or operator of any storage tank controlled by air pollution control equipment other than a combustion device must follow manufacturer's recommended maintenance. Air pollution control equipment must be periodically inspected to ensure proper maintenance and operation according to the Division-approved operation and maintenance plan.

I.E.2.b. Repealed (December 16, 2022)

I.E.2.c. Weekly Monitoring Requirements

The owner or operator must inspect or monitor the air pollution control equipment at least weekly to ensure that it is operating properly. The inspection must include and document the following:

I.E.2.c.(i) For combustion devices, a check that the pilot light is lit by either visible observation or other means approved by the Division. For devices equipped with an auto-igniter, a check that the auto-igniter is properly functioning.

I.E.2.c.(ii) For combustion devices, a check that the valves for piping of gas to the pilot light are open.

I.E.2.c.(iii) (State Only) In addition to complying with Sections I.E.2.c.(i). and I.E.2.c.(ii)., the owner or operator of tanks controlled pursuant to Section I.D. that have installed combustion devices may use a surveillance system to maintain records on combustion device operation.

I.E.2.c.(iv) For combustion devices, the owner or operator must visually check for the presence or absence of smoke and that the burner tray is not visibly clogged.

I.E.2.c.(v) For vapor recovery units, the owner or operator must check that the unit is operating and that vapors from the storage tank are being routed to the unit.

I.E.2.c.(vi) For all control devices, the owner or operator must check that the valves for the piping from the storage tank to the air pollution control equipment are open.

I.E.2.c.(vii) For all storage tanks, the owner or operator must check that the thief hatch is closed and latched, the pressure relief valve is properly seated, and all vent lines are closed.

I.E.2.c.(viii) Beginning May 1, 2020, or the applicable compliance date in Section I.D.3.b., whichever comes later, owners or operators of storage tanks with uncontrolled actual emissions of VOCs equal to or greater than four (4) tons per year based on a rolling twelve-month total must conduct audio, visual, olfactory (AVO) inspections of the storage tank.

I.E.2.c.(ix) Beginning May 1, 2020, or the applicable compliance date in Section I.D.3.b., whichever comes later, owners or operators of storage tanks subject to Section I.D.3.a.(ii) must conduct audio, visual, olfactory (AVO) inspections of the storage tank.

I.E.2.d. (State Only) For storage tanks equipped with a surveillance system or other Division-approved monitoring system, the owner or operator must check weekly that the system is functioning properly and that necessary information is being collected. Any loss of data or failure to collect required data may be treated by the Division as if the data were not collected.

I.E.3. Performance testing requirements

I.E.3.a. Each storage vessel that has the potential for VOC emissions equal to or greater than six (6) tons per year (controlled actual emissions) must conduct periodic performance testing of the control device used to comply with Section I.D.3.a.(i). The potential for VOC emissions must be calculated using a generally accepted model or calculation methodology, based on the maximum average daily throughput determined for the 30-day period of production prior to May 1, 2022, or April 1, 2023, if located in northern Weld County. The determination may take

into account requirements under a legally and practically enforceable limit in an operating permit or other requirement established under a federal, state, local, or tribal authority. Any vapor from the storage vessel that is recovered and routed to a process through a VRU with a cover and closed vent system is not required to be included in the determination of VOC potential to emit for purposes of determining applicability.

I.E.3.a.(i) Conduct a performance test in accordance with 40 CFR Part 60, Subpart OOOOa, Section 60.5413a(b) (June 3, 2016) by May 1, 2023, and subsequent performance tests no longer than 60 months following the previous performance test.

I.E.3.a.(ii) Control device models tested in accordance with 40 CFR Part 60, Subpart OOOOa, Section 60.5413a(d) and demonstrating continuous compliance in accordance with 40 CFR Part 60, Subpart OOOOa, Section 60.5413a(e)(1) (June 3, 2016) are not subject to the performance test requirement in Section I.E.3.a.(i).

I.E.3.a.(iii) Maintain records of performance tests conducted pursuant to Section I.E.3.a.(i) or manufacturer demonstrations and associated inlet gas flow rate records specified in Section I.E.3.a.(ii) for five (5) years and make records available to the Division upon request.

I.F. Storage Tank Recordkeeping and Reporting

I.F.1. Repealed, except for records retained in Sections I.F.1.c. through 1.F.1.f. and I.F.1.g.(x); renumbered as I.F.1.a. through I.F.1.e., respectively. (December 16, 2022)

I.F.1.a. A copy of each calendar weekly and calendar monthly spreadsheet shall be retained for five years, with final retention period ending April 30, 2025. A spreadsheet may apply to more than one week if there are no changes in any of the required data and the spreadsheet clearly identifies the weeks it covers. The spreadsheet may be retained electronically. However, the Division may treat any loss of data or failure to maintain the Division-approved spreadsheet, as if the data were not collected.

I.F.1.b. Each owner or operator shall maintain records of the inspections required pursuant to Section I.E. and retain those records for five years, with final retention period ending April 30, 2025. These records shall include the time and date of the inspection, the person conducting the inspection, a notation that each of the checks required under Sections I.C. and I.E. were completed and a description of any problems observed during the inspection, and a description and date of any corrective actions taken.

I.F.1.c. (State Only) Each owner or operator shall maintain records of required surveillance system or other monitoring data and shall make these records available promptly upon Division request.

I.F.1.d. (State Only) Each owner or operator shall maintain records on when an atmospheric condensate storage tank is newly installed, or when a well is newly drilled, re-completed, re-fractured or otherwise stimulated. Records shall be maintained per well associated with each tank and the date of first production associated with these activities.

I.F.1.e. A copy of each semi-annual report shall be retained for five years or through August 30, 2025, for the last report submitted on or before August 30, 2020.

I.F.2. Recordkeeping for storage tanks subject to Section I.D.3.

I.F.2.a. The owner or operator of any storage tank subject to control pursuant to Section I.D.3. must maintain records and make them available to the Division upon request.

I.F.2.b. Records maintained under this Section I.F.2. must include:

I.F.2.b.(i) The AIRS number for the storage tank. The AIRS number assigned by the Division must be marked on all storage tanks required to file an APEN.

I.F.2.b.(ii) If air pollution control equipment is required to comply with Section I.D.3. visible signage must be located with the control equipment identifying the AIRS number for each storage tank that is being controlled by that equipment.

I.F.2.b.(iii) Records of the inspections required in Section I.E.

I.F.2.b.(iii)(A) The time and date of each inspection.

I.F.2.b.(iii)(B) The person conducting the inspection.

I.F.2.b.(iii)(C) A notation that each of the checks required under Section I.E. were completed.

I.F.2.b.(iii)(D) A description of any problems observed during the inspection, description and date of any corrective actions taken, and name of individual performing corrective actions.

I.F.2.b.(iv) The calendar monthly uncontrolled actual and controlled actual emissions of VOC and the rolling twelve-month totals for each storage tank subject to control under Section I.D.3.

I.F.2.b.(v) The emission factor used for each storage tank. The emission factors must comply with Section I.C.2. and the owner or operator must use the most recent emission factor on file with the Division (i.e., either the default emission factor or the specific emission factor established pursuant to Section I.C.2.a.(iii)).

I.F.2.b.(vi) The control efficiency of each unit of air pollution control equipment and the AIRS number of the storage tank being controlled.

I.F.2.b.(vii) Records of any exemption, and associated documentation, applied for under Section I.D.3.a.(ii)(A).

I.F.2.c. (State Only) The owner or operator of each storage tank subject to Section I.D.3. (except storage tanks located at centralized oil stabilization and class II disposal well facilities specified in Section I.A.4.) must maintain records of

I.F.2.c.(i) The monthly production volumes for each storage tank, based on the most recent measurement available. The monthly average must be calculated by averaging the most recent measurement of such production, which may be the amount shown on the receipt from the purchaser for delivery of hydrocarbon liquids or produced water from such tank, over the time such delivered hydrocarbon liquids or produced water was collected. The monthly average from the most recent measurement will be used to estimate monthly volumes of controlled and uncontrolled actual emissions for all weeks and months following the measurement until the next measurement is taken.

I.F.2.c.(ii) Any downtime of air pollution control equipment, including the date, time and duration of any scheduled downtime. For any unscheduled downtime, the date and time the downtime was discovered and the date and time the air pollution control equipment was last observed to be operating.

I.F.2.c.(iii) Any required surveillance system or other monitoring data.

I.F.2.c.(iv) When a storage tank is installed, or when a well is drilled, re-completed, re-fractured, or otherwise stimulated. Records must be maintained per well associated with each storage tank and the date of commencement of operation associated with these activities.

I.F.3. Reporting for storage tanks subject to Section I.D.3.

I.F.3.a. On or before April 30, 2021, and April 30 of each year thereafter, each owner or operator of storage tanks in the 8-Hour Ozone Control Area must submit a report using Division-approved format. A copy of each report must be retained for a period of five (5) years.

I.F.3.b. On or before April 30, 2024, and April 30 of each year thereafter, the owner or operator of any storage tank subject to Sections I.D.3.b.(x) through I.D.3.b.(xii) must submit a report using Division-approved format. A copy of each report must be retained for a period of five (5) years.

I.F.3.c. The report under this Section I.F.3. must include:

I.F.3.c.(i) The report must list all storage tanks (by AIRS number and location name) controlled pursuant to Section I.D.3. during the previous calendar year (starting calendar year 2020) and

I.F.3.c.(i)(A) The calendar monthly uncontrolled actual and controlled actual emissions of VOC and the rolling twelve-month total for each storage tank.

I.F.3.c.(i)(B) The emission factor used for each storage tank for each month.

I.F.3.c.(i)(C) The control efficiency for the air pollution control equipment for each storage tank.

I.F.3.c.(ii) (State Only) The report must identify any storage tank whose control status has changed, and the

date of the change, since submission of the previous report.

I.F.3.c.(iii) (State Only) The report must list the production volume for each storage tank. Production volumes may be estimated by the amounts shown on the receipt from the purchaser.

I.F.3.c.(iv) (State Only) The report must list any downtime of air pollution control equipment, including the date, time, and duration of any scheduled downtime. For any unscheduled downtime, the date and time the downtime was discovered and the last date the air pollution control equipment was observed to be operating must be recorded in the report.

I.F.3.c.(v) (State Only) The report must list any instances where the air pollution control equipment was not properly functioning, including the date and time the equipment was not properly operating, the date and time the equipment was last observed operating properly, and the date and time the problem was corrected. The report must also include the specific nature of the problem, the specific steps taken to correct the problem, the AIRS number, or site name if no AIRS number has been assigned, of each storage tank being controlled by the equipment and the estimated production from those storage tanks during the period of non-operation.

I.F.3.c.(vi) (State Only) Reports must be signed by a responsible official who must also sign the Division-approved compliance certification form for storage tanks. The compliance certification includes both a certification of compliance with all applicable requirements of Section I. If any non-compliance is identified, the certification must include the citation, dates and durations of deviations from this Section I., associated reasoning, and compliance plan and schedule to achieve compliance. Compliance certifications for state only conditions must be identified separately from compliance certifications required under the State Implementation Plan.

I.F.3.c.(vii) (State Only) Each Division-approved self-certification form, and compliance certification submitted pursuant to Section I. must contain a certification by a responsible official of the truth, accuracy and completeness of such form, report or certification stating that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

I.G. Natural gas-processing plants located in the 8-hour Ozone Control Area or northern Weld County shall comply with requirements of this Section I.G., as well as the requirements of Sections I.B., I.C.1.a., I.C.1.b., I.H., I.J., I.K., and Regulation Number 26, Part B, Section I.A. through C.

I.G.1. For fugitive volatile organic compound emissions from leaking equipment, the leak detection and repair (LDAR) program as provided at 40 CFR Part 60, Subpart OOOO (March 8, 2024) applies, regardless of the date of construction of the affected facility, unless subject to the LDAR program provided at 40 CFR Part 60, Subpart OOOOa (August 1, 2024).

I.G.2. Air pollution control equipment shall be installed and properly operated to reduce emissions of volatile organic compounds from any atmospheric condensate storage tank (or tank battery) used to store condensate that has not been stabilized that has uncontrolled actual emissions of greater than or equal to two tons per year. Such air pollution control equipment shall have a control efficiency of at least 95%.

I.G.3. Natural gas processing plants within the 8-hour Ozone Control Area constructed before January 1, 2018, must comply with the requirements of Section I.G. beginning January 1, 2019.

I.G.4. Natural gas processing plants within northern Weld County must comply with the requirements of Section I.G. beginning February 14, 2023, or upon commencement of operation if after February 14, 2023.

I.G.5. The provisions of Sections I.B., I.C.1.a., I.C.1.b., I.G., I.H., I.J., I.K., and Regulation Number 26, Part B, Section I.A. through C., apply upon the commencement of operations to any natural gas processing plant that commences operation in the 8-Hour Ozone Control Area after the effective date of this section.

I.H. Emission Reductions from glycol natural gas dehydrators

I.H.1. Beginning May 1, 2005, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas-processing plant in the 8-Hour Ozone Control Area and subject to control requirements pursuant to Section I.H.3., shall reduce uncontrolled actual emissions of volatile organic compounds by at least 90 percent on a rolling twelve-month basis through the use of a condenser or air pollution control equipment.

I.H.2. (State Only) Beginning January 30, 2009, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas-processing plant in the 8-Hour Ozone Control Area and subject to control requirements pursuant to

Section I.H.3., shall reduce uncontrolled actual emissions of volatile organic compounds by at least 90 percent on a rolling twelve-month basis through the use of a condenser or air pollution control equipment.

I.H.3. The control requirements of Sections I.H.1. and I.H.2. apply where:

I.H.3.a. Actual uncontrolled emissions of volatile organic compounds from the glycol natural gas dehydrator are equal to or greater than one ton per year; and

I.H.3.b. The sum of actual uncontrolled emissions of volatile organic compounds from any single glycol natural gas dehydrator or grouping of glycol natural gas dehydrators at a single stationary source is equal to or greater than 15 tons per year. To determine if a grouping of dehydrators meets or exceeds the 15 tons per year threshold, sum the total actual uncontrolled emissions of volatile organic compounds from all individual dehydrators at the stationary source, including those with emissions less than one ton per year.

I.H.4. Beginning February 14, 2023, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas-processing plant in northern Weld County and subject to control requirements pursuant to Section I.H.4. that is not already controlled under Section II.D., must reduce uncontrolled actual emissions of volatile organic compounds by at least 95 percent on a rolling twelve-month basis through the use of a condenser or air pollution control equipment. The control requirements of Section I.H.4. apply where:

I.H.4.a. Uncontrolled actual emissions of VOCs from a glycol natural gas dehydrator constructed on or after February 14, 2023, are equal to or greater than two (2) tons per year. Such glycol natural gas dehydrators must be in compliance with Section I.H.4. by the date that the glycol natural gas dehydrator commences operation.

I.H.4.b. Uncontrolled actual emissions of VOCs from a single glycol natural gas dehydrator constructed before February 14, 2023, are equal to or greater than six (6) tons per year.

I.H.5. For purposes of Section I.H., emissions from still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator shall be calculated using a method approved in advance by the Division.

I.H.6. Monitoring and recordkeeping

I.H.5.a. Beginning January 1, 2017, or February 14, 2023, if located in northern Weld County, owners or operators of glycol natural gas dehydrators subject to the control requirements of Sections I.H.1., I.H.2., or I.H.4. must check on a weekly basis that any condenser or air pollution control equipment used to control emissions of volatile organic compounds is operating properly, and document:

I.H.6.a.(i) The date of each inspection;

I.H.6.a.(ii) A description of any problems observed during the inspection of the condenser or air pollution control equipment; and

I.H.6.a.(iii) A description and date of any corrective actions taken to address problems observed during the inspection of the condenser or air pollution control equipment.

I.H.6.b. The owner or operator must check and document on a weekly basis that the pilot light on a combustion device is lit, that the valves for piping of gas to the pilot light are open, and visually check for the presence or absence of smoke.

I.H.6.c. The owner or operator must document the maintenance of the condenser or air pollution control equipment, consistent with manufacturer specifications or good engineering and maintenance practices.

I.H.6.d. The owner or operator must retain records for a period of five years and make these records available to the Division upon request.

I.H.7. Reporting

I.H.7.a. On or before November 30, 2017, and semi-annually by April 30 and November 30 of each year thereafter, the owner or operator must submit the following information for the preceding calendar year (April 30 report) and for May 1 through September 30 (November 30 report) using Division-approved format. Owners or operators of glycol natural gas dehydrators in northern Weld County must submit the first April 30 report on or before April 30, 2024 (for calendar year 2023), and each April 30 thereafter, and the first November 30 report on or before November 30, 2023, (for May 1 through September 30), and each year thereafter, using Division-approved format. Beginning April 30, 2025, and by April 30 of each year thereafter, the owner or operator must submit the following information for the preceding calendar year, using Division-approved format.

I.H.7.a.(i) A list of the glycol natural gas dehydrator(s) subject to Section I.H.;

I.H.7.a.(ii) A list of the condenser or air pollution control equipment used to control emissions of volatile organic compounds from the glycol natural gas dehydrator(s); and

I.H.7.a.(iii) The date(s) of inspection(s) where the condenser or air pollution control equipment was found not operating properly or where smoke was observed.

I.I. The requirements of Sections I.D. through I.F. do not apply to the owner or operator of any natural gas compressor station or natural gas drip station located in an Ozone Nonattainment or Attainment/Maintenance Area if:

I.I.1. Air pollution control equipment is installed and properly operated to reduce emissions of volatile organic compounds from all atmospheric condensate storage tanks (or tank batteries) that have uncontrolled actual emissions of greater than or equal to two tons per year;

I.I.2. The air pollution control equipment is designed to achieve a VOC control efficiency of at least 95% on a rolling 12-month basis and meets the requirements of Sections I.C.1.a. and I.C.1.b;

I.I.3. The owner or operator of such natural gas compressor station or natural gas drip station does not own or operate any exploration and production facilities in the Ozone Non-attainment or Attainment-maintenance Area; and

I.I.4. The owner or operator of such natural gas compressor station or natural gas drip station does the following and maintains associated records and reports for a period of five years:

I.I.4.a. Documents the maintenance of the air pollution control equipment according to manufacturer specifications;

I.I.4.b. Conducts an annual opacity observation once each year on the air pollution control equipment to verify opacity does not exceed 20% during normal operations;

I.I.4.c. Maintains records of the monthly stabilized condensate throughput and monthly actual VOC emissions; and

I.I.4.d. Reports compliance with these requirements to the Division annually, on or before April 30 of each year beginning April 30, 2025.

I.I.5. A natural gas compressor station or natural gas drip station subject to Section I.I. at which a glycol natural gas dehydrator and/or natural gas-fired stationary or portable engine is operated is subject to Sections I.H., I.J., and/or Regulation Number 26, Part B, Section I. A natural gas compressor station subject to Section I.I. is also subject to Section I.L.

I.J. Compressors

I.J.1. Centrifugal compressor

I.J.1.a. Beginning January 1, 2018, or May 1, 2023, if located in northern Weld County, uncontrolled actual volatile organic compound emissions from wet seal fluid degassing systems on wet seal centrifugal compressors located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment must be reduced by at least 95%. A centrifugal compressor located at a well production facility, or an adjacent well production facility and servicing more than one well production facility, is not subject to Section I.J.1.

I.J.1.b. If the owner or operator uses a control device or routes emissions to a process to reduce emissions, the owner or operator must equip the wet seal fluid degassing system with a continuous, impermeable cover that is connected through a closed vent system that routes the emissions from the wet seal fluid degassing system to the process or control device.

I.J.1.c. The owner or operator must conduct annual visual inspections of the cover and closed vent system for defects that could result in air emissions. Defects of the closed vent system include, but are not limited to, visible cracks, holes, gaps in piping, loose connections, liquid leaks, or broken or missing caps or other closure devices. Defects of the cover include, but are not limited to, visible cracks, holes, gaps in the cover or between the cover and separator wall, broken or damaged seals or gaskets on closure devices, broken or missing hatches or other closure devices.

I.J.1.d. The owner or operator must conduct annual EPA Method 21 inspections of the cover and closed vent system to determine

whether the cover and closed vent system operates with volatile organic compound emissions less than 500 ppm.

I.J.1.e. In the event that a defect that could result in air emissions or leak is detected, the owner or operator must make a first attempt to repair no later than five (5) days after detecting the defect or leak and complete repair no later than thirty (30) days after detecting the defect or leak.

I.J.1.f. Owners or operators may delay inspection or repair of a cover or closed vent system if:

I.J.1.f.(i) Repair is technically infeasible without a shutdown. If shutdown is required, a repair attempt must be made during the next scheduled shutdown and final repair completed within two (2) years after discovery.

I.J.1.f.(ii) The cover or closed vent system is unsafe to inspect or repair because personnel would be exposed to an immediate danger as a consequence of completing the inspection or repair.

I.J.1.f.(iii) The cover or closed vent system is difficult to inspect or repair because personnel must be elevated more than two (2) meters above a supported surface or are unable to inspect or repair via a wheeled scissor-lift or hydraulic type scaffold that allows access up to 7.6 meters (25 feet) above the ground.

I.J.1.f.(iv) The cover or closed vent system is inaccessible to inspect or repair because the cover or closed vent system is buried, insulated, or obstructed by equipment or piping that prevents access.

I.J.1.g. The owner or operator must conduct monthly inspections of a combustion device used to reduce emissions to ensure the device is operating with no visible emissions. If smoke is observed, either the equipment must be immediately shut-in to investigate the potential cause for smoke and perform repairs, as necessary, or EPA Method 22 must be conducted. Devices fail the visible emissions test if a Method 22 observation documents visible emissions are present for more than one minute in any 15-minute period. Devices failing the visible emissions test must follow manufacturer’s repair instructions, if available, or best combustion engineering practice to return the unit to compliant operation. Following return to operation, the owner or operator must complete a Method 22 visual observation where there are

less than one minute of visible emissions in any 15-minute period.

I.J.1.h. For a combustion device used to reduce VOC emissions from wet seal fluid degassing systems on wet seal centrifugal compressors, the owner or operator must conduct a performance test in accordance with 40 CFR Part 60, Subpart OOOOa, Section 60.5413a(b) (June 3, 2016) by May 1, 2023, or May 1, 2024, if located in northern Weld County, and subsequent performance tests no longer than 60 months following the previous performance test. Control device models tested in accordance with 40 CFR Part 60, Subpart OOOOa, Section 60.5413a(d) and demonstrating continuous compliance in accordance with 40 CFR Part 60, Subpart OOOOa, Section 60.5413a(e)(1) (June 3, 2016) are not subject to the performance test requirement.

I.J.1.i. Recordkeeping

I.J.1.i.(i) Owners or operators must maintain the following records for at least five (5) years and make records available to the Division upon request:

I.J.1.i.(i)(A) Identification of each centrifugal compressor using a wet seal system;

I.J.1.i.(i)(B) Each combustion device visible emissions inspection and any resulting responsive actions;

I.J.1.i.(i)(C) Each cover and closed vent system inspection and any resulting responsive actions; and

I.J.1.i.(i)(D) Each cover or closed vent system on the delay of inspection or repair list, the reason for and duration of the delay of inspection or repair, and the schedule for inspecting or repairing such cover or closed vent system.

I.J.1.i.(i)(E) Each performance test or manufacturer demonstration of control device model performance test, and associated inlet gas flow rate records.

I.J.1.i.(i)(F) Records of visual inspections conducted pursuant to Section I.J.1.g., including the time and date of each inspection and a description of any problems observed, description and date of any corrective

action(s) taken, and name of employee or third party performing corrective action(s).

I.J.1.j. As an alternative to the inspection, repair, and recordkeeping provisions in Sections I.J.1.c. through I.J.1.f., I.J.1.h.(i)(C), and I.J.1.h.(i)(D), the owner or operator may inspect, repair, and document the cover and closed vent system in accordance with the leak detection and repair program in Section I.L., including the inspection frequency.

I.J.1.k. As an alternative to the emission control, inspection, repair, and recordkeeping provisions described in Sections I.J.1.a. through I.J.1.i., the owner or operator may comply with wet seal centrifugal compressors emission control, monitoring, recordkeeping, and reporting requirements of a New Source Performance Standard in 40 CFR Part 60 (November 16, 2017).

I.J.2. Reciprocating compressor

I.J.2.a. Beginning January 1, 2018, or February 14, 2023, if located in northern Weld County, the rod packing on reciprocating compressors located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment must be replaced every 26,000 hours of operation or every thirty-six (36) months. A reciprocating compressor located at a well production facility, or an adjacent well production facility and servicing more than one well production facility, is not subject to Section I.J.2.

I.J.2.a.(i) Owners or operators of reciprocating compressors located at a natural gas processing plant and constructed before January 1, 2018, or February 14, 2023, if located in northern Weld County must

I.J.2.a.(i)(A) Begin monitoring the hours of operation starting January 1, 2018, or February 14, 2023, if located in northern Weld County, unless already monitoring under Section II.B.3.; or

I.J.2.a.(i)(B) Conduct the first rod packing replacement required under Section I.J.2. prior to January 1, 2021, or February 14, 2026, if located in northern Weld County, unless under a replacement schedule under Section II.B.3.

I.J.2.a.(ii) Owners or operators of reciprocating compressors located at a natural gas processing plant and constructed after January 1, 2018, or February 14, 2023, if located in northern Weld County, must

begin monitoring the hours or months of operation upon commencement of operation of the reciprocating compressor, unless the compressor located in northern Weld County is already monitoring under Section II.B.3.d.

I.J.2.b. As an alternative to the requirement described in Section I.J.2.a., beginning May 1, 2018, or February 14, 2023, if located in northern Weld County, the owner or operator may collect rod packing volatile organic compound emissions using a rod packing emissions collection system that operates under negative pressure and routes the rod packing emissions through a closed vent system to a process.

I.J.2.b.(i) The owner or operator must conduct annual visual inspections of the cover and closed vent system for defects that could result in air emissions. Defects of the closed vent system include, but are not limited to, visible cracks, holes, gaps in piping, loose connections, liquid leaks, or broken or missing caps or other closure devices. Defects of the cover include, but are not limited to, visible cracks, holes, gaps in the cover or between the cover and separator wall, broken or damaged seals or gaskets on closure devices, broken or missing hatches or other closure devices.

I.J.2.b.(ii) The owner or operator must conduct annual EPA Method 21 inspections of the cover and closed vent system to determine whether the cover and closed vent system operates with volatile organic compound emissions less than 500 ppm.

I.J.2.b.(iii) In the event that a defect that could result in air emissions or leak is detected, the owner or operator must make a first attempt to repair no later than five (5) days after detecting the defect or leak and complete repair no later than thirty (30) days after detecting the defect or leak.

I.J.2.b.(iv) Owners or operators may delay inspection or repair of a cover or closed vent system if:

I.J.2.b.(iv)(A) Repair is technically infeasible without a shutdown. If shutdown is required, a repair attempt must be made during the next scheduled shutdown and final repair completed within two (2) years after discovery.

I.J.2.b.(iv)(B) The cover or closed vent system is unsafe to inspect or repair because personnel would be exposed to an immediate danger as a consequence of completing the inspection or repair.

I.J.2.b.(iv)(C) The cover or closed vent system is difficult to inspect or repair because personnel must be elevated more than two (2) meters above a supported surface or are unable to inspect or repair via a wheeled scissor-lift or hydraulic type scaffold that allows access up to 7.6 meters (25 feet) above the ground.

I.J.2.b.(iv)(D) The cover or closed vent system is inaccessible to inspect or repair because the cover or closed vent system is buried, insulated, or obstructed by equipment or piping that prevents access.

I.J.2.c. Recordkeeping

I.J.2.c.(i) Owners or operators must maintain the following records for at least five (5) years and make records available to the Division upon request:

I.J.2.c.(i)(A) Identification of each reciprocating compressor;

I.J.2.c.(i)(B) The hours of operation or the number of months since the previous rod packing replacement, or a statement that emissions from the rod packing are being routed to a process through a closed vent system under negative pressure;

I.J.2.c.(i)(C) The date of each rod packing replacement, or date of installation of a rod packing emissions collection system and closed vent system;

I.J.2.c.(i)(D) Each cover and closed vent system inspection and any resulting responsive actions; and

I.J.2.c.(i)(E) Each cover or closed vent system on the delay of inspection or repair list, the reason for and duration of the delay of inspection or repair, and the schedule for inspecting or repairing such cover or closed vent system.

I.J.2.d. As an alternative to the inspection, repair, and recordkeeping provisions in Sections I.J.2.b., I.J.2.c.(i)(D), and I.J.2.c.(i)(E), the owner or operator may inspect, repair, and document the cover and closed vent system in accordance with the leak detection and repair program in Section I.L., including the inspection frequency.

I.J.2.e. As an alternative to the emission control, inspection, repair, and recordkeeping provisions described in Sections I.J.2.a. through I.J.2.d., the owner or operator may comply with reciprocating compressor emission control, monitoring, recordkeeping, and reporting requirements of a New Source Performance Standard in 40 CFR Part 60 (November 16, 2017).

I.K. Pneumatic pumps

I.K.1. Beginning May 1, 2018, or July 1, 2023, if located in northern Weld County, the owner or operator of each natural gas-driven diaphragm pneumatic pump located at a natural gas processing plant must ensure the pneumatic pump has a volatile organic compound emission rate of zero.

I.K.2. Beginning May 1, 2018, or July 1, 2023, if located in northern Weld County, the owner or operator of each natural gas-driven diaphragm pneumatic pump located at a well production facility must reduce volatile organic compound emissions from the pneumatic pump by 95% if it is technically feasible to route emissions to an existing control device or process at the well production facility. Natural gas-driven diaphragm pneumatic pumps that are in operation during any period of time during a calendar day less than 90 days per calendar year are not subject to Section I.K.2.

I.K.2.a. If the control device available onsite is unable to achieve a 95% emission reduction and it is not technically feasible to route the emissions to a process at the well production facility, the owner or operator must still route the pneumatic pump emissions to the existing control device.

I.K.2.b. If the owner or operator subsequently installs a control device or it becomes technically feasible to route the emissions to a process, the owner or operator must reduce volatile organic compound emissions from the pneumatic pump by 95% within thirty (30) days of startup of the control device or of the feasibility of routing emissions to a process at the well production facility.

I.K.2.c. The owner or operator is not required to control pneumatic pump emissions if, through an engineering assessment by a qualified professional engineer, routing a pneumatic pump to a control device or process at the well production facility is shown to be technically infeasible.

I.K.2.d. If the owner or operator uses a control device or routes emissions to a process to reduce emissions, the owner or operator must connect the pneumatic pump through a closed vent system that routes the pneumatic pump emissions to the process or control device.

I.K.2.e. The owner or operator must conduct annual visual inspections of the closed vent system for defects that could result in air emissions. Defects of the closed vent system include, but are not limited to, visible cracks, holes, gaps in piping, loose connections, liquid leaks, or broken or missing caps or other closure devices.

I.K.2.f. The owner or operators must conduct annual EPA Method 21 inspections of the closed vent system to determine whether the closed vent system operates with volatile organic compound emissions less than 500 ppm.

I.K.2.g. In the event that a defect that could result in air emissions or leak is detected, the owner or operator must make a first attempt to repair no later than five (5) days after detecting the defect or leak and complete repair no later than thirty (30) days after detecting the defect or leak.

I.K.2.h. Owners or operators may delay inspection or repair of a closed vent system if:

I.K.2.h.(i) Repair is technically infeasible without a shutdown. If shutdown is required, a repair attempt must be made during the next scheduled shutdown and final repair completed within two (2) years after discovery.

I.K.2.h.(ii) The closed vent system is unsafe to inspect or repair because personnel would be exposed to an immediate danger as a consequence of completing the inspection or repair.

I.K.2.h.(iii) The closed vent system is difficult to inspect or repair because personnel must be elevated more than two (2) meters above a supported surface or are unable to inspect or repair via a wheeled scissor-lift or hydraulic type scaffold that allows access up to 7.6 meters (25 feet) above the ground.

I.K.2.h.(iv) The closed vent system is inaccessible to inspect or repair because the closed vent system is buried, insulated, or obstructed by equipment or piping that prevents access.

I.K.3. Recordkeeping

I.K.3.a. Owners or operators must maintain the following records for at least five (5) years and make records available to the Division upon request:

I.K.3.a.(i) Identification of each natural gas-driven diaphragm pneumatic pump;

I.K.3.a.(ii) For natural gas-driven diaphragm pneumatic pumps in operation less than 90 days per calendar year, records of the days of operation each calendar year;

I.K.3.a.(iii) Records of control devices designed to achieve less than 95% emission reduction, including an evaluation or manufacturer specifications indicating the percentage reduction the control device is designed to achieve;

I.K.3.a.(iv) Records of the engineering assessment and certification by a qualified professional engineer that routing natural gas-driven diaphragm pneumatic pump emissions to a control device or process is technically infeasible;

I.K.3.a.(v) Each closed vent system inspection and any resulting responsive actions; and

I.K.3.a.(vi) Each closed vent system on the delay of inspection or repair list, the reason for and duration of the delay of inspection or repair, and the schedule for inspecting or repairing such closed vent system.

I.K.4. As an alternative to the inspection, repair, and recordkeeping provisions in Sections I.K.2.e. through I.K.2.h., I.K.3.a.(v), and I.K.3.a.(vi), the owner or operator may inspect, repair, and document the closed vent system in accordance with the leak detection and repair program in Section I.L., including the inspection frequency.

I.K.5. As an alternative to the emission control, inspection, repair, and recordkeeping provisions described in Sections I.K.1. through I.K.4., the owner or operator may comply with natural gas-driven diaphragm pneumatic pump emission control, monitoring, recordkeeping, and reporting requirements of a New Source Performance Standard in 40 CFR Part 60 (November 16, 2017).

I.L. Leak detection and repair program for well production facilities and natural gas compressor stations located in the 8-hour Ozone Control Area or northern Weld County, or centralized oil stabilization facilities specified in Section I.A.3.

I.L.1. Natural gas compressor stations

I.L.1.a. Beginning June 30, 2018, or February 14, 2023, if located in northern Weld County, owners or operators of natural gas compressor stations must inspect components for leaks using an approved instrument monitoring method at least quarterly.

I.L.1.b. Owners or operators of natural gas compressor stations constructed on or after June 30, 2018, or February 14, 2023, if located in northern Weld County, must conduct an initial inspection for leaks from components using an approved instrument monitoring method no later than ninety (90) days after the facility commences operation. Thereafter, approved

instrument monitoring method inspections must be conducted at least quarterly.

I.L.2. Well production facilities

I.L.2.a. Beginning June 30, 2018, or February 14, 2023, if located in northern Weld County, owners or operators of well production facilities with uncontrolled actual volatile organic compound emissions greater than or equal to one (1) ton per year and less than or equal to six (6) tons per year, based on a rolling twelve-month total, must inspect components for leaks using an approved instrument monitoring method at least annually.

I.L.2.b. Beginning June 30, 2018, or February 14, 2023, if located in northern Weld County, owners or operators of well production facilities with uncontrolled actual volatile organic compound emissions greater than six (6) tons per year, based on a rolling twelve-month total, must inspect components for leaks using an approved instrument monitoring method at least semi-annually.

I.L.2.c. For purposes of Sections I.L.2.a. and I.L.2.b., the estimated uncontrolled actual volatile organic compound emissions from the highest emitting storage tank at the well production facility determines the frequency at which inspections must be performed. If no storage tanks storing oil or condensate are located at the well production facility, owners or operators must rely on the facility emissions (controlled actual volatile organic compound emissions from all permanent equipment, including emissions from components determined by utilizing the emission factors defined as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates).

I.L.2.d. Owners or operators of well production facilities constructed on or after June 30, 2018, or February 14, 2023, if located in northern Weld County, must conduct an initial inspection for leaks from components using an approved instrument monitoring method no sooner than fifteen (15) days and no later than thirty (30) days after the facility commences operation. Thereafter, approved instrument monitoring method inspections must be conducted in accordance with Sections I.L.2.a. and I.L.2.b.

I.L.2.e. Beginning April 1, 2023, owners or operators of centralized oil stabilization facilities specified in Section I.A.3. must inspect components for leaks using an approved instrument monitoring method at least quarterly.

I.L.3. If a component is unsafe, difficult, or inaccessible to monitor, the owner or operator is not required to monitor the component until it becomes feasible to do so.

I.L.3.a. Difficult to monitor components are those that cannot be monitored without elevating the monitoring personnel more than two (2) meters above a supported surface or are unable to be

reached via a wheeled scissor-lift or hydraulic type scaffold that allows access to components up to 7.6 meters (25 feet) above the ground.

I.L.3.b. Unsafe to monitor components are those that cannot be monitored without exposing monitoring personnel to an immediate danger as a consequence of completing the monitoring.

I.L.3.c. Inaccessible to monitor components are those that are buried, insulated, or obstructed by equipment or piping that prevents access to the components by monitoring personnel.

I.L.4. Leaks requiring repair: Only leaks from components exceeding the thresholds in Section I.L.4. require repair under Section I.L.5.

I.L.4.a. For EPA Method 21 monitoring, repair is required for leaks with any concentration of hydrocarbon above 500 ppm not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

I.L.4.b. For infra-red camera monitoring, repair is required for leaks with any detectable emissions not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

I.L.4.c. For other approved instrument monitoring methods or programs, leak identification requiring repair will be established as set forth in an approval under Section I.L.8.

I.L.4.d. For leaks identified using an approved non-quantitative instrument monitoring method, owners or operators have the option of either repairing the leak in accordance with the repair schedule set forth in Section I.L.5. or conducting follow-up monitoring using EPA Method 21 within five (5) working days of the leak detection. If the follow-up EPA Method 21 monitoring shows that the emission is a leak requiring repair as set forth in Section I.L.4.a., the leak must be repaired and remonitored in accordance with Section I.L.5.

I.L.4.e. Owners or operators must maintain and operate approved non-quantitative instrument monitoring methods according to manufacturer recommendations.

I.L.5. Repair and remonitoring

I.L.5.a. First attempt to repair a leak must be made no later than five (5) working days after discovery and completed no later than thirty (30) working days after discovery, unless parts are unavailable, the equipment requires shutdown to complete repair, or other good cause exists.

I.L.5.a.(i) If parts are unavailable, they must be ordered promptly and the repair must be made within fifteen (15) working days of receipt of the parts.

I.L.5.a.(ii) If shutdown is required, a repair attempt must be made during the next scheduled shutdown and final repair completed within two (2) years after discovery.

I.L.5.a.(iii) If delay is attributable to other good cause, repairs must be completed within fifteen (15) working days after the cause of delay ceases to exist.

I.L.5.b. Within fifteen (15) working days of completion of a repair the leak must be remonitored using an approved instrument monitoring method to verify that the repair was effective.

I.L.5.c. Leaks discovered pursuant to the leak detection methods of Section I.L.4. are not subject to enforcement by the Division unless the owner or operator fails to perform the required repairs in accordance with Section I.L.5. or keep required records in accordance with Section I.L.6.

I.L.6. Recordkeeping

I.L.6.a. Documentation of the initial approved instrument monitoring method inspection for well production facilities and natural gas compressor stations;

I.L.6.b. The date, facility name, and facility AIRS ID or facility location if the facility does not have an AIRS ID for each inspection;

I.L.6.c. A list of the leaks requiring repair and the monitoring method(s) used to determine the presence of the leak;

I.L.6.d. The date of first attempt to repair the leak and, if necessary, any additional attempt to repair;

I.L.6.e. The date the leak was repaired and type of repair method applied;

I.L.6.f. The delayed repair list, including the date and duration of any period where the repair of a leak was delayed due to unavailable parts, required shutdown, or delay for other good cause, the basis for the delay, and the schedule for repairing the leak. Delay of repair beyond thirty (30) days after initial discovery due to unavailable parts must be reviewed, and a record kept of that review, by a representative of the owner or operator with responsibility for leak detection and repair compliance functions. This review will not be made by the individual making the initial determination to place a part on the delayed repair list;

I.L.6.g. The date the leak was remonitored and the results of the remonitoring; and

I.L.6.h. A list of components that are designated as unsafe, difficult, or inaccessible to monitor, as described in Section I.L.3., an explanation stating why the component is so designated, and the schedule for monitoring such component(s).

I.L.6.i. Records must be maintained for a minimum of five years and made available to the Division upon request.

I.L.7. Reporting: The owner or operator of each facility subject to the leak detection and repair requirements in Section I.L. must submit a single annual report on or before May 31st of each year (beginning May 31st, 2019, or May 31st, 2024, if located in northern Weld County or a centralized oil stabilization facilities specified in Section I.A.3) that includes, at a minimum, the following information regarding leak detection and repair activities at their subject facilities conducted the previous calendar year:

I.L.7.a. The total number of well production facilities, total number of natural gas compressor stations inspected, and total number of centralized oil stabilization facilities inspected;

I.L.7.b. The total number of inspections performed per inspection frequency tier of well production facilities, the total number of inspections performed at natural gas compressor stations, and the total number of inspections performed at centralized oil stabilization facilities;

I.L.7.c. The total number of identified leaks requiring repair broken out by component type, monitoring method, and inspection frequency tier of well production facility as reported in Section I.L.7.b., the total number of identified leaks requiring repair at natural gas compressor stations broken out by component type and monitoring method, and the total number of identified leaks requiring repair at centralized oil stabilization facilities broken out by component type and monitoring method;

I.L.7.d. The total number of leaks repaired for each inspection frequency tier of well production facilities as reported in Section I.L.7.b., the total number of leaks repaired for natural gas compressor stations, and the total number of leaks repaired for centralized oil stabilization facilities;

I.L.7.e. The total number of leaks on the delayed repair list as of December 31st broken out by component type, inspection frequency tier of well production facility as reported in Section I.L.7.b.; natural gas compressor station, or centralized oil stabilization facilities, and the basis for each delay of repair;

I.L.7.f. The record of all reviews conducted for delayed repairs due to unavailable parts extending beyond 30 days for the previous calendar year; and

I.L.7.g. Each report shall be accompanied by a certification by a responsible official that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

I.L.8. Alternative approved instrument monitoring methods may be used in lieu of, or in combination with an infra-red camera, EPA Method 21, or other approved instrument monitoring method to inspect for leaks as required by Section I.L., if the following conditions are met:

I.L.8.a. The proponent of the alternative approved instrument monitoring method applies for a determination of an alternative approved instrument monitoring method or program. The application must include, at a minimum, the following:

I.L.8.a.(i) The proposed alternative approved instrument monitoring method manufacturer information;

I.L.8.a.(ii) A description of the proposed alternative approved instrument monitoring method including, but not limited to:

I.L.8.a.(ii)(A) Whether the proposed alternative approved instrument monitoring method is a quantitative detection method, and how emissions are quantified, or qualitative leak detection method;

I.L.8.a.(ii)(B) Whether the proposed alternative approved instrument monitoring method is commercially available;

I.L.8.a.(ii)(C) Whether the proposed alternative approved instrument monitoring method is approved by other regulatory authorities and for what application (e.g., pipeline monitoring, emissions detected);

I.L.8.a.(ii)(D) The leak detection capabilities, reliability, and limitations of the proposed alternative approved instrument monitoring method, including, but not limited to, the ability to identify specific leaks or locations, detection limits, and any restrictions on use, as well as supporting data;

I.L.8.a.(ii)(E) The frequency of measurements and data logging capabilities of the proposed alternative approved instrument monitoring method;

I.L.8.a.(ii)(F) Data quality indicators for precision and bias of the proposed alternative approved instrument monitoring method;

I.L.8.a.(ii)(G) Quality control and quality assurance procedures necessary to ensure proper operation of the proposed alternative approved instrument monitoring method;

I.L.8.a.(ii)(H) A description of where, when, and how the proposed alternative approved instrument monitoring method will be used; and

I.L.8.a.(ii)(I) Documentation (e.g., field or test data, modeling) adequate to demonstrate the proposed alternative approved instrument monitoring method or program is capable of achieving emission reductions that are at least as effective as the emission reductions achieved by the leak detection and repair provisions in Section I.L.

I.L.8.a.(iii) The Division will transmit a copy of the complete application and any other materials provided by the applicant to EPA.

I.L.8.a.(iv) Public notice of the application is provided pursuant to Regulation Number 3, Part B, Section III.C.4.

I.L.8.a.(v) The Division and the EPA approves the proposal. The Division will transmit a copy of the application and any other materials provided by the applicant, all public comments, all Division responses and the Division’s approval to EPA Region 8. If EPA fails to approve or disapprove the proposal within six (6) months of receipt of these materials, EPA will be deemed to have approved the proposal.

I.M. Storage tank hydrocarbon liquids loadout requirements at class II disposal well facilities specified in Section I.A.4., well production facilities, natural gas compressor stations, and natural gas processing plants.

I.M.1. Owners or operators of well production facilities, natural gas compressor stations, and natural gas processing plants with a hydrocarbon liquids loadout to transport vehicles throughput of greater than or equal to 5,000 barrels per year on a rolling 12-month basis

must control emissions from the loadout of hydrocarbon liquids from controlled storage tanks to transport vehicles by using (a) submerged fill and (b) a vapor collection and return system and/or air pollution control equipment.

Owners or operators of class II disposal well facilities with VOC emissions from hydrocarbon liquids loadout to transport vehicles greater than or equal to two (2) tons uncontrolled actual emissions per year on a rolling 12-month basis must control emissions from the loadout of hydrocarbon liquids from storage tanks to transport vehicles by using (a) submerged fill and (b) a vapor collection and return system and/or air pollution control equipment.

I.M.1.a. Compliance with Section I.M. must be achieved in accordance with the following schedule.

I.M.1.a.(i) Facilities constructed or modified on or after February 14, 2023, must be in compliance by commencement of operation

I.M.1.a.(ii) Well production facilities, natural gas compressor stations, and natural gas processing plants that exceed the hydrocarbon liquids loadout to transport vehicles throughput of greater than or equal to 5,000 barrels per year on a rolling 12-month basis on or after February 14, 2023, must control emissions from loadout upon exceeding the loadout threshold.

I.M.1.a.(iii) Class II disposal well facilities that exceed the hydrocarbon liquids loadout to transport vehicles emissions threshold of greater than or equal to two (2) tons uncontrolled actual VOC emissions per year on a rolling 12-month basis on or after February 14, 2023, must control emissions from loadout within sixty (60) days of the first day of the month after which loadout emissions exceeded the loadout threshold.

I.M.1.b. Storage tanks must operate without venting at all times during loadout.

I.M.1.c. The owner or operator must, as applicable

I.M.1.c.(i) Install and operate the vapor collection and return equipment to collect vapors during the loadout of hydrocarbon liquids to tank compartments of outbound transport vehicles and to route the vapors to the storage tank or air pollution control equipment.

I.M.1.c.(ii) Include devices to prevent the release of vapor from vapor recovery hoses not in use.

I.M.1.c.(iii) Use operating procedures to ensure that hydrocarbon liquids cannot be transferred to transport vehicles unless the vapor collection and return system is in use.

I.M.1.c.(iv) Operate all recovery and disposal equipment at a back-pressure less than the pressure relief valve setting of transport vehicles.

I.M.1.c.(v) The owner or operator must inspect onsite loading equipment to ensure that hoses, couplings, and valves are maintained to prevent dripping, leaking, or other liquid or vapor loss during loadout. These inspections must occur at least monthly, unless loadout occurs less frequently, then as often as loadout is occurring.

I.M.1.d. Owners or operators must retain records for at least five (5) years and make such records available to the Division upon request.

I.M.1.d.(i) Records of the annual facility hydrocarbon liquids loadout to transport vehicles throughput.

I.M.1.d.(ii) Records of class II disposal well facility VOC emissions from hydrocarbon liquids loadout to transport vehicles on a rolling 12-month basis.

I.M.1.d.(iii) Records of the frequency of loadout.

I.M.1.d.(iv) Inspections, including a description of any problems found and their resolution, required under Section I.M.1.c.(v) must be documented in a log.

I.M.1.d.(v) Air pollution control equipment used to comply with this Section I.M. must comply with Section I.C.1, be inspected in accordance with Sections I.E.2.c.(i), I.E.2.c.(ii), and I.E.2.c.(iv), and achieve a hydrocarbon control efficiency of 95%.

II. (State Only) Statewide Controls for Oil and Gas Operations

II.A. (State Only) Definitions

II.A.1. “Air Pollution Control Equipment,” as used in this Section II., means a combustion device or vapor recovery unit. Air pollution control equipment also means alternative emissions control equipment and pollution prevention devices and processes intended to reduce

uncontrolled actual emissions that comply with the requirements of Section II.B.2.e.

II.A.2. “Approved Instrument Monitoring Method,” means an infra-red camera, EPA Method 21, or other Division approved instrument based monitoring method or program. If an owner or operator elects to use Division approved continuous emission monitoring, the Division may approve a streamlined inspection and reporting program for such operations, including approved instrument monitoring method and/or AVO inspections.

II.A.3. “Auto-Igniter” means a device which will automatically attempt to relight the pilot flame in the combustion chamber of a control device in order to combust VOC emissions.

II.A.4. “Blowdown” as used in Section II.H., means the depressurization of equipment or piping to reduce system pressure. Blowdown includes venting as defined in Section II.C.2.a.(i)(B) where the venting was intentional.

II.A.5. “Centrifugal Compressor” means any machine used for raising the pressure of natural gas by drawing in low pressure natural gas and discharging significantly higher pressure natural gas by means of mechanical rotating vanes or impellers. Screw, sliding vane, and liquid ring compressors are not centrifugal compressors.

II.A.6. “Class II Disposal Well Facility” means a facility that injects underground fluids which are brought to the surface in connection with natural gas storage operations or oil or natural gas production and that may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection. Class II disposal well facilities do not include wells which inject fluids for enhanced recovery of oil or natural gas or for storage of hydrocarbons which are liquid at standard temperature and pressure.

II.A.7. “Closed Liquids Containment System” as used in Section II.H. means an assembly of piping and valves that allow for the transfer of liquid from a pigging unit to a pipeline or pressurized vessel at the operating pressure of the midstream gathering pipeline.

II.A.8. “Commencement of Operation” means when a source first conducts the activity that it was designed and permitted for. In addition, for oil and gas well production facilities, commencement of operation is the date any permanent production equipment is in use and product is consistently flowing to sales lines, gathering lines, or storage tanks from the first producing well at the stationary source, but no later than end of well completion operations (including flowback).

II.A.9. "Component" means each pump seal, flange, pressure relief device (including thief hatches or other openings on a controlled storage tank), connector, and valve that contains or contacts a process stream with hydrocarbons, except for components in process streams consisting of glycol, amine, produced water, or methanol.

II.A.10. "Connector" means flanged, screwed, or other joined fittings used to connect two pipes or a pipe and a piece of process equipment or that close an opening in a pipe that could be connected to another pipe. Joined fittings welded completely around the circumference of the interface are not considered connectors.

II.A.11. "Disproportionately Impacted Community" (DI community) means census block groups designated as DI communities in CDPHE's Data Viewer for Disproportionately Impacted Communities (as of December 17, 2021), at https://cohealthviz.dphe.state.co.us/t/EnvironmentalEpidemiologyPublic/views/EJActDICommunities-Public/HB21-1266DICommunities?%3AshowAppBanner=false&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link&%3AisGuestRedirectFromVizportal=y&%3Aembed=y consistent with 24-4-109(2)(b)(II), C.R.S. (2021). A complete list of these census block groups by 12-digit FIPS code will be maintained by the Division and made publicly available.

II.A.11.a. From January 30, 2022 to April 14, 2025, census block groups designated as DI communities in CDPHE's Data Viewer for Disproportionately Impacted Communities (as of December 17, 2021), at https://cohealthviz.dphe.state.co.us/t/EnvironmentalEpidemiologyPublic/views/EJActDICommunities-Public/HB21-1266DICommunities?%3AshowAppBanner=false&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link&%3AisGuestRedirectFromVizportal=y&%3Aembed=y consistent with 24-4-109(2)(b)(II), C.R.S. (2021). A complete list of these census block groups by 12-digit FIPS code will be maintained by the Division and made publicly available.

II.A.11.b. Beginning April 14, 2025, communities that meet the definition in 24-4-109(2)(b)(II)(A)-(D) and (F)-(G), C.R.S. (2023). These communities are identified as any census block group identified in the Disproportionately Impacted Community Map (November 2024) after selecting the criteria for "Mobile home communities", "Low-income population above 40%", "People of color population above 40%", "Housing cost-burdened population above 50%", "Linguistically isolated population above 20%", and "Colorado EnviroScreen percentile score above 80".

II.A.12. “Dump Valve” means a liquid-control valve in a separator that controls liquid level within the separator vessel.

II.A.13. “Dump Event” means the opening of a dump valve allowing liquid to flow from a separator equipped with a dump valve to a storage tank.

II.A.14. “Glycol Natural Gas Dehydrator” means any device in which a liquid glycol (including ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water.

II.A.15. “High-pressure Pigging Pipeline” as used in Section II.H. means a pigging pipeline with a normal operating pressure (average annual operating pressure) of 500 pounds per square inch gauge (psi) or greater.

II.A.16. “Hot Tapping” means a procedure that makes a new pipeline connection while the pipeline remains in service, flowing natural gas under pressure. The procedure involves attaching a branch connection and valve on the outside of an operating pipeline and then cutting out the pipe-line wall within the branch and removing the wall section through the valve.

II.A.17. “Hydrocarbon Liquid” means any naturally occurring, unrefined petroleum liquid. Hydrocarbon liquid does not include produced water.

II.A.18. “Infra-red Camera” means an optical gas imaging instrument designed for and capable of detecting (or producing a detectable image of) hydrocarbons. The instrument must be capable of imaging a gas that is half methane, half propane at a concentration of 10,000 ppm at a flow rate of < 60 grams/hour from a quarter inch diameter orifice. The instrument must be capable of detecting at a viewing distance of 2 meters and a delta-T of 5 degrees Celsius in an environment of calm wind conditions around 1 meter per second or less.

II.A.19. “Jumper Line” means an enclosed piping system attached to the vent line or other connection of a pig launcher or receiver that routes the contents of a pig launcher or receiver into a lower pressure system.

II.A.20. "Midstream Pipeline" means the pipeline and metering and regulating equipment delivering oil or natural gas from an oil or gas well or well production facility to a stand-alone pigging station, natural gas compressor station, natural gas processing plant, transmission pipeline, or direct use. Midstream pipeline also means the pipeline and metering and regulating equipment delivering oil or natural gas from a natural gas compressor station to a stand-alone pigging station, natural gas processing plant, transmission pipeline, or direct use.

II.A.21. "Midstream Segment" means the oil and natural gas compression segment and the natural gas processing segment upstream of the natural gas transmission and storage segment.

II.A.22. "Natural Gas Compressor Station" means a facility, located downstream of well production facilities, which contains one or more compressors designed to compress natural gas from well pressure to gathering system pressure prior to the inlet of a natural gas processing plant.

II.A.23. "Natural Gas Processing Segment" means the operations engaged in the separation of natural gas liquids (NGLs) or non-methane gases from produced natural gas, or the separation of NGLs into one or more component mixtures. Separation includes one or more of the following: forced extraction of natural gas liquids, sulfur and carbon dioxide removal, fractionation of NGLs, or the capture of CO2 separated from natural gas streams. This segment also includes all residue gas compression equipment owned or operated by the natural gas processing plant.

II.A.24. "Natural Gas Transmission and Storage Segment" means onshore natural gas transmission pipelines, onshore natural gas transmission compression, underground natural gas storage, and liquefied natural gas (LNG) storage, as these terms are defined in 40 CFR Part 98, Section 98.230 (October 22, 2015), that are physically located in Colorado.

II.A.25. "Normal Operation" means all periods of operation, excluding malfunctions as defined in Section I.G. of the Common Provisions regulation. For storage tanks at well production facilities, normal operation includes but is not limited to liquid dumps from the separator.

II.A.26. "Northern Weld County" means the portion of the county that does not lie south of a line described as follows: Beginning at a point on Weld County's eastern boundary and Logan County's western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County's western boundary and Larimer County's eastern boundary.

II.A.27. “Occupied Areas” means (1) a building or structure designed for use as a place of residency by a person, a family, or families. The term includes manufactured, mobile, and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes; (2) indoor or outdoor spaces associated with a school that students use commonly as part of their curriculum or extracurricular activities; (3) five thousand (5,000) or more square feet of building floor area in commercial facilities that are operating and normally occupied during working hours; and (4) an outdoor venue or recreation area, such as a playground, permanent sports field, amphitheater, or other similar place of outdoor public assembly.

II.A.28. “Oil and Natural Gas Compression Segment” means the oil and natural gas compression, midstream pipelines, and other equipment used to collect oil and/or natural gas from gas or oil wells and used to compress, dehydrate, sweeten, or transport the oil and/or natural gas to a natural gas processing facility, a natural gas transmission pipeline, or to a natural gas distribution pipeline. For purposes of Section II., equipment located within the boundaries of a well production facility, including but not limited to compressors, is excluded from the oil and natural gas compression segment.

II.A.29. “Open-Ended Valve or Line” means any valve, except safety relief valves, having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

II.A.30. “Pig Ramp” means a device installed inside the barrel of a pig receiver designed and intended to prevent liquid accumulation in the barrel and minimize release of volatile liquids into the environment during retrieval of the pig.

II.A.31. “Pigging” or “Pigging Operations” means the process of introducing or subsequently removing a specialized device (a “pig”) into or out of a natural gas pipeline to remove liquids or debris or for other purposes.

II.A.32. “Pigging Facility” means the facility from where a pig is launched or the facility where a pig is received, including standalone pigging stations, natural gas compressor stations, natural gas processing plants, well sites, or well production facilities.

II.A.33. “Pigging Pipeline” means a pipeline connected to a permanent or temporary pigging unit or any pipeline through which a pig is transported.

II.A.34. “Pigging Unit” means an individual pig launcher or receiver owned or operated by a midstream segment owner or operator where pigging occurs, including both permanent and temporary pig launchers and receivers.

II.A.35. “Pressure actuator system”, as used in Section II.B., means a system that monitors and records flow pressure to enclosed combustion device(s), automatically actuates a valve to open flow to the enclosed combustion device(s) at a pressure setpoint (“open point”), and automatically actuates the same valve to close flow to the enclosed combustion device(s) at a low pressure setpoint (“close point”). The pressure setpoints for the open point and close point are selected by the owner or operator.

II.A.36. “Process drain” as used in Section II.H. means an enclosed drain located on the underside of the pig receiver that drains liquids from the receiver into an enclosed system, process, or vessel.

II.A.37. “Produced Water” means water that is extracted from the earth from an oil or natural gas production well, or that is separated from crude oil, condensate, or natural gas after extraction.

II.A.38. “Reciprocating Compressor” means a piece of equipment that increases the pressure of process gas by positive displacement, employing linear movement of the piston rod.

II.A.39. “Stabilized” when used to refer to crude oil, condensate, intermediate hydrocarbon liquids, or produced water means that the vapor pressure of the liquid is sufficiently low to prevent the production of vapor phase upon transferring the liquid to an atmospheric pressure in a storage tank, and that any emissions that occur are limited to those commonly referred to within the industry as working, breathing, and standing losses.

II.A.40. “Standalone Pigging Station” means a pigging unit or group of co-located pigging units owned or operated by a midstream segment owner or operator but not located at a natural gas compressor station or natural gas processing plant.

II.A.41. “Storage Tank” means any fixed roof storage vessel or series of storage vessels that are manifolded together via liquid line. Storage tanks may be located at a well production facility or other location.

II.A.42. “Storage Tank Measurement System” means equipment and methods used to determine the quantity and quality of the liquids inside a storage tank without requiring direct access through the storage tank thief hatch.

II.A.43. “Storage Vessel” means a tank or other vessel that contains an accumulation of hydrocarbon liquids or produced water and is constructed primarily of nonearthed materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support. A well completion vessel that receives recovered liquids from a well after commencement of operation for a period which exceeds 60 days is considered a storage vessel. Storage vessel does not include vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges, or ships) and are intended to be located at the site for less than 180 consecutive days; process vessels such as surge control vessels, bottom receivers, or knockout vessels; or pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

II.A.44. “Vapor Collection and Return System” means a closed system designed to control the release of VOCs displaced from a vessel during

transfer of hydrocarbon liquids by using the transferred hydrocarbon liquids for direct displacement to force vapors from the vessel being loaded into either the storage tank being unloaded or to air pollution control equipment.

II.A.45. "Visible Emissions" means observations of smoke for any period or periods of duration greater than or equal to one (1) minute in any fifteen (15) minute period during normal operation, pursuant to EPA Method 22. Visible emissions do not include radiant energy or water vapor.

II.A.46. "Well Production Facility" means all equipment at a single stationary source directly associated with one or more oil wells or natural gas wells upstream of the natural gas processing plant. This equipment includes, but is not limited to, equipment used for storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and flowline.

II.B. (State Only) General Provisions

II.B.1. General requirements for prevention of emissions and good air pollution control practices for all oil and gas exploration and production operations; Class II disposal well facilities; well production facilities; and midstream segment operations, including natural gas compressor stations and natural gas processing plants.

II.B.1.a. All hydrocarbon liquids and produced water collection, storage, processing, and handling operations, regardless of size, must be designed, operated, and maintained so as to minimize emission of VOCs and other hydrocarbons to the atmosphere to the extent reasonably practicable.

II.B.1.b. At all times, including periods of start-up and shutdown, the facility and air pollution control equipment must be maintained and operated in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether or not acceptable operation and maintenance procedures are being used will be based on information available to the Division, which may include, but is not limited to, monitoring results, opacity observations, review of operation and maintenance procedures, and inspection of the source.

II.B.2. General requirements for air pollution control equipment used to comply with Section II.

II.B.2.a. All air pollution control equipment must be operated and maintained pursuant to the manufacturing specifications or equivalent to the extent practicable, and consistent with technological limitations and good engineering and maintenance practices. The owner or operator must keep manufacturer specifications or equivalent on file. In addition, all such air pollution control equipment must be adequately designed and sized to achieve the control efficiency rates and to handle reasonably foreseeable fluctuations in emissions of VOCs and other hydrocarbons during normal operations. Fluctuations in emissions that occur when the separator dumps into the tank are reasonably foreseeable.

II.B.2.b. If a combustion device is used to control emissions of VOCs and other hydrocarbons, it must be enclosed, have no visible emissions during normal operation, and be designed so that an observer can, by means of visual observation from the outside of the enclosed combustion device, or by other means approved by the Division, determine whether it is operating properly.

II.B.2.c. Any of the effective dates for installation of controls on storage tanks, dehydrators, and/or internal combustion engines may be extended at the Division’s discretion for good cause shown.

II.B.2.d. Auto-igniters: All combustion devices used to control emissions of hydrocarbons must be equipped with and operate an auto-igniter as follows

II.B.2.d.(i) All combustion devices installed on or after May 1, 2014, must be equipped with an operational auto-igniter upon installation of the combustion device.

II.B.2.d.(ii) All combustion devices installed before May 1, 2014, must be equipped with an operational auto-

igniter by or before May 1, 2016, or after the next combustion device planned shutdown, whichever comes first.

II.B.2.e. Alternative emissions control equipment will qualify as air pollution control equipment, and may be used in lieu of, or in combination with, combustion devices and vapor recovery units to achieve the emission reductions required by this Section II., if the Division approves the equipment, device, or process. As part of the approval process the Division, at its discretion, may specify a different control efficiency than the control efficiencies required by this Section II.

II.B.2.f. Owners or operators must conduct weekly visual inspections of air pollution control equipment.

II.B.2.f.(i) Visual inspections must begin

II.B.2.f.(i)(A) February 14, 2022, for owners or operators of storage tanks subject to Section II.C.1.

II.B.2.f.(i)(B) May 1, 2022, for air pollution control equipment that commenced operation before February 14, 2022, unless subject to Section II.B.2.f.(i)(A).

II.B.2.f.(i)(C) Within thirty (30) days of commencement of operation for air pollution control equipment constructed on or after February 14, 2022.

II.B.2.f.(ii) Weekly visual inspections must include, at a minimum

II.B.2.f.(ii)(A) Inspection or monitoring of each combustion device to ensure that it is operating, including that the pilot light is lit and the auto-igniter is properly functioning.

II.B.2.f.(ii)(B) Inspection or monitoring of each combustion device to ensure that the valves for the piping of gas to the pilot light are open and functioning properly.

II.B.2.f.(ii)(C) Inspection or monitoring of each combustion device to ensure the burner tray is not visibly clogged.

II.B.2.f.(ii)(D) Inspection of each combustion device for the presence or absence of smoke. If smoke is observed, either the equipment must be immediately shut-in to investigate the potential cause for smoke and perform

repairs, as necessary, or EPA Method 22 must be conducted to determine whether visible emissions are present for a period of at least one (1) minute in fifteen (15) minutes.

II.B.2.f.(ii)(E) Inspection or monitoring of each vapor recovery unit to ensure that the unit is operating and that vapors are being routed to the unit.

II.B.2.f.(ii)(F) Inspection or monitoring of air pollution control equipment to ensure that valves for the piping of gas to the air pollution control equipment are open.

II.B.2.f.(ii)(G) Recording the flow meter readings or pressure actuator system data, once installed pursuant to Section II.B.2.g.(i). For flow meter readings, this must include the maximum and minimum measured flow rate since the previous weekly visual inspection. For pressure actuator system data, this must include the maximum and minimum measured pressures while the actuator valve is open since the previous weekly visual inspection. An owner or operator may use automation to continuously record flow and/or pressure to the enclosed combustion devices(s) for which flow meters or pressure actuator system are required under Section II.B.2.g.

II.B.2.g. Owners or operators must install and operate either flow meter(s) or a pressure actuator system at the inlet to the enclosed combustion device or bank of enclosed combustion devices, ensuring that the flow meter(s) or pressure actuator system measures the flow rate or pressure of all flow streams to the device or bank of enclosed combustion devices.

II.B.2.g.(i) Unless an extension is authorized by the Division for good cause, flow meter(s) or a pressure actuator system must be installed and operating by

II.B.2.g.(i)(A) December 31, 2022, for enclosed combustion devices in disproportionately impacted communities, as defined in Section II.A.11.a., that commenced operation before February 14, 2022

II.B.2.g.(i)(B) May 1, 2023, for enclosed combustion devices not subject to Section II.B.2.g.(i)(A) that commenced operation before February 14, 2022.

II.B.2.g.(i)(C) Commencement of operation for enclosed combustion devices that commence operation on or after February 14, 2022.

II.B.2.g.(ii) The owner or operator must calibrate and maintain the flow meter(s) and pressure actuator system in accordance with the manufacturer’s specifications and schedule, if available, or otherwise in accordance with generally accepted calibration and maintenance practices.

II.B.2.g.(iii) Flow meters or a pressure actuator system are not required to be installed

II.B.2.g.(iii)(A) On portable enclosed combustion devices used at a location for less than 180 consecutive days and which are used for time-limited activities or backup purposes.

II.B.2.g.(iii)(B) On enclosed combustion devices used during vapor recovery unit downtime associated with dehydrators.

II.B.2.g.(iii)(C) Where installation and operation of a flow meter or pressure actuator system is technically or economically infeasible, as demonstrated by the owner or operator to the Division’s reasonable satisfaction, or where the Division approves the use of an

alternate parameter (and associated recordkeeping and reporting).

II.B.2.h. Beginning February 14, 2022, the owner or operator must conduct performance tests for each enclosed combustion device for which Regulation Number 7, Part B, Sections I.D., II.B.3.b., II.C.1., II.D., or II.F. requires the device to achieve at least 95% control efficiency for hydrocarbons. A performance test that does not demonstrate that an enclosed combustion device is achieving at least 95% control efficiency for hydrocarbons is considered a failing test.

II.B.2.h.(i) Performance test requirements.

II.B.2.h.(i)(A) Performance tests are not required for enclosed combustion devices serving solely as limited-use control devices during vapor recovery unit downtime.

II.B.2.h.(i)(B) Owners or operators must test all enclosed combustion devices used to control the same piece of equipment or operation (e.g., a bank of enclosed combustion devices controlling a storage tank) over the course of the same testing event, which may occur over multiple working days.

II.B.2.h.(i)(C) Performance tests must be conducted in accordance with a Division-approved test protocol.

II.B.2.h.(i)(D) With enough time to calibrate and ensure proper reading from the flow meter prior to each performance test conducted under Section II.B.2.h. and continuing through the performance test, owner or operators must install and operate a flow meter on the inlet to each enclosed combustion device to be tested, unless not required by the Division-approved performance test protocol. Temporary flow meters may be used to meet this requirement.

II.B.2.h.(i)(E) For the calendar year of a failing performance test, owners or operators must calculate enclosed combustion device emissions (or the emissions for the source controlled) pursuant to Sections II.G. and V. with the results of the failed test until the enclosed combustion device is back in

compliance as confirmed by the passing retest under Section II.B.2.h.(i)(G).

II.B.2.h.(i)(F) Owners or operators of enclosed combustion devices that fail a performance test must, within thirty (30) days, follow the manufacturer's repair instructions, if available, or best combustion engineering practices to return the device to compliant operation or shut-in all equipment or operations controlled by the enclosed combustion device.

II.B.2.h.(i)(G) Owners or operators must retest the enclosed combustion device within ninety (90) days of corrective action in response to a failed test or within thirty (30) days of return to operation if the equipment or operations controlled by the enclosed combustion device were shut-in as a response to a failed test. Division approval of the testing protocol is not required for a retest where.

II.B.2.h.(i)(G)(1) The owner or operator is following the same test protocol as the original, failed test and

II.B.2.h.(i)(G)(2) Conditions have not materially changed such that a new test protocol would be required.

II.B.2.h.(i)(H) As an alternative to Section II.B.2.h.(i)(G), the owner or operator may replace the failing enclosed combustion device with a different enclosed combustion device and test the replacement enclosed combustion device upon commencement of operation. The owner or operator does not have to test the replacement enclosed combustion device if the device is newly manufactured (has never been in operation anywhere else) and has been tested by the manufacturer in accordance with the requirements of 40 CFR Part 60, Subpart OOOOa, Section 60.5413a(d) (June 3, 2016).

II.B.2.h.(ii) Initial performance test schedule.

II.B.2.h.(ii)(A) Enclosed combustion devices that commenced operation before December 31, 2021, must be tested within the schedule in Table 1, unless the Division approves an alternative testing schedule.

Table 1 – Enclosed Combustion Device Inspections						
Location of enclosed combustion device	Compliance deadlines					
	October 31, 2023	October 31, 2024	May 1, 2025	May 1, 2026	May 1, 2027	May 1, 2028
	Percentage (%) of owner or operator's enclosed combustion devices that must be tested					
Within a DI community	At least 15%	At least 40%	At least 70%	100%	NA	NA
Within a DI community as determined pursuant to Section II.B.2.h.(iv)(D) if not already located within a DI community					100%	
Within the 8-hour ozone control area and northern Weld County	At least 10%	At least 30%	At least 50%	At least 80%	100%	NA
Outside the 8-hour ozone control area and northern Weld County	At least 5%	At least 15%	At least 30%	At least 50%	At least 75%	100%

II.B.2.h.(ii)(B) A performance test conducted in accordance with Division-approved test protocol between January 1, 2020, and October 31, 2023, will satisfy the initial performance testing requirements in Section II.B.2.h.(ii)(A).

II.B.2.h.(ii)(C) Enclosed combustion devices that commence operation on or after December 31, 2021, must be tested within two (2) years after commencement of operation, unless the enclosed combustion device is newly manufactured (has never been in operation) and has been tested by the manufacturer in accordance with the requirements of 40 CFR Part 60, Subpart OOOOa, Section 60.5413a(d) (June 3, 2016), in which case the enclosed combustion device must be tested within five (5) years after commencement of operation.

II.B.2.h.(ii)(D) No enclosed combustion device located in the 8-hour ozone control area and northern Weld County or in a disproportionately impacted community can operate for more than five (5) years without a performance test.

II.B.2.h.(ii)(E) No enclosed combustion device located outside the 8-hour ozone control area and northern Weld County but not within a disproportionately impacted community can operate for more than ten (10) years without a performance test.

II.B.2.h.(ii)(F) Owners or operators do not have to start up a source solely to perform a performance test on the enclosed combustion device if gas flow to the device is from a source or equipment that has been shut-in for more than thirty (30) consecutive days; however, a performance test is required within thirty (30) days of the enclosed combustion device once again receiving gas flow.

II.B.2.h.(iii) Notification.

No later than July 31, 2022, owners or operators of enclosed combustion devices subject to Section II.B.2.h.(ii) must submit a notification to the Division with the following information.

II.B.2.h.(iii)(A) A list of all enclosed combustion devices that commenced operation before December 31, 2021, with associated facility name and location, AIRS ID (if assigned), manufacturer model, serial number (if

available, or other unique identifier), and identification of equipment controlled by the enclosed combustion device.

II.B.2.h.(iii)(B) The year in which each enclosed combustion device will be tested to meet the compliance schedule in Table 1.

II.B.2.h.(iii)(C) A list of enclosed combustion devices where the initial performance test requirement is satisfied pursuant to Section II.B.2.h.(ii)(B), including the date and results of the test.

II.B.2.h.(iv) Subsequent performance tests.

II.B.2.h.(iv)(A) Enclosed combustion devices located in the 8-hour ozone control area and northern Weld County must be tested within five (5) years following the previous performance test, unless the enclosed combustion device is newly manufactured (has never been in operation) and has been tested by the manufacturer in accordance with the requirements of 40 CFR Part 60, Subpart OOOOa, Section 60.5413a(d) (June 3, 2016), in which case the enclosed combustion device must be tested within eight (8) years following the previous performance test.

II.B.2.h.(iv)(B) Enclosed combustion devices located within a disproportionately impacted community must be tested within five (5) years following the previous performance test, unless the enclosed combustion device is newly manufactured (has never been in operation) and has been tested by the manufacturer in accordance with the requirements of 40 CFR Part 60, Subpart OOOOa, Section 60.5413a(d) (June 3, 2016), in which case the enclosed combustion device must be tested within eight (8) years following the previous performance test.

II.B.2.h.(iv)(C) Enclosed combustion devices located outside the 8-hour ozone control area and northern Weld County and not within a disproportionately impacted community

must be tested within ten (10) years following the previous performance test.

II.B.2.h.(iv)(D) Beginning April 14, 2025, disproportionately impacted community is defined as in Section II.A.11.b. The owner or operator must assess by December 31, 2025, whether the enclosed combustion device is located within a disproportionately impacted community to determine the schedule for subsequent performance tests

II.B.2.i. Recordkeeping.

Except as specified in Section II.B.2.i.(ix), the owner or operator must maintain records for a period of five (5) years and make them available to the Division upon request, including

II.B.2.i.(i) Notifications submitted in accordance with Section II.B.2.h.(iii).

II.B.2.i.(ii) Records of the make, model, serial number or other unique identifier, and AIRS ID (if assigned) of each enclosed combustion device; associated facility name and location; and the range of gas flow at which the combustion device is designed to operate.

II.B.2.i.(iii) Records of visual inspections conducted pursuant to Section II.B.2.f., including the time and date of each inspection and a description of any problems observed, description and date of any corrective action(s) taken, and name of employee or third party performing corrective action(s).

II.B.2.i.(iv) Records of the date and result of any EPA Method 22 test or investigation.

II.B.2.i.(v) Records of the date and duration of any period where the air pollution control equipment is not operating.

II.B.2.i.(vi) Monthly records of the total hours the vapor recovery unit is not operating, the total throughput volume, and total throughput volume during the time the vapor recovery unit is not operating.

II.B.2.i.(vii) Records of inlet gas flow rate, as required by Section II.B.2.f.(ii)(G).

II.B.2.i.(viii) Records supporting the delay of any performance test pursuant to Section II.B.2.h.(ii)(F).

II.B.2.i.(ix) Records of performance tests must be maintained for the life of the equipment that the enclosed combustion device is used to control (even if ownership or control of the device is transferred), including manufacturer model and serial number(s) of devices tested; the date of the test; a copy of the test protocol followed; a certification by a responsible official that the performance test was conducted in accordance with a Division-approved test protocol; the enclosed combustion device parameters required by the test protocol; documentation of the methods and results of the test, including whether the device passed or failed and the tested control efficiency; and the date and description of any actions taken in response to a failed test.

II.B.2.i.(x) Records of flow meter or pressure actuation system calibration and maintenance conducted pursuant to Section II.B.2.g.(ii), including manufacturer specifications and schedule if available.

II.B.2.i.(xi) Beginning January 1, 2026, records of location assessments conducted pursuant to Section II.B.2.h.(iv)(D).

II.B.2.j. Reporting. The owner or operator must submit the following information to the Division. Beginning April 14, 2025, the owner or operator must submit the following information using a Division-approved format.

II.B.2.j.(i) By no later than thirty (30) days after the failing test result, the owner or operator must submit a notification of the failing test, including: AIRS ID, serial number or other unique identifier, and equipment or operation controlled; the date of test; the results of the test; monthly methane and VOC emission calculations using the test results for the calendar year of the test; monthly throughput for the calendar year of the test; the action to return the enclosed combustion device to proper operation (or whether operations were shut-in), including the timing thereof; and the proposed date of the retest.

II.B.2.j.(ii) On the same date as the annual emissions inventory report in Part B, Section V., the owner or operator must submit the date of each performance

test and the results of the test (i.e., pass/fail and tested control efficiency).

II.B.2.j.(iii) By July 31 of each year (beginning 2023 and ending 2027 or upon completion of the initial performance testing schedule set forth in Table 1), owners or operators must submit an update to the notification provided under Section II.B.2.h.(iii) documenting changes to the list specified in Section II.B.2.h.(iii)(A) (e.g., an enclosed combustion device moved to a different facility (including transfer to another operator) or controlling more or less equipment or operations than specified) and changes to the performance testing schedule provided pursuant to Section II.B.2.h.(iii)(B).

II.B.2.j.(iv) Beginning April 14, 2025, owners or operators must submit a notification of the intent to perform a performance test at least thirty (30) days prior to conducting the performance test.

II.B.2.j.(v) In the July 31, 2026, report required under Section II.B.2.j.(iii), owners or operators must document changes to the location of an enclosed combustion device related to the updated definition of disproportionately impacted community (i.e., whether an enclosed combustion device is or is no longer located within a disproportionately impacted community), as determined by December 31, 2025, pursuant to Section II.B.2.h.(iv)(D), and changes to the performance testing schedule provided pursuant to Section II.B.2.h.(iii)(B). Owners or operators will use this updated location list through the May 1, 2028, compliance deadline in Table 1, except that enclosed combustion devices located at a facility newly assessed as located in a disproportionately impacted community as of December 31, 2025, must by 100% tested by May 1, 2027.

II.B.3. Requirements for compressor seals and open-ended valves or lines

II.B.3.a. Beginning January 1, 2015, each open-ended valve or line at well production facilities and natural gas compressor stations must be equipped with a cap, blind flange, plug, or a second valve that seals the open end at all times except during operations requiring process fluid flow through the open-ended valve or line. Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in

the event of a process upset are exempt from the requirement to seal the open end of the valve or line. Alternatively, an open-ended valve or line may be treated as if it is a "component" as defined in Section II.A.7., and may be monitored under the provisions of Section II.E.

II.B.3.b. Beginning January 1, 2015, uncontrolled actual hydrocarbon emissions from wet seal fluid degassing systems on wet seal centrifugal compressors must be reduced by at least 95%, unless the centrifugal compressor is subject to 40 CFR Part 60, Subpart OOOO (February 23, 2014) or 40 CFR Part 60, Subpart OOOOa (June 3, 2016) on that date or thereafter.

II.B.3.c. Beginning January 1, 2015, the rod packing on any reciprocating compressor located at a natural gas compressor station must be replaced every 26,000 hours of operation or every thirty-six (36) months, unless the reciprocating compressor is subject to the reciprocating compressor emission control, monitoring, recordkeeping, and reporting requirements of 40 CFR Part 60, Subpart OOOO (February 23, 2014) or 40 CFR Part 60, Subpart OOOOa (June 3, 2016) on that date or thereafter. The measurement of accumulated hours of operation (26,000) or months elapsed (36) begins on January 1, 2015.

II.B.3.d. Beginning February 14, 2022, the rod packing on any reciprocating compressor located at a natural gas processing plant must be replaced every 26,000 hours of operation or every thirty-six (36) months, unless the reciprocating compressor is subject to the reciprocating compressor emission control, monitoring, recordkeeping, and reporting requirements of Section I.J.2., 40 CFR Part 60, Subpart OOOO (February 23, 2014), or 40 CFR Part 60, Subpart OOOOa (June 3, 2016) on that date or thereafter. The measurement of accumulated hours of operation (26,000) or months elapsed (36) begins on February 14, 2022.

II.B.4. Oil refineries are not subject to Section II.

II.B.5. Glycol natural gas dehydrators that are subject to an emissions control requirement in a federal maximum achievable control technology ("MACT") standard under 40 CFR Part 63 (July 1, 2022), a Best Available Control Technology ("BACT") limit, or a New Source Performance Standard ("NSPS") under 40 CFR Part 60 (July 1, 2022) are not subject to Section II., except for the leak detection and repair requirements in Section II.E.

II.C. Emission reduction from storage tanks at oil and gas exploration and production operations, Class II disposal well facilities, well production facilities, natural gas compressor stations, and natural gas processing plants.

II.C.1. Control and monitoring requirements for storage tanks

II.C.1.a. (State Only) Beginning May 1, 2008, owners or operators of all storage tanks storing condensate with uncontrolled actual emissions of VOCs equal to or greater than twenty (20) tons per year based on a rolling twelve-month total must collect and control emissions from each storage tank by routing emissions to and operating air pollution control equipment that has a control efficiency of at least 95% for VOCs.

II.C.1.b. (State Only) Owners or operators of storage tanks with uncontrolled actual emissions of VOCs equal to or greater than six (6) tons per year based on a rolling twelve-month total must collect and control emissions from each storage tank by routing emissions to and operating air pollution control equipment that achieves a hydrocarbon control efficiency of 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons, except where the combustion device has been authorized by permit prior to May 1, 2014.

II.C.1.b.(i) (State Only) Control requirements of Section II.C.1.b. must be achieved in accordance with the following schedule:

II.C.1.b.(i)(A) A storage tank constructed on or after May 1, 2014, must be in compliance within ninety (90) days of the date that the storage tank commences operation.

II.C.1.b.(i)(B) A storage tank constructed before May 1, 2014, must be in compliance by May 1, 2015.

II.C.1.b.(i)(C) A storage tank not otherwise subject to Sections II.C.1.b.(i)(A) or II.C.1.b.(i)(B) that increases uncontrolled actual emissions to six (6) tons per year VOC or more on a rolling twelve-month basis after May 1, 2014, must be in compliance within sixty (60) days of discovery of the emissions increase.

II.C.1.b.(ii). Control requirements within ninety (90) days of commencement of operation.

II.C.1.b.(ii)(A) Beginning May 1, 2014, through March 1, 2020, owners or operators of storage tanks at well production facilities must collect and control emissions by routing emissions to operating air pollution control

equipment during the first ninety (90) calendar days after commencement of operation. The air pollution control equipment must achieve a hydrocarbon control efficiency of 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons. This control requirement does not apply to storage tanks that are projected to have emissions less than 1.5 tons of VOC during the first ninety (90) days after commencement of operation.

II.C.1.b.(ii)(B) The air pollution control equipment and any associated monitoring equipment required pursuant to Section II.C.1.c.(i) may be removed at any time after the first ninety (90) calendar days as long as the source can demonstrate that uncontrolled actual emissions from the storage tank will be below the threshold in Section II.C.1.b.

II.C.1.c. (State Only) Owners or operators of storage tanks with uncontrolled actual emissions of VOCs equal to or greater than two (2) tons per year based on a rolling twelve-month total must collect and control emissions from each storage tank by routing emissions to and operating air pollution control equipment that achieves a hydrocarbon control efficiency of 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons, except where the combustion device has been authorized by permit prior to March 1, 2020.

II.C.1.c.(i) Control requirements of Section II.C.1.c. must be achieved in accordance with the following schedule

II.C.1.c.(i)(A) A storage tank constructed on or after March 1, 2020, must be in compliance by commencement of operation of that storage tank.

II.C.1.c.(i)(B) A storage tank constructed before March 1, 2020, that is not already controlled under Sections I.D. or II.C.1.b. must be in compliance by May 1, 2021.

II.C.1.c.(i)(C) A storage tank not otherwise subject to Sections II.C.1.c.(i)(A) or II.C.1.c.(i)(B) that increases uncontrolled actual emissions above the applicable threshold in Section

II.C.1.c.(i)(B) after the applicable date in Section II.C.1.c.(i)(B) must be in compliance within sixty (60) days of the first day of the month after which the storage tank emissions exceeded the applicable threshold based on a rolling twelve-month basis.

II.C.1.c.(ii) If air pollution control equipment is not installed by the applicable compliance date in Sections II.C.1.c.(i)(A), II.C.1.c.(i)(B), or II.C.1.c.(i)(C), compliance with Section II.C.1.c. may alternatively be demonstrated by shutting in all wells producing into that storage tank by the date in Sections II.C.1.c.(i)(A), II.C.1.c.(i)(B), or II.C.1.c.(i)(C) so long as production does not resume from any such well until the air pollution control equipment is installed and operational.

II.C.1.c.(iii) Owners or operators of storage tanks for which the use of air pollution control equipment would be technically infeasible without supplemental fuel may apply to the Division for an exemption from the control requirements of Section II.C.1.c. Such request must include documentation demonstrating the infeasibility of the air pollution control equipment. The applicability of this exemption does not relieve owners or operators of compliance with the storage tank monitoring requirements of Section II.C.1.d.

II.C.1.d. (State Only) Beginning May 1, 2014, or the applicable compliance date in Sections II.C.1.b.(i) or II.C.1.c.(i), whichever comes later, owners or operators of storage tanks subject to Section II.C.1. must conduct audio, visual, olfactory (AVO) and additional visual inspections of the storage tank and any associated equipment (e.g., separator, air pollution control equipment, or other pressure reducing equipment) at the same frequency as liquids are loaded out from the storage tank. These inspections are not required more frequently than every seven (7) days but must be conducted at least every thirty-one (31) days. Monitoring is not required for storage tanks or associated equipment that are unsafe, difficult, or inaccessible to monitor, as defined in Section II.C.1.e. The additional visual inspections must include, at a minimum:

II.C.1.d.(i) Visual inspection of any thief hatch, pressure relief valve, or other access point to ensure that they are closed and properly sealed.

II.C.1.d.(ii) Repealed (February 14, 2022).

II.C.1.d.(iii) Repealed (February 14, 2022).

II.C.1.d.(iv) Repealed (February 14, 2022).

II.C.1.d.(v) Repealed (February 14, 2022).

II.C.1.d.(vi) Beginning May 1, 2020, or the applicable compliance date in Section II.C.1.c.(i), whichever comes later, visual observation of the dump valve(s) of the last separator(s) before the storage tank(s) to ensure the dump valve is free of debris and not stuck open. The owner or operator is not required to observe the actuation of the dump valve during this inspection; however, if a dump event occurs during the inspection, the owner or operator must confirm proper operation of the valve.

II.C.1.d.(vii) Beginning May 1, 2020, or the applicable compliance date in Section II.C.1.c.(i), whichever comes later, a check for the presence of liquids in liquid knockout vessels that do not drain automatically, underground lines, and aboveground piping.

II.C.1.d.(vii)(A) For liquid knockout vessels for which a procedure exists to check liquid level, check for the presence of liquids. If liquids are present above the low level indication point, drain liquids.

II.C.1.d.(vii)(B) For liquid knockout vessels for which no procedure exists to check liquid level, drain liquids.

II.C.1.d.(vii)(C) For underground lines and aboveground piping that is not sloped to a liquid knockout or tank and for which a procedure exists to check for the presence of liquids accumulation, check for the presence of liquids and drain liquids as needed.

II.C.1.d.(vii)(D) For underground lines and aboveground piping that is not sloped to a liquid knockout vessel or tank and for which

no written procedure exists to check for the presence of liquids accumulation, drain liquids quarterly.

II.C.1.e. (State Only) If storage tanks or associated equipment is unsafe, difficult, or inaccessible to monitor, the owner or operator is not required to monitor such equipment until it becomes feasible to do so.

II.C.1.e.(i) Difficult to monitor means it cannot be monitored without elevating the monitoring personnel more than two meters above a supported surface or is unable to be reached via a wheeled scissor-lift or hydraulic type scaffold that allows access up to 7.6 meters (25 feet) above the ground.

II.C.1.e.(ii) Unsafe to monitor means it cannot be monitored without exposing monitoring personnel to an immediate danger as a consequence of completing the monitoring.

II.C.1.e.(iii) Inaccessible to monitor means buried, insulated, or obstructed by equipment or piping that prevents access by monitoring personnel.

II.C.2. (State Only) Capture and monitoring requirements for storage tanks that are fitted with air pollution control equipment as required by Sections I.D. or II.C.1.

II.C.2.a. Owners or operators of storage tanks must route all hydrocarbon emissions to air pollution control equipment, and must operate without venting hydrocarbon emissions from the thief hatch (or other access point to the tank) or pressure relief device during normal operation. This requirement does not apply where venting is reasonably required for maintenance, unless the control of maintenance emissions is required pursuant to Section II.H.2.; gauging, unless the use of a storage tank measurement system is required pursuant to and the operator compiles with Section II.C.4.; or safety of personnel and equipment. Compliance must be achieved in accordance with the schedule in Section II.C.2.b.(ii).

II.C.2.a.(i) Venting is emissions from a controlled storage tank thief hatch, pressure relief device, or other access point to the storage tank, which:

II.C.2.a.(i)(A) Are primarily the result of over-pressurization, whether related to design, operation, or maintenance; or

II.C.2.a.(i)(B) Are the result of an open, unlatched, or visibly unseated pressure relief device (e.g., thief hatch or pressure relief valve), an open vent line, or an unintended opening in the storage tank (e.g., crack or hole).

II.C.2.a.(ii) When emissions from a controlled storage tank are observed, the Division may require the owner or operator to submit sufficient information demonstrating whether or not the emissions were primarily the result of over-pressurization. Absent a demonstration that such emissions were not primarily the result of over-pressurization, such emissions will be considered venting for purposes of Section II.C.2.a.

II.C.2.a.(iii) When venting is observed, the owner or operator must confirm within twenty-four (24) hours of taking action to return the storage tank to operation without venting that the action(s) taken was effective. If the venting was observed using an approved instrument monitoring method, the confirmation must be made using an approved instrument monitoring method.

II.C.2.b. Owners or operators of storage tanks subject to the control requirements of Sections I.D., II.C.1.a, II.C.1.b., or II.C.1.c. must develop, certify, and implement a documented Storage Tank Emission Management System (STEM) plan to identify, evaluate, and employ appropriate control technologies, monitoring practices, operational practices, and/or other strategies designed to meet the requirements set forth in Section II.C.2.a. Owners or operators must update the STEM plan as necessary to achieve or maintain compliance. Owners or operators are not required to develop and implement STEM for storage tanks containing only stabilized liquids. The minimum elements of STEM are listed.

II.C.2.b.(i) STEM plans must include selected control technologies, monitoring practices, operational practices, and/or other strategies; an analysis of the engineering design of the storage tank and air pollution control equipment; procedures for evaluating ongoing storage tank emission capture performance; and monitoring in accordance with approved instrument monitoring methods following the applicable schedule in Section II.C.2.b.(ii).

II.C.2.b.(ii) Owners or operators must achieve the requirements of Sections II.C.2.a. and II.C.2.b. and begin implementing the required approved instrument monitoring method in accordance with the following schedule

II.C.2.b.(ii)(A) A storage tank subject to Sections II.C.1.a. or II.C.1.b. and constructed on or after May 1, 2014, must comply with the requirements of Section II.C.2.a. by the date the storage tank commences operation. The storage tank must comply with Section II.C.2.b. and implement the approved instrument monitoring method inspections within ninety (90) days of the date that the storage tank commences operation.

II.C.2.b.(ii)(B) A storage tank subject to Sections II.C.1.a. or II.C.1.b. and constructed before May 1, 2014, must comply with the requirements of Sections II.C.2.a. and II.C.2.b. by May 1, 2015.

II.C.2.b.(ii)(C) A storage tank subject to Section II.C.1.c. and constructed on or after March 1, 2020, must comply with the requirements of Section II.C.2.a. by commencement of operation of the storage tank. The storage tank must comply with Section II.C.2.b. and implement the approved instrument monitoring method inspections within ninety (90) days of commencement of operation of the storage tank.

II.C.2.b.(ii)(D) A storage tank subject to Sections II.C.1.c. and I.D.3. and constructed before March 1, 2020, that is not subject to the control requirements of the system-wide control strategy in Section I.D.1. must comply with the requirements of Sections II.C.2.a. and II.C.2.b. by May 1, 2020, or by commencement of operation of the storage tank, whichever comes later.

II.C.2.b.(ii)(E) A storage tank subject to Section II.C.1.c. and constructed before March 1, 2020, that is not subject to the control requirements of the system-wide control strategy in Section I.D.1. must comply with

the requirements of Sections II.C.2.a. and II.C.2.b. by May 1, 2021. Approved instrument monitoring method inspections of the storage tank must begin in 2021.

II.C.2.b.(ii)(F) A storage tank with uncontrolled actual emissions of VOCs equal to or greater than six (6) and less than or equal to twelve (12) tons per year must begin semi-annual approved instrument monitoring method inspections in 2020.

II.C.2.b.(ii)(G) A storage tank not otherwise subject to Sections II.C.2.b.(ii)(A) or II.C.2.b.(ii)(B) that increases uncontrolled actual emissions to six (6) tons per year VOC or more on a rolling twelve month basis after May 1, 2014, must comply with the requirements of Sections II.C.2.a. and II.C.2.b. and implement the required approved instrument monitoring method inspections within sixty (60) days of the first day of the month after which the storage tank emissions exceeded the applicable threshold based on a rolling twelve-month basis..

II.C.2.b.(ii)(H) A storage tank not otherwise subject to Sections II.C.2.b.(ii)(A) through II.C.2.b.(ii)(F) that increases uncontrolled actual emissions above the applicable threshold in Section II.C.1.c.(i)(B) after the applicable date in Section II.C.1.c.(i)(B), must comply with the requirements of Sections II.C.2.a. and II.C.2.b. and implement the required approved instrument monitoring method inspections within sixty (60) days of the first day of the month after which the storage tank VOC emissions exceeded the applicable threshold based on a rolling twelve-month basis.

II.C.2.b.(ii)(I) Following the first approved instrument monitoring method inspection, owners or operators must continue conducting approved instrument monitoring method inspections in accordance with the inspection frequency in Table 2.

Table 2 – Storage Tank Inspections	
Threshold: Storage Tank Uncontrolled Actual VOC Emissions (tpy)	Approved Instrument Monitoring Method Inspection Frequency
$\geq$ 2 and $\leq$ 12	Semi-annually
> 12 and $\leq$ 50	Quarterly
> 50	Monthly

II.C.2.b.(iii) Owners or operators are not required to monitor storage tanks and associated equipment that are unsafe, difficult, or inaccessible to monitor, as defined in Section II.C.1.e.

II.C.2.b.(iv) STEM must include a certification by the owner or operator that the selected STEM strategy(ies) are designed to minimize emissions from storage tanks and associated equipment at the facility(ies), including thief hatches and pressure relief devices.

II.C.3. (State Only) Recordkeeping: The owner or operator of each storage tank subject to Sections I.D. or II.C. must maintain records of STEM, if applicable, including the plan, any updates, and the certification, and make them available to the Division upon request. In addition, for a period of two (2) years, the owner or operator must maintain records of any required monitoring and make them available to the Division upon request, including

II.C.3.a. The AIRS ID for the storage tank.

II.C.3.b. The date and duration of any period where the thief hatch, pressure relief device, or other access point are found to be venting hydrocarbon emissions, except for venting that is reasonably required for maintenance (though recordkeeping is required if actions are required to reduce maintenance emissions pursuant to Section II.H.2.), gauging (unless use of a storage tank measurement system is required pursuant to and the operator complies with Section II.C.4.), or safety of personnel and equipment.

II.C.3.c. The date and duration of any period where the air pollution control equipment is not operating.

II.C.3.d. Records of the inspections required in Sections II.C.1.d. and II.C.2.b.(ii), including the time and date of each inspection and a description of any problems observed, description and date of any corrective action(s) taken, and name of employee or third party performing corrective action(s).

II.C.3.e. Repealed (February 14, 2022).

II.C.3.f. The timing of and efforts made to eliminate venting, restore operation of air pollution control equipment, and mitigate visible emissions, including the dates and results of action(s) taken and the monitoring used to confirm the action(s) were successful.

II.C.3.g. A list of equipment associated with the storage tank that is designated as unsafe, difficult, or inaccessible to monitor, as described in Section II.C.1.e., an explanation stating why the equipment is so designated, and the plan for monitoring such equipment.

II.C.3.h. Records of any exemption, and associated documentation, applied for under Section II.C.1.c.(iii).

II.C.4. (State Only) Storage tank measurement system requirements at well production facilities, natural gas compressor stations, and natural gas processing plants

II.C.4.a. Applicability

II.C.4.a.(i) The owners or operators of controlled storage tanks at well production facilities, natural gas compressor stations, or natural gas processing plants constructed on or after May 1, 2020, and at any facilities that are modified on or after May 1, 2020, such that an additional controlled storage vessel is constructed to receive an anticipated increase in throughput of hydrocarbon liquids or produced water, must use a storage tank measurement system to determine the quantity of liquids in the storage tank(s).

II.C.4.a.(ii) The owners or operators of controlled storage tanks at well production facilities, natural gas compressor stations, or natural gas processing plants constructed on or after January 1, 2021, and at any facilities that are modified on or after January 1, 2021, such that an additional controlled storage vessel is constructed to receive an anticipated increase in throughput of hydrocarbon liquids or produced water, must use a storage tank measurement system to determine the quality and quantity of liquids in the storage tank(s).

II.C.4.b. Owner or operators subject to the storage tank measurement system requirements in Section II.C.4.a., must keep thief hatches (or other access points to the tank) and

pressure relief devices on storage tanks closed and latched during activities to determine the quality and/or quantity of liquids in the storage tank(s).

II.C.4.c. Operators may inspect, test, and/or calibrate the storage tank measurement system semi-annually, or as directed by the Bureau of Land Management (see 43 CFR Section 3174.6(b)(5)(ii)(B) (November 17, 2016)) or system manufacturer. Opening the thief hatch if required to inspect, test, or calibrate the system is not a violation of Section II.C.4.b.

II.C.4.d. The owner or operator must install signage at or near the storage tank that indicates which equipment and method(s) is used and the appropriate and necessary operating procedures for that system.

II.C.4.e. The owner or operator must develop and implement an annual training program for employees and/or third parties conducting activities subject to Section II.C.4. that includes, at a minimum, operating procedures for each type of system.

II.C.4.f. Owner or operators must retain records for at least two (2) years and make such records available to the Division upon request, including

II.C.4.f.(i) Date of construction of the storage vessel or facility.

II.C.4.f.(ii) Description of the storage tank measurement system used to comply with Section II.C.4.a.

II.C.4.f.(iii) Date(s) of storage tank measurement system inspections, testing, and/or calibrations pursuant to Section II.C.4.c.

II.C.4.f.(iv) Manufacturer specifications regarding storage tank measurement system inspections, and/or calibrations, if followed pursuant to Section II.C.4.c.

II.C.4.f.(v) Records of the annual training program, including the date and names of persons trained.

II.C.5. (State Only) Storage tank hydrocarbon liquids loadout requirements at Class II disposal well facilities, well production facilities, natural gas compressor stations, and natural gas processing plants.

II.C.5.a. Owners or operators of well production facilities, natural gas compressor stations, and natural gas processing plants with a hydrocarbon liquids loadout to transport vehicles throughput of greater than or equal to 5,000 barrels per year on a rolling 12-month basis must control emissions from the loadout of hydrocarbon liquids from controlled storage tanks to transport

vehicles by using (a) submerged fill and (b) a vapor collection and return system and/or air pollution control equipment.

Owners or operators of class II disposal well facilities with VOC emissions from hydrocarbon liquids loadout to transport vehicles greater than or equal to two (2) tons uncontrolled actual emissions per year on a rolling 12-month basis must control emissions from the loadout of hydrocarbon liquids from storage tanks to transport vehicles by using (a) submerged fill and (b) a vapor collection and return system and/or air pollution control equipment.

II.C.5.a.(i) Compliance with Section II.C.5. must be achieved in accordance with the following schedule

II.C.5.a.(i)(A) Facilities constructed or modified on or after May 1, 2020, must be in compliance by commencement of operation.

II.C.5.a.(i)(B) Facilities constructed before May 1, 2020, must be in compliance by May 1, 2021.

II.C.5.a.(i)(C) Class II disposal well facilities constructed or modified on or after January 1, 2021, must be in compliance by commencement of operation.

II.C.5.a.(i)(D) Class II disposal well facilities constructed before January 1, 2021, must be in compliance by May 1, 2021.

II.C.5.a.(i)(E) Facilities not subject to Sections II.C.5.a.(i)(A) or II.C.5.a.(i)(B) that exceed the hydrocarbon liquids loadout to transport vehicles throughput of greater than or equal to 5,000 barrels per year on a rolling 12-month basis must control emissions from loadout upon exceeding the loadout threshold.

II.C.5.a.(i)(F) Facilities not subject to Sections II.C.5.a.(i)(C) or II.C.5.a.(i)(D) that exceed the hydrocarbon liquids loadout to transport vehicles emissions threshold of greater than or equal to two (2) tons uncontrolled actual VOC emissions per year on a rolling 12-month basis must control emissions from loadout within sixty (60) days of the first day of the month after which loadout emissions exceeded the loadout threshold.

II.C.5.a.(ii) Storage tanks must operate without venting at all times during loadout.

II.C.5.a.(iii) The owner or operator must, as applicable:

II.C.5.a.(iii)(A) Install and operate the vapor collection and return equipment to collect vapors during the loadout of hydrocarbon liquids to tank compartments of outbound transport vehicles and to route the vapors to the storage tank or air pollution control equipment.

II.C.5.a.(iii)(B) Include devices to prevent the release of vapor from vapor recovery hoses not in use.

II.C.5.a.(iii)(C) Use operating procedures to ensure that hydrocarbon liquids cannot be transferred to transport vehicles unless the vapor collection and return system is in use.

II.C.5.a.(iii)(D) Operate all recovery and disposal equipment at a back-pressure less than the pressure relief valve setting of transport vehicles.

II.C.5.a.(iii)(E) The owner or operator must inspect onsite loading equipment to ensure that hoses, couplings, and valves are maintained to prevent dripping, leaking, or other liquid or vapor loss during loadout. These inspections must occur at least monthly, unless loadout occurs less frequently, then as often as loadout is occurring,

II.C.5.a.(iv) Loadout observations and operator training

II.C.5.a.(iv)(A) The owner or operator must observe loadout to confirm that all storage tanks operate without venting when loadout operations are active. These inspections must occur at least monthly, unless loadout occurs less frequently, then as often as loadout is occurring,

II.C.5.a.(iv)(B) If observation of loadout is not feasible, the owner or operator must document the annual loadout frequency and the reason why observation is not feasible and inspect the facility within 24 hours after

loadout to confirm that all storage tank thief hatches (or other access point to the tank) are closed and latched.

II.C.5.a.(iv)(C) The owner or operator must install signage at or near the loadout control system that indicates which loadout control method(s) is used and the appropriate and necessary operating procedures for that system.

II.C.5.a.(iv)(D) The owner or operator must develop and implement an annual training program for employees and/or third parties conducting loadout activities subject to Section II.C.5. that includes, at a minimum, operating procedures for each type of loadout control system.

II.C.5.a.(v) Owners or operators must retain records for at least two (2) years and make such records available to the Division upon request.

II.C.5.a.(v)(A) Records of the annual facility hydrocarbon liquids loadout to transport vehicles throughput.

II.C.5.a.(v)(B) Inspections, including a description of any problems found and their resolution, required under Sections II.C.5.a.(iii) and II.C.5.a.(iv) must be documented in a log.

II.C.5.a.(v)(C) Records of the infeasibility of observation of loadout.

II.C.5.a.(v)(D) Records of the frequency of loadout.

II.C.5.a.(v)(E) Records of the annual training program, including the date and names of persons trained.

II.C.5.a.(v)(F) Records of class II disposal well facility VOC emissions from hydrocarbon liquids loadout to transport vehicles on a rolling 12-month basis.

II.C.5.a.(vi) Air pollution control equipment used to comply with this Section II.C.5. must comply with Section II.B., be inspected in accordance with Sections II.B.2.f.(ii)(A) through II.B.2.f.(ii)(D), and achieve a hydrocarbon control efficiency of 95%.

II.D. (State Only) Emission reductions from glycol natural gas dehydrators

II.D.1. Beginning May 1, 2008, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production operation, natural gas compressor station, or gas-processing plant subject to control requirements pursuant to Section II.D.2., shall reduce uncontrolled actual emissions of volatile organic compounds by at least 90 percent through the use of a condenser or air pollution control equipment.

II.D.2. The control requirement in Section II.D.1. apply where:

II.D.2.a. Actual uncontrolled emissions of volatile organic compounds from the glycol natural gas dehydrator are equal to or greater than two tons per year; and

II.D.2.b. The sum of actual uncontrolled emissions of volatile organic compounds from any single glycol natural gas dehydrator or grouping of glycol natural gas dehydrators at a single stationary source is equal to or greater than 15 tons per year. To determine if a grouping of dehydrators meets or exceeds the 15 tons per year threshold, sum the total actual uncontrolled emissions of volatile organic compounds from all individual dehydrators at the stationary source, including those with emissions less than two tons per year.

II.D.3. Beginning May 1, 2015, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production operation, natural gas compressor station, or gas-processing plant subject to control requirements pursuant to Section II.D.4., shall reduce uncontrolled actual emissions of hydrocarbons by at least 95 percent on a rolling twelve-month basis through the use of a condenser or air pollution control equipment. If a combustion device is used, it shall have a design destruction efficiency of at least 98% for hydrocarbons, except where:

II.D.3.a. The combustion device has been authorized by permit prior to May 1, 2014; and

II.D.3.b. A building unit or designated outside activity area is not located within 1,320 feet of the facility at which the natural gas glycol dehydrator is located.

II.D.4. The control requirement in Section II.D.3. apply where:

II.D.4.a. Uncontrolled actual emissions of VOCs from a glycol natural gas dehydrator constructed on or after May 1, 2015, are equal to or greater than two (2) tons per year. Such glycol natural gas dehydrators must be in compliance with Section II.D.3. by the date that the glycol natural gas dehydrator commences operation.

II.D.4.b. Uncontrolled actual emissions of VOCs from a single glycol natural gas dehydrator constructed before May 1, 2015, are equal to or greater than six (6) tons per year, or two (2) tons per year if the glycol natural gas dehydrator is located within 1,320 feet of a building unit or designated outside activity area.

II.D.4.c. For purposes of Sections II.D.3. and II.D.4.:

II.D.4.c.(i) Building Unit means a residential building unit, and every five thousand (5,000) square feet of building floor area in commercial facilities or every fifteen thousand (15,000) square feet of building floor area in warehouses that are operating and normally occupied during working hours.

II.D.4.c.(ii) A Designated Outside Activity Area means an outdoor venue or recreation area, such as a playground, permanent sports field, amphitheater, or other similar place of public assembly owned or operated by a local government, which the local government had established as a designated outside activity area by the COGCC; or an outdoor venue or recreation area where ingress to or egress from could be impeded in the event of an emergency condition at an oil and gas location less than three hundred and fifty (350) feet from the venue due to the configuration of the venue and the number of persons known or expected to simultaneously occupy the venue on a regular basis.

II.E. (State Only) Leak detection and repair program for well production facilities and natural gas compressor stations

II.E.1. The following provisions of Section II.E. apply in lieu of any directed inspection and maintenance program requirements established pursuant to Regulation Number 3, Part B, Section III.D.2.

II.E.2. Owners or operators of well production facilities or natural gas compressor stations that monitor components as part of Section II.E. may estimate uncontrolled actual emissions from components for the purpose of evaluating the applicability of component fugitive emissions to Regulation Number 3 by utilizing the emission factors defined as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates (Document EPA-453/R-95-017).

II.E.3. Beginning January 1, 2015, owners or operators of natural gas compressor stations must inspect components for leaks using an approved instrument monitoring method, in accordance with the following schedule.

II.E.3.a. Approved instrument monitoring method inspections must begin within ninety (90) days after January 1, 2015, or the date the natural gas compressor station commences operation if such date is after January 1, 2015, for natural gas compressor stations with fugitive VOC emissions greater than zero (0) but less than or equal to fifty (50) tons per year, based on a rolling twelve-month total.

II.E.3.a.(i) Annual approved instrument monitoring method inspections at natural gas compressor stations with fugitive VOC emissions greater than zero (0) but less than or equal to twelve (12) tons per year, based on a rolling twelve-month total, must begin within ninety (90) days after January 1, 2015, or the

date the natural gas compressor station commences operation if such date is after January 1, 2015. Annual inspections must be conducted through calendar year 2019.

II.E.3.a.(ii) Beginning calendar year 2020, owners or operators of natural gas compressor stations with fugitive VOC emissions greater than zero (0) but less than or equal to twelve (12) tons per year, based on a rolling twelve-month total, must conduct semi-annual approved instrument monitoring method inspections.

II.E.3.a.(iii) Beginning January 1, 2023, owners or operators of natural gas compressor stations with fugitive VOC emissions greater than zero (0) but less than or equal to twelve (12) tons per year, based on a rolling twelve-month total, must conduct quarterly approved instrument monitoring method inspections.

II.E.3.b. Approved instrument monitoring method inspections must begin within thirty (30) days after January 1, 2015, or the date the natural gas compressor station commences operation if such date is after January 1, 2015, for natural gas compressor stations with fugitive VOC emissions greater than fifty (50) tons per year.

II.E.3.c. Following the first approved instrument monitoring method inspection, owners or operators must continue conducting approved instrument monitoring method inspections in accordance with the Inspection Frequency in Table 3.

II.E.3.d. Beginning January 1, 2023, owners or operators of natural gas compressor stations located within a disproportionately impacted community or within 1,000 feet of an occupied area must inspect components for leaks using an approved instrument monitoring method in accordance with the inspection frequency in Table 3.

II.E.3.d.(i) Beginning April 14, 2025, disproportionately impacted community is defined as in Section II.A.11.b. The owner or operator must assess by December 31, 2025, whether the natural gas compressor station is located within a disproportionately impacted community to determine the inspection and repair frequency for the calendar year beginning in 2026.

II.E.3.e. For purposes of Section II.E.3., fugitive emissions must be calculated using the emission factors of Table 2-4 of the 1995 EPA Protocol for Equipment Leak Emission Estimates (Document EPA-453/R-95-017), or other Division approved method.

Table 3 – Natural Gas Compressor Station Component Inspections

Fugitive VOC Emissions (rolling twelve-month tpy)	Inspection Frequency
> 0 and ≤ 12	Quarterly
> 0 and ≤ 50, located within a disproportionately impacted community or within 1,000 feet of an occupied area	Bimonthly
> 12 and ≤ 50	Quarterly

> 50	Monthly

II.E.4. Requirements for well production facilities

II.E.4.a. Owners or operators of well production facilities constructed on or after October 15, 2014, must identify leaks from components using an approved instrument monitoring method no sooner than fifteen (15) days and no later than thirty (30) days after the facility commences operation. This initial test constitutes the first, or only for facilities subject to a one time approved instrument monitoring method inspection, of the periodic approved instrument monitoring method inspections. Thereafter, approved instrument monitoring method and AVO inspections must be conducted in accordance with the Inspection Frequencies in Table 4.

II.E.4.b. Owners or operators of well production facilities constructed before October 15, 2014, must identify leaks from components using an approved instrument monitoring method within ninety (90) days of the Phase-In Schedule in Table 4; within thirty (30) days for well production facilities subject to monthly approved instrument monitoring method inspections; or by January 1, 2016, for well production facilities subject to a one time approved instrument monitoring method inspection. Thereafter, approved instrument monitoring method and AVO inspections must be conducted in accordance with the inspection frequencies in Table 4.

II.E.4.c. Beginning calendar year 2020, owners or operators of well production facilities with estimated uncontrolled actual VOC emissions greater than or equal to two (2) but less than or equal to twelve (12) tons per year as calculated in accordance with Section II.E.4.e., based on a rolling twelve-month total, must inspect components for leaks using an approved instrument monitoring method at least semi-annually.

II.E.4.d. Beginning calendar year 2020, owners or operators of well production facilities with estimated uncontrolled actual VOC emissions greater than or equal to two (2) tons per year as calculated in accordance with Section II.E.4.g., based on a rolling twelve-month total, and located within 1,000 feet of an occupied area must inspect components for leaks using an approved instrument monitoring method in accordance with the inspection frequency in Table 4.

II.E.4.e. Owners or operators of well production facilities must inspect components for leaks using an approved instrument

monitoring method as follows, except as provided in Section II.E.4.f.

II.E.4.e.(i) Beginning January 1, 2023, for well production facilities that commenced operation before May 1, 2022, in accordance with the inspection frequencies in Table 5.

II.E.4.e.(i)(A) Beginning April 14, 2025, for well production facilities that commenced operation before May 1, 2022, disproportionately impacted community is defined as in Section II.A.11.b. The owner or operator must assess by December 31, 2025, whether the well production facility is located within a disproportionately impacted community to determine the inspection and repair frequency for the calendar year beginning in 2026

II.E.4.e.(ii) Well production facilities that commence operation on or after May 1, 2022, must be inspected at least monthly.

II.E.4.e.(ii)(A) Beginning April 14, 2025, for well production facilities that commenced operation after May 1, 2022, disproportionately impacted community is defined as in Section II.A.11.b. The owner or operator must assess by December 31, 2025, whether the well production facility is located within a disproportionately impacted community to determine the inspection and repair frequency for the calendar year beginning in 2026.

II.E.4.f. Alternative inspection frequency requirements.

Owners or operators of well production facilities in compliance with Sections II.E.4.f.(i) or II.E.4.f.(ii) must inspect components for leaks using an approved instrument monitoring method at least semi-annually or consistent with the inspection frequency in Table 4, whichever is more frequent, except that a well production facility with uncontrolled actual VOC emissions less than two (2) tons per year as of February 14, 2022, need only be inspected at least annually. Owners or operators must comply with all other requirements of Section II.E.

II.E.4.f.(i) The owner or operator installs and operates an automatic pressure management and pilot light

system, consistent with a Division-approved protocol, on each storage tank at a well production facility with storage tanks subject to the requirements of Section II.C. The Division-approved protocol must ensure that the automatic pressure management and pilot light system, as appropriate.

II.E.4.f.(i)(A) Continuously tracks the pressure in the storage tank(s) and monitors the pilot light on combustion devices used as air pollution control equipment;

II.E.4.f.(i)(B) Accurately identifies when storage tank pressure levels both drop and rise substantially to indicate venting (e.g., both when a thief hatch is open and when pressure rises above the level where venting might occur);

II.E.4.f.(i)(C) Accurately identifies when a pilot light is out and subsequently re-lit;

II.E.4.f.(i)(D) Will shut-in flow to the storage tank(s) under the circumstances in Sections II.E.4.f.(i)(B) and II.E.4.f.(i)(C);

II.E.4.f.(i)(E) Triggers a site investigation by the owner or operator upon the occurrence of potential venting and pilot light outages; and

II.E.4.f.(i)(F) Includes sufficient recordkeeping and reporting requirements to demonstrate compliance.

II.E.4.f.(ii) The owner or operator uses only non-emitting pneumatic controllers, installs and operates a software system providing automated operational feedback to a central control system, and does not install and operate hydrocarbon liquid storage tanks (other than a maintenance tank) or natural gas-fired reciprocating internal combustion engines.

II.E.4.g. The estimated uncontrolled actual VOC emissions from the highest emitting storage tank at the well production facility determines the frequency at which inspections must be performed. If no storage tanks storing oil or condensate are located at the well production facility, owners or operators must rely on the facility emissions (controlled actual VOC emissions from all permanent equipment, including emissions from components determined by utilizing the emission factors defined

as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates).

Table 4 – Well Production Facility Component Inspections				
Thresholds (per II.E.4.g.)				
Well production facilities without storage tanks (rolling twelve-month tpy)	Well production facilities with storage tanks (rolling twelve-month tpy)	Approved Instrument Monitoring Method Inspection Frequency	AVO Inspection Frequency	Phase-In Schedule
> 0 and < 2	> 0 and < 2	One time	Monthly	January 1, 2016
≥ 2 and ≤ 12	≥ 2 and ≤ 12	Semi-annually	Monthly	* begins in 2020
> 2 and < 12, located within 1,000 feet of an occupied area	> 2 and < 12, located within 1,000 feet of an occupied area	Quarterly	Monthly	* begins in 2020
> 12 and ≤ 20	> 12 and ≤ 50	Quarterly	Monthly	January 1, 2015
> 12, located within 1,000 feet of an occupied area	> 12, located within 1,000 feet of an occupied area	Monthly		* begins in 2020
> 20	> 50	Monthly		January 1, 2015

Table 5 - Well Production Facility Component Inspections on or after January 1, 2023		
Thresholds (per II.E.4.g.)		
Well production facilities (rolling twelve-month tpy)	Approved Instrument Monitoring Method Inspection Frequency	AVO Inspection Frequency
> 0 and < 2	Annual	Monthly
> 0 and < 2, located within 1,000 feet of an occupied area	Semi-annual	Monthly
> 0 and < 2, located in the 8-hour ozone control area and within a disproportionately impacted community	Semi-annual	Monthly

≥ 2 and ≤ 50	Quarterly	Monthly
≥ 2 and ≤ 12, located within 1,000 feet of an occupied area or within a disproportionately impacted community	Bimonthly	Monthly
> 12, located within 1,000 feet of an occupied area or within a disproportionately impacted community	Monthly	
> 20, well production facilities without storage tanks	Monthly	
> 50, well production facilities with storage tanks	Monthly	

II.E.5. If a component is unsafe, difficult, or inaccessible to monitor, the owner or operator is not required to monitor the component until it becomes feasible to do so.

II.E.5.a. Difficult to monitor components are those that cannot be monitored without elevating the monitoring personnel more than two (2) meters above a supported surface or are unable to be reached via a wheeled scissor-lift or hydraulic type scaffold that allows access to components up to 7.6 meters (25 feet) above the ground.

II.E.5.b. Unsafe to monitor components are those that cannot be monitored without exposing monitoring personnel to an immediate danger as a consequence of completing the monitoring.

II.E.5.c. Inaccessible to monitor components are those that are buried, insulated, or obstructed by equipment or piping that prevents access to the components by monitoring personnel.

II.E.6. Leaks requiring repair: Leaks must be identified utilizing the methods listed in Section II.E.6. Only leaks from components exceeding the thresholds in Section II.E.6. require repair under Section II.E.7.

II.E.6.a. For EPA Method 21 monitoring, at facilities constructed before May 1, 2014, repair is required for leaks with any concentration of hydrocarbon above 2,000 parts per million (ppm) not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation, except for well production facilities where a leak is defined as any concentration of hydrocarbon above 500 ppm not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

II.E.6.b. For EPA Method 21 monitoring, at facilities constructed on or after May 1, 2014, repair is required for leaks with any concentration of hydrocarbon above 500 ppm not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

II.E.6.c. For infra-red camera and AVO monitoring, repair is required for leaks with any detectable emissions not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

II.E.6.d. For other Division approved instrument monitoring methods or programs, leak identification requiring repair will be established as set forth in the Division's approval.

II.E.6.e. Except as provided in Sections II.E.6.f. or II.E.6.g., for leaks identified using an approved non-quantitative instrument monitoring method or AVO, owners or operators have the option of either repairing the leak in accordance with the repair schedule set forth in Section II.E.7.a. or conducting follow-up monitoring using EPA Method 21 within five (5) working days of the leak detection. If the follow-up EPA Method 21 monitoring shows that the emission is a leak requiring repair as set forth in Section II.E.6., the leak must be repaired in accordance with Section II.E.7.a. and remonitored in accordance with Section II.E.7.c.

II.E.6.f. Beginning on March 1, 2021, for leaks identified using an approved non-quantitative instrument monitoring method or AVO at a well production facility located within 1,000 feet of an occupied area, owners or operators have the option of either repairing the leak in accordance with the repair schedule set forth in Section II.E.7.b. or conducting follow-up monitoring using EPA Method 21 within five (5) working days of the leak detection. If the follow-up EPA Method 21 monitoring shows that the emission is a leak requiring repair as set forth in Sections II.E.6.a. through II.E.6.d., the leak must be repaired as follows and remonitored in accordance with Section II.E.7.c.

II.E.6.f.(i) If EPA Method 21 indicates a leak greater than 500 ppm and less than 10,000 ppm hydrocarbons, the leak must be repaired in accordance with Section II.E.7.a.

II.E.6.f.(ii) If EPA Method 21 is not performed or indicates a leak greater than or equal to 10,000 ppm hydrocarbons, the leak must be repaired in accordance with Section II.E.7.b.

II.E.6.g. Beginning February 14, 2022, for leaks identified using an approved non-quantitative instrument monitoring method or AVO at a well production facility located within a disproportionately impacted community or at a well production facility inspected pursuant to Section II.E.4.f., owners or operators have the option of either repairing the leak in accordance with the repair schedule set forth in Section II.E.7.b. or conducting follow-up monitoring using EPA Method 21 within five (5) working days of the leak detection. If the follow-up EPA Method 21 monitoring shows that the emission is a leak requiring repair as set forth in Sections II.E.6.a. through II.E.6.d., the leak must be repaired as follows and remonitored in accordance with Section II.E.7.c.

II.E.6.g.(i) If EPA Method 21 indicates a leak greater than 500 ppm and less than 10,000 ppm hydrocarbons, the leak must be repaired in accordance with Section II.E.7.a.

II.E.6.g.(ii) If EPA Method 21 is not performed or indicates a leak greater than or equal to 10,000 ppm hydrocarbons, the leak must be repaired in accordance with Section II.E.7.b.

II.E.7. Repair and remonitoring

II.E.7.a. Except as provided in Section II.E.7.b., the first attempt to repair a leak must be made no later than five (5) working days after discovery and repair of a leak discovered on or after January 1, 2018, completed no later than thirty (30) working days after discovery, unless parts are unavailable, the equipment requires shutdown to complete repair, or other good cause exists.

II.E.7.a.(i) If parts are unavailable, they must be ordered promptly and the repair must be made within fifteen (15) working days of receipt of the parts.

II.E.7.a.(ii) If shutdown is required, a repair attempt must be made during the next scheduled shutdown and final repair completed within two (2) years after discovery.

II.E.7.a.(iii) If delay is attributable to other good cause, repairs must be completed within fifteen (15) working days after the cause of delay ceases to exist.

II.E.7.a.(iv) Beginning February 14, 2022, the owner or operator must take action(s) where technically feasible to mitigate emissions from leaks placed on delay of repair within no later than 48 hours of placing a leaking component on delay of repair.

II.E.7.b. For leaks requiring repair pursuant to Sections II.E.6.f. and II.E.6.g., the first attempt to repair must be made as soon as practicable but no later than five (5) working days after discovery and completed within five (5) working days after discovery. If repair is not completed within five (5) working days after discovery, the owner or operator must use other means to stop the leak including, but not limited to, isolating the component or shutting in the well, unless such other means will cause greater emissions.

II.E.7.b.(i) If the owner or operator cannot repair or stop the leak within five (5) working days after discovery, the owner or operator must notify the local government with jurisdiction over the location and the Division as soon as possible, but no later than seven (7) working days after the leak is discovered. The notice must include

II.E.7.b.(i)(A) Identification of the facility, the leaking component, and contact information of the owner or operator representative;

II.E.7.b.(i)(B) The concentration of hydrocarbons using EPA Method 21, if available;

II.E.7.b.(i)(C) Instructions to access the infrared camera video footage of the leak, if available;

II.E.7.b.(i)(D) The approximate distance of the facility to the closest occupied area that is not an outdoor area;

II.E.7.b.(i)(E) The basis for the delay of repair and justification for not isolating the component or shutting in the well; and

II.E.7.b.(i)(F) The estimated date of repair.

II.E.7.c. Within fifteen (15) working days of completion of a repair, the leak must be remonitored using an approved instrument monitoring method to verify that the repair was effective.

II.E.7.d. Leaks discovered pursuant to the leak detection methods of Section II.E.6. are not subject to enforcement by the Division unless the owner or operator fails to perform the required

repairs in accordance with Section II.E.7. or keep required records in accordance with Section II.E.8.

II.E.8. Recordkeeping: The owner or operator of each facility subject to the leak detection and repair requirements in Section II.E. must maintain the following records for a period of two (2) years and make them available to the Division upon request.

II.E.8.a. Documentation of the initial approved instrument monitoring method inspection for new well production facilities;

II.E.8.b. The date, facility name, and facility AIRS ID or facility location if the facility does not have an AIRS ID for each inspection;

II.E.8.c. For each inspection, a list of the leaking components requiring repair and the monitoring method(s) used to determine the presence of the leak;

II.E.8.d. The date and result of any EPA Method 21 monitoring relied upon to demonstrate a leak is not subject to Section II.E.7.b.;

II.E.8.e. The date of first attempt to repair the leak and, if necessary, any additional attempt to repair the leak;

II.E.8.f. The date the leak was repaired and for leaks discovered and repaired on or after January 1, 2018, the type of repair method applied;

II.E.8.g. Documentation of actions taken pursuant to Section II.E.7.b. to stop a leak that was not repaired within five (5) working days after discovery or documentation that such actions would cause greater emissions;

II.E.8.h. Copies of all notices submitted pursuant to Section II.E.7.b.(i) and the infrared camera video footage of leaks that required notice pursuant to Section II.E.7.b.(i);

II.E.8.i. The delayed repair list, including the basis for placing leaks on the list;

II.E.8.i.(i) For leaks discovered on or after January 1, 2018, the delayed repair list must include the date and duration of any period where the repair of a leak was delayed due to unavailable parts, required shutdown, or delay for other good cause, the basis for the delay, and the schedule for repairing the leak. Delay of repair beyond thirty (30) days after initial discovery due to unavailable parts must be reviewed, and a record kept of that review, by a representative of the owner or operator with

responsibility for leak detection and repair compliance functions. This review will not be made by the individual making the initial determination to place a part on the delayed repair list.

II.E.8.i.(ii) For leaks discovered after March 1, 2021, that require repair pursuant to Section II.E.7.b., the delayed repair list must include the date and duration of leaks for which repairs were not completed within five (5) working days after discovery, and the schedule for repairing the leak.

II.E.8.i.(iii) For leaks discovered after February 14, 2022, pursuant to Section II.E.6.g., that require repair pursuant to Section II.E.7.b., the delayed repair list must include the date and duration of leaks for which repairs were not completed within five (5) working days after discovery, and the schedule for repairing the leak, including, but not limited to, the date upon which necessary parts were ordered.

II.E.8.i.(iv) For leaks discovered after February 14, 2022, the delayed repair list must include a description of action(s) taken to mitigate the emissions from the leak or the reasons why mitigation was not technically feasible, as required under Section II.E.7.a.(iv).

II.E.8.j. The date the leak was remonitored and the results of the remonitoring;

II.E.8.k. A list of components that are designated as unsafe, difficult, or inaccessible to monitor, as described in Section II.E.5., an explanation stating why the component is so designated, and the schedule for monitoring such component(s); and

II.E.8.l. Documentation of the owner or operator’s proximity analysis, if applicable, including the date of the initial and any subsequent analysis and a description of the methodology used for the analysis.

II.E.9. Reporting. The owner or operator of each facility subject to the leak detection and repair requirements in Section II.E. must submit a single annual report using the Division-approved format on or before May 31st of each year (beginning May 31st, 2019) that includes, at a minimum, the following information regarding leak detection and repair activities at their subject facilities conducted the previous calendar year:

II.E.9.a. The total number of well production facilities and total number of natural gas compressor stations inspected;

II.E.9.b. The total number of inspections performed per inspection frequency tier of well production facilities and inspection frequency tier of natural gas compressor stations;

II.E.9.c. The total number of identified leaks requiring repair, broken out by component type, monitoring method, and inspection frequency tier of well production facilities, as reported in Section II.E.9.b., or inspection frequency tier of natural gas compressor stations;

II.E.9.d. The total number of leaks repaired for each inspection frequency tier of well production facilities, as reported in Section II.E.9.b., or inspection frequency tier of natural gas compressor stations;

II.E.9.e. The total number of leaks on the delayed repair list as of December 31st broken out by component type, inspection frequency tier of well production facilities, as reported in Section II.E.9.b., or inspection frequency tier of natural gas compressor stations, and the basis for each delay of repair. This total does not include leaks that have been stopped through other means, as specified in Section II.E.7.b.;

II.E.9.f. The record of all reviews conducted for delayed repairs due to unavailable parts extending beyond 30 days for the previous calendar year; and

II.E.9.g. Each report must be accompanied by a certification by a responsible official that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete

II.F. Control of emissions from well production facilities.

Well Operation and Maintenance:

II.F.1. On or after August 1, 2014, gas coming off a separator, produced during normal operation from any newly constructed, hydraulically fractured, or recompleted oil and gas well, must either be routed to a gas gathering line or controlled from commencement of operation by air pollution control equipment that achieves an average hydrocarbon control efficiency of 95%.

II.F.2. On or after February 14, 2022, gas coming off a separator, produced during normal operation from any oil and gas well, must either be routed to a gas gathering line or controlled by air pollution control equipment that achieves a hydrocarbon control efficiency of 95%,

unless emitting to the atmosphere is authorized pursuant to a variance issued by the Colorado Oil and Gas Conservation Commission.

II.F.3. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons.

II.G. (State Only) Emission reductions from downhole well maintenance, well liquids unloading events, and well plugging activities.

II.G.1. Beginning May 1, 2014, owners or operators must use best management practices to minimize hydrocarbon emissions and the need for emissions from the well associated with downhole well maintenance, well liquids unloading, and well plugging (beginning January 31, 2020), unless emitting is necessary for safety. The emitting as necessary for safety exemption does not apply to Section II.G.1.c.

II.G.1.a. Prior to January 1, 2023, during liquids unloading events, any means of creating differential pressure must first be used to attempt to unload the liquids from the well without emitting. If these methods are not successful in unloading the liquids from the well, the well may emit in order to create the necessary differential pressure to bring the liquids to the surface.

II.G.1.b. The owner or operator must be present on-site during any planned downhole well maintenance, well liquids unloading, or well plugging event and must ensure that any emissions from the well associated with the event are limited to the maximum extent practicable.

II.G.1.c. Beginning January 1, 2023, for all downhole well maintenance and well liquids unloading activities with emissions to atmosphere, owners or operators must, consistent with well site conditions and good engineering practices

II.G.1.c.(i) Use best engineering practices in the design and construction of oil and gas wells and well production facilities that commence operation after January 1, 2023, to minimize the need for well liquids unloading with emissions to atmosphere and other downhole well maintenance as the well ages.

II.G.1.c.(ii) Attempt to create differential pressure to unload the liquids from the well without emitting.

II.G.1.c.(iii) Monitor wellhead pressure and/or flow rate of the vented natural gas.

II.G.1.c.(iv) Equalize the wellhead pressure with the production separator pressure prior to conducting unloading, swabbing, or maintenance activities, when practicable.

II.G.1.c.(v) Close wellhead vents to the atmosphere or otherwise end direct emission of natural gas to atmosphere as soon as practicable.

II.G.1.c.(vi) Minimize emissions to atmosphere from well liquids unloading and well swabbing, through the installation, use, and optimization of artificial lift, such as plunger lift with smart automation, except

II.G.1.c.(vi)(A) Artificial lift is not required where an operator demonstrates to the Division that installation and use of artificial lift is technically infeasible on a well because of the structure of the well.

II.G.1.c.(vi)(B) Smart automation is not required where an operator demonstrates to the Division that use of smart automation is technically infeasible.

II.G.1.c.(vi)(C) Artificial lift is not required on a well drilled after February 14, 2022, until that well begins requiring regular liquids unloading operations. The owner or operator must install artificial lift at such well no later than twelve months after the well commences operation.

II.G.1.c.(vi)(D) The Division can approve an alternative to artificial lift if the owner or operator demonstrates that use of artificial lift would result in an emissions increase or other environmental disbenefit.

II.G.1.d. Beginning January 1, 2023, unless exempted in Sections II.G.1.d.(i) or II.G.1.d.(ii), owners or operators must use capture and recovery techniques or install and use a control device to achieve at least 95% control of hydrocarbon emissions during well liquids unloading and well swabbing operations. Notwithstanding any provision in Section II.B. to the contrary, owners or operators may use open flares and portable combustion devices to comply with this Section II.G.1.d.

II.G.1.d.(i) Owners or operators are not required to use control devices during well swabbing operations if pressurized equipment is used such that hydrocarbons are not emitted to the atmosphere from the well swabbing operation.

II.G.1.d.(ii) Owners or operators are not required to capture or control emissions during well liquids unloading and well swabbing operations if, during the preceding rolling twelve-month period

II.G.1.d.(ii)(A) The well production facility is located within a disproportionately impacted community and the operator did not conduct more than or equal to six (6) well liquids unloading and well swabbing events with emissions to atmosphere during any rolling six-month period.

II.G.1.d.(ii)(B) The well production facility is not located within a disproportionately impacted community and did not have any single well with more than or equal or six (6) well liquids unloading and well swabbing events with emissions to atmosphere during any rolling six-month period or any well(s), in the aggregate, with more than or equal to ten (10) well liquids unloading events and well swabbing with emissions to atmosphere during any rolling six-month period.

II.G.1.d.(ii)(C) Capturing or controlling the emissions from the well liquids unloading or well swabbing event is technically infeasible, as approved by the Division.

II.G.1.d.(ii)(D) Beginning April 14, 2025, disproportionately impacted community is defined as in Section II.A.11.b. The owner or operator must assess by December 31, 2025, whether the well production facility is located within a disproportionately impacted community to determine the capture and recovery or control requirements for the calendar year beginning in 2026.

II.G.1.d.(ii)(E) An owner or operator must comply with any capture, recovery, or control requirement that becomes applicable solely due to a change in location as assessed pursuant to Section II.G.1.d.(ii)(D) by no later than July 1, 2026.

II.G.1.d.(iii) Well liquids unloading events are not included in the calculation for purposes of Section II.G.1.d.(ii) where the need for well

liquids unloading resulted from the infiltration of excess water directly caused by a nearby hydraulic fracturing event provided that the owner of the well to be unloaded provides the Division with at least 48 hours written notice (or as soon as possible prior to conducting well liquids unloading if 48 hours' notice would require an alternative or extended well liquids unloading practice that increases emissions) of the intent to begin unloading and the unloading activities are completed within thirty (30) days of commencement of those activities. The notice must include an identification of the operator that conducted the fracturing event suspected of contributing to the infiltration of water and the well API number(s) of the well that was fractured.

II.G.2. Recordkeeping

II.G.2.a. Through January 31, 2020, the owner or operator must keep records of the cause, date, time, and duration of venting events under Section II.G. Records must be kept for two (2) years and made available to the Division upon request.

II.G.2.b. Beginning January 31, 2020, or the date specified in Section II.G.2.b.(iii), the owner or operator must keep the following records for two (2) years and make records available to the Division upon request.

II.G.2.b.(i) The cause of emissions (i.e., downhole well maintenance, well liquids unloading, well plugging), date, time, and duration of emissions under Section II.G.

II.G.2.b.(ii) The best management practices used to minimize hydrocarbon emissions or the safety needs that prevented the use of best management practices.

II.G.2.b.(iii) Beginning July 1, 2020, the emissions associated with well liquids unloading, downhole well maintenance, and well plugging.

II.G.2.c. Beginning January 1, 2023, in addition to the records in Section II.G.2.b., the owner or operator must keep the following records for five (5) years and make records available to the Division upon request.

II.G.2.c.(i) The volume of gas vented during each downhole well maintenance, well liquids unloading and well swabbing, and well plugging event.

II.G.2.c.(ii) The type of artificial lift used to reduce emissions pursuant to Section II.G.1.c.(vi); the number of well liquids unloading and well swabbing events resulting in emissions to atmosphere; or, if applicable, documentation of the justification for not having artificial lift under Section II.G.1.c.(vi). If plunger lift is installed, the number of cycles of the plunger.

II.G.2.c.(iii) Whether the well liquids unloading or well swabbing event was controlled pursuant to Section II.G.1.d. and, if not, the justification for the exemption under Sections II.G.1.d.(i) or II.G.1.d.(ii), including all records relating to Section II.G.1.d.(iii) and records of production during the 30-day time period covered by Section II.G.1.d.(iii) and an estimate of the VOC and methane emissions during that same 30-day time period associated with the well liquids unloading or well maintenance activities.

II.G.3. Reporting

II.G.3.a. The owner or operator must submit a single annual report using a Division-approved format on or before June 30th of each year (beginning June 30th, 2021) that includes the following information regarding each downhole well maintenance, well liquids unloading, and well plugging event conducted the previous calendar year that resulted in emissions.

II.G.3.a.(i) The API number of the well and the AIRS number of any associated storage tanks.

II.G.3.a.(ii) Whether the emissions occurred due to downhole well maintenance, well liquids unloading, well swabbing, or well plugging.

II.G.3.a.(iii) The date, time, and duration of the downhole well maintenance, well liquids unloading, or well plugging event, and, beginning with the annual report for calendar year 2023 whether the event was controlled.

II.G.3.a.(iv) The best management practices used to minimize emissions, including the method used pursuant to Section II.G.1.c.(vi) beginning January 1, 2023.

II.G.3.a.(v) Safety needs that prevented the use of best management practices to minimize emissions, if applicable.

II.G.3.a.(vi) An estimate of the volume of natural gas, VOC, NOx, N2O, CO2, CO, ethane, and methane emitted from the well associated with well liquid unloading activities, downhole well maintenance, and well plugging event and the emission factor or calculation methodology used to determine the volume of natural gas and emissions.

II.G.3.a.(vii) Beginning with the annual report submitted June 30th of 2023 (for calendar year 2022), whether the well identified in Section II.G.3.a.(i) is equipped with artificial lift.

II.H. (State Only) Emission reductions from midstream segment pigging operations and blowdowns of piping and equipment.

II.H.1. Pigging operations and blowdowns of piping and equipment located at natural gas compressor stations and natural gas processing plants.

II.H.1.a. Consistent with the schedule for compliance in Section II.H.1.c., at natural gas compressor stations and natural gas processing plants in disproportionately impacted communities, midstream segment owners or operators must capture and recover hydrocarbon emissions from

II.H.1.a.(i) Pigging units attached to a high-pressure pigging pipeline with an outside diameter of twelve (12) inches or greater.

II.H.1.a.(ii) Pigging units with annual uncontrolled actual emissions equal to or greater than 0.5 tpy VOC or 1 tpy methane on a rolling 12-month basis, consistent with a Division-accepted method of calculation.

II.H.1.a.(iii) Blowdowns of compressors, where total uncontrolled actual blowdown emissions from all compressors are greater than or equal to 0.75 tpy VOC or 1.5 tpy methane on a rolling 12-month basis, consistent with a Division-accepted method of calculation. Hydrocarbons emitted during a compressor blowdown event where the physical volume of the compressor is less than fifty (50) cubic feet (cf) are not included in the emissions calculated for purposes of applicability of this Section II.H.1.a.(iii), provided the owner or operator

maintains records of the dates and number of such events.

II.H.1.a.(iv) Blowdowns of all equipment and piping not covered by Sections II.H.1.a.(i) through II.H.1.a.(iii) where the physical volume between isolation valves is greater than or equal to fifty (50) cf. This requirement does not apply if the owner or operator can demonstrate that the aggregate uncontrolled actual emissions from blowdowns of all equipment and piping subject to this Section II.H.1.a.(iv) are less than 0.75 tpy VOC and 1.5 tpy methane, provided the owner or operator maintains records of the dates and number of all blowdowns including blowdowns where the physical volume between isolation valves is greater than one (1) cf but less than fifty (50) cf.

II.H.1.b. Consistent with the schedule for compliance in Section II.H.1.c., at all natural gas compressor stations and natural gas processing plants not located in a disproportionately impacted community, midstream segment owners or operators must capture and recover hydrocarbon emissions from

II.H.1.b.(i) Pigging units attached to high-pressure pigging pipelines with an outside diameter of twelve (12) inches or greater.

II.H.1.b.(ii) Pigging units with annual uncontrolled actual emissions equal to or greater than 1 tpy VOC or 2 tpy methane on a rolling 12-month basis, consistent with a Division-accepted method of calculation.

II.H.1.b.(iii) Blowdowns of compressors, where total uncontrolled actual blowdown emissions from all compressors are greater than or equal to 1 tpy VOC or 2 tpy methane on a rolling 12-month basis, consistent with a Division-accepted method of calculation. Hydrocarbons emitted during a compressor blowdown event where the physical volume of the compressor is less than fifty (50) cf are not included in the emissions calculated for purposes of applicability of this Section II.H.1.b.(iii), provided the owner or operator maintains records of the dates and number of such events.

II.H.1.b.(iv) Blowdowns of equipment and piping not covered by Sections II.H.1.b.(i) through II.H.1.b.(iii) where the physical volume between isolation valves is greater

than or equal to fifty (50) cf. This requirement does not apply if the owner or operator can demonstrate that the aggregate uncontrolled actual emissions from blowdowns of all equipment and piping subject to this Section II.H.1.a.(iv) are less than 1 tpy VOC and 2 tpy methane, provided the owner or operator maintains records of the dates and number of all blowdowns including blowdowns where the physical volume between isolation valves is greater than one (1) cf but less than fifty (50) cf.

II.H.1.c. Schedule for compliance with Sections II.H.1.a. and II.H.1.b. Midstream segment owners or operators must be in compliance

II.H.1.c.(i) Upon commencement of operation for any natural gas compressor station or natural gas processing plant that commences operation on or after February 14, 2022.

II.H.1.c.(ii) By January 1, 2023, at no less than fifty percent (50%) of natural gas compressor stations and natural gas processing plants that commenced operation before February 14, 2022, and that are located within a disproportionately impacted community.

II.H.1.c.(iii) By June 1, 2023, at all natural gas compressor stations and natural gas processing plants that commenced operation before February 14, 2022, and that are located within a disproportionately impacted community.

II.H.1.c.(iv) By January 1, 2024, for all natural gas compressor stations and natural gas processing plants that commenced operation before February 14, 2022.

II.H.1.c.(v) Within sixty (60) days of the first day of the month after which a pigging unit in a disproportionately impacted community not subject to Sections II.H.1.a.(i) or (ii) increases hydrocarbon emissions to 0.5 tpy VOC or 1 tpy methane after the applicable compliance date in Sections II.H.1.c.(i) through II.H.1.c.(iv), on a rolling twelve-month basis.

II.H.1.c.(vi) Within sixty (60) days of the first day of the month after which a pigging unit not located in a disproportionately impacted community and not

subject to Sections II.H.1.b.(i) or II.H.1.b.(ii) that increases hydrocarbon emissions to 1 tpy VOC or 2 tpy methane after the applicable compliance date in Sections II.H.1.c.(i) through II.H.1.c.(iv), on a rolling twelve-month basis.

II.H.1.c.(vii) Within sixty (60) days of the first day of the month after which blowdowns of compressors or other equipment and piping with a physical volume of the compressor or between isolation valves of equal to or greater than 50 cf located at a natural gas compressor station or natural gas processing plant located in a disproportionately impacted community not subject to Sections II.H.1.a.(iii) or II.H.1.a.(iv) increases hydrocarbon emissions to 0.75 tpy VOC or 1.5 tpy methane after the applicable compliance date in Section II.H.1.c.(i)-(iv), on a rolling twelve-month basis.

II.H.1.c.(viii) Within sixty (60) days of the first day of the month after which blowdowns of compressors or other equipment and piping with a physical volume of the compressor or between isolation valves of equal to or greater than 50 cf located at a natural gas compressor station or natural gas processing plant not located in a disproportionately impacted community not subject to Sections II.H.1.b.(iii) or II.H.1.b.(iv) increases hydrocarbon emissions to 1 tpy VOC or 2 tpy methane after the applicable compliance date in Sections II.H.1.c.(i) through II.H.1.c.(iv), on a rolling twelve-month basis.

II.H.1.c.(ix) An owner or operator may request an extension of the compliance schedules in Sections II.H.1.c.(ii) through II.H.1.c.(iv) for no more than twelve (12) months. The Division may approve such request if the owner or operator demonstrates that the extension is required to facilitate coordinated engineering and design projects to holistically address compliance with Section II.H. in order to avoid temporary solutions and emissions disbenefits, if any, that may be caused by the compliance schedules in Sections II.H.1.c.(ii) through II.H.1.c.(iv).

II.H.1.c.(x) Beginning April 14, 2025, disproportionately impacted community is defined as in Section II.A.11.b. The owner or operator must assess by December 31, 2025, whether the natural gas

compressor station or natural gas processing plant is located within a disproportionately impacted community to determine the capture and recovery or control requirements for the calendar year beginning in 2026.

II.H.1.c.(xi) An owner or operator must comply with any capture, recovery, or control requirement that becomes applicable solely due to a change in location as assessed pursuant to Section II.H.1.c.(x) by no later than July 1, 2026.

II.H.1.d. Midstream owners or operators must capture and recover hydrocarbon emissions from pigging units that commence operation after February 14, 2022, where the pigging unit is attached to a high-pressure pigging line.

II.H.2. Pigging operations at standalone pigging stations.

II.H.2.a. Midstream segment owners or operators must capture and recover hydrocarbon emissions from the following pigging operations at standalone pigging stations that commence operation on or after February 14, 2022.

II.H.2.a.(i) Pigging units attached to a high-pressure pigging pipeline.

II.H.2.a.(ii) Pigging units located in a disproportionately impacted community with annual uncontrolled actual emissions equal to or greater than 0.5 tpy VOC or 1 tpy methane on a rolling 12-month basis, consistent with a Division-accepted method of calculation.

II.H.2.a.(iii) Pigging units not located in a disproportionately impacted community with annual uncontrolled actual emissions greater than or equal to 1 tpy VOC or 2 tpy methane on a rolling 12-month basis, consistent with a Division-accepted method of calculation.

II.H.2.a.(iv) Beginning April 14, 2025, disproportionately impacted community is defined as in Section II.A.11.b. The owner or operator must assess by December 31, 2025, whether the pigging station is located within a disproportionately impacted community to determine the capture and recovery or control requirements for the calendar year beginning in 2026.

II.H.2.a.(v) An owner or operator must comply with any capture, recovery, or control requirement that becomes applicable solely due to a change in location as assessed pursuant to Section II.H.2.a.(iv) by no later than July 1, 2026.

II.H.2.b. Beginning January 1, 2023, at standalone pigging stations that commenced operation before February 14, 2022, located within a disproportionately impacted community, midstream segment owners or operators must capture and recover hydrocarbon emissions from pigging operations

II.H.2.b.(i) At pigging units with annual uncontrolled actual emissions equal to or greater than 0.5 tpy VOC or 1 tpy methane on a rolling 12-month basis, consistent with a Division-accepted method of calculation.

II.H.2.b.(ii) Where the pigging unit is attached to a high-pressure pigging pipeline with an outside diameter of twelve (12) inches or greater.

II.H.2.b.(iii) A pigging unit not subject to Section II.H.2.b.(i) as of January 1, 2023, that increases hydrocarbon emissions to 0.5 tpy VOC or 1 tpy methane must be in compliance with Section II.H.2.b, within sixty (60) days of the first day of the month after which the emissions exceeded the applicable threshold, based on a rolling twelve-month basis.

II.H.2.b.(iv) Beginning April 14, 2025, disproportionately impacted community is defined as in Section II.A.11.b. The owner or operator must assess by December 31, 2025, whether the pigging station is located within a disproportionately impacted community to determine the capture and recovery or control requirements for the calendar year beginning in 2026.

II.H.2.b.(v) An owner or operator must comply with any capture, recovery, or control requirement that becomes applicable solely due to a change in location as assessed pursuant to Section II.H.2.b.(iv) by no later than July 1, 2026.

II.H.2.c. Beginning January 1, 2024, at standalone pigging stations that commenced operation before February 14, 2022, that are not in a disproportionately impacted community, midstream segment owners or operators must capture and recover hydrocarbon emissions from pigging operations

II.H.2.c.(i) At pigging units with annual uncontrolled actual emissions equal to or greater than 1 tpy VOC or 2 tpy methane on a rolling 12-month basis, consistent with a Division-accepted method of calculation.

II.H.2.c.(ii) Where the pigging unit is attached to a high-pressure pigging pipeline with an outside diameter of twelve (12) inches or greater.

II.H.2.c.(iii) A pigging unit not subject to Section II.H.2.c.(i) as of January 1, 2024, that increases hydrocarbon emissions to 1 tpy VOC or 2 tpy methane must be in compliance with Section II.H.2.c. within sixty (60) days of the first day of the month after which the emissions exceeded the applicable threshold, based on a rolling twelve-month basis.

II.H.2.c.(iv) Beginning April 14, 2025, disproportionately impacted community is defined as in Section II.A.11.b. The owner or operator must assess by December 31, 2025, whether the pigging station is located within a disproportionately impacted community to determine the capture and recovery or control requirements for the calendar year beginning in 2026.

II.H.2.c.(v) An owner or operator must comply with any capture, recovery, or control requirement that becomes applicable solely due to a change in location as assessed pursuant to Section II.H.2.c.(iv) by no later than July 1, 2026.

II.H.3. Capture and recovery requirements.

II.H.3.a. Capture and recovery requirements apply during normal operation.

II.H.3.b. Capture and recovery requirements do not apply during planned emergency system shutdown testing operations.

II.H.3.c. Capture and recovery is not required pursuant to Sections II.H.1.a.(iv) or II.H.1.b.(iv) for blowdowns of storage vessels; pressure vessels; or process vessels such as surge vessels, bottom receivers, or knockout vessels, that operate at a pressure less than twenty (20) psig.

II.H.3.d. Residual emission from depressurization of the blowdown volume remaining after capture and recovery techniques have been implemented are considered in compliance with the capture and recovery requirements of Sections II.H.1. and II.H.2.

II.H.3.e. Where a natural gas compressor station or natural gas processing plant is connected to an electrical grid, capture and recovery techniques must be powered by non-emitting equipment, where technically and economically feasible. If technically or economically infeasible, the midstream owner or operator will maintain a record of the analysis undertaken at the time the pigging unit or piping and equipment became subject to Section II.H.1.

II.H.3.f. If capture and recovery of the hydrocarbon emissions emitted is not feasible, the owner or operator may request Division approval to use a control device to comply with Sections II.H.1. or II.H.2. The Division may approve the use of open flares to control hydrocarbon emissions from pigging operations and blowdowns under Sections II.H.1. or II.H.2. Any Division approval will include appropriate operating and maintenance requirements for the control device utilized.

II.H.3.f.(i) Pigging operations and blowdowns that are minimized through the use of a control device or closed-vent system as of February 14, 2022, or for which a permit application is pending to require the use of a control device or closed-vent system, as of December 31, 2021, do not need further Division approval to continue use of the control device or closed-vent system for purposes of Sections II.H.1. or II.H.2. The owner or operator utilizing control devices under this Section II.H.3.f.(i) must notify the Division by March 31, 2022, that control devices will be used to comply with Sections II.H.1. or II.H.2.

II.H.3.g. Midstream owners or operators must design and operate natural gas compressor stations, natural gas processing plants, and standalone pigging stations that commence operation on or after January 1, 2023, to maximize the capture and recovery of hydrocarbon emissions from pigging operations and equipment and piping routinely blown down based on technologies and capabilities that are technically and economically feasible at the time of facility development. Midstream owners or operators must maintain a record of the analysis undertaken at the time of facility development pursuant to this section for the life of the facility.

II.H.4. Beginning January 1, 2023, midstream segment owners or operators must utilize best practices to minimize emissions from pigging operations and blowdowns during normal operations, including all stand-alone pigging stations and midstream pipelines not located within the boundaries of a natural gas compressor station or natural gas processing plant, including

II.H.4.a. Keeping pipeline access openings to the atmosphere on the pig receiver closed at all times except when a pig is being placed into or removed from the receiver or during active pipeline maintenance activities.

II.H.4.b. In the 8-hour ozone control area and northern Weld County, utilizing a liquids management system to reduce the accumulation of liquids in the pigging unit. A liquids management system to include, but is not limited to, use of a pig ramp, process drain, pig receiver on an incline, or a closed liquids containment system.

II.H.4.c. Where feasible for pipeline blowdowns other than for pigging operations, rerouting gas to the low-pressure system using existing piping connections between high- and low-pressure systems, temporarily resetting or bypassing pressure regulators to reduce system pressure prior to maintenance, or installing temporary connections between high- and low-pressure systems.

II.H.4.c.(i) For purposes of Section II.H.4.c., feasibility requires that a low-pressure line be nearby, be owned or operated by the same midstream owner or operator, and be on contiguous property owned or operated by the midstream owner or operator. Feasibility here also means that the action is economically feasible.

II.H.4.c.(ii) The Division can approve alternatives to the best practices in Section II.H.4.c. where the owner or operator demonstrates that the alternatives will achieve equivalent or better emission reductions.

II.H.4.d. Creating or updating operating and maintenance plans to provide for the use, where practicable, of the following best practices. The operating and maintenance plan must describe the situations and circumstances where use of the best practice is, and is not, practicable, and must identify the documentation that will enable the Division to confirm whether the best practice was used consistently with the operating and maintenance plan.

II.H.4.d.(i) Using short pig barrels, where it reduces the gas volume for potential release.

II.H.4.d.(ii) Planning for venting-reduction steps, such as pipeline pump-downs techniques (e.g., in-line compressors, portable compressors, ejector), when large vessels and pipelines need to be isolated and depressurized.

II.H.4.d.(iii) Minimizing the volume that must be released. For example, adding stops to isolate a smaller section of a pipeline to reduce the length of pipe that must be vented.

II.H.4.d.(iv) Using inert gases and pigs to perform pipeline purges.

II.H.4.d.(v) Hot tapping to make new connections to pipelines.

II.H.4.d.(vi) Coordinating operational repairs and routine maintenance to minimize the number of emissions events and volume.

II.H.5. Recordkeeping. The owner or operator must maintain records for a period of five (5) years and make them available to the Division upon request, including:

II.H.5.a. General records.

II.H.5.a.(i) If subject to Sections II.H.1.a. or II.H.1.b., documentation of the methods used to comply with Sections II.H.1.a. or II.H.1.b. If exempt from Sections II.H.1.a. or II.H.1.b., documentation supporting the exemption.

II.H.5.a.(ii) If control equipment is used to comply with Sections II.H.1.a., II.H.1.b., or II.H.1.d., documentation of operating and maintenance activities, and the date and duration of any control equipment downtime during active pigging operations or blowdowns.

II.H.5.a.(iii) Documentation of best practices employed pursuant to Section II.H.4., including any operating and maintenance plans created, updated, or revised under Section II.H.4.d. and the records documenting compliance therewith.

II.H.5.b. Records of pigging operations.

II.H.5.b.(i) The number of pigging events, whether or not subject to capture or control, including the locations of the pigging event, associated pigging units and facility(ies) (including AIRS ID, if applicable); date and time; diameter and normal operating pressure of pigging pipeline; pressure of pigging unit immediately before and after pigging operations (or after capture and recovery if applicable); volume of gas recovered and released; and type and volume of liquid removed from the pigging unit after pigging operations, if any.

II.H.5.b.(ii) The monthly and annual VOC and methane emissions associated with the pigging operations, in accordance with Division-approved calculation methodology, including the VOC and methane weight percent composition of the fluid transported by the pigging pipeline at normal pipeline operating conditions used in the calculations and the date and location of the sample, or other justification of representative composition data.

II.H.5.c. Records of blowdowns.

II.H.5.c.(i) The location (by equipment, facility, and AIRS ID, or by equipment and coordinates if no AIRS ID), date and time of blowdown event.

II.H.5.c.(ii) The monthly and annual VOC and methane emissions from blowdowns, aggregated by equipment blown-down.

II.H.5.c.(iii) The date, location, identification of equipment or piping and number of blowdown events (other than pigging operations), including identification of whether the volume between isolation valves is less than 50 cf.

II.I. (State Only) Control of emissions from natural gas-processing plants

II.I.1. Beginning January 1, 2023, owners or operators of natural gas-processing plants that are not subject to the requirements of Section I.G. must comply with the leak detection and repair (LDAR) program as provided at 40 CFR Part 60, Subpart OOOOa (August 1, 2024) unless subject to the LDAR program provided at 40 CFR Part 60, Subpart OOOO (March 8, 2024). In addition,

II.I.1.a. The owner or operator must complete repair of components placed on delay of repair within two (2) years or the applicable timeline provided in 40 CFR Part 60, Subpart OOOO (March 8, 2024) or 40 CFR Part 60, Subpart OOOOa (August 1, 2024), whichever is earlier.

II.I.1.b. The owner or operator must take action(s) to mitigate emissions from leaks placed on delay of repair where technically feasible.

III. Natural Gas-Actuated Pneumatic Controllers and Pneumatic Pumps Associated with Oil and Gas Operations

III.A. Applicability

This section applies to pneumatic controllers that are actuated by natural gas, and located at, or upstream of natural gas processing plants (upstream activities include: oil and gas exploration and production operations and natural gas compressor stations).

III.B. Definitions

III.B.1. (Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities) “Access to electrical power” means commercial line power is available onsite, with sufficient capacity to support the required power loading of onsite equipment, and which provides reliable and consistent power.

III.B.2. “Affected Operations” means pneumatic controllers that are actuated by natural gas, and located at, or upstream of natural gas processing plants (upstream activities include: oil and gas exploration and production operations and natural gas compressor stations).

III.B.3. (Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities) “Closed vent system” means a system that is not open to the atmosphere and that is composed of hard-piping, ductwork, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back to a process.

III.B.4. “Continuous Bleed” means a continuous bleed rate of natural gas from a pneumatic controller that is designed to bleed natural gas continuously.

III.B.5. "Custody Transfer" means the transfer of crude oil or natural gas after processing and/or treatment in the producing operations or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation.

III.B.6. (Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities) "Deviation", for purposes of this Section III., means any instance in which an owner or operator of a source subject to Sections III.C.5. or III.G. fails to:

III.B.6.a. Meet any requirement or obligation established by Sections III.C.5. or III.G. including, but not limited to, any emission limit, operating limit, or work practice standard;

III.B.6.b. Meet any term or condition that is adopted to implement an applicable requirement in Sections III.C.5. or III.G. and that is included in the operating permit for any applicable source required to obtain such a permit; and/or

III.B.6.c. Meet any emission limit, operating limit, or work practice standard of Sections III.C.5. or III.G. during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by Sections III.C.5. or III.G..

III.B.7. (Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities) "Emergency shutdown device" means a device which functions exclusively to protect personnel and/or prevent physical damage to equipment by shutting down equipment or gas flow during unsafe conditions resulting from an unexpected event, such as a pipe break or fire. For the purposes of Section III.C.5., an emergency shutdown device is not used for routine control of operating conditions.

III.B.8. (State Only) "Enhanced Response" means to return a pneumatic controller to proper operation and includes but is not limited to, cleaning, adjusting, and repairing leaking gaskets, and seals; tuning to operate over a broader range of proportional band; and eliminating unnecessary valve positioners.

III.B.9. "High-Bleed Pneumatic Controller" means a continuous bleed pneumatic controller that is designed to have a continuous bleed rate that emits in excess of 6 standard cubic feet per hour (scfh) of natural gas to the atmosphere.

III.B.10. (State Only) "Intermittent pneumatic controller" means a pneumatic controller that is not designed to have a continuous bleed rate, but is designed to only release natural gas to the atmosphere as part of the actuation cycle.

III.B.11. "Low-Bleed Pneumatic controller" means a continuous bleed pneumatic controller that is designed to have a continuous bleed rate

that emits less than or equal to 6 scfh of natural gas to the atmosphere.

III.B.12. (Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities) "Natural gas-driven pneumatic controller" means an automated instrument powered by natural gas used for maintaining a process parameter such as liquid level, pressure, delta-pressure and temperature.

III.B.13 "Natural Gas Processing Plant" means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

III.B.14. "No-Bleed Pneumatic Controller" means any pneumatic controller that is not using hydrocarbon gas as the valve's actuating gas.

III.B.15. "Non-emitting Controller" means a device that monitors a process parameter such as liquid level, pressure or temperature and sends a signal to a control valve in order to control the process parameter and does not emit natural gas to the atmosphere. Examples of non-emitting controllers include but are not limited to: no-bleed pneumatic controllers, electric controllers, mechanical controllers and routed pneumatic controllers.

III.B.16. (Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities) "Non-natural gas-driven pneumatic controller" means a pneumatic controller that is actuated using other sources of power than pressurized natural gas; examples include pneumatic controllers actuated using nitrogen gas driven or instrument air.

III.B.17. "Pneumatic Controller" means an automated instrument that monitors a process parameter such as liquid level, pressure, or temperature and uses pressurized gas (which may be released to the atmosphere during normal operation) to send a signal to a control valve in order to control the process parameter. Controllers that do not utilize pressurized gas are not pneumatic controllers.

III.B.18. "Routed Pneumatic Controller" means a pneumatic controller that releases natural gas to a process, sales line or to a combustion device instead of directly to the atmosphere.

III.B.19. (Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities) "Routed to a process" or "route to a process" means the emissions are conveyed via a closed vent system to any enclosed portion of a process that is operational where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by

chemical reaction into the materials that are not regulated materials and/or incorporated into a product; and or recovered.

III.B.20. "Self-contained Pneumatic Controller" means a pneumatic controller that releases natural gas to a process or sales line instead of to the atmosphere.

(Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities) Beginning April 30, 2025, "Self-contained Pneumatic Controller" means a natural gas-driven pneumatic controller that releases gas into the downstream piping and not to the atmosphere, resulting in zero emissions.

III.B.21. "Wellhead" means the piping, casing, tubing and connected valves supporting or controlling the operation of an oil and/or natural gas well. The wellhead does not include other process equipment at the wellhead site.

III.C. Pneumatic Controllers

Owners and operators of affected operations shall reduce emissions of volatile organic compounds, unless specified as methane reductions in Section III.C.5., from natural gas-driven pneumatic controllers associated with affected operations as follows:

III.C.1. Continuous bleed, natural gas-driven pneumatic controllers in the 8-Hour Ozone Control Area or northern Weld County and located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline:

III.C.1.a. All pneumatic controllers located in the 8-Hour Ozone Control Area and placed in service on or after February 1, 2009, must emit natural gas emissions in an amount equal to or less than a low-bleed pneumatic controller, unless allowed pursuant to Section III.C.1.f.

III.C.1.b. All high-bleed pneumatic controllers located in the 8-Hour Ozone Control Area and in service prior to February 1, 2009 shall be replaced or retrofit such that natural gas emissions are reduced to an amount equal to or less than a low-bleed pneumatic controller, by May 1, 2009, unless allowed pursuant to Section III.C.1.f.

III.C.1.c. All pneumatic controllers located in northern Weld County and placed in service on or after February 14, 2023, and not already subject to Section III.C.3.a., must emit natural gas emissions in an amount equal to or less than a low-bleed pneumatic controller, unless allowed pursuant to Section III.C.1.f.

III.C.1.d. All high-bleed pneumatic controllers located in northern Weld County in service prior to February 14, 2023, and not already subject to Section III.C.3.b. must be replaced or retrofit such that natural gas emissions are reduced to an amount equal to or less than a low-bleed pneumatic controller, by May 1, 2023, unless allowed pursuant to Section III.C.1.f.

III.C.1.e. Except as provided in Section III.C.1.e.(iv), the following facilities must use only non-emitting controllers:

III.C.1.e.(i) Well production facilities that commence operations on or after February 14, 2023;

III.C.1.e.(ii) Well production facilities that receive production from a well that first begins production or is recompleted or refractured on or after February 14, 2023; and

III.C.1.e.(iii) Natural gas compressor stations that commence operations or increase compression horsepower on or after February 14, 2023.

III.C.1.e.(iv) Pneumatic controllers that emit natural gas to the atmosphere meeting any of the following conditions are not subject to the requirements in Section III.C.1.e.

III.C.1.e.(iv)(A) Pneumatic controllers necessary for a safety or process purpose that cannot otherwise be met without emitting natural gas. Owners or operators must submit justification to the Division for the emitting pneumatic controller(s) to be installed forty-five (45) days prior to installation.

III.C.1.e.(iv)(B) Pneumatic controllers that emit natural gas located on temporary or portable equipment that is used for well abandonment activities or used prior to or through the end of flowback.

III.C.1.e.(iv)(C) Pneumatic controllers on temporary or portable equipment that is in use and onsite for sixty (60) days or less. This does not apply to use on temporary or portable equipment used to temporarily increase throughput capacity of a facility. Owners or operators must submit justification to the Division for continued use beyond sixty (60)

days at least fourteen (14) days before the 60-day period expires.

III.C.1.e.(iv)(D) Pneumatic controllers that emit natural gas to the atmosphere that are used as emergency shutdown devices or for artificial lift control located on a wellhead that is greater than one quarter mile from the associated well production facility or that is not located on the same surface disturbance as the associated production facility.

III.C.1.e.(iv)(E) Any pneumatic controller that emits natural gas pursuant to Sections III.C.1.e.(iv)(A) through (D) must be tagged, which will indicate that the controller may emit natural gas.

III.C.1.f. All high-bleed pneumatic controllers that remain in service due to safety and/or process purposes must comply with Sections III.D. and III.E.

III.C.1.f.(i) For high-bleed pneumatic controllers located in the 8-Hour Ozone Control Area and in service prior to February 1, 2009, the owner/operator must submit justification for high-bleed pneumatic controllers to remain in service due to safety and /or process purposes by March 1, 2009.

III.C.1.f.(ii) For high-bleed pneumatic controllers located in the 8-Hour Ozone Control Area and placed in service on or after February 1, 2009, the owner/operator must submit justification for high-bleed pneumatic controllers to be installed due to safety and /or process purposes thirty (30) days prior to installation.

III.C.1.f.(iii) For high-bleed pneumatic controllers located in northern Weld County in service prior to February 14, 2023, the owner/operator must submit justification for high-bleed pneumatic controllers to remain in service due to safety and /or process purposes by March 1, 2023.

III.C.1.f.(iv) For high-bleed pneumatic controllers located in northern Weld County and placed in service on or after February 14, 2023, the owner/operator must submit justification for high-bleed pneumatic controllers to be installed due to safety and /or

process purposes thirty (30) days prior to installation.

III.C.2. Continuous bleed, natural gas-driven pneumatic controllers in the 8-Hour Ozone Control Area or northern Weld County and located at a natural gas processing plant:

III.C.2.a. All pneumatic controllers in the 8-Hour Ozone Control Area placed in service on or after January 1, 2018, must have a natural gas bleed rate of zero, unless allowed pursuant to Section III.C.2.e.

III.C.2.b. All pneumatic controllers in the 8-Hour Ozone Control Area with a bleed rate greater than zero in service prior to January 1, 2018, must be replaced or retrofit such that the pneumatic controller has a natural gas bleed rate of zero by May 1, 2018, unless allowed pursuant to Section III.C.2.e.

III.C.2.c. All pneumatic controllers located in northern Weld County and placed in service on or after February 14, 2023, must have a natural gas bleed rate of zero, unless allowed pursuant to Section III.C.2.e.

III.C.2.d. All pneumatic controllers located in northern Weld County with a bleed rate greater than zero in service prior to February 14, 2023, must be replaced or retrofit such that the pneumatic controller has a natural gas bleed rate of zero by January 1, 2024, unless allowed pursuant to Section III.C.2.e.

III.C.2.e. All pneumatic controllers with a natural gas bleed rate greater than zero that remain in service due to safety and/or process purposes must comply with Sections III.D. and III.E.

III.C.2.e.(i) For pneumatic controllers in the 8-Hour Ozone Control Area with a natural gas bleed rate greater than zero in service prior to January 1, 2018, the owner or operator must submit justification for pneumatic controllers to remain in service due to safety and /or process purposes by May 1, 2018.

III.C.2.e.(ii) For pneumatic controllers in the 8-Hour Ozone Control Area with a natural gas bleed rate greater than zero placed in service on or after January 1, 2018, the owner or operator must submit justification for pneumatic controllers to be installed due to safety and /or process purposes thirty (30) days prior to installation.

III.C.2.e.(iii) For pneumatic controllers located in northern Weld County with a natural gas bleed rate greater than zero in service prior to February 14, 2023, the owner or operator must submit justification for pneumatic controllers to remain in service due to safety and /or process purposes by March 1, 2023.

III.C.2.e.(iv) For pneumatic controllers located in northern Weld County with a natural gas bleed rate greater than zero placed in service on or after February 14, 2023, the owner or operator must submit justification for pneumatic controllers to be installed due to safety and /or process purposes thirty (30) days prior to installation.

III.C.3. (State Only) Statewide:

III.C.3.a. Owners or operators of all pneumatic controllers placed in service on or after May 1, 2014, except as otherwise provided in Section III.C.4., must

III.C.3.a.(i) Utilize no-bleed pneumatic controllers where on-site electrical grid power is being used and use of a no-bleed pneumatic controller is technically and economically feasible.

III.C.3.a.(ii) If on-site electrical grid power is not being used or a no-bleed pneumatic controller is not technically and economically feasible, utilize pneumatic controllers that emit natural gas emissions in an amount equal to or less than a low-bleed pneumatic controller, unless allowed pursuant to Section III.C.3.c.

III.C.3.a.(iii) For purposes of Section III.C.3.a.(ii), instead of a low-bleed pneumatic controller, owners or operators may utilize a natural gas-driven intermittent pneumatic controller.

III.C.3.a.(iv) Utilizing self-contained pneumatic controllers satisfies Section III.C.3.a.(i).

III.C.3.b. All high-bleed pneumatic controllers in service prior to May 1, 2014, must be replaced or retrofitted by May 1, 2015, such that natural gas emissions are reduced to an amount equal to or less than a low-bleed pneumatic controller, unless allowed pursuant to Section III.C.3.c.

III.C.3.c. All high-bleed pneumatic controllers that must remain in service due to safety and/or process purposes must comply with Sections III.D. and III.E.

III.C.3.c.(i) For high-bleed pneumatic controllers in service prior to May 1, 2014, the owner/operator must submit justification for high-bleed pneumatic controllers to remain in service due to safety and/or process purposes by March 1, 2015.

III.C.3.c.(ii) For high-bleed pneumatic controllers placed in service on or after May 1, 2014, the owner/operator must submit justification for high-bleed pneumatic controllers to be installed due to safety and/or process purposes thirty (30) days prior to installation.

III.C.3.d. Continuous bleed, natural gas-driven pneumatic controllers located at natural gas-processing plants that are not subject to the requirements of Section III.C.2.

III.C.3.d.(i) All pneumatic controllers placed in service on or after January 1, 2023, must have a natural gas bleed rate of zero, unless allowed pursuant to Section III.C.3.a.(iii).

III.C.3.d.(ii) All pneumatic controllers with a bleed rate greater than zero in service prior to January 1, 2023, must be replaced or retrofit such that the pneumatic controller has a natural gas bleed rate of zero by January 1, 2024, unless allowed pursuant to Section III.C.3.a.(iii).

III.C.3.d.(iii) All pneumatic controllers with a natural gas bleed rate greater than zero that remain in service due to safety and/or process purposes must comply with Sections III.D. and III.E.

III.C.3.d.(iii)(A) For pneumatic controllers with a natural gas bleed rate greater than zero in service prior to January 1, 2023, the owner or operator must submit justification for pneumatic controllers to remain in service due to safety and /or process purposes by March 1, 2023.

III.C.3.d.(iii)(B) For pneumatic controllers with a natural gas bleed rate greater than zero placed in service on or after January 1, 2023, the owner or operator must submit justification for pneumatic controllers to be installed due to safety and /or process purposes thirty (30) days prior to installation.

III.C.4. (State Only, except as pursuant to Section III.C.4.c.) Non-Emitting Controller Requirements for Well Production Facilities and Natural Gas Compressor Stations

III.C.4.a. Except as provided in Section III.C.4.e.(i), the following facilities must use only non-emitting controllers:

III.C.4.a.(i) Well production facilities that commence operations on or after May 1, 2021;

III.C.4.a.(ii) Well production facilities that receive production from a well that first begins production or is recompleted or refractured on or after May 1, 2021; and

III.C.4.a.(iii) Natural gas compressor stations that commence operations or increase compression horsepower on or after May 1, 2021.

III.C.4.b. Each well production facility and natural gas compressor station with non-emitting controllers used to satisfy the requirements of Sections III.C.4.a.(i) through III.C.4.a.(iii) must contain on-site signage indicating that the facility utilizes non-emitting controllers to satisfy the requirements of this Section III.C.4. This Section III.C.4.b does not apply to operator's subject to Section III.C.4.d.(vi). –

III.C.4.c. Company-Wide Non-Emitting Controller Program for Well Production Facilities That Commenced Operation before May 1, 2021

Beginning November 7, 2022, (i.e., the effective date of the finding of failure to attain by the serious attainment date under the 2008 ozone National Ambient Air Quality Standard), Sections III.C.4.c., III.C.4.e., III.C.4.f.(i), and III.C.4.f.(ii) as applicable to well production facilities located in the 8-hour ozone control area are included in Colorado's ozone state implementation plan.

This provision sunsets no later than June 7, 2025, if EPA has taken action prior to that date that stops the running of the sanctions clock regarding the November 2023 disapproval of contingency measures.

III.C.4.c.(i) Except as provided for in Section III.C.4.c.(iv), owners or operators of well production facilities that commenced operation before May 1, 2021, must phase out pneumatic controllers that emit natural gas to the atmosphere in accordance with Table 1.

III.C.4.c.(ii) Except as provided for in Section III.C.4.c.(iv), owners or operators of well production facilities that commenced operations before May 1, 2021, must:

III.C.4.c.(ii)(A) Determine Historic Facility Production for each existing well production facility that commenced operation before May 1, 2021.

III.C.4.c.(ii)(A)(1) Historic Facility Production at each existing well production facility which first began production during 2018 or earlier must be based on total liquids production (summing total barrels of oil and water produced through the well production facility) for the calendar year 2019.

III.C.4.c.(ii)(A)(2) Notwithstanding Section III.C.4.c.(ii)(A)(1), for any well production facility to which a well first began production during 2019, 2020 or by May 1, 2021, historic facility production must be based on the production for the first twelve (12) months beginning with the date of first production of the latest well to begin production prior to May 1, 2021.

III.C.4.c.(ii)(A)(3) Notwithstanding Sections III.C.4.c.(ii)(A)(1) and (2), for any well production facility to which a well first began production during 2019, 2020, or by May 1, 2021, if twelve (12) months since date of first production of the latest well to begin production has not passed as of May 1, 2021, then the owner or operator must use an estimate of the anticipated yearly production for the facility based on industry accepted calculation methodologies.

III.C.4.c.(ii)(B) Calculate the Total Historic Production for the owner or operator by summing the Historic Facility Production for all existing well production facilities that commenced operation before May 1, 2021.

III.C.4.c.(ii)(C) Determine the percentage of total liquids production for each existing facility (the Facility Percent Production) by dividing the Historic Facility Production for that facility by the Total Historic Production.

III.C.4.c.(ii)(D) Determine the Historic Non-Emitting Facility Percent Production.

III.C.4.c.(ii)(D)(1) If the well production facility, including all wellheads flowing to the well production facility, uses only non-emitting controllers, then the Facility Percent Production should be designated as Historic Non-Emitting Facility Percent Production.

III.C.4.c.(ii)(D)(2) In making the determination in Section III.C.4.c.(ii)(D)(1), pneumatic controllers that meet the conditions in Section III.C.4.e.(i) need not be considered.

III.C.4.c.(ii)(E) Determine the Total Historic Non-Emitting Facility Percent Production percentage by summing the Historic Non-Emitting Facility Percent Production for all well production facilities that commenced operation prior to May 1, 2021. The Total Historic Non-Emitting Facility Percent Production determines an owner or operators' May 1, 2022 and May 1, 2023 Additional Required Non-Emitting Facility Percent Production, as set forth in Table 1.

III.C.4.c.(iii) Owners or operators must demonstrate compliance with Table 1's May 1, 2022 and May 1, 2023 Additional Required Non-Emitting Facility Percent Production through any combination of (1) retrofitting well production facilities to utilize non-

emitting controllers or (2) plugging and abandoning an existing well production facility.

III.C.4.c.(iv) An owner or operator that demonstrates that its total statewide oil and natural gas production averages 15 barrels of oil equivalent or less per day per well is not subject to the requirements of Sections III.C.4.c.(i) through (iii). To calculate average statewide oil and natural gas production per day per well, an owner or operator must sum all oil and natural gas production for calendar year 2019 in barrels of oil equivalent, divide by three hundred and sixty-five, and divide by the number of wells the owner or operator operated statewide that produced hydrocarbons in 2019.

III.C.4.c.(v) If a well production facility for which production was included in a calculation of achieving a Total Required Non-Emitting Facility Percent Production target is sold or transferred prior to May 1, 2023 and the selling or transferring owner or operator plans to utilize the well production facility to show compliance with Table 1, the selling or transferring owner or operator (and the buyer or transferee, as applicable) must submit to the Division an acknowledgment or certification within 30 days following sale or transfer, in a form acceptable to the Division, identifying how the selling or transferring owner or operator will utilize the well production facility to show compliance with Table 1.

In each submission of the updated Company-Wide Well Production Facility Natural Gas-Driven Pneumatic Controller Compliance Plan, the owner or operator will provide the date (month and year) when a well production facility was transferred since the last submission and whether or not the well production facility contributed or will contribute towards achieving the Total Required Non-Emitting Facility Percent Production. An owner or operator that merges with or acquires an owner or operator with a Company-Wide Well Production Facility Natural Gas-Driven Pneumatic Controller Compliance Plan must comply, despite the resulting ownership or operatorship, with each Company-Wide Well Production Facility Natural Gas-Driven Pneumatic Controller Compliance Plan, as

applicable, and as established on September 1, 2021.

III.C.4.c.(vi) For each facility designated as contributing to Historic Non-Emitting Facility Percent Production, the owner or operator will place signage on-site by October 1, 2021 indicating that the facility utilizes non-emitting controllers to satisfy the requirements of this Section III.C.4.c.

TABLE 1*—Well Production Facilities					
Total Historic Non-Emitting Facility Percent Production	**May 1, 2022 Additional Required Non-Emitting Facility Percent Production**	**May 1, 2022 Maximum Required Non-Emitting Facility Percent Production**	**May 1, 2023 Additional Required Non-Emitting Facility Percent Production**	**May 1, 2023 Maximum Required Non-Emitting Facility Percent Production**	**Total Additional Required Non-Emitting Facility Percent Production By May 1 2023**
> 75 %	+5%	90%	+10%	96.5%	+15%
> 60-75 %	+5%	80%	+10%	90%	+15%
> 40-60 %	+10%	65%	+15%	75%	+25%
> 20-40 %	+15%	50%	+20%	65%	+35%
0-20 %	+15%	35%	+25%	55%	+40%

* Table 1 establishes minimum increases in the percentage of liquids produced (based on historic non-emitting controller use) from non-emitting facilities. Owners or operators do not need to go beyond the maximum required percentages set forth in Table 1, although they may choose to do so.

III.C.4.d. Company-Wide Non-Emitting Controller Compliance Program for Natural Gas Compressor Stations that Commenced Operation Before May 1, 2021.

III.C.4.d.(i) Owners or operators of natural gas compressor stations that commenced operation before May 1, 2021, must phase out pneumatic controllers that emit natural gas to the atmosphere in accordance with Table 2.

III.C.4.d.(ii) Owners or operators of natural gas compressor stations that commenced operation before May 1, 2021, must:

III.C.4.d.(ii)(A) Determine Total Controller Count for all controllers at all of the owner or operator’s natural gas compressor stations that commenced operation before May 1, 2021. The Total Controller Count must include all pneumatic controllers and all non-emitting controllers, except that pneumatic controllers excluded under Sections III.C.4.e.

(i)(A) through (C) are not included in the Total Controller Count.

III.C.4.d.(ii)(B) Determine which controllers in the Total Controller Count are non-emitting and sum the total number of non-emitting controllers and designate those as Total Historic Non-Emitting Controllers.

III.C.4.d.(ii)(C) Determine the Total Historic Non-Emitting Percent Controllers by dividing the Total Historic Non-Emitting Controller Count by the Total Controller Count.

III.C.4.d.(iii) Owners or operators must demonstrate compliance with Table 2's May 1, 2022 and May 1, 2023 Additional Required Percentage of Non-Emitting Controllers through any combination of (1) retrofitting controllers at natural gas compressor stations to utilize non-emitting controllers or (2) permanently removing natural gas compressor stations from service.

III.C.4.d.(iv) Pneumatic controllers that emit natural gas to atmosphere at natural gas compressor stations with non-emitting controllers must be tagged, which will indicate that the controller may emit natural gas. The tags must differentiate between pneumatic controllers that are exempt under Sections III.C.4.e.(i)(A) through (C) and pneumatic controllers that emit natural gas to the atmosphere under the company-wide plan. Tagging pursuant to this Section III.C.4.d.(iv) must occur by May 1, 2022.

III.C.4.d.(v) If a natural gas compressor station for which the number of pneumatic controllers located at such compressor station was included in a calculation of achieving a Total Required Non-Emitting Percent Controllers target is sold or transferred prior to May 1, 2023 and the selling or transferring owner or operator plans to utilize the pneumatic controllers at that natural gas compressor station to show compliance with Table 2, the selling or transferring owner or operator (and the buyer or transferee, as applicable) must submit to the Division an acknowledgement or certification, within 30 days following sale or transfer, in a form acceptable to the Division, identifying how the selling or

transferring owner or operator will utilize the pneumatic controllers at that natural gas compressor station to show compliance with Table 2.

In each submission of the updated Company-Wide Compressor Station Pneumatic Controller Compliance Plan, the owner or operator will provide the date (month and year) when the natural gas compressor station was transferred since the last submission and whether or not the compressor station contributed or will contribute towards achieving the Total Required Non-Emitting Percent Controllers. An owner or operator that merges with or acquires an owner or operator with a Company-Wide Compressor Station Pneumatic Controller Compliance Plan must comply, despite the resulting ownership or operatorship, with each Company-Wide Compressor Station Pneumatic Controller Compliance Plan, as applicable, and as established on September 1, 2021.

III.C.4.d.(vi) This section applies to owners or operators of natural gas compressor stations where all the owner or operator’s active, operating natural gas compressor stations use only non-emitting controllers (except that pneumatic controllers that qualify for the exclusions set forth in Sections III.C.4.e.(i)(A) through (C) are not required to be non-emitting controllers).

III.C.4.d.(vi)(A) No later than September 1, 2021, such owners or operators may file a one-time notification with the Division in lieu of the requirements in Sections III.C.4.d.(i) through (iii) that:

III.C.4.d.(vi)(A)(1) Lists each active, operating natural gas compressor station (including AIRS identification numbers and facility names) and that includes a certification by the company representative that supervised the development and submission of the notification that, based on information and belief formed after reasonable inquiry, each of its active, operating natural gas compressor stations uses only non-emitting controllers (except that pneumatic controllers that qualify for the exclusions set forth in Sections III.C.4.e.(i)(A) through (C) are not required to be non-emitting controllers); and

III.C.4.d.(vi)(A)(2) Lists each inactive, non-operating compressor station (including AIRS identification numbers and facility names) and that includes a certification by the company representative that supervised the development and submission of the notification that after May 1, 2021, such compressor stations have not and subsequently will not operate with pneumatic controllers that emit natural gas to the atmosphere, except pneumatic controllers that qualify for exclusions set forth in subject to Sections III.C.4.e.(i)(A) through (C).

III.C.4.d.(vi)(B) If applicable, the notifications submitted under this section must list any pneumatic controllers that qualify for exclusions pursuant to Sections III.C.4.e.(i)(A) through (C) and identify the specific exemption applicable to each such pneumatic controller. Operators must tag any controller qualifying for the exclusions in

Sections III.C.4.e.(i)(A) through (C) by October 1, 2021.

III.C.4.d.(vi)(C) The owner or operator must maintain a copy of the one-time notification required by Section III.C.4.d.(vi)(A) for five years.

TABLE 2* – Natural Gas Compressor Stations					
Total Historic Percentage of Non-Emitting Controllers	**May 1, 2022 Additional Required Percentage of Non-Emitting Controllers**	**May 1, 2022 Maximum Required Percentage of Non-Emitting Controllers**	**May 1, 2023 Additional Required Percentage of Non-Emitting Controllers**	**May 1, 2023 Maximum Required Percentage of Non-Emitting Controllers**	**Total Additional Required Percentage of Non-Emitting Controllers By May 1, 2023**
> 75 %	+10%	90%	+15%	100%	+25%
>60-75 %	+10%	85%	+20%	92%	+30%
>40-60 %	+10%	70%	+25%	75%	+35%
>20-40 %	+15%	50%	+25%	65%	+40%
0-20 %	+20%	35%	+25%	60%	+45%

* Table 2 establishes minimum additional percentages of non-emitting controllers required by May 1, 2022 and May 1, 2023 based on a company's historic percentage of non-emitting controllers. Owners and operators need not go beyond the maximum required percentages specified in Table 2, although they may choose to do so.

III.C.4.e. Pneumatic Controllers That Emit Natural Gas to the Atmosphere Not Subject to Non-Emitting Controller Requirements for Well Production Facilities and Natural Gas Compressor Stations.

III.C.4.e.(i) Pneumatic controllers that emit natural gas to the atmosphere meeting any of the following conditions are not subject to the requirements in Section III.C.4.a. and are not required to be retrofit in order to count the facility or controller as non-emitting for compliance with the company-wide plans under Sections III.C.4.c. and III.C.4.d.

III.C.4.e.(i)(A) Pneumatic controllers necessary for a safety or process purpose that cannot otherwise be met without emitting natural gas.

III.C.4.e.(i)(A)(1) Owners or operators that seek to rely on this exemption for facilities listed in Sections III.C.4.a.(i) through (iii) must submit a justification for the safety or process purposes to the Division for approval forty-five (45) days prior to installation of emitting device or retrofit of the facility. If the

Division does not respond to the justification within forty-five (45) days after submission of the justification, the justification will be deemed approved.

III.C.4.e.(i)(A)(2) Owners or operators that seek to rely on this exemption to maintain emitting controllers at facilities that are retrofit to meet requirements of Section III.C.4.c.(i) must submit a justification for the safety or process purposes to the Division for approval forty-five (45) days prior to retrofit of the facility. If the Division does not respond to the justification within forty-five (45) days after submission of the justification, the justification will be deemed approved.

III.C.4.e.(i)(B) Pneumatic controllers that emit natural gas located on temporary or portable equipment that is used for well abandonment activities or used prior to or through the end of flowback.

III.C.4.e.(i)(C) Pneumatic controllers that emit natural gas located on temporary or portable equipment meeting the requirements of this Section III.C.4.e.(i)(C).

III.C.4.e.(i)(C)(1) Upon notice to the Division on a form developed by the Division, pneumatic controllers that emit natural gas other than those covered by Section III.C.4.e.(i)(B) located on temporary or portable equipment that is in use and onsite for sixty (60) days or less. However, this exemption for temporary or portable equipment does not apply to pneumatic controllers that emit natural gas used on temporary or portable equipment to temporarily increase throughput capacity of a facility.

III.C.4.e.(i)(C)(2) An owner or operator must obtain written approval from the Division for continued use beyond 60 days of pneumatic

controllers that emit natural gas under Section III.C.4.e.(i)(C). The owner or operator must submit the request for an extension to the Division at least fourteen (14) days before the 60-day period expires. If the Division does not respond to the request before the 60-day period expires, the request will be deemed approved until such time as the Division may determine that the extension should be denied.

III.C.4.e.(i)(C)(2)(a) To request such an exemption, the owner or operator must submit a plan for Division approval which (1) identifies the temporary or portable equipment and number and type of pneumatic controllers that emit natural gas, (2) identifies how long the owner or operator plans to keep the equipment on site, (3) explains the need for an extension, and (4) other information as reasonably required by the Division.

III.C.4.e.(i)(C)(2)(b) In explaining the need for an extension, the operator must clearly identify the basis for extension; the anticipated schedule for use of the temporary or portable equipment; and the steps taken to minimize the length of the requested extension.

III.C.4.e.(i)(C)(3) The operator must inspect the pneumatic controllers using approved instrument monitoring method and AVO, consistent with Section II.E, at the same frequency as the associated well production facility or compressor station, and must comply with the repair, recordkeeping, and reporting provisions in Sections II.E.6 through 9.

III.C.4.e.(i)(D) Pneumatic controllers that emit natural gas to the atmosphere that are used as emergency shutdown devices or for artificial lift control located on a wellhead: (1)

greater than one quarter mile from the associated production facilities for well production facilities that commenced operation on or after May 1, 2021; or (2) not located on the same surface disturbance as the associated production facilities for well production facilities that commenced operation before May 1, 2021.

III.C.4.e.(i)(D)(1)	Owners or operators who seek to use a pneumatic controller at a qualifying wellhead at a facility listed in Sections III.C.4.a.(i) or (ii) that is not used as an emergency shutdown device or for artificial lift control must submit a justification for the use of such a pneumatic controller to the Division for approval forty-five (45) days prior to installation of the emitting device or retrofit of the facility. If the Division does not respond to the justification within forty-five (45) days after submission of the justification, the justification will be deemed approved.
III.C.4.e.(i)(D)(2)	Owners or operators that seek to rely on this exemption to exclude emitting pneumatic controllers at a qualifying wellhead that are not used as an emergency shutdown device or for artificial lift control when determining their Total Historic Non-Emitting Facility Percent Production pursuant to Section III.C.4.c.(ii) must submit a justification to the Division for approval no later than July 1, 2021. If the Division does not respond to the justification by August 15, 2021, the justification will be deemed approved.
III.C.4.e.(i)(D)(3)	Operators that utilize the exemption in Section III.C.4.e.(i)(D) must identify leaks from components using an approved instrument monitoring method and AVO, consistent with Section II.E, at the same frequency as the well production facility to which the

well flows as set forth in Table 3 of Section II.E.4, or on a frequency no less than one time per year, whichever is greater, and must comply with the repair, recordkeeping, and reporting provisions in Sections II.E.6 through 9. For well production facilities that commenced operation before May 1, 2021 with wellheads utilizing this exemption, the requirement in this Section III.C.4.e.(i)(D)(3) must begin May 1, 2022.

III.C.4.e.(i)(D)(3)(a) An owner or operator that cannot reasonably access the wellhead site to conduct a monthly AIMM or AVO inspection due to circumstances beyond its control (including but not limited to the presence of crops, wildlife restrictions, or severe weather conditions) shall conduct an AVO or AIMM inspection, as applicable, within 14 days of the condition preventing inspection being resolved. Owners or operators that rely on this Section III.C.4.e.(i)(D)(3)(a) must maintain records pursuant to Section III.C.4.g.(vii) and report pursuant Section III.C.4.g.(viii).

III.C.4.e.(i)(D)(3)(b) Operators may use drone-mounted infra-red cameras that ensure line of sight and appropriate distance from the drone to all wellhead equipment and components to conduct the inspections required under Section III.C.4.e.(i)(D)(3). Operators must develop their own methodology before using OGI camera-equipped aerial drones and make that methodology available to the Division upon request.

III.C.4.e.(i)(D)(4) If a wellhead has on-site electrical grid power to operate an electric controller, then operators may not utilize the

exemption in Section III.C.4.e.(i)(D) for any pneumatic controller at the wellhead for which it is technically feasible to utilize an electric controller.

III.C.4.e.(i)(D)(5) Operators may not utilize the exemption in Section III.C.4.e.(i)(D) where equipment with pneumatic controllers other than the wellhead is located at the wellhead site.

III.C.4.e.(ii) By October 1, 2021, each pneumatic controller at a well production facility that emits natural gas pursuant to Sections III.C.4.e.(i)(A) through (D) must be tagged, which will indicate that the controller may emit natural gas.

III.C.4.e.(iii) By October 1, 2021, each pneumatic controller at a natural gas compressor station that emits natural gas pursuant to Sections III.C.4.e.(i)(A) through (C) must be tagged, which will indicate that the controller may emit natural gas.

III.C.4.f. Company-Wide Well Production Facility and Natural Gas Compressor Station Reporting Requirements.

III.C.4.f.(i) Owners and operators of well production facilities subject to Sections III.C.4.c.(i) through (iii) must submit a Company-Wide Well Production Facility Pneumatic Controller Compliance Plan to the Division on the Division-approved form by September 1, 2021, and include all of the following elements:

III.C.4.f.(i)(A) A list of existing well production facilities as of May 1, 2021, including AIRS identification numbers and facility names.

III.C.4.f.(i)(B) The following for each well production facility:

III.C.4.f.(i)(B)(1) Historic Facility Production.

III.C.4.f.(i)(B)(2) Facility Percent Production.

III.C.4.f.(i)(B)(3) Historic Non-Emitting Facility Percent Production.

III.C.4.f.(i)(B)(4) The API number for each producing well included in the Total Historic Facility Production.

III.C.4.f.(i)(C) The following company-wide information:

III.C.4.f.(i)(C)(1) Total Historic Production.

III.C.4.f.(i)(C)(2) Total Historic Non-Emitting Facility Percent Production, including a list of facilities already using non-emitting controllers as determined in Section III.C.4.c.(ii)(E).

III.C.4.f.(i)(C)(3) Total Required Non-Emitting Facility Percent Production.

III.C.4.f.(i)(D) An indication of which and in what year well production facilities are expected to be retrofit with non-emitting controllers, or plugged and abandoned, to meet the required Additional Non-Emitting Facility Percent Production for each year listed in Table 1.

III.C.4.f.(ii) Owners or operators will submit an updated Company-Wide Facility Pneumatic Controller Compliance Plan by July 1 of each year listed in Table 1, unless the owner or operator has demonstrated compliance with the Total Required Non-Emitting Facility Percent Production in a previous year's plan. The updated plan will include all of the following elements:

III.C.4.f.(ii)(A) All elements set forth in Sections III.C.4.f.(i)(A) through (C).

III.C.4.f.(ii)(B) The date (month and year) that any well production facilities were retrofit or plugged and abandoned since the prior submission, which may vary from the information previously provided pursuant to Section III.C.4.f.(i)(D).

III.C.4.f.(ii)(C) An update of information set forth in Section III.C.4.f.(i)(D) if the Total Required Non-Emitting Facility Percent Production required by Table 1 has not been met.

III.C.4.f.(ii)(D) For each submission, the owner or operator must list each existing well production facility that is utilizing non-emitting controllers and provide a demonstration that the required Additional Non-Emitting Facility Percent Production for the relevant year has been met.

III.C.4.f.(ii)(E) In the final year, the owner or operator must additionally provide a demonstration that the Total Required Non-Emitting Facility Percent Production has been met.

III.C.4.f.(iii) Owners and operators of natural gas compressor stations subject to Sections III.C.4.d.(i) through (iii) must submit a Company-Wide Compressor Station Pneumatic Controller Compliance Plan to the Division on a Division-approved form by September 1, 2021, and include all of the following elements:

III.C.4.f.(iii)(A) A listing of existing natural gas compressor stations as of May 1, 2021, including AIRS identification numbers and facility names.

III.C.4.f.(iii)(B) The following company-wide information:

III.C.4.f.(iii)(B)(1) Total Controller Count, including a list of each pneumatic controller and all non-emitting controllers, except that pneumatic controllers excluded under Sections III.C.4.e.(i)(A) through (C) are not included in the Total Controller Count.

III.C.4.f.(iii)(B)(2) Total Historic Non-Emitting Controllers, including an indication as to which controllers are already non-emitting.

III.C.4.f.(iii)(B)(3) Total Required Non-Emitting Facility Percent Controllers.

III.C.4.f.(iii)(C) An indication of which and in what year controllers are expected to be retrofit with non-emitting controllers or removed from service (as applicable) to meet the required Additional Non-Emitting Percent Controllers for each year listed in Table 2.

III.C.4.f.(iv) Owners or operators will submit an updated Company-Wide Compressor Station Pneumatic Controller Compliance Plan by July 1 of each year listed in Table 2, unless the owner or operator has demonstrated compliance with the Total Required Non-Emitting Percent Controllers in a previous year’s plan. The updated plan will include all of the following elements:

III.C.4.f.(iv)(A) All elements set forth in Sections III.C.4.f.(iii)(A) through (B).

III.C.4.f.(iv)(B) The date (month and year) that any controllers at natural gas compressor stations were retrofit or removed from service since the prior submission, which may vary from the information previously provided pursuant to Section III.C.4.f.(iii)(C).

III.C.4.f.(iv)(C) The information set forth in Section III.C.4.f.(iii)(C) if the Total Required Non-

Emitting Percent Controllers required by Table 2 has not been met.

III.C.4.f.(iv)(D) For each submission, the owner or operator must list total controllers and total non-emitting controllers at existing natural gas compressor stations and provide a demonstration that the required Additional Non-Emitting Percent Controllers for the relevant year has been met.

III.C.4.f.(iv)(E) In the final year, the owner or operator must additionally provide a demonstration that the Total Required Non-Emitting Percent Controller has been met.

III.C.4.g. Recordkeeping and Reporting Requirements. The records in Sections III.C.4.g.(i) through (vii) must be kept for a period of five years and made available to the Division upon request.

III.C.4.g.(i) Records of the date a well production facility completes retrofit or all wells flowing to the well production facility are plugged and abandoned, or the date natural gas compressor station pneumatic controllers were retrofit or is taken out of service.

III.C.4.g.(ii) If claiming an exemption under Sections III.C.4.e.(i)(A) through III.C.4.e.(i)(D), records for each pneumatic controller demonstrating that the exemption applies.

III.C.4.g.(iii) Copies of the Company-Wide Well Production Facility Pneumatic Controller Compliance Plan and Company-Wide Compressor Station Pneumatic Controller Compliance Plans required to be submitted by Sections III.C.4.f.(i) through III.C.4.f.(iv).

III.C.4.g.(iv) For any owner or operator utilizing the provision in Section III.C.4.c.(iv), the records described in Section III.C.4.c.(iv) that demonstrate the owner or operator qualifies for that provision.

III.C.4.g.(v) For each pneumatic controller required to be tagged pursuant to Sections III.C.4.d.(iv), III.C.4.d.(vi)(B), III.C.4.e.(ii), or III.C.4.e.(iii), a list of each tagged pneumatic controller, equipment location, and its tag identification number.

III.C.4.g.(vi) Records required to be submitted to the Division pursuant to Sections III.C.4.c.(v) and III.C.4.d.(v).

III.C.4.g.(vii) Owners or operators that rely on Section III.C.4.e.(i)(D)(3)(a) must maintain: (1) the date of the AIMM or AVO inspection at the production facility to which the well flows, (2) the date of the AIMM or AVO inspection of the wellhead site once the conditions preventing inspection has been resolved, and (3) records demonstrating the circumstances that prevented the wellhead site from being inspected.

III.C.4.g.(viii) Owners or operators that rely on Section III.C.4.e.(i)(D)(3)(a) shall report annually by May 31 of each year, on a form approved by the Division, the number of wellhead sites for which the AIMM inspection was delayed pursuant to Section III.C.4.e.(i)(D)(3)(a), the number of wellhead sites for which the AVO inspection was delayed pursuant to Section III.C.4.e.(i)(D)(3)(a), and the total number of wellhead sites where inspections were delayed pursuant to Section III.C.4.e.(i)(D)(3)(a) for (1) 30 days or less, (2) greater than 30 days but less than or equal to 90 days, and (3) greater than 90 days.

III.C.5. (Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities) Natural gas-driven pneumatic controller requirements beginning April 30, 2025.

III.C.5.a. Applicability.

III.C.5.a.(i) This Section III.C.5. applies to natural gas-driven pneumatic controllers located at well production facilities and natural gas compressor stations

upstream of natural gas processing plants and at natural gas processing plants.

III.C.5.a.(ii) Pneumatic controllers that function as emergency shutdown devices are not subject to the requirements of this Section III.C.5. and facilities at which emergency shutdown devices are the only natural gas-driven pneumatic controllers used are not subject to this Section III.C.5.

III.C.5.a.(ii)(A) (State Only) Each natural gas-driven pneumatic controller that functions as an emergency shutdown device must be physically tagged by the owner or operator by May 1, 2026, identifying the controller as an emergency shutdown device.

III.C.5.b. Methane emission reduction requirements.

III.C.5.b.(i) In accordance with the schedules in Tables 3 and 4, as applicable, owners or operators must design and operate their facilities that had natural gas-driven pneumatic controllers as of May 1, 2023, and are not subject to Section III.C.5.b.(v) with no emissions from natural gas-driven pneumatic controllers, through any combination of the following methods:

III.C.5.b.(i)(A) Pneumatic controller emissions can be routed to a process through a closed vent system that is designed to capture and route all gases, vapors, and fumes;

III.C.5.b.(i)(B) Pneumatic controllers can be self-contained;

III.C.5.b.(i)(C) The use of natural gas-driven pneumatic controllers can be eliminated through configuration, removal, or replacement, including the use of non-natural gas-driven pneumatic controllers or non-pneumatic controllers, such as solar or electric; and/or

III.C.5.b.(i)(D) Facilities can be shut down. If an owner or operator counts a shutdown facility for purposes of compliance with this Section III.C.5.b., as reflected in the interim compliance reports pursuant to Section III.C.5.b.(iv), the owner or operator may not return that facility to operation unless that

facility complies with this Section III.C.5.b. through another method of compliance.

III.C.5.b.(ii) (State Only) Compliance schedules

III.C.5.b.(ii)(A) Owners or operators must design their facilities located inside the 8-hour Ozone Control Area or northern Weld County to comply with Section III.C.5.b.(i) in accordance with the following schedule in Table 3. The total number of facilities that the compliance percentages are based on are those included in an owner or operator's total facility count or revised total facility count, pursuant to Sections III.C.5.b.(iii)(A)(2) and III.C.5.b.(iv)(A)(2), respectively. The process for demonstrating compliance with the required compliance percentages is provided in Section III.C.5.b.(iv)(A)(3).

Table 3 - Compliance Schedule for Facilities Located Inside the 8-hour Ozone Control Area or northern Weld County

Compliance deadlines	Percentage (%) of an owner or operator's applicable facilities that must be in compliance with Section III.C.5.b.(i)
May 1, 2026	50%
May 1, 2027	100%

III.C.5.b.(ii)(B) Owners or operators must design their facilities located outside the 8-hour Ozone Control Area or northern Weld County to comply with Section III.C.5.b.(i) in accordance with the following schedule in Table 4. The total number of facilities that the compliance percentages are based on are those included in an owner or operator's total facility count or revised total facility count, pursuant to Sections III.C.5.b.(iii)(A)(2) and III.C.5.b.(iv)(A)(2), respectively. The process for demonstrating compliance with the required compliance percentages is provided in Section III.C.5.b.(iv)(A)(3).

Table 4 - Compliance Schedule for Facilities Located

Outside the 8-hour Ozone Control Area or northern Weld County	
Compliance deadlines	Percentage (%) of an owner or operator's applicable facilities that must be in compliance with Section III.C.5.b.(i)
May 1, 2026	25%
May 1, 2027	50%
May 1, 2028	75%
March 1, 2029	100%

III.C.5.b.(iii) (State Only) Initial reporting.

III.C.5.b.(iii)(A) By December 1, 2025, owners or operators must submit a single initial report to the Division, in a Division-approved format, that includes the following information.

III.C.5.b.(iii)(A)(1) Company name, physical street address, and name and contact information of the company representative, for reporting purposes.

III.C.5.b.(iii)(A)(2) Total facility counts that equal the sum of all of the owner or operator’s facilities that had natural gas-driven pneumatic controllers as of May 1, 2023, and that are not subject to Section III.C.5.b.(v). A total facility count must be reported for the owner or operator’s applicable facilities located in the 8-hour Ozone Control Area or northern Weld County and a total facility count must be reported for the owner or operator’s applicable facilities located outside the 8-hour Ozone Control Area or northern Weld County.

III.C.5.b.(iii)(A)(3) An identification of each facility counted in the total facility

counts pursuant to Section III.C.5.b.(iii)(A)(2), including each facility's name, AIRS ID, county location, and whether or not the facility is located in the 8-hour Ozone Control Area or northern Weld County.

III.C.5.b.(iv) (State Only) Interim compliance reporting.

III.C.5.b.(iv)(A) On or before June 30, 2026, and by June 30 each year thereafter until June 30, 2027, for facilities subject to Section III.C.5.b.(ii)(A) or June 30, 2029, for facilities subject to Section III.C.5.b.(ii)(B), owners or operators must submit annual reports for the most recent compliance date, in a Division-approved format, that includes the following information.

III.C.5.b.(iv)(A)(1) Company name, physical street address, facility names, the name and contact information of the company representative, for reporting purposes, the date of submission, and the period covered by the report with an identification of the most recent applicable compliance deadline date in Table 3 or 4.

III.C.5.b.(iv)(A)(2) Revised total facility counts that reflect any revisions to the total facility counts determined pursuant to Section III.C.5.b.(iii)(A)(2) to account for any asset transfers as described in Section III.C.5.b.(iv)(A)(4). A revised total facility count must be reported for the owner or operator's applicable facilities located in the 8-hour Ozone Control Area or northern Weld County and a revised total facility count must be reported for the owner or operator's applicable facilities located outside the 8-hour Ozone

		Control Area or northern Weld County.
	III.C.5.b.(iv)(A)(3)	A demonstration of compliance with the most recent applicable compliance percentages in Tables 3 and 4. Compliance is demonstrated by dividing the number of the owner or operator's facilities counted towards compliance with Sections III.C.5.b.(ii)(A) or III.C.5.b.(ii)(B), by the owner or operator's revised total facility counts, determined pursuant to Section III.C.5.b.(iv)(A)(2). The report must include an identification of each facility in the revised total facility counts being counted as compliant with Section III.C.5.b.(i), including each facility's name, AIRS ID, county location, whether or not the facility is located in the 8-hour Ozone Control Area or northern Weld County, and, as applicable, the method(s) of compliance.
	III.C.5.b.(iv)(A)(4)	If, within the previous reporting year, an owner or operator acquired or divested any facilities that affect the owner or operator's total facility counts, the owner or operator must report which facilities were acquired or divested and must revise the total facility counts as described in Section III.C.5.b.(iv)(A)(2) by the next compliance deadline following the asset transfer. The transferor must remove the transferred asset(s) from its revised total facility count and the transferee must add the asset(s) to its revised total facility count. If a transferor has previously

designated transferred asset(s) to demonstrate compliance with an applicable deadline in Tables 3 or 4, the transferor is no longer entitled to count the transferred asset(s) for compliance for the next applicable deadline. In such circumstance, the transferee is entitled to count the transferred asset(s) for compliance for the next applicable deadline.

III.C.5.b.(iv)(A)(5) In the 2027 report for well production facilities subject to Section III.C.5.b.(vi), owners or operators must provide the list of well production facilities required in III.C.5.b.(iv)(A)(2) and the following with respect to the facilities in the first half of the list: an indication of which facilities complied with Section III.C.5.b.(i) and an indication of whether the facility was transferred, the name of the transferee/transferor, and for facilities that were transferred, an indication of whether the facility complied with Section II.C.5.b.(i) prior to transfer.

III.C.5.b.(v) Facilities with natural gas-driven pneumatic controllers that had emissions routed to a process or were self-contained as of May 1, 2023.

III.C.5.b.(v)(A) Owners or operators of well production facilities, natural gas compressor stations, and natural gas processing plants for which the only natural gas-driven pneumatic controllers at the facility as of May 1, 2023, other than emergency shutdown devices, were routed pneumatic controllers (as defined prior to April 30, 2025) that released to sales line or process or were self-contained pneumatic controllers (as defined prior to April 30, 2025) must ensure that

such facilities comply with Sections III.C.5.b.(i)(A) through III.C.5.b.(i)(D) by May 1, 2027.

III.C.5.b.(v)(B) Owners or operators of facilities subject to Section III.C.5.b.(v)(A) must first report relevant information in Section III.C.5.c.(v) by June 30, 2027.

III.C.5.b.(vi) Additional requirements for well production facilities subject to Section III.C.5.b.(ii)(B).

III.C.5.b.(vi)(A) In addition to compliance deadlines and percentages in Table 4, owners or operators of well production facilities outside of the 8-hour Ozone Control Area and northern Weld County must comply with the following requirements.

III.C.5.b.(vi)(A)(1) By December 1, 2025, owners or operators must determine for each well production facility identified as part of the total facility count calculated in Section III.C.5.b.(iii)(A)(2), the total liquids production (summing total barrels of hydrocarbon liquids and water produced through the well production facility) for calendar year 2023, as reported pursuant to Regulation Number 7, Part B, Section V.

III.C.5.b.(vi)(A)(2) In the initial report required by Section III.C.5.b.(iii), owners or operators must list the well production facilities in descending order by production (with the highest producing facility first and the lowest producing facility last). If well production facilities have the same production, the owner or operator may elect the order in which to list the facilities.

III.C.5.b.(vi)(A)(3) Owners or operators must ensure that the facilities in the first half of the list (50% of the list) of well production facilities

		determined in Section III.C.5.(vi)(A)(2) comply with Section III.C.5.b.(i) by the May 1, 2027, compliance deadline in Section III.C.5.b.(ii)(B). Any facilities complying with this Section III.C.5.b.(vi)(A)(3) will count towards the compliance percentages in Table 4.
	III.C.5.b.(vi)(A)(4)	If an owner or operator transfers to another owner or operator a well production facility in the first half of the list of well production facilities determined in Section III.C.5.(vi)(A)(2), then either the owner or operator must ensure that the well production facility complies with Section III.C.5.b.(i) prior to the transfer or the new owner or operator must ensure that the well production facility complies with Section III.C.5.b.(i) prior to May 1, 2027.
III.C.5.c.		Additional requirements for the ongoing use of self-contained natural gas-driven pneumatic controllers and natural gas-driven pneumatic controllers for which emissions are routed to a process.
	III.C.5.c.(i)	For facilities with natural gas-driven pneumatic controllers that are subject to Section III.C.5.b.(v), the requirements of this Section III.C.5.c. apply beginning May 1, 2027.
	III.C.5.c.(ii)	For facilities with natural gas-driven pneumatic controllers that use a method in Section III.C.5.b.(i)(A) or (B) to comply with Section III.C.5.b.(i) and are not subject to Section III.C.5.b.(v), the requirements of this Section III.C.5.c. begin applying upon the applicable compliance deadline date in Table 3 or 4 of Section III.C.5.b.(ii) for which a facility contributes to the compliance percentages in Tables 3 or 4, except that Section III.C.5.c.(iii)(D) applies within thirty (30) days after routing emissions through the closed vent system.
	III.C.5.c.(iii)	Closed vent system requirements

III.C.5.c.(iii)(A) A qualified professional engineer or an in-house engineer with expertise on the design and operation of the closed vent system must certify an assessment that the closed vent system is of sufficient design and capacity to ensure that all gases, vapors, and fumes from pneumatic controllers are routed to the process.

III.C.5.c.(iii)(B) If the closed vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from being routed to a process, owners or operators must either

III.C.5.c.(iii)(B)(1) Install, calibrate, maintain, and operate a flow indicator at the inlet of the bypass device(s). The flow indicator must be capable and set to take readings at least once every fifteen (15) minutes at the inlet to the bypass device and sound an alarm, or remote notification, when the bypass device is open such that the stream is being, or could be, diverted away from the control device or process and sent to the atmosphere; or

III.C.5.c.(iii)(B)(2) The bypass device valve must be secured at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

III.C.5.c.(iii)(B)(3) The bypass device valve must be visually inspected at least once every month to verify that the vent stream is not diverted through the bypass device.

III.C.5.c.(iii)(B)(4) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of Section

III.C.5.c.(iii)(B)(1) and III.C.5.c.(iii)(B)(2).

III.C.5.c.(iii)(C) The owner or operator must inspect closed vent systems during the leak detection and repair inspections conducted pursuant to Part B, Section II.E. for well production facilities and natural gas compressor stations and Part B Section II.I. for natural gas-processing plants. If emissions are detected in any inspection, the owner or operator must comply with the applicable repair requirements in accordance with Part B, Section II.E.6. for well production facilities and natural gas compressor stations and Part B, Section II.I. for natural gas-processing plants.

III.C.5.c.(iii)(D) The owner or operator must conduct an initial leak detection and repair inspection of the closed vent system within thirty (30) days after routing emissions through the closed vent system and repair any emissions detected. This requirement does not apply to facilities applicable to Section III.C.5.c.(i) or pneumatic controllers routed to process before April 30, 2025.

III.C.5.c.(iii)(E) The owner or operator must conduct annual visual inspections of the closed vent system for defects that could result in air emissions.

III.C.5.c.(iv) Self-contained pneumatic controller requirements

III.C.5.c.(iv)(A) The owner or operator must inspect self-contained pneumatic controllers during the leak detection and repair inspections conducted pursuant to Part B, Section II.E. for well production facilities and natural gas compressor stations and Part B, Section II.I for natural gas-processing plants. If emissions are detected in any inspection, the owner or operator must comply with the repair requirements in Part B, Section II.E.6 for well production facilities and natural gas compressor stations and Part B, Section II.I. for natural gas-processing plants.

III.C.5.c.(v) Recordkeeping

III.C.5.c.(v)(A) Owners or operators must maintain the following records for at least five (5) years and make them available to the Division upon request.

III.C.5.c.(v)(A)(1) Records identifying each natural gas-driven pneumatic controller for which vapors are routed to a process through a closed vent system, including the name and AIRS ID of the facility where the controller is located.

III.C.5.c.(v)(A)(2) Records identifying each self-contained natural gas-driven pneumatic controller, including the name and AIRS ID of the facility where the controller is located.

III.C.5.c.(v)(A)(3) For inspections of closed vent systems and self-contained pneumatic controllers, as applicable, leak detection and repair records as required by Part B, Section II.E.8. for well production facilities and natural gas compressor stations and Part B, Section II.I for natural gas processing plants.

III.C.5.c.(v)(A)(4) If applicable, for bypass devices used in closed vent systems, records of readings from the flow indicator, each inspection of the seal or closure mechanism, and the date and time of each instance the alarm is sounded.

III.C.5.c.(v)(A)(5) If applicable, records of each change in compliance method for compliance with Section III.C.5.b.(i), including identification of each natural gas-driven process controller which changes its method of compliance, the new method of compliance, and the date of the

change in the method of compliance.

III.C.5.c.(v)(A)(6) Records of each deviation, the date and time the deviation began, the duration of the deviation, and a description of the deviation.

III.C.5.c.(v)(A)(7) If applicable, records of the certification(s) by a qualified professional engineer or in-house engineer that the closed vent system is of sufficient design and capacity to route pneumatic controller emissions to a process, pursuant to Section III.C.5.c.(iii)(A).

III.C.5.c.(v)(B) Any records required to be maintained by this section may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to the Division or as part of an onsite compliance evaluation.

III.C.5.c.(vi) Annual Reporting

III.C.5.c.(vi)(A) On or before June 30, 2027, and by June 30 each year thereafter, owners or operators must submit annual reports for the previous calendar year, in a Division-approved format, that includes the following information.

III.C.5.c.(vi)(A)(1) Company name, physical street address, facility names, the name and contact information of the company representative, for reporting purposes, the date of submission, and the period covered by the report.

III.C.5.c.(vi)(A)(2) An identification of each facility complying with Section III.C.5.b.(i) by either routing emissions from natural gas-driven pneumatic controllers to a

	process through a closed vent system or by using self-contained natural gas-driven pneumatic controllers and, for each facility, an identification of each natural gas-driven pneumatic controller and the applicable method of compliance.
III.C.5.c.(vi)(A)(3)	For each facility, as applicable, identification of any changes to the methods of compliance with Section III.C.5.b.(i) during the reporting period and the applicable information required in this Section III.C.5.(vi)(A) for the new method of compliance.
III.C.5.c.(vi)(A)(4)	For each pneumatic controller in each applicable facility complying with the requirements of III.C.5.b.(i) by routing emissions to a process using a closed vent system, the dates of inspections required under Sections III.C.5.c.(iii)(D) and III.C.5.c.(iii)(E). Leak detection and repair records for closed vent systems should be reported pursuant to Part B, Section II.E.8. for well production facilities and natural gas compressor stations and Part B, Section II.I for natural gas processing plants.
III.C.5.c.(vi)(A)(5)	For each pneumatic controller at the applicable facility complying with the requirements of Section III.C.5.b.(i) by using a self-contained natural gas-driven process controller, leak detection and repair records for closed vent systems should be reported pursuant to Part B, Section II.E.8. for well production facilities and natural

gas compressor stations and Part B, Section II.I for natural gas processing plants.

III.C.5.c.(vi)(A)(6) For each deviation that occurred during the reporting period, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation. If no deviations occurred during the reporting period, owners or operators must include a statement that no deviations occurred during the reporting period.

III.C.5.c.(vi)(A)(7) For closed vent systems that use bypass devices, the date and time of each bypass device alarm sounded and any instance the valve was unsecured or in the diverting position, pursuant to Sections III.C.5.c.(iii)(B)(1) and III.C.5.c.(iii)(B)(2).

III.C.5.c.(vi)(A)(8) A certification by the company representative that supervised the development and submission of the report that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

III.C.5.d. As an alternative to the emission control, inspection, repair, and recordkeeping provisions described in Section III.C.5.c., the owner or operator may comply with natural gas-driven pneumatic controller emission control, monitoring, recordkeeping, and reporting requirements of 40 CFR Part 60, Subpart OOOOb (March 8, 2024).

III.D. Monitoring

This section applies to pneumatic controllers identified in Sections III.C.1.f. and III.C.2.e. (State Only: and in Sections III.C.3.c. and III.C.3.d.(iii)).

III.D.1. In the 8-Hour Ozone Control Area or northern Weld County and located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline:

III.D.1.a. Effective May 1, 2009, or February 14, 2023, if located in northern Weld County, each high-bleed pneumatic controller must be physically tagged by the owner or operator identifying it with a unique high-bleed pneumatic controller number that is assigned and maintained by the owner or operator.

III.D.1.b. Effective May 1, 2009, or February 14, 2023, if located in northern Weld County, the owner or operator must inspect each high-bleed pneumatic controller on a monthly basis, perform necessary maintenance (such as cleaning, tuning, and repairing leaking gaskets, tubing fittings, and seals; tuning to operate over a broader range of proportional band, eliminating unnecessary valve positioners), and maintain the pneumatic controller according to manufacturer specifications to ensure that the controller's natural gas emissions are minimized.

III.D.2. In the 8-Hour Ozone Control Area or northern Weld County and located at a natural gas processing plant:

III.D.2.a. Effective May 1, 2018, or March 1, 2023, if located in northern Weld County, each pneumatic controller with a natural gas bleed rate greater than zero must be physically tagged by the owner or operator identifying it with a unique pneumatic controller number that is assigned and maintained by the owner or operator.

III.D.2.b. Effective May 1, 2018, or March 1, 2023, if located in northern Weld County, the owner or operator must inspect each pneumatic controller with a natural gas bleed rate greater than zero on a monthly basis, perform necessary maintenance (such as cleaning, tuning, and repairing leaking gaskets, tubing fittings, and seals; tuning to operate over a broader range of proportional band; eliminating unnecessary valve positioners), and maintain the pneumatic controller according to manufacturer specifications to ensure that the controller's natural gas emissions are minimized.

III.D.3. (State Only) Statewide:

III.D.3.a. Effective May 1, 2015, each high-bleed pneumatic controller must be physically tagged by the owner or operator identifying it with a unique high-bleed pneumatic

controller number that is assigned and maintained by the owner or operator.

III.D.3.b. Effective May 1, 2015, the owner or operator must inspect each high-bleed pneumatic controller on a monthly basis, perform necessary maintenance (such as cleaning, tuning, and repairing leaking gaskets, tubing fittings, and seals; tuning to operate over a broader range of proportional band; eliminating unnecessary valve positioners), and maintain the pneumatic controller according to manufacturer specifications to ensure that the controller's natural gas emissions are minimized.

III.D.4. (State Only) Located at a natural gas processing plant not subject to Section III.D.2.

III.D.4.a. Effective March 1, 2023, each pneumatic controller with a natural gas bleed rate greater than zero must be physically tagged by the owner or operator identifying it with a unique pneumatic controller number that is assigned and maintained by the owner or operator.

III.D.4.b. Effective March 1, 2023, the owner or operator must inspect each pneumatic controller with a natural gas bleed rate greater than zero on a monthly basis, perform necessary maintenance (such as cleaning, tuning, and repairing leaking gaskets, tubing fittings, and seals; tuning to operate over a broader range of proportional band; eliminating unnecessary valve positioners), and maintain the pneumatic controller according to manufacturer specifications to ensure that the controller's natural gas emissions are minimized.

III.E. Recordkeeping

III.E.1. In the 8-Hour Ozone Control Area or northern Weld County:

III.E.1.a. Continuous bleed, natural gas-driven pneumatic controllers located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline:

III.E.1.a.(i) By January 1, 2019, or January 1, 2024, if located in northern Weld County, owners or operators must compile an estimate of the total number of continuous bleed, natural gas-driven pneumatic controllers in service prior to January 1, 2018, or January 1, 2024, if located in northern Weld County, and documentation (e.g., manufacturer specification, engineering calculations) that the natural gas bleed rate is less than or equal to 6 standard cubic feet of gas per hour.

III.E.1.a.(ii) Beginning January 1, 2018, or January 1, 2024, if located in northern Weld County, the owner or operator must maintain records of the make and model of each type of continuous bleed, natural gas-driven pneumatic controllers placed in service on or after January 1, 2018, or January 1, 2024, if located in northern Weld County, and documentation (e.g., manufacturer specification, engineering calculations) that the natural gas bleed rate is less than or equal to 6 standard cubic feet of gas per hour. Owners or operators must use this information to update the estimate required in Section III.E.1.a.(i) every three years (i.e., by

January 1, 2022, January 1, 2025, etc.) (i.e., for northern Weld County, January 1, 2027, January 1, 2030, etc.).

III.E.1.b. Continuous bleed, natural gas-driven pneumatic controllers located at a natural gas processing plant:

III.E.1.b.(i) By January 1, 2019, or January 1, 2024, if located in northern Weld County, owners or operators must compile an estimate of the total number of continuous bleed, natural gas-driven pneumatic controllers in service prior to January 1, 2018, or January 1, 2024, if located in northern Weld County, and documentation (e.g., manufacturer specification, engineering calculations) that the natural gas bleed rate is zero.

III.E.1.b.(ii) Beginning January 1, 2018, or January 1, 2024, if located in northern Weld County, the owner or operator must maintain records of the make and model of each type of continuous bleed, natural gas-driven pneumatic controllers placed in service on or after January 1, 2018, or January 1, 2024, if located in northern Weld County, and documentation (e.g., manufacturer specification, engineering calculations) that the natural gas bleed rate is zero. Owners or operators must use this information to update the estimate required in Section III.E.1.b.(i) every three years (i.e., by January 1, 2022, January 1, 2025, etc.) (i.e., for northern Weld County, January 1, 2027, January 1, 2030, etc.).

III.E.1.c. Records must be maintained for a minimum of five years and made available to the Division upon request.

III.E.2. This section applies only to pneumatic controllers identified in Sections III.C.1.f. and III.C.2.e. (State Only: and in Section III.C.3.c.).

III.E.2.a. The owner or operator must maintain a log of the total number of pneumatic controllers and their associated controller numbers per facility, the total number of pneumatic controllers per company and the associated justification that the pneumatic controllers must be used pursuant to Sections III.C.1.f. and III.C.2.e. (State Only: and in Section III.C.3.c.). The log shall be updated on a monthly basis.

III.E.2.b. The owner or operator must maintain a log of necessary maintenance which shall include, at a minimum,

inspection dates, the date of the maintenance activity, pneumatic controller number, description of the maintenance performed, results and date of any corrective action taken, and the printed name and signature of the individual performing the maintenance. The log shall be updated on a monthly basis.

III.E.2.c. Records of maintenance of pneumatic controllers shall be maintained for a minimum of three years and readily made available to the Division upon request.

III.F. (State Only) Pneumatic Controller Inspection and Enhanced Response

III.F.1. General Requirements

III.F.1.a. Beginning January 1, 2018, owners or operators of natural gas-driven pneumatic controllers in the 8-Hour Ozone Control Area must operate and maintain pneumatic controllers consistent with manufacturer’s specifications, if available, or good engineering and maintenance practices.

III.F.1.b. Beginning May 1, 2020, owners or operators of natural gas-driven pneumatic controllers state-wide must operate and maintain pneumatic controllers consistent with manufacturer’s specifications, if available, or good engineering and maintenance practices.

III.F.2. Pneumatic controller inspection

III.F.2.a. Beginning June 30, 2018, through calendar year 2019, owners or operators of natural gas-driven pneumatic controllers at well production facilities in the 8-Hour Ozone Control Area must inspect pneumatic controllers using an approved instrument monitoring method at least

III.F.2.a.(i) Annually at well production facilities with uncontrolled actual volatile organic compound emissions greater than or equal to one (1) ton per year and less than or equal to six (6) tons per year, based on a rolling twelve-month total.

III.F.2.a.(ii) Semi-annually at well production facilities with uncontrolled actual volatile organic compound emissions greater than six (6) tons per year and less than or equal to twelve (12) tons per year, based on a rolling twelve-month total.

III.F.2.a.(iii) Quarterly at well production facilities with uncontrolled actual volatile organic compound emissions greater than twelve (12) tons per year and less than or equal to twenty (20) tons per year, based on a rolling twelve-month total, or fifty (50) tons per year if no storage tanks storing oil or condensate are located at the well production facility, based on a rolling twelve-month total.

III.F.2.a.(iv) Monthly at well production facilities with uncontrolled actual volatile organic compound emissions greater than twenty (20) tons per year, based on a rolling twelve-month total, or fifty (50) tons per year if no storage tanks storing oil or condensate are located at the well production facility, based on a rolling twelve-month total.

III.F.2.b. Beginning calendar year 2020, owners or operators of natural gas-driven pneumatic controllers at well production facilities must inspect pneumatic controllers using an approved instrument monitoring method at least:

III.F.2.b.(i) Annually at well production facilities in the 8-Hour Ozone Control Area with uncontrolled actual volatile organic compound emissions greater than or equal to one (1) ton per year and less than two (2) tons per year, based on a rolling twelve-month total.

III.F.2.b.(ii) Semi-annually at well production facilities statewide with uncontrolled actual volatile organic compound emissions greater than or equal to two (2) tons per

year and less than or equal to twelve (12) tons per year, based on a rolling twelve-month total.

III.F.2.b.(iii) Quarterly at well production facilities statewide with uncontrolled actual volatile organic compound emissions greater than twelve (12) tons per year and less than or equal to twenty (20) tons per year, based on a rolling twelve-month total, or fifty (50) tons per year if no storage tanks storing oil or condensate are located at the well production facility, based on a rolling twelve-month total.

III.F.2.b.(iv) Monthly at well production facilities statewide with uncontrolled actual volatile organic compound emissions greater than twenty (20) tons per year, based on a rolling twelve-month total, or fifty (50) tons per year if no storage tanks storing oil or condensate are located at the well production facility, based on a rolling twelve-month total.

III.F.2.c. Beginning calendar year 2023, owners or operators of natural gas-driven pneumatic controllers at well production facilities must inspect pneumatic controllers using an approved instrument monitoring method at the same frequency that the owner or operator inspects components for leaks pursuant to Sections II.E.4.e. or II.E.4.f.

III.F.2.d. For purposes of Sections III.F.2.a. through III.F.2.c., the estimated uncontrolled actual VOC emissions from the highest emitting storage tank at the well production facility determines the frequency at which inspections must be performed. If no storage tanks storing oil or condensate are located at the well production facility, owners or operators must rely on the facility emissions (controlled actual VOC emissions from all permanent equipment, including emissions from components determined by utilizing the emission factors defined as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates).

III.F.2.e. Beginning June 30, 2018, owners or operators of natural gas-driven pneumatic controllers at natural gas compressor stations in the 8-Hour Ozone Control Area must inspect pneumatic controllers using an approved instrument monitoring method at least:

III.F.2.e.(i) Quarterly at natural gas compressor stations with fugitive volatile organic compound emissions greater than zero (0) and less than or equal to fifty (50) tons per year, based on a rolling twelve-month total.

III.F.2.e.(ii) Monthly at natural gas compressor stations with fugitive volatile organic compounds greater than fifty (50) tons per year, based on a rolling twelve-month total.

III.F.2.f. Beginning calendar year 2020, owners or operators of natural gas-driven pneumatic controllers at natural gas compressor stations outside the 8-Hour Ozone Control

Area must inspect pneumatic controllers using an approved instrument monitoring method at least

III.F.2.f.(i) Semi-annually at natural gas compressor stations with fugitive volatile organic compound emissions greater than zero (0) and less than or equal to twelve (12) tons per year, based on a rolling twelve-month total.

III.F.2.f.(ii) Quarterly at natural gas compressor stations with fugitive volatile organic compound emissions greater than twelve (12) and less than or equal to fifty (50) tons per year, based on a rolling twelve-month total.

III.F.2.f.(iii) Monthly at natural gas compressor stations with fugitive volatile organic compounds greater than fifty (50) tons per year, based on a rolling twelve-month total.

III.F.2.g. Beginning calendar year 2023, owners or operators of natural gas-driven pneumatic controllers at natural gas compressor stations must inspect pneumatic controllers using an approved instrument monitoring method at least

III.F.2.g.(i) Quarterly at natural gas compressor stations with fugitive volatile organic compound emissions greater than zero (0) and less than or equal to fifty (50) tons per year, based on a rolling twelve-month total.

III.F.2.g.(ii) Bimonthly at natural gas compressor stations with fugitive volatile organic compound emissions greater than zero (0) and less than or equal to fifty (50) tons per year, based on a rolling twelve-month total, and located within a disproportionately impacted community or within 1,000 feet of an occupied area.

III.F.2.g.(iii) Monthly at natural gas compressor stations with fugitive volatile organic compounds greater than fifty (50) tons per year, based on a rolling twelve-month total.

III.F.2.h. Beginning calendar year 2026, owners or operators of natural gas-driven pneumatic controllers at natural gas compressor stations must inspect pneumatic controllers using an approved instrument monitoring method at the same frequency that the owner or operator inspects components for leaks pursuant to Sections II.E.3.

III.F.2.i. For purposes of Sections III.F.2.d. and III.F.2.e., fugitive emissions must be calculated using the emission factors of Table 2-4 of the 1995 EPA Protocol for Equipment Leak Emission Estimates (Document EPA-453/R-95-017), or other Division approved method.

III.F.2.j. Beginning January 1, 2023, owners or operators of natural gas-driven pneumatic controllers located at natural gas-processing plants must inspect pneumatic controllers at least quarterly using an approved instrument monitoring method..

III.F.2.k. Where detectable emissions from the pneumatic controller are observed, owners or operators must determine whether the pneumatic controller is operating properly within five (5) working days after detecting emissions. In making this determination, owners or operators may use techniques other than approved instrument monitoring methods

III.F.2.l. For pneumatic controllers not operating properly, the owner or operator must conduct enhanced response or follow manufacturer specifications to return the pneumatic controller to proper operation.

III.F.3. Enhanced response and remonitoring

III.F.3.a. Enhanced response must begin no later than five (5) working days and the pneumatic controller returned to proper operation no later than thirty (30) working days after determining the pneumatic controller is not operating properly, unless parts are unavailable, the equipment requires shutdown to complete enhanced response, or other good cause exists. If parts are unavailable, they must be ordered promptly and enhanced response conducted within fifteen (15) working days of receipt of the parts. If shutdown is required, enhanced response must be conducted during the next scheduled shutdown. If delay is attributable to other good cause, enhanced response must be completed within fifteen (15) working days after the cause of delay ceases to exist.

III.F.3.b. Within fifteen (15) working days of completion of enhanced response, the owner or operator must verify the pneumatic controller is operating properly. In verifying proper operation, owners or operators may use techniques other than approved instrument monitoring methods.

III.F.3.c. Pneumatic controllers found emitting detectable emissions are not subject to enforcement by the Division unless the owner or operator fails to determine whether the pneumatic controller is operating properly in accordance with Section III.F.2., perform any necessary enhanced response in accordance with Section III.F.3., keep records in accordance with Section III.F.4., or submit reports in accordance with Section III.F.5.

III.F.4. Owners or operators must maintain the following records for a minimum of three (3) years and make records available to the Division upon request.

III.F.4.a. The date, facility name, facility AIRS ID or facility location if the facility does not have an AIRS ID, and approved instrument monitoring method used for each inspection;

III.F.4.b. A list of pneumatic controllers, including type, determined to be not operating properly;

III.F.4.c. For intermittent pneumatic controllers observed to have detectable emissions but determined to be operating properly, a brief explanation of the basis for concluding that the intermittent pneumatic controller was operating properly. The explanation can include, but is not limited to, an owner or operator’s standard operating procedure detailing how to determine whether an intermittent

pneumatic controller is operating properly, or an individual explanation;

III.F.4.d. The date(s) of enhanced response and a description of the actions taken to return the pneumatic controller to proper operation;

III.F.4.e. The date the owner or operator verified the pneumatic controller was returned to proper operation; and

III.F.4.f. The delayed repair list, including the date and duration of any period where the enhanced response was delayed beyond thirty (30) days after determining the pneumatic controller is not operating properly due to unavailable parts, required shutdown, or delay for other good cause, the basis for the delay, and the schedule for returning the pneumatic controller to proper operation. Delay of enhanced response due to unavailable parts must be reviewed, and a record kept of that review, by a representative of the owner or operator with responsibility for pneumatic controller inspection and enhanced response compliance functions. This review will not be made by the individual making the initial determination to place a part on the delayed repair list.

III.F.5. Owners or operators of pneumatic controllers at well production facilities or natural gas compressor stations must submit a single annual report on or before May 31st of each year (beginning May 31st, 2019 for facilities in the 8-Hour Ozone Control Area and May 31st, 2021, for facilities outside the 8-Hour Ozone Control Area) that includes, at a minimum, the following information regarding pneumatic controller inspection and enhanced response activities at their subject facilities conducted the previous calendar year. Owners or operators of pneumatic controllers at natural gas processing plants must submit the annual report on or before May 31st of each year beginning 2024.

III.F.5.a. The total number and type of pneumatic controllers returned to proper operation, the types of actions taken to return the pneumatic controllers to proper operation, and the facility type (by inspection frequency tier of well production facility or natural gas compressor station);

III.F.5.b. The number and type of pneumatic controllers on the delayed repair list as of December 31 broken out by the facility type (by inspection frequency tier of well production facility or natural gas compressor station), and the basis for each delay; and

III.F.5.c. The record of all reviews conducted for delayed repairs due to unavailable parts extending beyond 30 days for the previous calendar year.

III.G. (Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities) Pneumatic pump methane emission reduction requirements

III.G.1. Applicability

III.G.1.a. This Section III.G. applies to natural gas-driven diaphragm and piston pumps located at well production facilities and

natural gas compressor stations upstream of natural gas processing plants and at natural gas processing plants.

III.G.1.b. Pumps that are not driven by natural gas and pumps that are not in operation 90 days or more per calendar year are not subject to the requirements of this Section III.G.

III.G.1.c. Sections III.G.2. to III.G.7 do not apply prior to May 1, 2026.

III.G.2. If not subject to the pneumatic pump requirements in Section I.K.1., owners or operators must comply with the following requirements beginning May 1, 2026.

III.G.2.a. Owners or operators of natural gas-driven diaphragm and piston pumps used at facilities with access to electrical power, or at facilities that do not have access to electrical power but have three or more natural gas-driven pumps, must design and operate their facilities with no emissions from natural gas-driven diaphragm and piston pumps.

III.G.2.b. Owners or operators of natural gas-driven diaphragm and piston pumps used at facilities that do not have access to electrical power and have less than three natural gas-driven pumps must:

III.G.2.b.(i) Route emissions from the pump to a process if a vapor recovery unit is on site; or

III.G.2.b.(ii) If a vapor recovery unit is not on site, reduce methane emissions from the pump by 95% by routing the emissions to a control device; or

III.G.2.b.(iii) If a vapor recovery unit is not on site, and there is no control device capable of reducing methane emissions from the pump by 95%, route emissions from the pump to an on-site control device, and certify that there is no vapor recovery unit or control device capable of achieving a 95% reduction onsite; or

III.G.2.b.(iv) Certify that there is no vapor recovery unit or control device on site, if applicable. If a vapor recovery unit or control device is subsequently installed on site, the owner or operator must route emissions from the pump to the vapor recovery unit or control device within thirty (30) days of startup of the vapor recovery unit or control device.

III.G.2.c. Pump emissions routed to a process or control device must be routed through a closed vent system that is

designed to capture and route all gases, vapors, and fumes.

III.G.2.d. Owners or operators are not required to install a vapor recovery unit or control device solely for the purpose of compliance with Sections III.G.2.b.(i) or III.G.2.b.(ii).

III.G.2.e. Owners or operators may prepare technical infeasibility assessments if it is technically infeasible to route the pump emissions to an existing control device or process due to, but not limited to, safety considerations, distance from the process or control device, pressure losses and differentials in the closed vent system, and the ability of the process or control device to handle the pump emissions. This technical infeasibility assessment must be prepared under the direction or supervision of a qualified professional engineer or in-house engineer. The qualified professional engineer or in-house engineer must certify and submit the technical infeasibility assessment to the Division.

III.G.2.f. If the control device or process is subsequently removed or no longer available, the owner or operator must comply with Section III.G.2.b.(iv).

III.G.3. Closed vent system requirements

III.G.3.a. A qualified professional engineer or an in-house engineer with expertise on the design and operation of the closed vent system must certify an assessment that the closed vent system is of sufficient design and capacity to ensure that all gases, vapors, and fumes are routed to the process or control device and the process or control device is of sufficient design and capacity to accommodate all emissions from the pump.

III.G.3.b. If the closed vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from being routed to a process, owners or operators must install, calibrate, maintain, and operate a flow indicator at the inlet of the bypass device(s).

III.G.3.b.(i) The flow indicator must be capable and set to take readings at least once every fifteen (15) minutes at the inlet to the bypass device and sound an alarm, or remote notification, when the bypass device is open such that the stream is being, or could be, diverted away from the control device or process and sent to the atmosphere, or

III.G.3.b.(ii) The bypass device valve must be secured at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

III.G.3.b.(iii) The bypass device valve must be visually inspected at least once every month to verify that the vent stream is not diverted through the bypass device.

III.G.3.b.(iv) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of Section III.G.3.b.(i) and III.G.3.b.(ii).

III.G.3.c. The owner or operator must inspect closed vent systems during the leak detection and repair inspections conducted pursuant to Part B, Section II.E. for well production facilities and natural gas compressor stations and Part B, Section II.I. for natural gas-processing plants. If emissions are detected in any inspection, the owner or operator must comply with the applicable repair requirements in accordance with Part B, Section II.E.6. for well production facilities and natural gas compressor stations, and Part B, Section II.I. for natural gas processing plants.

III.G.3.d. The owner or operator must conduct an initial leak detection and repair inspection of the closed vent system within thirty (30) days after routing emissions through the closed vent system and repair any emissions detected.

III.G.3.e. The owner or operator must conduct annual visual inspections of the closed vent system for defects that could result in air emissions.

III.G.4. Control device requirements

III.G.4.a. Unless exempt as provided in 40 CFR Part 60, Subpart OOOOb, Section 60.5413b(a) (March 8, 2024), owner or operators must conduct performance tests on control devices in accordance with the requirements in 40 CFR Part 60, Subpart OOOOb, Section 60.5413b(b) (March 8, 2024).

III.G.4.b. The owner or operator of each combustion control device must:

III.G.4.b.(i) Ensure each device is maintained so as to prevent detectable emissions and is operated following the manufacturer's written operating instructions, procedures, and maintenance schedule to ensure

good air pollution control practices for minimizing emissions.

III.G.4.b.(ii) Maintain the inlet gas flow rate equal to or greater than the minimum inlet gas flow rate and equal to or less than the maximum inlet gas flow rate specified by the manufacturer or determined during the most recent performance test.

III.G.4.b.(iii) Install and operate a continuous burning pilot or combustion flame.

III.G.4.b.(iv) Operate devices with no visible emissions, as determined pursuant to monthly EPA Method 22 tests. Devices failing the visible emissions test must be returned to compliant operation by following the manufacturer's repair instructions, if available, or best combustion engineering practices. Following return to operation, each device must pass an EPA Method 22 visual observation.

III.G.4.b.(v) Install and operate the continuous parameter monitoring systems in accordance with 40 CFR Part 60, Subpart OOOOb, Sections 60.5417b(a) and 60.5417b(c) through 60.5417b(i) (March 8, 2024).

III.G.4.b.(vi) Conduct weekly visual inspections that must include, at a minimum

III.G.4.b.(vi)(A) Inspection or monitoring of each combustion device to ensure that it is operating, including that the pilot light is lit and the auto-igniter is properly functioning.

III.G.4.b.(vi)(B) Inspection or monitoring of each combustion device to ensure that the valves for the piping of gas to the pilot light are open and functioning properly.

III.G.4.b.(vi)(C) Inspection or monitoring of each combustion device to ensure the burner tray is not visibly clogged.

III.G.4.b.(vi)(D) Inspection of each combustion device for the presence or absence of smoke. If smoke is observed, either the equipment must be immediately shut-in to investigate the potential cause for smoke and perform repairs, as necessary, or EPA Method 22 must be conducted to determine whether

visible emissions are present for a period of at least one (1) minute in fifteen (15) minutes.

III.G.4.b.(vi)(E) Inspection or monitoring of each vapor recovery unit to ensure that the unit is operating and that vapors are being routed to the unit.

III.G.4.b.(vi)(F) Inspection or monitoring of air pollution control equipment to ensure that valves for the piping of gas to the air pollution control equipment are open.

III.G.4.b.(vi)(G) Recording the flow meter readings or pressure actuator system data, once installed pursuant to Section II.B.2.g.(i). For flow meter readings, this must include the maximum and minimum measured flow rate since the previous weekly visual inspection. For pressure actuator system data, this must include the maximum and minimum measured pressures while the actuator valve is open since the previous weekly visual inspection. An owner or operator may use automation to continuously record flow and/or pressure to the enclosed combustion devices(s) for which flow meters or pressure actuator system are required under Section II.B.2.g.

III.G.5. Recordkeeping

III.G.5.a. Owners or operators must maintain the following records for at least five (5) years and make them available to the Division upon request.

III.G.5.a.(i) Records identifying each natural gas-driven pump for which vapors are routed to a process or control device through a closed vent system, including the name and AIRS ID of the facility where the pump is located.

III.G.5.a.(ii) If applicable, records of the certification(s) by a qualified professional engineer or in-house engineer that the closed vent system is of sufficient design and capacity to route pneumatic controller emissions to a process, pursuant to Section III.G.3.a.

III.G.5.a.(iii) For inspections of closed vent systems and self-contained pneumatic controllers, as applicable, leak detection and repair records as required by Part B, Section II.E.8. for well production facilities and natural gas compressor stations and Part B, Section II.I. for natural gas processing plants.

III.G.5.a.(iv) If applicable, for bypass devices used in closed vent systems, records of readings from the flow indicator, each inspection of the seal or closure mechanism, and the date and time of each instance the alarm is sounded.

III.G.5.a.(v) Records of control device performance tests.

III.G.5.a.(vi) Records of control device operating parameter values and operating parameter monitoring.

III.G.5.a.(vii) Records of enclosed combustion device alternative test methods.

III.G.5.a.(viii) Records of the certification that there is no vapor recovery unit or control device installed onsite by the compliance date, if applicable, pursuant to Section III.G.2.b.(iv).

III.G.5.a.(ix) Records of weekly visual inspections, pursuant to Section III.G.4.b.(vi).

III.G.5.b. Any records required to be maintained by this section may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to the Division as part of an onsite compliance evaluation.

III.G.6. Reporting

III.G.6.a. On or before June 30, 2026, and by June 30 each year thereafter, owners or operators must submit annual reports for the previous calendar year, in a Division-approved format, that contains the following information:

III.G.6.a.(i) Company name, physical street address, facility names, the name and contact information of the company representative, for reporting purposes, the date of submission, and the period covered by the report.

III.G.6.a.(ii) An identification of each facility complying with Section III.G.2. by routing emissions from natural gas-driven diaphragm and piston pumps to either a

process or control device, and for each facility, an identification of each natural gas-driven pump and the applicable method of compliance.

III.G.6.a.(iii) The certifications specified in Sections III.G.2.b.(iii) and III.G.2.b.(iv), if applicable.

III.G.6.a.(iv) For each facility, as applicable, identification of any changes to methods of compliance with Section III.G.2., including documentation of applicable pump emission control requirements and certifications.

III.G.6.a.(v) For each pump at the applicable facility complying with the requirements of Section III.G.2. by routing emissions to a process using a closed vent system, the dates of inspections required under Sections III.G.3.d. and III.G.3.e. Leak detection and repair records for closed vent systems should be reported pursuant to Part B, Section II.E.8. for well production facilities and natural gas compressor stations and Part B, Section II.I for natural gas processing plants.

III.G.6.a.(vi) For closed vent systems that use bypass devices, the date and time of each bypass device alarm sounded and any instance the valve was unsecured or in the diverting position, pursuant to Sections III.G.3.b.(i) and III.G.3.b.(ii).

III.G.6.a.(vii) For each deviation that occurred during the reporting period, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation. If no deviations occurred during the reporting period, owners or operators must include a statement that no deviations occurred during the reporting period.

III.G.6.a.(viii) The date and results of performance tests conducted on control devices, if applicable.

III.G.7. As an alternative to the emission control, inspection, repair, and recordkeeping provisions described in Sections III.G.2. through III.G.6., the owner or operator may comply with natural gas-driven pump emission control, monitoring, recordkeeping, and reporting requirements of 40 CFR Part 60, Subpart OOOOb (March 8, 2024).

IV. (State Only) Control of Emissions from Natural Gas Transmission and Storage Segment

IV.A. Definitions

IV.A.1. “Best management practice” (BMP) means a demonstrated and commercially available or innovative emission-reducing technology or work practice.

IV.A.2. “Best management practices plan” (BMP plan) means a written plan that includes, but is not limited to, each natural gas transmission and storage segment owner or operator’s planned and implemented BMPs to reduce methane emissions from its facilities within the natural gas transmission and storage segment.

IV.A.3. “Natural gas transmission and storage segment” (segment) includes onshore natural gas transmission pipelines, onshore natural gas transmission compression, underground natural gas storage, and liquefied natural gas (LNG) storage, as these terms are defined in 40 CFR Part 98, Section 98.230 (October 22, 2015), that are physically located in Colorado.

IV.A.4. “Natural gas transmission and storage segment Colorado throughput” (segment throughput) means the total volume of natural gas, as adjusted for methane, transported through transmission pipelines in Colorado as reported to the Department of Energy’s (DOE) Energy Information Administration (EIA) for Form 176, excluding net volumes stored as liquefied natural gas or in underground storage facilities.

IV.A.5. “Natural gas transmission and storage segment emissions inventory protocol” (inventory protocol) means the requirements by which natural gas transmission and storage segment owners or operators will quantify and report methane, ethane, carbon monoxide (CO), carbon dioxide (CO2), nitrous oxide (N2O), nitrogen oxides (NOx), and volatile organic compound (VOC) emissions. The protocol will specify the segment facilities and types of activity data collected, emissions quantification methodologies, throughput calculation methodologies, criteria for determining whether events are beyond the control of the owner or operator, and the process for designating and protecting confidential business information (CBI), consistent with Colorado law.

IV.A.6. “Performance-based program” means a program of BMPs implemented and documented by each natural gas transmission and storage segment owner or operator to reduce methane emissions in order to achieve the system-wide emissions intensity target.

IV.A.7. “Steering committee” means five members approved by the Division to serve as a technical working group for developing program guidance documents and evaluating progress against the system-wide emissions intensity target. The committee members will include two representatives from natural gas transmission and storage segment owners or operators (or industry trade organizations representing owners or operators), two members representing the general public (including but not limited to environmental organizations, local government groups, or citizens), and one Division member.

IV.A.8. "Segment-wide emissions intensity" means the natural gas transmission and storage segment methane emissions divided by the natural gas transmission and storage segment throughput.

IV.A.9. "Segment-wide emissions intensity target" (segment-wide target) means the target established by the steering committee reflected as annual segment-wide methane emissions from Colorado's natural gas transmission and storage segment divided by the annual natural gas transmission and storage segment Colorado throughput.

IV.B. Beginning January 1, 2020, each segment owner or operator must participate in this performance based program to reduce segment-wide methane emissions.

IV.B.1. By April 1, 2020, a steering committee charter and the steering committee members will be approved by the Division.

IV.B.2. By September 30, 2020, the Division will publish the inventory protocol and any associated program guidance documents developed by the steering committee.

IV.B.3. By December 31, 2020, each segment owner or operator must develop a company-specific BMP plan. The BMP plan must contain each element from the BMP plan template chapter of the program guidance document, which will include, but is not limited to, a list of information the owner or operator must collect to demonstrate the BMPs performed. By December 31st of each year (beginning December 31st, 2021), each owner or operator must review and update, as appropriate, its company-specific BMP plan and document in the BMP plan any changes.

IV.B.4. Beginning January 1, 2021, each segment owner or operator will:

IV.B.4.a. Implement company specific BMP plans.

IV.B.4.b. Collect emissions inventory data in accordance with the inventory protocol and its company-specific BMP plan.

IV.B.5. By May 1, 2022, the segment owners or operators will select a third-party contractor from a pool of qualified applicants to receive, safeguard, and aggregate company-specific reports as described in Sections IV.D.3. and IV.D.4. The steering committee will establish criteria for the selection of the third-party contractor. The segment owners and operators will use a competitive bidding process to solicit applications from contractors who meet the criteria and will provide an opportunity for the steering committee to reject unqualified applicants.

IV.B.6. By October 1, 2023, the steering committee will determine the segment-wide emissions intensity target using the 2021 and 2022 emissions inventory data. In developing the initial or updated segment-wide emissions intensity target and evaluating the program, the

steering committee may request non-company specific information from the Division (in accordance with the Colorado Opens Record Act) or the third-party contractor to assist in setting such target or such evaluation. The steering committee may ask companies to explain emission factors and methodologies used to calculate or measure emissions.

IV.C. The segment-wide emissions intensity target must first be achieved by January 1, 2025, based on the 2024 reporting year.

IV.C.1. By October 1 of each year (beginning October 1, 2025), the steering committee will submit a compliance certification to the Division that the segment achieved the segment-wide emissions intensity target for the prior calendar year.

IV.C.2. If the steering committee cannot certify compliance with the segment-wide emissions intensity target, the steering committee will develop a plan (which may include amendments to program guidance documents) and timeline for the segment to achieve compliance with the segment-wide emissions intensity target.

IV.C.3. Beginning January 1, 2026, and every three (3) years thereafter if appropriate, the steering committee will assess the segment-wide emissions intensity target for continual improvement.

IV.D. Recordkeeping and reporting

IV.D.1. The Division will provide an update on the development of this program and initial implementation efforts to the Air Quality Control Commission during a scheduled Commission meeting on or after January 2021.

IV.D.2. Segment owners or operators must maintain BMP plans and emissions inventory reports for a period of five (5) years and make records available to the Division upon request.

IV.D.3. By June 30 of each year (beginning June 30, 2022), owners or operators of the natural gas transmission and storage segment will submit company-wide reports to the third-party contractor.

IV.D.3.a. Emissions claimed to be beyond the control of the owner or operator, using the criteria and methods established by the steering committee, must be included in the company-wide report but will not be used to set or determine compliance with the segment-wide emissions intensity target.

IV.D.3.b. Emissions and emission reductions associated with any requirements of the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Colorado Public Utilities Commission (CPUC), and/or the Federal Energy Regulatory Commission (FERC) must be included in the

report and used for purposes of calculating compliance with the system-wide emissions intensity target, unless they qualify under Section IV.D.3.a., but this Section IV. does not supersede or alter these agencies applicable regulations or requirements.

IV.D.4. The third-party contractor must aggregate the company-wide reports into a segment-wide report and provide it to the steering committee by August 15 of each year (beginning August 15, 2022) on a form developed by the steering committee and approved by the Division. The segment-wide report must include, at a minimum

IV.D.4.a. The segment-wide emissions, apportioned by county,

IV.D.4.b. A report of the numbers and types of events subject to Section IV.D.3.a. and the segment-wide emissions resulting from each type of event.

IV.D.4.c. The BMPs implemented to mitigate or avoid emissions and a description of how the BMPs mitigate, reduce, and/or avoid emissions.

IV.D.4.d. The segment-wide segment throughput.

IV.D.4.e. The segment-wide emissions intensity. If the steering committee determines that one or more types of events reported under Section IV.D.4.b. were not beyond the control of the owner or operator, the steering committee will revise the segment-wide emissions intensity calculation to include the methane emissions from those events.

IV.D.5. Segment owners or operators must submit an annual certification to the Division by June 30 of each year (beginning June 30, 2021) that includes

IV.D.5.a. A certification that the company-specific BMP plan was developed or reviewed in accordance with Section IV.B.3.

IV.D.5.b. A certification that the company-wide report was submitted to the third-party contractor in accordance with Section IV.D.3.

IV.D.5.c. Beginning in 2022, a certification of company BMP plan compliance in accordance with Section IV.B.4., including

IV.D.5.c.(i) The company’s implementation of the BMPs in the company-specific BMP plan.

IV.D.5.c.(ii) Instances of non-conformance with the company-specific BMP plan, reason(s) for non-conformance,

and any modifications of the applicable element(s) of the BMP plan.

IV.D.5.c.(iii) Any use of alternative emission reduction approaches not specified in the company-specific BMP plan.

IV.D.5.d. With each submission under Sections IV.D.5.a. through IV.D.5.c., a certification by a responsible official that, based on information and belief after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

IV.D.6. The Division may provide an update briefing to the Air Quality Control Commission during a scheduled Commission meeting on or after October 1 of each year (beginning October 1, 2022). The update briefing will include any assessment of the segment-wide target, as specified in Section IV.C.3.

V. (State Only) Oil and Natural Gas Operations Emissions Inventory

V.A. Applicability

V.A.1. On or before June 30th, 2021 (and on June 30th each year thereafter), the owner or operator of oil and natural gas operations and equipment at or upstream of a natural gas processing plant in Colorado must submit a single annual report that includes actual emissions and specified information in the Division-approved report format.

V.A.2. On or before June 30th, 2022 (and on June 30th each year thereafter), the owner or operator or class II disposal well facilities that are not subject to reporting under Section IV. must submit a single annual report that includes actual emissions and specified information in the Division-approved report format.

V.A.3. In order for a midstream company to generate credits for a particular vintage year pursuant to Section VII., the midstream company must submit the annual report required in Section V.A.1. by March 31, of the reporting year in which they want to participate in the GHG credit market.

V.B. General reporting requirements

V.B.1. The following information must be reported in accordance with Section V.A.

V.B.1.a. Company name, physical street address, and name and contact information of the company representative, for reporting purposes.

V.B.1.b. The date of submittal and the year covered by the report.

V.B.1.c. A list of the activities or equipment, as specified in Section V.C., for which emissions are reported. Beginning with the June 2022 report for the calendar year 2021, owners or operators must include whether the activities or equipment are located in a disproportionately impacted community.

V.B.1.c.(i) Beginning with the June 2026 report for the calendar year 2025, disproportionately impacted community is defined as in 24-4-109(2)(b)(II)(A)-(D) and (F)-(G), C.R.S. (2023). These communities are identified as any census block group identified in the Disproportionately Impacted Community Map (November 2024) after selecting the criteria for "Mobile home communities", "Low-income population above 40%", "People of color population above 40%", "Housing cost-burdened population above 50%", "Linguistically isolated population above 20%", and "Colorado EnviroScreen percentile score above 80".

V.B.1.d. Beginning with the June 2022 report for calendar year 2021, for well production facilities, a list of each well production facility, all associated wells by API number and associated location ID as assigned by the Colorado Oil and Gas Conservation Commission, and the total calendar year production of hydrocarbon liquids, and natural gas as well as throughput of produced water.

V.B.1.e. Beginning with the June 2021 report for calendar year 2020 through the June 2024 report for calendar year 2023:

V.B.1.e.(i) The company's monthly actual emissions of volatile organic compounds (VOC), oxides of nitrogen (NOx), nitrous oxide (N2O), carbon dioxide (CO2), carbon monoxide (CO), methane, and ethane for each month of May through September, in accordance with Division- accepted calculation methods.

V.B.1.e.(ii) The company's annual actual emissions of VOCs, NOx, N2O, CO2, CO, methane, and ethane for the entire calendar year, in accordance with Division-accepted calculation methods.

V.B.1.f. Beginning with the June 2025 report for calendar year 2024, the company's monthly actual emissions of VOCs, NOx, N2O, CO2, CO, methane, and ethane, in accordance with Division-accepted calculation methods.

V.B.1.g. The actual emissions of VOCs, NOx, N2O, CO2, CO, methane, and ethane for each activity or equipment listed in Section V.C. per facility, or per pipeline between facilities where the pipeline is not located at a stationary source, in accordance with Division- accepted calculation methods.

V.B.1.g.(i) Beginning with the June 2021 report for calendar year 2020 through the June 2024 report for calendar year 2023:

V.B.1.g.(i)(A) The report must include the actual emissions from each activity or equipment per month for each month of May through September.

V.B.1.g.(i)(B) The report must include the actual emissions from each activity or equipment for the entire calendar year.

V.B.1.g.(ii) Beginning with the June 2025 report for calendar year 2024, the report must include the monthly actual emission from each activity or equipment.

V.B.1.h. Beginning with the June 2022 report for calendar year 2021 through the June 2023 report for calendar year 2022, if the emissions reported for any activities or equipment, as specified in Section V.C., are calculated using a method other than what was used to report to the U.S. EPA under the federal Greenhouse Gas Reporting Program (40 CFR Part 98) for the same activity or equipment, the owner or operator must submit supporting documentation with the annual report that includes the emissions information reported to the EPA, an explanation of the difference in emissions reported to the Division, the emission calculation method(s) used to report to the Division, and a justification and supporting documentation for using a method other than that for the Greenhouse Gas Reporting Program. If the Division determines that the use of a different calculation method was not justified, the owner or operator must revise the report accordingly, to use the same calculation method as that reported under the federal Greenhouse Gas Reporting Program or other Division-approved method.

V.B.1.i. Emission factors, beginning with the June 2022 report for calendar year 2021, where emission factors are used to calculate emissions reported pursuant to Section V.B.1.

V.B.1.i.(i) Where the Division has published a default emission factor, owners or operators submitting reports under this section must use the state default factor or other Division- accepted emission factor.

V.B.1.i.(ii) Owners or operators using a site-specific emission factor must submit documentation to the Division supporting the use of that emission factor with the first annual emission report in which that site-specific emission factor is used (the calendar year 2021 report will be considered the first report for purposes of this section). If subsequent annual emission reports use the same emission factor, operators do not need to resubmit the supporting documentation.

V.B.1.i.(iii) Owners or operators using a site-specific emission factor must conduct a gas speciation analysis, a pressurized liquid sampling method, or another Division-accepted analytical method every five (5) years to verify the ongoing accuracy of the site-specific emission factor pursuant to a Division-accepted sampling method or protocol.

V.B.1.j. A certification by the company representative that supervised the development and submission of the inventory report that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

V.B.2. The owner or operator must submit a revised annual report after discovering that an annual report submitted within the previous two (2) years contained one or more substantive errors. A substantive error is a mass of emissions of any individual pollutant subject to reporting under Section V. that is at least 10% higher or lower than the mass of emissions of the pollutant reported across the owner or operator's activity or equipment, as listed in Section V.C., in Colorado. A refinement of or improvement to an emissions estimation technique or emission factor is not a substantive error but must be noted in the subsequent annual report after the refinement or improvement. Revised annual reports must be submitted by August 31 if the substantive error is discovered between January 1 and June 30, and by February 28 if the substantive error is discovered between July 1 and December 31 of the preceding calendar year.

V.C. Beginning July 1, 2020, and each calendar year thereafter, owners or operators must maintain the following information for inclusion in the annual

report, except that beginning January 1, 2021, owners or operators must maintain the information described in Sections V.C.2.g. and V.C.2.h. Beginning May 1, 2021, owners or operators of class II disposal well facilities must maintain the following information for inclusion in the annual report.

V.C.1. AIRS number of the activity or equipment and associated facility or pipeline (if a pipeline between facilities) location, including latitude and longitude coordinates. If the activity or equipment does not have an AIRS number, a description of the activity or equipment.

V.C.2. Actual emissions from each activity or equipment listed, unless otherwise specified in the Division-approved report format, and the emission factor(s), assumptions, calculation methodology used to calculate the emissions, and other supporting information on the Division-approved form.

V.C.2.a. Abnormal events, except those reported as malfunctions under the Common Provisions or in another activity or equipment.

V.C.2.b. Acid gas removal units.

V.C.2.c. Associated gas venting and flaring, aggregated per facility. Beginning with the June 2023 report for calendar year 2022, owners or operators must measure or estimate the volume of natural gas that is vented or flared during drilling, completion, and production operations.

V.C.2.d. Blowdowns from facility equipment or piping where the physical volume of the piping between isolation valves is greater than or equal to 50 cubic feet, aggregated per activity below per facility. Beginning with the June 2024 report for calendar year 2023, owners or operators must report this information for all blowdowns from facility equipment and piping, where the physical volume between isolation valves is greater than or equal to 1 cubic foot.

V.C.2.d.(i) Pipeline venting within the facility boundary.

V.C.2.d.(ii) Compressors.

V.C.2.d.(iii) Scrubbers/strainers.

V.C.2.d.(iv) Pig launchers and receivers, through the June 2022 report for calendar year 2021.

V.C.2.d.(v) Emergency shutdowns (regardless of equipment type).

V.C.2.d.(vi) Through the June 2023 report (for calendar year 2022), all other equipment (including pipelines,

compressor case or cylinders, manifolds, suction bottles, discharge bottles, and vessels) with a physical volume between isolation valves greater than or equal to 50 cubic feet.

V.C.2.d.(vii) Beginning with the June 2024 report for calendar year 2023, all other equipment (including pipelines, compressor case or cylinders, manifolds, suction bottles, discharge bottles, and vessels), where the physical volume between isolation valves is greater than or equal to 1 cubic foot.

V.C.2.d.(viii) Beginning with the June 2024 report for calendar year 2023, best practices employed pursuant to Section II.H.4.

V.C.2.e. Boilers.

V.C.2.f. Centrifugal compressor leaks or vents, aggregated per facility. Beginning with the June 2025 report for calendar year 2024, centrifugal compressor leaks or vents must be aggregated per compressor.

V.C.2.g. Class II disposal well facility fluids accepted for injection. Owners or operators will take periodic, representative samples of the liquids for estimating emissions for the annual report.

V.C.2.h. Class II disposal well facility produced water ponds.

V.C.2.i. Beginning with the June 2026 report for calendar year 2025, crankcase vents from natural gas engines greater than or equal to 130 horsepower.

V.C.2.j. Drilling mud and mud pits.

V.C.2.k. Flares and enclosed combustion devices, where not otherwise reported in the emissions of another emissions source category.

V.C.2.l. Fugitive emissions from components, aggregated per facility. Beginning with the June 2022 report for calendar year 2021, gas composition data and component counts used in fugitive emissions calculations must be provided.

V.C.2.m. Hydrocarbon liquid storage tanks.

V.C.2.n. Hydrocarbon liquid loadout.

V.C.2.o. Maintenance and safety, where not otherwise reported in the emissions of another emissions source category.

Beginning with the June 2023 report for calendar year 2022, owners or operators must report the basis for each maintenance or safety event.

V.C.2.p. Natural gas dehydration (glycol and desiccant).

V.C.2.q. Natural gas pneumatic controllers, aggregated per facility. Pneumatic controllers at the wellhead must be aggregated with the associated facility or be reported pursuant to a different Division-approved format.

V.C.2.r. Natural gas pneumatic pumps, aggregated per facility. Pneumatic pumps at the wellhead must be aggregated with the associated facility or be reported pursuant to a different Division-approved format.

V.C.2.s. Non-road internal combustion engines.

V.C.2.t. Pigging operations, including pig launchers and receivers. Beginning with the June 2023 report for calendar year 2022, emissions from pigging operations must be separately identified in the annual report from other operational activities, and aggregated by pigging unit.

V.C.2.t.(i) Beginning with the June 2024 report for calendar year 2023, capture or control methods or best practices employed pursuant to Sections II.H.1., II.H.2., or II.H.4. per pigging unit.

V.C.2.u. Pipeline segments between facilities.

V.C.2.v. Process heaters.

V.C.2.w. Produced water storage tanks.

V.C.2.x. Produced water loadout.

V.C.2.y. Reciprocating compressor leaks or vents, aggregated per facility. Beginning with the June 2023 report for calendar year 2022, reciprocating compressor leaks or vents must be aggregated per compressor.

V.C.2.z. Separators (e.g., two-phase separators, three-phase separators, high/low pressure separators, heater-treaters, vapor recovery towers, etc.). Beginning with the June 2022 report for calendar year 2021, stages of separation must be identified.

V.C.2.aa. Stationary combustion turbines.

V.C.2.bb. Stationary compression ignition internal combustion engines.

V.C.2.cc. Stationary spark ignition internal combustion engines.

V.C.2.dd. Temporary completion and/or workover equipment (e.g., tanks).

V.C.2.ee. Thermal oxidizing units, where not otherwise reported in the emissions of another emissions source category.

V.C.2.ff. Well completions (includes flowback).

V.C.2.gg. Well workovers.

V.C.2.hh. Wellhead bradenhead.

V.D. Annual information reporting

V.D.1. Beginning in 2022, and each calendar year thereafter, the Division must prepare and send an annual information report to the Commission and the Colorado Oil and Gas Conservation Commission. The report must include:

V.D.1.a. Summary and analysis of oil and gas emissions data received or produced by the Division, including but not limited to

V.D.1.a.(i) Oil and gas annual emissions reporting under Section V.;

V.D.1.a.(ii) An update on the Division’s leak detection and repair program, including a summary of information reported under Section II.E., as well as the results of any aerial and ground-based surveys performed by or at the direction of the Division;

V.D.1.a.(iii) Data collected from early production operations monitoring data reported to the Division under Section VI.; and

V.D.1.a.(iv) Greenhouse gas intensity plans and annual verifications submitted pursuant to Sections VIII.E. and VIII.G., specifically regarding the technologies and measures employed to reduce emissions from oil and gas production.

V.D.1.b. An evaluation of the progress toward the goals set forth in the Greenhouse Gas Pollution Reduction Roadmap; and any initiatives developed by the Division to achieve Colorado’s statewide greenhouse gas emission reductions, and the role of oil and the role of oil and gas operations in achieving the reduction targets for the oil and gas sector;

V.D.1.c. Information regarding ambient air quality standard attainment, trends, and contributions from oil and gas operations, including ground-level ozone ambient air quality standards as presented to the Commission during the annual ozone presentation;

V.D.1.d. A summary of information collected pursuant to the community-based air toxics monitoring program performed by the Division under § 25-7-141(6), CRS;

V.D.1.e. Opportunities for inter-agency coordination, including workgroups, or basin-wide, statewide, or other regional studies to evaluate and address air quality issues related to oil and gas production; and

V.D.1.f. Additional information requested by the Commission or that the Division determines is relevant to achieving the state's greenhouse gas emission reduction targets or ozone attainment.

V.D.2. When transmitting information to the Colorado Oil and Gas Conservation Commission pursuant to Section V.D.1., the Division must make the report available to the public on the Division's website.

V.D.3. The Division must include the relevant annual information provided to the Colorado Oil and Gas Conservation Commission as part of the Division's report submitted every odd-numbered year to the General Assembly pursuant to § 25-7-105(1)(e)(V)), CRS. The Division must also submit the Division's General Assembly report to the Colorado Oil and Gas Conservation Commission.

VI. (State Only) Oil and Natural Gas Pre-Production, Early Production and Production Operations

VI.A. Definitions

VI.A.1. "Childcare facility" means a child care center as defined in 26.5-5-303(3)(a), C.R.S. (2024) and includes 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.

VI.A.2. "Commencement of operation" means when a source first conducts the activity that it was designed and permitted for. In addition, for oil and gas well production facilities, commencement of operation is the date any permanent production equipment is in use and product is consistently flowing to sales lines, gathering lines, or storage tanks from the first producing well at the stationary source, but no later than end of well completion operations (including flowback).

VI.A.3. "Controlling interest" means an interest that provides a person, either directly or indirectly, the power to direct or cause the direction of the management and policies of another person, whether through ownership or voting securities, by contract, or otherwise.

VI.A.4. "Cumulatively impacted community" means a census block group within the disproportionately impacted community layer in Colorado EnviroScreen (Version 1.0) with a Colorado EnviroScreen (Version 1.0) score above the 80th percentile.

VI.A.4.a. Beginning April 14, 2025, cumulatively impacted community means a census block within the disproportionately impacted community layer in Colorado EnviroScreen (Version 2.0) with a Colorado EnviroScreen (Version 2.0) score above the 80th percentile.

VI.A.5. "Disproportionately impacted community" means

VI.A.5.a. a census block group that satisfies one or more of the following.

VI.A.5.a.(i) The proportion of the population living in households that are below two hundred percent of the federal poverty level is greater than forty percent.

VI.A.5.a.(ii) The proportion of households that spend more than thirty percent of household income on housing is greater than fifty percent.

VI.A.5.a.(iii) The proportion of the population that identifies as people of color is greater than forty percent.

VI.A.5.a.(iv) The proportion of the population that is linguistically isolated is greater than twenty percent.

VI.A.5.a.(v) Multiple factors, including socioeconomic stressors, vulnerable populations, disproportionate environmental burdens, vulnerability to environmental degradation or climate change, and lack of public participation may act cumulatively to affect health and the environment and may contribute to persistent disparities.

VI.A.5.b. Beginning April 14, 2025, communities that meet the definition in 24-4-109(2)(b)(II)(A)-(D) and (F)-(G), C.R.S. (2023). These communities are identified as any census block group identified in the Disproportionately Impacted Community Map (November 2024) after selecting the criteria for "Mobile home communities", "Low-income population above 40%", "People of

color population above 40%", "Housing cost-burdened population above 50%", "Linguistically isolated population above 20%", and "Colorado EnviroScreen percentile score above 80".

VI.A.6. "Drill-out" means the process of removing the plugs placed during hydraulic fracturing or refracturing. Drill-out ends after the removal of all stage plugs and the initial wellbore clean-up.

VI.A.7. "Drilling" or "drilled" means the process to bore a hole to create a well for oil and/or natural gas production.

VI.A.8. "Flowback" means the process of allowing fluids and entrained solids to flow from a well following stimulation, either in preparation for a subsequent phase of treatment or in preparation for cleanup and placing the well into production. The term flowback also means the fluids and entrained solids flowing from a well after drilling or hydraulic fracturing or refracturing. Flowback ends when all temporary flowback equipment is removed from service. Flowback does not include drill-out.

VI.A.9. "Flowback vessel" means a vessel that contains flowback.

VI.A.10. VI.A.10. "High occupancy building unit" means

VI.A.10.a. Any school, nursing facility as defined in 25.5-4-103(14), C.R.S. (2024), hospital, facilities (i.e., life care) as defined in 11-49-101(5), C.R.S. (2024), or correctional facility as defined in 17-1-102(1.7), C.R.S. (2024), provided the facility or institution regularly serves 50 or more persons;

VI.A.10.b. An operating child care center as defined in 26.5-5-303(3)(a), C.R.S. (2024); or

VI.A.10.c. A multifamily dwelling unit with four or more units.

VI.A.11. "Hydraulic fracturing" means the process of directing pressurized fluids containing any combination of water, proppant, and any added chemicals to penetrate tight formations, such as shale, coal, and tight sand formations, that subsequently require flowback to expel fracture fluids and solids.

VI.A.12. "Hydraulic refracturing" means conducting a subsequent hydraulic fracturing operation at a well that has previously undergone a hydraulic fracturing operation.

VI.A.13. "kBOE" means production of hydrocarbon liquids and natural gas, measured in thousands of barrels of oil equivalent.

VI.A.14. "Majority operator" means an operator with company-wide production in the 8-hour ozone control area and/or northern Weld County in the calendar year immediately prior to the applicable NOx intensity target year of greater than 50,000 kBOE.

VI.A.15. “Midstream segment” means the oil and natural gas compression segment and the natural gas processing segment that are upstream of the natural gas transmission and storage segment.

VI.A.16. “Minority operator” means an operator with company-wide production in the 8-hour ozone control area and/or northern Weld County in the calendar year immediately prior to the applicable NOx intensity target year of greater than 45 kBOE but less than or equal to 50,000 kBOE.

VI.A.17. “Pre-production operations” means the drilling through the hydrocarbon bearing zones, hydraulic fracturing or refracturing, drill-out, and flowback of an oil and/or natural gas well.

VI.A.18. “Residential building unit” means a building or structure designed for use as a place of residency by a person, a family, or families. The term includes manufactured, mobile, and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes. Each individual residence within a building will be counted as one residential building unit.

VI.A.19. “School” means any operating public school as defined in 22-7-703(4), C.R.S. (2024), including any charter school as defined in 22-30.5-103(2), C.R.S. (2024), or 22-30.5-502(6), C.R.S. (2024), or private school as defined in 22-30.5-103(6.5), C.R.S. (2024).

VI.A.20. “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.

VI.A.21. “Tank measurement system” means equipment and methods used to determine the quantity of the liquids inside a flowback vessel without requiring direct access through the flowback vessel thief hatch or other opening.

VI.A.22. “Upstream segment” means oil and natural gas exploration and production operations located upstream of the midstream segment.

VI.A.23. “Well” means a hole drilled for the purpose of producing oil and/or natural gas.

VI.A.24. “Well completion” means the process that allows for the flow of petroleum and/or natural gas from newly drilled wells, to expel drilling and reservoir fluids, and to test the reservoir flow characteristics (e.g., hydraulic fracturing, drill-out, flowback).

VI.A.25. "Well re-completion" means the process that allows for the flow of petroleum and/or natural gas from an existing well from any geological interval not currently producing in the existing well, to expel drilling and reservoir fluids, and to test the reservoir flow characteristics (e.g., hydraulic re-fracturing, drill-out, flowback).

VI.B. General provisions

VI.B.1. At all times the facility and equipment must be maintained and operated in a manner consistent with good air pollution control practices for minimizing emissions.

VI.B.2. Air pollution control equipment must be operated and maintained pursuant to the manufacturing specifications or equivalent to the extent practicable and consistent with technological limitations and good engineering and maintenance practices.

VI.C. Air quality monitoring

VI.C.1. Owners or operators of drilling operations that begin on or after May 1, 2021, must monitor air quality at and/or around the pre-production and early production operations.

VI.C.1.a. Owners or operators must monitor air quality for at least ten (10) days prior to beginning pre-production operations, during all pre-production operations, and for at least six months after the well is capable of consistently producing either separable gas or salable liquid hydrocarbons (i.e., early production).

VI.C.1.b. Owners or operators must submit an air quality monitoring plan to the Division and the local government with jurisdiction over the location of the operations and any other local government unit, where applicable, within 2,000 feet of the proposed operations at least sixty (60) days prior to beginning air quality monitoring. Beginning May 1, 2025, owners or operators must submit an air quality monitoring plan using a Division-approved format for each drilling, pre-production, and production operation not located on the same surface disturbance and where the operation locations do not utilize the same monitoring equipment. Upon the request of any of these local government units within fourteen (14) days of receiving the plan, the Division will consult with them as part of its review process. Owners or operators must receive approval from the Division of the air quality monitoring plan prior to beginning air quality monitoring. Owners or operators must comply with the plan once approved. The air quality monitoring plan must include, at a minimum:

VI.C.1.b.(i) The owner or operator name and the contact information of the owner or operator representative for monitoring purposes.

VI.C.1.b.(ii) The planned schedule for drilling and pre-production operations.

VI.C.1.b.(iii) The operations to be monitored including the API number of the well(s), location of the operations including latitude and longitude coordinates, and any associated facility or equipment AIRS number(s). Beginning May 1, 2025, the Energy and Carbon Management Commission's (ECMC) Location ID as identified in the Colorado Oil and Gas Information System (COGIS), if assigned.

VI.C.1.b.(iv) Whether the local government with jurisdiction over the location of the operations has air quality monitoring requirements applicable to pre-production and/or early production operations, a description of those requirements, and a local government contact for air quality monitoring purposes.

VI.C.1.b.(v) The monitoring objective(s), which must include one or more of the following (and may include additional objectives such as field-testing new air quality monitoring technologies or improving emissions inventories):

VI.C.1.b.(v)(A) Detect, evaluate, and reduce as necessary hazardous air pollutant emissions;

VI.C.1.b.(v)(B) Detect, evaluate, and reduce as necessary ozone precursor emissions;

VI.C.1.b.(v)(C) Detect, evaluate, and reduce as necessary methane emissions.

VI.C.1.b.(vi) The air pollutant(s) and other parameters to be monitored. Pollutants must include at least one of the following: total VOCs, methane, benzene or BTEX (benzene, toluene, ethyl benzene and xylenes) or other indicator of hydrocarbon emissions from pre-production and early production operations, as appropriate to meeting the specified monitoring objectives.

VI.C.1.b.(vii) A description of the monitoring equipment to be deployed, including the manufacturer and model information and any manufacturer specifications for

the monitoring equipment and data systems. The description of pollutant monitoring equipment should explain why it was chosen and document or provide references describing relevant prior use and evaluations that are known to the owner or operator.

VI.C.1.b.(viii) A description of the meteorological monitoring equipment to be deployed. If meteorological data will not be collected on-site, the plan must provide reasoning and justification, and identify the meteorological station from which data will be obtained and demonstrate that the station represents conditions at the oil and gas development site.

VI.C.1.b.(ix) A monitor siting plan, which must include but is not limited to:

VI.C.1.b.(ix)(A) The number of monitors and/or sensors to be deployed. For monitoring plans submitted after May 1, 2025.

VI.C.1.b.(ix)(A)(1) Sensors deployed to a minimum of three (3) monitoring sites around the pre-production or production operation.

VI.C.1.b.(ix)(A)(2) Sensors deployed to a minimum of four (4) monitoring sites around the pre-production or production operation where at least one (1) residential building unit, high occupancy building unit, school, school facility, or childcare facility is located within 2,000 feet of the edge of the surface disturbance of the operations to be monitored.

VI.C.1.b.(ix)(A)(3) At least one (1) meteorological monitor capable of measuring wind speed, wind direction, temperature, pressure, and relative humidity deployed at a location where it can gather representative meteorological data, unless the use of off-site meteorological data is justified

by the operator pursuant to Section VI.C.1.b.(viii).

VI.C.1.b.(ix)(A)(4) Monitor siting distances and additional siting criteria that will provide adequate monitoring coverage.

VI.C.1.b.(ix)(A)(5) The Division may approve a justified, alternative to or variation from the provisions in Section VI.C.1.b.(ix)(A).

VI.C.1.b.(ix)(B) The location (as latitude and longitude), height, and distance (in feet) of the monitoring equipment to the edge of the surface disturbance of the operations to be monitored, including for each phase of operations if location and height of the equipment will change (e.g., monitoring placement impacted by sound walls). For monitoring plans submitted after May 1, 2025, the owner or operator must orient the meteorological monitoring equipment within +/- 10 degrees of true north, accounting for magnetic declination, upon its initial placement and any relocation, unless the use of off-site meteorological data is justified by the operator pursuant to Section VI.C.1.b. (viii).

VI.C.1.b.(ix)(C) A topographic map and plan of the site, showing the expected equipment layout, including air quality and meteorological monitor locations and their distance from pre-production and production operations. The map must indicate any obstructions to air flow to the monitor(s) and also show all roads and access ways within a half-mile of the facility and any contiguous structures, whether or not they are part of the production operations. For monitoring plans submitted after May 1, 2025, include a geographic information system (GIS) shapefile, which may be preliminary, showing the boundaries of each drilling, pre-production, and production operation covered by the monitoring plan.

VI.C.1.b.(ix)(D) For monitoring plans submitted after May 1, 2025, a description of how the placement of monitoring equipment minimizes surface disturbances, in alignment with the Colorado Energy and Carbon Management Commission's (ECMC) site preparation requirements, and any monitoring requirements that are conditions of approval (COA) in the owner or operator's ECMC permit.

VI.C.1.b.(x) The standard operating procedures that will be employed, to include at minimum:

VI.C.1.b.(x)(A) The sampling and/or measurement interval, averaging times, minimum detection concentration or level, expected precision, and confidence level at which pollutant data will be reported.

For monitoring plans submitted after May 1, 2025, the sampling rate for continually monitored pollutants (e.g., TVOC and methane) must be at a minimum sample frequency of one sample per minute.

VI.C.1.b.(x)(B) The response level for each pollutant or indicator monitored and/or sampled and the response procedures or actions that will be taken if elevated levels are observed.

For monitoring plans submitted after May 1, 2025, response levels and response procedures that are adequate to support the objective(s) of the monitoring plan.

VI.C.1.b.(x)(B)(1) Owners or operators must include a minimum of three response levels with corresponding response procedures, the highest of which includes notifications to the Division and local government with jurisdiction over the location.

VI.C.1.b.(x)(B)(2) Should the use of whole air sampling be required pursuant to Section VI.C.1.b.(xii), the sampling must be automatically

triggered and for a sample collection period not to exceed one (1) hour, unless otherwise specified in the approved monitoring plan.

VI.C.1.b.(x)(C) The data quality indicators for precision and bias of the monitoring equipment.

VI.C.1.b.(x)(D) The quality control and quality assurance procedures, including calibration intervals and frequency, which will be used to ensure proper operation of the monitoring equipment. Owners or operators may reference and attach an existing methodology.

For monitoring plans submitted after May 1, 2025, calibration and equipment testing procedures as specified in Sections VI.C.1.b.(x)(D)(1) through VI.C.1.b.(x)(D)(3) and as otherwise informed by the manufacturer or monitoring service company recommendations.

VI.C.1.b.(x)(D)(1) Continually monitoring equipment (e.g., VOC and CH4 monitors) must be challenged, at a minimum, monthly (with a minimum of 10 calendar days between challenges) using a 2-point bump test procedure. If a monitor fails to meet acceptance criteria as specified in an approved monitoring plan, an in-field calibration of the monitor must be performed. Following an in-field calibration procedure, a follow-up bump test must be performed. If the monitor fails to meet acceptance criteria in the follow-up bump test, the monitor or sensor must be replaced with a monitor or sensor that has undergone calibration prior to installation as specified in Section VI.C.1.b.

	(x)(D)(2) or repaired, recalibrated, and bump tested.
VI.C.1.b.(x)(D)(2)	Monitor calibrations must take place no more than fourteen (14) calendar days prior to or upon installation at the monitoring site. If monitors are removed from the monitoring site for any reason, they must undergo calibration no more than fourteen (14) calendar days prior to or upon re-installation at the monitoring site. For monitors that are calibrated in a factory or laboratory, calibrations must occur within sixty (60) calendar days of installation or re-installation and within fourteen (14) calendar days after the calibrated monitor leaves climate-controlled storage. Monitors calibrated in a factory or laboratory must also be challenged using a bump test procedure upon installation or re-installation.
VI.C.1.b.(x)(D)(3)	Malfunctioning monitors or sensors that require replacement must be replaced within fourteen (14) calendar days of the determination to replace the monitor or sensor (typically following a failed in-field calibration). If a monitor or sensor cannot be replaced in the required timeframe, the owner or operator must notify the Division and explain the failure to meet the required timeline. If the Division finds the delay to be justified or unavoidable, the Division will provide an extension of the required timeline.

VI.C.1.b.(x)(D)(4) Monthly bump tests, applicable calibrations, or other monitoring equipment quality control and quality assurance procedures specified in the approved monitoring plan, are not required during complete months of idle period but must be conducted prior to transitioning from an idle period to a period of operational activity.

VI.C.1.b.(x)(D)(5) The Division may approve a justified, alternative to or variation from the provisions in Section VI.C.1.b.(x)(D).

VI.C.1.b.(x)(E) A discussion of known limitations of the pollutant monitoring equipment and, if applicable, how they will be addressed.

VI.C.1.b.(x)(F) The protocol that will be used for acquiring, processing, and recording relevant meteorological data.

VI.C.1.b.(x)(G) The data system and operating protocol to be used for data collection, including, but not limited to, data logging, data processing, recording, downloading, backup and storage, and reporting. For monitoring plans submitted after May 1, 2025, the owner or operator must incorporate local storage capacity such that at least 24-hours of data may be stored and available for upload to cloud facilities on a rolling basis to minimize data loss due to intermittent connectivity.

VI.C.1.b.(x)(G)(1) For monitoring plans submitted after May 1, 2025, each sensor and meteorological monitor must maintain a minimum 75% recovery rate (i.e., minutes of data as a percentage of the total minutes in the reporting period) for each pollutant and meteorological parameter monitored per monitoring site

over the reporting period. Sensor malfunctions resulting in a less than 75% recovery rate for a reporting period may be excepted from the recovery requirement for no more than two consecutive reporting periods.

VI.C.1.b.(x)(H) The methods for collecting and analyzing speciated or other samples of chemical constituents identified by the Division when indicated necessary based on site-specific concentration thresholds, if applicable.

VI.C.1.b.(xi) A description of how the monitoring equipment, pollutant(s) monitored, and siting plan are expected to detect elevated emissions and achieve at least one of the monitoring objectives listed in Section VI.C.1.b.(v).

VI.C.1.b.(xii) For monitoring plans submitted after May 1, 2025, the owner or operator must collect speciated data using whole air samplers at operations where at least one (1) residential building unit, high occupancy building unit, school, school facility, or childcare facility is located within 2,000 feet, at the time of monitoring plan submission, of the edge of the surface disturbance of the operations to be monitored. Samplers must

VI.C.1.b.(xii)(A) Be co-located at each monitoring site located between the operations and proximal populations.

VI.C.1.b.(xii)(B) Automatically trigger upon a monitored value at or above a specified response level.

VI.C.1.b.(xii)(C) Collect a sample for a period not to exceed one (1) hour.

VI.C.1.b.(xii)(D) Be analyzed for an analyte compound list that is appropriate for the monitoring objective such as, but not limited to, BTEX (benzene, toluene, ethyl benzene, and xylenes).

VI.C.1.b.(xii)(E) The Division may approve a justified, alternative to or variation from the provisions in Section VI.C.1.b.(xii).

VI.C.1.c. Within ten (10) days of approving a monitoring plan, the Division will notify all local government units identified in Section VI.C.1.b. of the plan approval.

VI.C.1.d. Beginning May 1, 2025, and applicable to all current and future approved monitoring plans, following an inactive period of eighteen (18) months from either the indicated start of activity or pause of activity (extended idle period), the Division may choose to exit the monitoring plan and request submission of a new monitoring plan to be compliant with current requirements.

VI.C.2. Recordkeeping and reporting

VI.C.2.a. Owners or operators must keep the following records for a minimum of three (3) years, unless otherwise specified, and upon request make records available to the Division. Local governments identified in Section VI.C.1.b may request those records from the Division. If the Division has not requested the records and a local government(s) identified in Section VI.C.1.b requests the records from the Division, the Division shall request the records from the owner or operator.

VI.C.2.a.(i) The air quality monitoring plan.

VI.C.2.a.(ii) Monthly reports and the data necessary to inform the monthly reports, as provided in Section VI.C.2.b.

VI.C.2.a.(iii) Activity logs to inform Section VI.C.2.b.(iii)(A) of the monthly report.

VI.C.2.a.(iv) For a period of one year after the monthly report, the underlying raw data associated with each monitor.

VI.C.2.a.(v) For a period of one year after the monthly report, the meteorological data in the time intervals as close to the sampling and/or measurement intervals as possible Beginning May 1, 2025, the data must be in 1-minute intervals, unless otherwise specified in an approved monitoring plan.

VI.C.2.a.(vi) Beginning May 1, 2025, records of the calibration and equipment testing, as provided in Section VI.C.1.b.(x)(D).

VI.C.2.b. Owners or operators must submit monthly reports of monitoring conducted to the Division by the last day of the month following the previous month of monitoring (e.g., by June 30 for the previous May 1-31). Beginning June 30, 2025, owners or operators must submit the monthly reports using a Division-approved format and submission method.

VI.C.2.b.(i) The month and year of the monitoring period.

VI.C.2.b.(ii) A description of the monitoring equipment and the pollutant(s) monitored.

VI.C.2.b.(iii) A description of the monitored operations including

VI.C.2.b.(iii)(A) The phase of operation (e.g., prior to pre-production, during pre-production operations, early production) and activities occurring during the monitored period. Beginning June 30, 2025, start and stop dates for each phase of operation for each well.

VI.C.2.b.(iii)(B) API number of the well(s).

VI.C.2.b.(iii)(C) Location of the operations, including latitude and longitude coordinates. Beginning June 30, 2025, the location (as latitude and longitude) of the monitoring equipment.

VI.C.2.b.(iii)(D) Any associated facility or equipment AIRS number(s).

VI.C.2.b.(iii)(E) The date, time, and duration of any monitoring equipment downtime. Beginning June 30, 2025, discussion of the cause(s) of monitoring equipment downtime resulting in failure to meet the 75% recovery rate.

VI.C.2.b.(iii)(F) The date, time, and duration of operations malfunctions and shut-in periods or other events investigated for influence on monitoring.

VI.C.2.b.(iii)(G) For monitoring plans submitted after May 1, 2025, the owner or operator must include updated geographic information system (GIS) shapefile(s) showing the boundaries of each drilling, pre-production, and production operation covered by the

monitoring plan if the shapefile submitted pursuant to Section VI.C.1.b.(ix)(C) was not the final as-built shapefile.

VI.C.2.b.(iv) For the first monthly report after beginning monitoring during pre-production operations, a summary of air quality condition results monitored prior to beginning pre-production operations, including time series of the results at hourly or higher time resolution and a statistical summary of the air quality results monitored prior to beginning pre-production operations, including number of observations, maximum concentrations or levels, periodic averages, and data distributions including 5^{th}, 25^{th}, median, 75^{th} and 95^{th} percentile values. Beginning June 30, 2025, submit the monitored air quality data at a minimum sample frequency of one (1) sample per minute timestamped in Mountain Standard Time (UTC-7), unless otherwise specified in an approved monitoring plan, and describe the activities that occurred during the monitoring conducted prior to beginning pre-production operations.

VI.C.2.b.(v) A summary of monitored air quality results, including

VI.C.2.b.(v)(A) For reports submitted prior to June 30, 2025, time series plots as hourly or higher time resolution and a statistical summary including number of observations, maximum concentrations or levels, periodic averages, and date distributions including 5^{th}, 25^{th}, median, 75^{th} and 95 percentile values.

VI.C.2.b.(v)(B) For reports submitted on and after June 30, 2025, submit the monitored air quality data at a minimum sample frequency of one (1) sample per minute and flag data for any sensor that fails to meet the monthly bump test acceptance criteria.

VI.C.2.b.(v)(C) For monthly reports for monitoring plans submitted after May 1, 2025, report any data loss and the cause for the data loss.

VI.C.2.b.(vi) A description of responsive action(s) taken as a result of monitoring results, including the date; concentration or level measured; correlations with specific events, activities, and/or monitoring

thresholds; and any additional steps taken as a result of the responsive action. Beginning June 30, 2025,

VI.C.2.b.(vi)(A) This description applies to action(s) taken as a result of exceedance of any response level and must also include time and duration of the exceedance.

VI.C.2.b.(vi)(B) Describe the events and activities (e.g., drilling, hydraulic fracturing or refracturing, drill-out, flowback, equipment maintenance, equipment malfunction) occurring at the time of the exceedance of the response level.

VI.C.2.b.(vii) The results of any speciated or other samples of chemical constituents identified by the Division and collected when site-specific concentrations indicate such samples are necessary.

VI.C.2.b.(viii) A summary of meteorological data, including in the time intervals identified for concentration readings in the air quality monitoring plan during the time period of responsive action(s). If meteorological data is collected on-site, the meteorological data assessed in as close to the sampling and/or measurement intervals as possible.

VI.C.2.b.(ix) A description of how data will be processed, if available from the manufacturer, and summarized for purposes of fulfilling monthly reporting requirements, including whether and how data will be corrected, and how missing data and values that are below detection limits will be treated in statistical summaries.

VI.C.2.b.(x) Beginning May 2023, a list of leaking components requiring repair and the monitoring method(s) used to determine the presence of the leak pursuant to Section II.E.

VI.C.2.b.(xi) In the last monthly report, a certification by the company representative that supervised the development and submission of the monitoring reports that, based on information and belief formed after reasonable inquiry, the statements and information in the monthly reports are true, accurate, and complete.

VI.C.2.c. Beginning May 1, 2025, owners or operators are not required to submit the monthly reports pursuant to Section VI.C.2.b. during complete months of idle periods but must notify the Division that the operation is idle. For purposes of this section, idle period means a period of time when a well has been drilled through the hydrocarbon layer but not completed or a well is not producing hydrocarbons but is capable of production by opening valves, activating existing equipment, or supplying a power source.

VI.C.3. Owners or operators must notify the Division and the local government with jurisdiction over the location of the operations, using the contact provided in Section VI.C.1.b.(iv), within forty-eight (48) hours of responsive action(s) taken as a result of recorded values in excess of the response level.

VI.D. Emission reduction from pre-production flowback vessels

VI.D.1. Control

VI.D.1.a. Owners or operators of a well with flowback that begins on or after May 1, 2021, must collect and control emissions from each flowback vessel on and after the date flowback is routed to the flowback vessel by routing emissions to and operating air pollution control equipment that achieves a hydrocarbon control efficiency of at least 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons.

VI.D.1.a.(i) Owners or operators must use enclosed, vapor-tight flowback vessels.

VI.D.1.a.(ii) Flowback vessels must be inspected, tested, and refurbished where necessary to ensure the flowback vessel is vapor-tight prior to receiving flowback.

VI.D.1.a.(iii) Owners or operators must use a tank measurement system to determine the quantity of liquids in the flowback vessel(s).

VI.D.1.a.(iii)(A) Thief hatches or other access points to the flowback vessel must remain closed and latched during activities to determine the quantity of liquids in the flowback vessel(s).

VI.D.1.a.(iii)(B) Opening the thief hatch or other access point if required to inspect, test, or calibrate the tank measurement system or to

add biocides or chemicals is not a violation of Section VI.D.1.a.(ii)(A).

VI.D.1.a.(iv) Combustion devices used during pre-production operations must be enclosed, have no visible emissions during normal operation, and be designed so that an observer, by means of visual observation from the outside of the enclosed combustion device, or by other means approved by the Division, determine whether it is operating properly.

VI.D.1.a.(iv)(A) Combustion devices must be equipped with an operational auto-igniter upon installation of the combustion device.

VI.D.2. Monitoring

VI.D.2.a. Owners or operators of a well with flowback that begins on or after May 1, 2021, must conduct daily visual inspections of the flowback vessel and any associated equipment.

VI.D.2.a.(i) Visual inspection of any thief hatch, pressure relief valve, or other access point to ensure that they are closed and properly seated.

VI.D.2.a.(ii) Visual inspection or monitoring of the air pollution control equipment to ensure that it is operating.

VI.D.2.a.(iii) Visual inspection of the air pollution control equipment to ensure that the valves for the piping from the flowback vessel to the air pollution control equipment are open.

VI.D.2.a.(iv) If a combustion device is used, visual inspection of the auto-igniter and valves for piping of gas to the pilot light to ensure they are functioning properly.

VI.D.2.a.(v) If a combustion device is used, inspection of the device for the presence or absence of smoke. If smoke is observed, either the equipment must be immediately shut-in to investigate the potential cause for smoke and perform repairs, as necessary, or EPA Method 22 must be conducted to determine whether visible emissions are present for a period of at least one (1) minute in fifteen (15) minutes.

VI.D.3. Recordkeeping

VI.D.3.a. The owner or operator of each flowback vessel subject to Section VI.D.1. must maintain records for a period of two

(2) years and make them available to the Division upon request, including

VI.D.3.a.(i) The API number of the well and the associated facility location, including latitude and longitude coordinates.

VI.D.3.a.(ii) The date and time of the onset of flowback.

VI.D.3.a.(iii) The date and time the flowback vessels were permanently disconnected, if applicable.

VI.D.3.a.(iii) The date and duration of any period where the air pollution control equipment is not operating.

VI.D.3.a.(iv) Records of the inspections required in Section VI.D.2. including the time and date of each inspection, a description of any problems observed, a description and date of any corrective action(s) taken, and the name of the employee or third party performing corrective action(s).

VI.D.3.a.(v) Where a combustion device is used, the date and result of any EPA Method 22 test or investigation pursuant to Section VI.D.2.a.(v).

VI.E. Use and Operational Restrictions for Drilling, Pre-Production, and Production Operations

VI.E.1. Beginning in 2024, owners or operators of drilling and pre-production operations in the 8-hour ozone control area or northern Weld County conducted between May 1 and September 30 must comply with the following use practices.

VI.E.1.a. At operations located in a cumulatively impacted community.

VI.E.1.a.(i) Drill rig engines and/or turbines with a manufacturer’s design rate greater than or equal to 50 horsepower must be

VI.E.1.a.(i)(A) Powered by grid power or non-fossil fuel generated power (e.g., solar, geothermal, battery). For owners or operators utilizing this Section VI.E.1.a.(i)(A), other associated non-self-propelled fuel combustion equipment used during drilling, hydraulic fracturing, or hydraulic refracturing of a well (e.g., compressors, pumps, boilers, process heaters, lighting) must be powered by grid power or no-fossil fuel generated power, where technically feasible;

VI.E.1.a.(i)(B) EPA Tier 4 Final diesel engines, which can include the use of dual fuel;

VI.E.1.a.(i)(C) Natural gas generators including, but not limited to, those with battery storage system; or

VI.E.1.a.(i)(D) Other technologies or operational optimization methods as approved by the Division.

VI.E.1.a.(ii) Pumps used for hydraulic fracturing or refracturing must be powered by

VI.E.1.a.(ii)(A) Electricity, natural gas-fired engines, or natural gas-fired turbines; or

VI.E.1.a.(ii)(B) Other technologies or operational optimization methods as approved by the Division.

VI.E.1.b. At operations not located in a cumulatively impacted community.

VI.E.1.b.(i) Drill rig engines or turbines with a manufacturer's design rate greater than or equal to 50 horsepower must be:

VI.E.1.b.(i)(A) Powered by grid power or non-fossil fuel generated power (e.g., solar, geothermal, battery);

VI.E.1.b.(i)(B) EPA Tier 4 Final diesel engines, which can include the use of dual fuel;

VI.E.1.b.(i)(C) In calendar years 2024 and 2025, Tier II dual fuel engines;

VI.E.1.b.(i)(D) Tier II diesel engine combined with operational practices guaranteed by the manufacturer to be Tier IV compliant;

VI.E.1.b.(i)(E) Natural gas generators including, but not limited to, those with battery storage system; or

VI.E.1.b.(i)(F) Other technologies or operational optimization methods as approved by the Division.

VI.E.1.b.(ii) Pumps used for hydraulic fracturing or refracturing must be powered by

VI.E.1.b.(ii)(A) Electricity, natural-gas fired engines, or natural-gas fired turbines;

VI.E.1.b.(ii)(B) EPA Tier 4 Final diesel engines, which can include the use of dual fuel; or

VI.E.1.b.(ii)(C) Other technologies or operational optimization methods as approved by the Division.

VI.E.1.c. Beginning calendar year 2026, owners or operators will use the facility location in relation to a cumulatively impacted community as defined in Section VI.A.3.a.

VI.E.1.d. The use practices in Sections VI.E.1.a. and VI.E.1.b. do not apply to emergency engines or turbines providing back-up power in case of unexpected power outages.

VI.E.1.e. All engines and turbines used to drill, hydraulically fracture, or hydraulically refracture operations and other associated equipment used during drilling, hydraulic fracturing, or hydraulic refracturing operations must be operated and maintained pursuant to the manufacturing specifications, recommendations, or equivalent to the extent practicable, and consistent with technological limitations and good engineering and maintenance practices.

VI.E.2. Beginning in 2024, operators of upstream segment operations (e.g., drilling, pre-production, and well production facilities) in the 8-hour ozone control area or northern Weld County must reduce emissions between May 1 and September 30 and achieve the following NOx intensity targets.

VI.E.2.a. Compliance with the NOx intensity targets will be determined for the applicable year using the following calculation, based on the final report submitted pursuant to Part B, Section V. (i.e., ONGAEIR).

NOx intensity = operator May-Sept NOx emissions / (0.42 * calendar year kBOE)

* Operator May-Sept NOx emissions means emissions from all upstream segment activities and equipment in which the majority or minority operator has a controlling interest. NOx emissions is only allocated to one operator for the May-Sept time period.

VI.E.2.b. For calendar year 2024,

VI.E.2.b.(i) Majority operator: 0.034 tons NOx/kBOE.

VI.E.2.b.(ii) Minority operator: 0.073 tons NOx/kBOE.

VI.E.2.c. For calendar year 2025,

VI.E.2.c.(i) Majority operator: 0.028 tons NOx/kBOE.

VI.E.2.c.(ii) Minority operator: 0.060 tons NOx/kBOE.

VI.E.2.d. For calendar year 2026,

VI.E.2.d.(i) Majority operator: 0.027 tons NOx/kBOE.

VI.E.2.d.(ii) Minority operator: 0.058 tons NOx/kBOE.

VI.E.3. Recordkeeping. The following records for wells drilled on or after May 1, 2024, and well production facilities in the 8-hour ozone control area or northern Weld County must be kept for a period of five (5) years and made available to the Division upon request.

VI.E.3.a. For drilling, hydraulic fracturing, and hydraulic refracturing operations located in a cumulatively impacted community, records demonstrating that the use practices in Section VI.E.1.a. were followed between May 1 and September 30.

VI.E.3.b. For drilling, hydraulic fracturing, and hydraulic refracturing operations not located in a cumulatively impacted community, records demonstrating that the use practices in Section VI.E.1.b. were followed between May 1 and September 30.

VI.E.3.c. Records of any engines or turbines used to drill, hydraulically fracture, and hydraulically refracture a well between May 1 and September 30, including AIRS number, if applicable; manufacturer model; horsepower; engine configuration; whether the engine or turbine is grid powered, if applicable; and the emissions tier the engine is certified or guaranteed to meet, if applicable.

VI.E.3.d. A mapped image of the location of the drilling operations that occurred between May 1 and September 30 in relation to any cumulatively impacted community or disproportionately impacted community within 2000 feet of the drilling operations at the time of the drilling operations.

VI.E.3.e. The manufacturer specifications, recommendations, or equivalent specified in Section VI.E.1.c., if applicable.

VI.E.3.f. Records of NOx emissions from well production facilities and wells drilled and/or hydraulically fractured or refractured between May 1 and September 30 and company kBOE.

VI.E.4. Reporting. Beginning November 30, 2024, and by November 30 of 2025 and 2026 thereafter, the owner or operator of wells drilled on or after May 1, 2024, and/or well production facilities in the 8-hour ozone control area or northern Weld County must submit the following information using a Division-approved format.

VI.E.4.a. For each drilling, hydraulic fracturing, and hydraulic refracturing operation occurring May 1 through September 30, the report must include, but is not limited to

VI.E.4.a.(i) The location of the operations (i.e., not location per well), including latitude and longitude coordinates, and any associated facility or equipment AIRs number(s).

VI.E.4.a.(ii) An identification of which operations are located within a cumulatively impacted community.

VI.E.4.a.(iii) The API number of the well(s), if known.

VI.E.4.a.(iv) The date and duration of drilling, hydraulic fracturing, and hydraulic refracturing of each well.

VI.E.4.a.(v) An identification of any engines or turbines used to drill, hydraulically fracture, and hydraulically refracture a well, including AIRS number, if applicable; manufacturer model; horsepower; engine configuration; whether the engine is grid powered, if applicable; and the emissions tier the engine is certified or guaranteed to meet, if applicable.

VI.E.4.a.(vi) Performance test, manufacturer guarantee, or other documentation if claiming a lower emission factor, if applicable.

VI.E.4.a.(vii) For drilling, hydraulic fracturing, and hydraulic refracturing operations occurring May 1 through September 30 and located in a cumulatively impacted community, a demonstration that the use practices in Section VI.E.1.a. were followed.

VI.E.4.a.(viii) For drilling, hydraulic fracturing, and hydraulic refracturing operations not located in a cumulatively impacted community, a demonstration that the use practices in Section VI.E.1.b. were followed.

VI.E.4.a.(ix) An interim report of the drilling, hydraulic fracturing, and hydraulic refracturing operation NOx

emissions for the time period of May 1 through September 30.

VI.E.4.b. For each well production facility operating May 1 through September 30, the report must include, but is not limited to

VI.E.4.b.(i) An identification of each well production facility, including facility name and facility AIRS ID or facility location if the facility does not have an AIRS ID.

VI.E.4.b.(ii) An identification of which well production facilities are located within a cumulatively impacted community.

VI.E.4.b.(iii) An interim report of the well production facility NOx emissions for the time period of May 1 through September 30.

VI.E.4.c. Owners or operators of drilling, hydraulic fracturing, hydraulic refracturing operations and well production facilities must submit

VI.E.4.c.(i) The company's rolling twelve month total kBOE through September 30.

VI.E.4.c.(i)(A) Production can only be allocated to one operator for the same time period. Operators must account for production from all oil or natural gas wells and well production facilities in which the operator holds the controlling interest. Operators must account for production during the time in which the operator holds that controlling interest.

VI.E.4.c.(i)(B) Operators must calculate kBOE by adding the production of hydrocarbon liquids in thousand barrels to the proportion of natural gas (calculated by dividing the million standard cubic feet (MMscf) volume of natural gas produced by the conversion rate of 5.8 Mscf/kBOE).

VI.E.5. Reporting. Owners or operators must submit an updated report as required in Section VI.E.4. with asset transfers impacting the reporting year by June 30 of the subsequent year (e.g., an updated report including asset transfers impacting 2024 must be submitted by June 30, 2025).

VI.E.5.a. Owners or operators that commence drilling, hydraulic fracturing, or hydraulic refracturing operations after May 1 of the compliance year that are transferred or acquired by a different controlling interest must submit documentation of how the NOx emissions between the commencement of drilling, hydraulic fracturing, or hydraulic fracturing and September 30 and the production between commencement of operation and the end of the calendar year will be allocated between the acquiring operator and selling operator for the purposes of determining compliance with the applicable NOx intensity target. The selling operator must also report

VI.E.5.a.(i) Identification of each drilling, hydraulic fracturing, hydraulic refracturing operation transferred (name and AIRS ID, if applicable), the name of the acquiring operator, and the date of closing of the transaction.

VI.E.5.a.(ii) The drilling, hydraulic fracturing, and hydraulic refracturing operation NOx emissions for the time period of May 1 through September 30.

VI.E.5.a.(iii) The drilling, hydraulic fracturing, and hydraulic refracturing operation production for the time period of May 1 through the end of the calendar year.

VII. (State Only) Reduction of Emissions from Oil and Natural Gas Midstream Segment Fuel Combustion Equipment

VII.A. Definitions

VII.A.1. Repealed.

VII.A.2. Repealed.

VII.A.3. Repealed.

VII.A.4. “2021 MFCE GHG emissions” means the midstream company’s total reported greenhouse gas (GHG) emission in metric tons (mt) of carbon dioxide equivalent (CO2e) from the midstream company’s midstream fuel combustion equipment (MFCE) in Colorado in calendar year 2021, as identified by the Division in 2024.

VII.A.5. “Avoided emissions via electrification” means the MFCE GHG emissions avoided from electrification projects undertaken by the midstream company on or after January 1, 2016, and before July 31, 2022, as identified by the Division in 2024.

VII.A.6. "Controlling interest" means an interest that provides a person, either directly or indirectly, the power to direct or cause the direction of the management and policies of another person, whether through ownership or voting securities, by contract, or otherwise.

VII.A.7. "Disproportionately impacted community" (DI community) means those communities that meet the definition contained in § 24-4-109(2)(b)(II)(A)-(D) and (F), C.R.S. (May 23, 2023). For purposes of this Section VII. disproportionately impacted community means any census block group identified in the Air Quality Control Commission Regulation Number 3 Disproportionately Impacted Community Layer in Version 1.0 of Colorado EnviroScreen.

VII.A.7.a. For purposes of Section VII.F.2.b., disproportionately impacted community means any census block group identified in the Air Quality Control Commission Regulation Number 3 Disproportionately Impacted Community Layer in either Version 1.0 of Colorado EnviroScreen or Version 2.0 of Colorado EnviroScreen.

VII.A.8. "Front range prioritization area" (FRPA) means the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld.

VII.A.9. "Harmful air pollutants" for purposes of Section VII. means pollutants designated by EPA as criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate pollution (PM) (PM2.5 and PM10) and sulfur dioxide) or hazardous air pollutants.

VII.A.10. "Midstream company" means a company (or parent company) operating midstream fuel combustion equipment (MFCE) in the midstream segment. MFCE and emissions from MFCE can only be allocated to one midstream company for the same time period. A midstream company with the controlling interest in the MFCE is responsible for the MFCE.

VII.A.11. "Midstream fuel combustion equipment" (MFCE) means engines, turbines, process and other heaters, boilers, and reboilers operated by a midstream company in the midstream segment.

VII.A.12. "Midstream segment" means the oil and natural gas compression segment and the natural gas processing segment upstream of the natural gas transmission and storage segment.

VII.A.13. "Midstream company-specific emissions cap" (company cap) means the CO2e emissions (in metric tons per year) from a

midstream company's MFCE in Colorado that the company must not exceed in calendar year 2030 and each subsequent year.

VII.A.14. Repealed.

VII.A.15. Repealed.

VII.A.16. "Natural gas processing segment" means the operations engaged in the separation of natural gas liquids (NGLs) or non-methane gases from produced natural gas, or the separation of NGLs into one or more component mixtures. Separation includes one or more of the following: forced extraction of natural gas liquids, sulfur and carbon dioxide removal, fractionation of NGLs, or the capture of CO2 separated from natural gas streams. This segment also includes all residue gas compression equipment owned or operated by the natural gas processing plant.

VII.A.17. "Natural gas transmission and storage segment" includes onshore natural gas transmission pipelines, onshore natural gas transmission compression, underground natural gas storage, and liquefied natural gas (LNG) storage, as these terms are defined in 40 CFR Part 98, Section 98.230 (October 22, 2015) that are physically located in Colorado.

VII.A.18. "New entrant" means a midstream company that did not own or operate any MFCE in the midstream segment in Colorado as of September 30, 2023, that constructs a new midstream segment facility on or after September 30, 2023. As soon as it begins to own or operate MFCE, a new entrant becomes a midstream company for purposes of Section VII.

VII.A.19. Repealed.

VII.A.20. "Oil and natural gas compression segment" means the oil and natural gas compression, midstream pipelines, and other equipment used to collect oil and/or natural gas from gas or oil wells and used to compress, dehydrate, sweeten, or transport the oil and/or natural gas to a natural gas processing facility, a natural gas transmission pipeline, or to a natural gas distribution pipeline. For purposes of Section VII., equipment located at a well production facility, including but not limited to compressors, is excluded from the oil and natural gas compression segment.

VII.A.21. "Residue gas" and "residue gas compression" mean, respectively, production lease natural gas from which gas liquid products and, in some cases, non-hydrocarbon components have been extracted such that it meets the specifications set by a pipeline transmission company, and/or a distribution company; and the compressors operated by the processing facility, whether inside the processing facility boundary fence or outside

the fence-line, that deliver the residue gas from the processing facility to a transmission pipeline.

VII.B. Beginning January 1, 2022, each midstream company must participate in this Section VII. program to reduce greenhouse gas emissions from midstream fuel combustion equipment by twenty percent (20%) over the 2015 baseline as determined by § 25-7-140(2)(a)(II), C.R.S.

VII.C. Repealed.

VII.D. Repealed.

VII.E. Repealed.

VII.F. Midstream segment emissions reduction program.

VII.F.1. Beginning February 14, 2025, each midstream company must participate in this midstream segment emissions reduction program to reduce greenhouse gas emissions from midstream fuel combustion equipment (MFCE) in Colorado.

VII.F.1.a. Midstream companies owning or operating MFCE in Colorado must achieve an overall midstream segment cap of 3,930,228 metric tons CO2e through compliance with company specific emissions caps. Midstream companies must achieve company caps by December 31, 2030, and maintain the company caps each year thereafter.

VII.F.1.a.(i) Company caps are established by the Division pursuant to the following calculations, as of February 14, 2025, and as published in the Division's annual report under Section VII.F.5.

VII.F.1.a.(i)(A) For midstream companies with "2021 MFCE GHG emissions" of 25,000 mt CO2e or less, the company cap equals the company's "2021 MFCE GHG emissions".

VII.F.1.a.(i)(B) For all other midstream companies, the company cap equals the smaller of [("2021 MFCE GHG emissions" + "avoided emissions via electrification") * (1 - capfactor %) as rounded to the nearest whole number] or "2021 MFCE GHG emissions".

VII.F.1.a.(i)(C) The capfactor% is calculated, where

VII.F.1.a.(i)(C)(1) For midstream companies with "2021 MFCE GHG emissions" of 500,000 mt CO2e or greater, the capfactor% is 22.532666%. For the individual subsidiaries of

a parent company that in aggregate have “2021 MFCE GHG emissions” of 500,000 of greater, the cap factor is also 22.532666% for the parent company of such subsidiaries.

VII.F.1.a.(i)(C)(2) For all other midstream companies, the capfactor% equals ((“2021 MFCE GHG emissions” + “avoided emissions via electrification”) – 25,000) * [(22.532666% - 6.0%) / (500,000 – 25,000)] + 6.0%.

VII.F.1.a.(ii) Company caps may be adjusted as provided in Section VII.F.4.

VII.F.1.a.(iii) A new entrant must comply with a company cap of zero mt CO2e.

VII.F.1.b. The Division will extend a midstream company’s compliance deadline if any of the following occur:

VII.F.1.b.(i) The midstream company requires construction permit(s) or permit modification(s) to comply with Section VII. and submitted a complete permit application to the Division at least twelve (12) months prior to the planned start of construction or modification, but no later than December 31, 2028, but has not been issued the relevant permit by December 31, 2029;

VII.F.1.b.(ii) If after December 31, 2030, the midstream company requires construction permit(s) or permit modification(s) for continued compliance with Section VII. and submitted a complete permit application to the Division at least twelve (12) months prior to the planned start of construction or modification but has not been issued the relevant permit within twelve (12) months of receipt of the permit application;

VII.F.1.b.(iii) The Division approves a midstream company’s demonstration that the midstream company submitted a service application request or other request for service as required by its electric utility by December 31, 2026, but will not have service by December 31, 2029; or

VII.F.1.b.(iv) The Division approves a midstream company's demonstration that, for good cause shown, the midstream company was, or will be, unable to achieve the company cap due to unforeseeable circumstances (e.g., natural disasters) or unavoidable events even if foreseeable (e.g., utility actions subject to Public Utilities Commission approvals or other regulatory restrictions; federal, state, or local permitting delays; or supply chain delays) that are beyond the reasonable control of the midstream company.

VII.F.1.c. The Division may exclude temporary emissions from a midstream company's MFCE for purposes of demonstrating compliance with the midstream company's company cap if the midstream company demonstrates through the notice specified in Section VII.F.1.c.(iv) that the temporary emissions were a result of actions taken due to electrical grid reliability as provided in Sections VII.F.1.c.(i) through VII.F.1.c.(iv).

VII.F.1.c.(i) To curtail onsite electricity consumption at the request of the electricity provider.

VII.F.1.c.(ii) To generate onsite electrical power to operate a midstream segment facility's electrically-powered equipment or to operate backup equipment for a midstream segment facility's electrically-powered equipment where the electrical power or power quality, such as insufficient voltage, supplied by a third-party electric utility is temporarily insufficient to operate some or all of a midstream segment facility's equipment.

VII.F.1.c.(iii) When the electric power provider serving the midstream operator has issued a public safety shutoff notice for the area in which the midstream facility is located.

VII.F.1.c.(iv) When there is a full or partial power outage at the midstream facility.

VII.F.1.c.(v) Within thirty (30) days after the conclusion of an event specified in Sections VII.F.1.c.(i) through VII.F.1.c.(iv), the midstream company must submit a notice to the Division including

VII.F.1.c.(v)(A) The AIRS ID of the MFCE utilized for a purpose in Sections VII.F.1.c.(i) through VII.F.1.c.(iv).

VII.F.1.c.(v)(B) Documentation that the MFCE emissions were necessary for a purpose in Sections VII.F.1.c.(i) through VII.F.1.c.(iii). Such documentation must include verification from the electric utility about the extent of the public safety power shutoff, power outage, or time period where the utility asked the midstream company to curtail electricity usage.

VII.F.1.c.(v)(C) The time the MFCE began and stopped operating for a purpose in Sections VII.F.1.c.(i) through VII.F.1.c.(iv).

VII.F.1.c.(v)(D) The total time (in hours) the MFCE operated throughout the period for a purpose in Sections VII.F.1.c.(i) through VII.F.1.c.(iv).

VII.F.1.c.(v)(E) The total estimated MFCE CO2e emissions that occurred as a result of a purpose in Sections VII.F.1.c.(i) through VII.F.1.c.(iv).

VII.F.2. Compliance methods.

VII.F.2.a. A midstream company that does not own or operate MFCE at facilities located in the FRPA as of February 14, 2025, and does not acquire facilities with MFCE located in the FRPA between February 14, 2025, and December 31, 2029, must achieve its company cap by reducing onsite GHG emissions and/or retiring GHG credits.

VII.F.2.b. A midstream company that owns or operates MFCE at facilities located in the FRPA as of February 14, 2025, or that acquires facilities with MFCE located in the FRPA between February 14, 2025, and December 31, 2029, must achieve its company cap by reducing onsite GHG emissions from MFCE. The midstream company may retire GHG credits to achieve its company cap if

VII.F.2.b.(i) By no later than January 1, 2029, demonstrates that the midstream company achieved, or will achieve by December 31, 2030, the FRPA-company reduction obligation, which is onsite reductions of CO2e from MFCE at the midstream company’s facilities located in a disproportionately impacted community and/or in the FRPA in an amount equal to or greater than 45% multiplied by the difference between the company’s “2021 MFCE GHG

emissions" and the company cap as of February 14, 2025.

VII.F.2.b.(ii) By no later than January 1, 2029, demonstrates that the onsite emissions reductions needed to achieve the 45% in Section VII.F.2.b.(i) are not technically or economically feasible,

VII.F.2.b.(ii)(A) If reductions pursuant to Section VII.F.2.b.(i) cannot be achieved, onsite emissions reductions must be achieved from MFCE at any of the midstream company's facilities, if technically and economically feasible.

VII.F.2.b.(ii)(B) In demonstrating that reductions are not technically or economically feasible, the midstream company must evaluate the following, but not limited to

VII.F.2.b.(ii)(B)(1) The direct costs, including capital costs and incremental operating costs, of potential onsite emissions reduction options.

VII.F.2.b.(ii)(B)(2) The benefits of completing the onsite emissions reductions, including reduced energy use and reduced emissions over the life of the emissions reduction options.

VII.F.2.b.(ii)(B)(3) If an evaluated onsite emissions reduction option involves electrification, the availability and cost of supplying electric grid power to the facility or equipment.

VII.F.2.b.(ii)(B)(4) The most recent social cost of greenhouse gases for which the federal government has determined the cost, except that the social cost of greenhouse gases that is used may not be lower than that established by the Interagency Working Group in 2016 and it can't have a discount rate

higher than 2.5%, consistent with the State Air Act as of December 20, 2024.

VII.F.2.b.(ii)(C) The demonstration requires Division approval after opportunity for public comment.

VII.F.2.c. A midstream company that owns or operates MFCE at facilities located in the FRPA as of February 14, 2025, or that acquires facilities with MFCE located in the FRPA between February 14, 2025, and December 31, 2029, with 2021 MFCE GHG emissions used to calculate the company caps in Section VII.F.1.a.(i) less than 25,000 metric tons CO2e must achieve its company cap by reducing onsite GHG emissions and/or retiring GHG credits.

VII.F.2.d. Midstream companies must prioritize reductions at facilities located in a disproportionately impacted community where possible.

VII.F.3. Asset transfers.

VII.F.3.a. Midstream companies may transfer ownership of a midstream segment facility with a portion of the company cap and/or the FRPA-company reduction obligation. The amount of the company cap transferred applies for the entire year in which the facility and cap are transferred and each year thereafter.

VII.F.3.b. A midstream company that transfers ownership of all of that midstream company’s midstream segment facilities in Colorado will transfer the total company cap to the transferee midstream company.

VII.F.3.c. The transfer of an existing midstream segment facility to a midstream company with no assigned company cap does not make the acquiring midstream company a new entrant.

VII.F.3.d. Midstream companies that transfer midstream segment facilities and company caps must submit a notice to the Division within sixty (60) days of the transfer of ownership including

VII.F.3.d.(i) The names of the transferor and transferee midstream companies.

VII.F.3.d.(ii) For each facility transferred, the facility name and facility AIRS ID.

VII.F.3.d.(iii) The total transferred company cap and/or FRPA reduction obligation.

VII.F.3.d.(iv) The date of the transfer of ownership.

VII.F.3.e. Following a transfer of company cap or FRPA reduction obligation under Section VII.F.3.a., the Division shall adjust each midstream company's company cap and/or FRPA reduction obligation as agreed upon by the midstream companies, as set forth below:

VII.F.3.e.(i) The Division will add or subtract, as applicable, the total of the company cap or FRPA reduction obligation that was transferred to or from the midstream company as part of an asset transfer on or after February 14, 2025, as set forth in the notice submitted pursuant to Section VII.F.3.d.

VII.F.4. The Division may adjust company caps and the FRPA-company reduction obligation

VII.F.4.a. By adding or subtracting, as applicable, due to asset and/or company cap transfers, including by new entrants.

VII.F.4.b. By distributing to any new entrant or other midstream company any amount of 2030 company cap from a midstream company that has permanently ceased operations in Colorado such that the midstream company is no longer subject to Regulation Number 7.

VII.F.5. The Division will publish an annual midstream segment information report by October 31 of each year, beginning in 2025. The report must include

VII.F.5.a. A summary of the midstream segment emissions and equipment data received by the Division.

VII.F.5.b. A summary of the midstream company project plans for achieving the company caps.

VII.F.5.c. A summary of midstream company project plans to achieve emissions reductions from MFCE located in disproportionately impacted communities in and outside of the FRPA.

VII.F.5.d. Midstream facility ownership transfers, new entrants, 2021 MFCE GHG emissions, and a statement of current company caps and company FRPA-company reduction obligations.

VII.F.5.e. An evaluation of the progress of the midstream segment toward the 2030 emissions reduction goal.

VII.F.5.f. Any adjustments made under Section VII.F.4. to the midstream segment cap, the midstream segment 2015 baseline, or any company's 2021 MFCE GHG emissions.

VII.F.6. A midstream company may generate, sell, purchase, and retire GHG credits through the GHG crediting and tracking system as defined and established in Regulation Number 27, Part D to achieve the company cap, subject to the following provisions.

VII.F.6.a. Midstream companies must adhere to the GHG crediting and tracking system establishment and maintenance clauses in Regulation Number 27, Part D, Section I.

VII.F.6.b. Midstream companies must register in the Division's GHG crediting and tracking system pursuant to Regulation Number 27, Part D by 2028, or within ninety days of becoming subject to Regulation Number 7, Part B, Section VII.

VII.F.6.c. Beginning in reporting year 2028 for emissions in calendar year 2027, a midstream company by March 31 pursuant to Part B, Section V.A.3. will generate one (1) GHG credit for each metric ton of CO2e that the company's annual direct GHG emissions are less than the midstream company cap.

VII.F.6.d. The Division will issue GHG credits to midstream companies that submitted their annual report by March 31 pursuant to Part B, Section V.A.3. on an annual basis beginning in calendar year 2028. The Division will credit the GHG crediting and tracking system credit account of an operating midstream company with GHG credits equal to the difference between the midstream company's annual direct GHG emissions and the midstream company cap if the midstream company has submitted all reports in accordance with Section VII.G., as verified by the Division and has lowered its overall emissions below its company cap.

VII.F.6.d.(i) A midstream company that owns or operates MFCE at facilities located in the FRPA as of February 14, 2025, or that acquires facilities with MFCE located in the FRPA between February 14, 2025, and December 31, 2029, cannot retire GHG credits to satisfy its company cap unless the midstream company complies with the requirements in Section VII.F.2.b.

VII.F.6.d.(ii) A midstream company which has permanently ceased operations in Colorado may not generate GHG credits.

VII.F.6.d.(iii) Each GHG credit issued by the Division in the GHG crediting and tracking system will be uniquely identifiable.

VII.F.6.d.(iv) Beginning in 2028, the Division will publish on its website the total amount of any GHG credits credited collectively to the compliance accounts of midstream companies for the previous calendar year and the cumulative surplus or shortfall of credits for that vintage year.

VII.F.6.d.(v) GHG credits for midstream companies are subject to the expiration and double-counting requirements in Regulation Number 27, Part D, Sections III.C. and III.D.

VII.F.6.e. A midstream company may trade GHG credits pursuant to Regulation Number 27, Part D, Sections III.E. and IV.

VII.F.6.f. GHG credit trading between midstream companies and manufacturing stationary sources, as defined in Regulation Number 27, Part A, will be allowed beginning with GHG credits issued in 2028, pursuant to established Division guidance.

VII.G. Recordkeeping and reporting.

VII.G.1. Recordkeeping. Midstream companies must maintain the following records for a period of five (5) years and make records available to the Division upon request.

VII.G.1.a. Records of actions taken after January 1, 2022, to reduce CO2e emissions from the midstream company’s MFCE.

VII.G.1.b. Records of asset transfers, such as a legally executed bill of sale.

VII.G.1.c. Records of project plans (e.g., best management practices, control method, emissions reduction strategies, technologies) to achieve the company cap.

VII.G.1.d. Records, if applicable, of a demonstration approved pursuant to Section VII.F.2.b.(ii).

VII.G.2. Reporting. Midstream companies must submit an annual report covering the previous calendar year to the Division by June 30 of each year (beginning June 30, 2025) using a Division-approved report format that includes

VII.G.2.a. The reporting midstream company's name, subsidiary midstream company name(s), physical street address, and name and contact information of the company representative, for reporting purposes.

VII.G.2.b. The date of submittal and the year covered by the report.

VII.G.2.c. The facility name, AIRS ID (if applicable), location (with coordinates) of each of the reporting midstream company's midstream segment facilities, and whether the facility is located in a disproportionately impacted community or in the FRPA.

VII.G.2.d. Total annual GHG emissions reported pursuant to Part B, Section V. in metric tons of CO2e from all MFCE owned or operated by the midstream company.

VII.G.2.d.(i) State-wide;

VII.G.2.d.(ii) Located within a disproportionately impacted community; and

VII.G.2.d.(iii) Located in the FRPA.

VII.G.2.e. A description of the midstream company's current project plans (e.g., best management practices, control method, emissions reduction strategies, technologies)) to achieve the company cap. The company must explain

VII.G.2.e.(i) Project locations and impacted MFCE;

VII.G.2.e.(ii) Which engines, by AIRS ID, will utilize the exemption at Regulation Number 26, Part B, Section I.D.6.a.(vi)(E);

VII.G.2.e.(iii) Approximate timelines for project commencement and completion;

VII.G.2.e.(iv) Estimated annual reductions in CO2e and harmful air pollutants expected to be achieved by the projects;

VII.G.2.e.(v) Estimated annual reductions expected to be achieved by the projects in disproportionately impacted communities both in and outside of the FRPA;

VII.G.2.e.(vi) Supporting documentation for long-duration projects that are planned or underway; and

VII.G.2.e.(vii) Until a project is implemented and reflected in the reporting under Section VII.G.2.g., the midstream

company must describe material changes in project plans since the previous year's reported plans.

VII.G.2.f. A description of the midstream company's completed projects including the identification of the MFCE impacted (by location name and AIRS ID), whether the MFCE is located in a disproportionately impacted community or in the FRPA, date(s) of project completion, and achieved reductions in emissions of CO2e and harmful air pollutants.

VII.G.2.g. For all midstream facilities where an ownership transfer occurred in the previous calendar year, a copy of the notice submitted to the Division pursuant to Section VII.F.3.d.

VII.G.2.h. Documentation of GHG credits generated in the GHG crediting and tracking trading system in the applicable period.

VII.G.2.i. Documentation of GHG credits retired prior to expiration in the GHG crediting and tracking trading system for compliance purposes in the applicable period.

VII.G.2.j. Documentation, if applicable, of the demonstration in Section VII.F.2.b.(i) that the midstream company achieved, or will achieve by December 31, 2030, onsite reductions of CO2e from MFCE at the midstream company's facilities located in a disproportionately impacted community and/or in the FRPA in an amount equal to or greater than 45% multiplied by the difference between the company's "2021 MFCE GHG emissions" and the company cap.

VII.G.2.k. Documentation, if applicable, of progress made toward the resolution of the event(s) or action(s) in the demonstration in Section VII.F.1.b.

VII.G.2.l. A copy of the notice submitted to the Division pursuant to Section VII.F.1.c. and documentation, if applicable, that the midstream company cannot achieve it's company cap due to temporary emissions that occurred due to a purpose provided in Sections VII.F.1.c.(i) through VII.F.1.c.(iv).

VII.G.2.m. A certification by the company representative that supervised the development and submission of the annual report that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

VIII. (State Only) Greenhouse Gas Intensity Program for Oil and Natural Gas Upstream Segment

VIII.A. Definitions

VIII.A.1. "Calendar year" means January 1 up through and including December 31 of the year.

VIII.A.2. "Certified third-party auditor" means a person tasked with performing an environmental audit of an operator's Oil and Natural Gas Annual Emission Inventory Reports (ONGAEIR). The certified third-party auditor must have expertise in the area of emission calculation methodologies. The certified third-party auditor must be qualified to perform such audits, as determined by the Division. The certified third-party auditor must not have supervised or been responsible for the ONGAEIR calculations, permitting, or compliance support for that operator being audited.

VIII.A.3. "Co-benefits" for this Section VIII. means the reduction of harmful air pollutants in disproportionately impacted communities.

VIII.A.4. "Commencement of operation" means when a source first conducts the activity that it was designed and permitted for. In addition, for oil and gas well production facilities, commencement of operation is the date any permanent production equipment is in use and product is consistently flowing to sales lines, gathering lines, or storage tanks from the first producing well at the stationary source, but no later than end of well completion operations (including flowback).

VIII.A.5. "Controlling interest" for this Section VIII. means an interest that provides a person, either directly or indirectly, the power to direct or cause the direction of the management and policies of another person, whether through ownership or voting securities, by contract, or otherwise.

VIII.A.6. "Direct measurement" means regional, local, stationary source, or air pollution source monitoring of methane emissions used to quantify emissions of greenhouse gasses.

VIII.A.7. "Disproportionately impacted community" (DI community) means

VIII.A.7.a. From January 20, 2022, to April 14, 2025, census block groups designated as DI communities in CDPHE's draft Data Viewer for Disproportionately Impacted Communities in Colorado (as of December 17, 2021, at: https://cohealthviz.dphe.state.co.us/t/EnvironmentalEpidemiologyPublic/views/EJActDICommunities-Public/HB21-

1266DICommunities?%3AshowAppBanner=false&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link&%3AisGuestRedirectFromVizportal=y&%3Aembed=y) consistent with 24-4-109(2)(b)(II), C.R.S. (2021). A complete list of these census block groups by 12-digit FIPS code will be maintained by the Division and made publicly available

VIII.A.7.b. Beginning April 14, 2025, communities that meet the definition in 24-4-109(2)(b)(II)(A)-(D) and (F)-(G), C.R.S. (2023). These communities are identified as any census block group identified in the Disproportionately Impacted Community Map (November 2024) after selecting the criteria for “Mobile home communities”, “Low-income population above 40%”, “People of color population above 40%”, “Housing cost-burdened population above 50%”, “Linguistically isolated population above 20%”, and “Colorado EnviroScreen percentile score above 80”.

VIII.A.8. “Drill-out” means the process of removing the plugs placed during hydraulic fracturing or refracturing. Drill-out ends after the removal of all stage plugs and the initial wellbore clean-up.

VIII.A.9. “Drilling” or “drilled” means the process to bore a hole to create a well for oil and/or natural gas production.

VIII.A.10. “Flowback” means the process of allowing fluids and entrained solids to flow from a well following stimulation, either in preparation for a subsequent phase of treatment or in preparation for cleanup and placing the well into production. The term flowback also means the fluids and entrained solids flowing from a well after drilling or hydraulic fracturing or refracturing. Flowback ends when all temporary flowback equipment is removed from service. Flowback does not include drill-out.

VIII.A.11. “Greenhouse gas intensity” means the sum of preproduction emissions and production emissions in a calendar year in mtCO2e divided by the kBOE for that calendar year, calculated pursuant to Sections VIII.D. and VIII.F.

VIII.A.12. “Harmful air pollutants” for purposes of Section VIII. means pollutants designated by EPA as criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate pollution

(PM) (PM2.5 and PM10) and sulfur dioxide) or hazardous air pollutants.

VIII.A.13. “Hydraulic fracturing” means the process of directing pressurized fluids containing any combination of water, proppant, and any added chemicals to penetrate tight formations, such as shale, coal, and tight sand formations, that subsequently require flowback to expel fracture fluids and solids.

VIII.A.14. “Hydraulic refracturing” means conducting a subsequent hydraulic fracturing operation at a well that has previously undergone a hydraulic fracturing operation.

VIII.A.15. “Intensity operator” means a person or entity that operates upstream segment activities or equipment. For purposes of Section VIII., where a person or entity holds a controlling interest in more than one intensity operator, that person or entity is the intensity operator of all upstream segment activities and equipment in which that person or entity has a controlling interest.

VIII.A.16. “kBOE” means production of hydrocarbon liquids and natural gas, measured in thousands of barrels of oil equivalent.

VIII.A.17. “mtCO2e” means metric tons (mt) of carbon dioxide equivalent, using global warming potential values from the IPCC Fifth Assessment Report, 2014 (AR5).

VIII.A.18. “Majority operator” means (1) an intensity operator with company-wide production in Colorado in calendar year 2022 of greater than or equal to 10,000 kBOE; (2) a new to market operator whose first transaction(s) in Colorado is to purchase the assets of a majority operator; (3) a new to market operator for which the total level of production from all assets acquired or developed in that calendar year exceeds 10,000 kBOE; (4) a new to market operator who has not purchased assets from a majority or minority operator and who commences operation of a well production facility after January 1, 2023; and (5) a minority operator that becomes a majority operator pursuant to Section VIII.B.6.

VIII.A.19. “Measurement-informed inventory” means the greenhouse gas emissions inventory from the Oil and Natural Gas Annual Emission Inventory Reports (ONGAEIR) informed by direct measurement and, optionally, parametric measurement.

VII.A.20. “Measurement strategy” means the strategy that describes how an intensity operator uses direct measurement and, optionally, parametric measurement to inform reported greenhouse gas emissions in ONGAEIR.

VIII.A.21. “Midstream segment” means the oil and natural gas compression segment and the natural gas processing segment that are physically located in Colorado and that are upstream of the natural gas transmission and storage segment.

VIII.A.22. “Minority operator” means an intensity operator with company-wide production of hydrocarbon liquids and natural gas in Colorado in calendar year 2022 of less than 10,000 kBOE. Minority operator also means a new to market operator whose first transaction(s) in Colorado is to purchase the assets of a minority operator, as long as the total level of production from all assets acquired or developed by (in the case of new well production facilities) of the new to market operator in that calendar year does not exceed 10,000 kBOE.

VIII.A.23. “New to market operator” means an owner or operator that did not produce any oil or natural gas in Colorado in calendar years 2021 or 2022 or own or operate any well production facility in Colorado as of December 31, 2022. A new to market operator that becomes a majority operator as defined in Section VIII.A.16. or a minority operator as defined in Section VIII.A.18. is no longer a new to market operator.

VIII.A.24. “Oil and Natural Gas Annual Emission Inventory Reports (ONGAEIR)” means the annual emissions inventory reports required in Regulation Number 7, Part B, Sections II.G.3 and V for oil and gas segment emissions.

VIII.A.25. “Parametric Measurement” means regional, local, stationary source, or air pollution source monitoring of pressure, temperature, flow rate, control efficiency, or other operational characteristics used to inform quantification of greenhouse gas emissions.

VIII.A.26. “Preproduction emissions” means the greenhouse gas emitted from an oil or natural gas well and associated equipment and activities during the construction and operation of the oil or natural gas well until the well commences operation, including from the drilling through the hydrocarbon bearing zones, hydraulic fracturing or refracturing, drill-out, and flowback of the oil and/or natural gas well.

VIII.A.27. “Production emissions” means the greenhouse gas emitted from an oil or natural gas well and associated equipment and activities after the well commences operation.

VIII.A.28. “State default intensity verification factor” means the methane factor developed to account for the difference (if any) in monitored methane emissions and reported methane emissions and used in the calculation of greenhouse gas intensity.

VIII.A.29. "Upstream segment" means oil and natural gas exploration and production operations physically located in Colorado upstream of the midstream segment.

VIII.A.30. "Well production facility" means all equipment at a single stationary source directly associated with one or more oil wells or natural gas wells upstream of the natural gas processing plant. This equipment includes, but is not limited to, equipment used for storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and flowline.

VIII.B. Greenhouse gas intensity targets for the upstream segment.

VIII.B.1. Beginning January 1, 2023, intensity operators must participate in this greenhouse gas intensity program to reduce preproduction and production emissions in Colorado. An intensity operator that fails to achieve any of the applicable targets in Section VIII.B. must achieve additional reductions in preproduction and/or production emissions in the subsequent calendar year to address the difference between the intensity operator's reported greenhouse gas intensity for that calendar year and the applicable target.

VIII.B.2. For calendar year 2025, intensity operators subject to Section VIII.B.1. must achieve the following greenhouse gas intensity targets for preproduction and production emissions.

VIII.B.2.a. Majority Operator: 10.94 mtCO2e/kBOE.

VIII.B.2.b. Minority Operator: 34.39 mtCO2e/kBOE.

VIII.B.3. For calendar year 2027, intensity operators subject to Section VIII.B.1. must achieve the following greenhouse gas intensity targets for preproduction and production emissions.

VIII.B.3.a. Majority Operator: 8.46 mtCO2e/kBOE.

VIII.B.3.b. Minority Operator: 26.60 mtCO2e/kBOE.

VIII.B.4. For calendar year 2030, intensity operators subject to Section VIII.B.1. must achieve the following greenhouse gas intensity targets for preproduction and production emissions.

VIII.B.4.a. Majority Operator: 6.80 mtCO2e/kBOE.

VIII.B.4.b. Minority Operator: 21.38 mtCO2e/kBOE.

VIII.B.5. In calendar years 2026, 2028, and 2029, intensity operators subject to Section VIII.B.1. must achieve a greenhouse gas intensity less than or equal to the applicable preceding year

target in Sections VIII.B.2. and VIII.B.3. (e.g., for calendar year 2026 achieve at least the target for calendar year 2025).

VIII.B.6. If, in any calendar year beginning 2023, a minority operator

VIII.B.6.a. Has production of greater than or equal to 10,000 kBOE or

VIII.B.6.b. Has production that represents an increase over production in the prior calendar year by greater than or equal to 2,500 kBOE (e.g., if production is 2,500 kBOE higher in 2023 than it was in 2022), then

VIII.B.6.c. Beginning the calendar year after the applicable circumstances under Sections VIII.B.6.a. or VIII.B.6.b., unless otherwise approved by the Division, the minority operator becomes a majority operator and must comply with the applicable majority operator greenhouse gas intensity targets for all its upstream segment operations for that year and all remaining years through 2030.

VIII.B.7. Acquisitions. Except as provided, if an owner or operator acquires or takes over operation of an oil or natural gas well in Colorado after January 1, 2025, that owner or operator must meet the greenhouse gas intensity targets in Sections VIII.B.2. through VIII.B.5. applicable to the intensity operator acquiring the assets.

VIII.B.7.a. If a majority operator merges with, acquires, or takes over operation of an oil or natural gas well in Colorado from a minority operator on or after January 1, 2025, the majority operator (or surviving entity) must at least comply with the applicable minority operator greenhouse gas intensity target for the preproduction and production emissions from the acquired well(s) for the calendar year of the acquisition. Beginning with the calendar year after the acquisition, the applicable majority owner or operator must comply with the applicable majority operator greenhouse gas intensity targets for the preproduction and production emissions from all its upstream segment operations, including the acquired well(s).

VIII.B.7.b. If a minority operator acquires or takes over operation of an oil or natural gas well in Colorado from a majority operator on or after January 1, 2025, the minority operator must at least comply with the applicable minority operator greenhouse gas intensity target for the preproduction and production emissions from the acquired well(s) for the calendar years of and after the acquisition, after which the minority operator greenhouse gas

intensity targets apply to all assets of the minority operator, including the acquired assets (unless the minority operator has become a majority operator).

VIII.C. New facility intensity targets.

VIII.C.1. Beginning January 1, 2023, intensity operators of well production facilities that commence operation after December 31, 2022, must also meet the new facility intensity target(s) for those facilities as set forth in Sections VIII.C.2. through VIII.C.4. in the calendar year of and the calendar year after the well production facility commences operation. These targets are in addition to the targets applicable to all of the intensity operator's upstream segment operations as specified in Section VIII.B.

VIII.C.1.a. For purposes of Section VIII.C., "new facility intensity" means the production emissions in CO_2e from all well production facilities commencing operation in a calendar year divided by the production of hydrocarbon liquid and natural gas from those facilities in kBOE for that calendar year.

VIII.C.1.b. Well production facilities identified as located in a disproportionately impacted community for purposes of Section VIII.C.2. must continue to meet the new facility intensity targets for well production facilities located in a disproportionately impacted community in Sections VIII.C.3.

VIII.C.1.c. If the community that a well production facility subject to this Section VIII.C. is located in becomes identified as a disproportionately impacted community as of April 14, 2025, and the well production facility commences operation in calendar year 2026, the facility becomes subject to the new facility intensity target for well production facilities located in the 8-hour Ozone Control Area and in a disproportionately impacted community in calendar year 2027.

VIII.C.2. For calendar years 2023 through 2025, the new facility intensity target is 8.59 $mtCO_2e/kBOE$, unless the well production facility is located in the 8-hour Ozone Control Area and in a disproportionately impacted community, then the new facility intensity target is 7.7 $mtCO_2e/kBOE$.

VIII.C.3. For calendar years 2026 through 2027, the new facility intensity target is 6.64 $mtCO_2e/kBOE$, unless the well production facility is located in the 8-hour Ozone Control Area and in a disproportionately impacted community, then the new facility intensity target is 6.0 $mtCO_2e/kBOE$.

VIII.C.4. For calendar years 2028 through 2030, the new facility intensity target is 5.34 mtCO2e/kBOE, unless the well production facility is located in the 8-hour Ozone Control Area and in a disproportionately impacted community, then the new facility intensity target is 4.8 mtCO2e/kBOE.

VIII.D. Accounting for production kBOE, preproduction emissions, and production emissions.

VIII.D.1. Production can only be allocated to one intensity operator for the same time period. Intensity operators must account for production from all oil or natural gas wells and well production facilities in which the intensity operator holds the controlling interest. Intensity operators must account for production during the time in which the intensity operator holds that controlling interest.

VIII.D.2. Intensity operators must calculate kBOE by adding the production of hydrocarbon liquids in thousand barrels to the proportion of natural gas (calculated by dividing the million standard cubic feet (MMscf) volume of natural gas produced by the conversion rate of 5.8 MMscf/kBOE).

VIII.D.3. The intensity operator that reports the preproduction emissions and production emissions for upstream segment activities and equipment must report the kBOE associated with those activities and equipment.

VIII.E. Intensity operator greenhouse gas intensity plans.

VIII.E.1. Greenhouse gas intensity plans must be submitted on a Division-approved format and must contain, at a minimum

VIII.E.1.a. An identification of all the intensity operator’s well production facilities, including facility name; facility AIRS ID, or facility location if the facility does not have an AIRS ID; entity listed as the operator for all well production facilities covered by the greenhouse gas intensity plan for which production is included as specified under Section VIII.D.1.; and an identification of which facilities are located within a disproportionately impacted community.

VIII.E.1.b. The intensity operator’s greenhouse gas intensity company-wide and per well production facility for the preceding calendar year, including intensity calculation methodology in accordance with Section VIII.F2.

VIII.E.1.c. A list and description of the best management practices (BMPs), control methods, emission reduction strategies, and technologies the intensity operator intends to use to meet the applicable targets in Section IV.B.2. on a site-specific basis.

VIII.E.1.d. An estimate of the greenhouse gas emission reductions that each type of BMP, control method, emission reduction strategy, or technology is expected to achieve on a company-wide mass basis and on a company-wide greenhouse gas intensity basis, including calculation methods.

VIII.E.1.e. A description of which BMPs, control methods, emission reduction strategies, and technologies will be deployed in disproportionately impacted communities, and a demonstration that intensity operators will prioritize co-benefits.

VIII.E.2. Greenhouse gas intensity plan submittal deadlines.

VIII.E.2.a. By August 31, 2023, each intensity operator subject to Section VIII.B.1. must submit to the Division a proposed greenhouse gas intensity plan demonstrating how the intensity operator intends to meet the applicable greenhouse gas intensity targets in Section VIII.B.2.

VIII.E.2.b. By June 30, 2026, each intensity operator subject to Section VIII.B.1. must submit to the Division a greenhouse gas intensity plan demonstrating how the intensity operator will meet the applicable greenhouse gas intensity targets in Section VIII.B.3.

VIII.E.2.c. By June 30, 2028, each intensity operator subject to Section VIII.B.1. must submit to the Division a greenhouse gas intensity plan demonstrating how the intensity operator will meet the applicable greenhouse gas intensity targets in Section VIII.B.4.

VIII.E.3. Asset transfer updates.

VIII.E.3.a. Section VIII.E.3. applies whenever ownership or operation of an oil or natural gas well or well production facility is transferred after August 31, 2024. The operator taking over operation of the oil or natural gas well or well production facility is referred to herein as the “acquiring operator”. The intensity operator from whom ownership or operation is transferred is referred to as the “selling operator.”

VIII.E.3.b. If the transaction involves any well production facility for which the selling operator’s greenhouse gas intensity plan submitted under Section VIII.E.2. provides for implementation of any BMP, control method, emission reduction strategy, or technology, then within thirty (30) days of closing of the transaction.

VIII.E.3.b.(i) The selling operator must submit an update to its greenhouse gas intensity plan that:

VIII.E.3.b.(i)(A) Identifies each well production facility transferred (name and AIRS ID, if applicable), the name of the acquiring operator, and the date of closing of the transaction.

VIII.E.3.b.(i)(B) Includes a quantification of the emission reductions that would have been achieved at each well production facility involved in the transaction under the greenhouse gas intensity plan consistent with the calculation methods used in Section VIII.E.1.d.

VIII.E.3.b.(i)(C) Includes a demonstration that the selling operator will still meet its greenhouse gas intensity targets and identifies any additional BMPs, control method, emission reduction strategy, and technologies consistent with Section VIII.E.1.

VIII.E.3.b.(ii) The acquiring operator must submit an update to its greenhouse gas intensity plan (or, in the event the acquiring operator is also a new to market operator, the acquiring operator must submit a new greenhouse gas intensity plan) that, for each well production facility involved in the transaction

VIII.E.3.b.(ii)(A) Identifies the well production facility transferred (name and AIRS ID, if applicable), the name of the selling operator, and the date of closing of the transaction.

VIII.E.3.b.(ii)(B) Commits to implementing the same BMP, control method, emission reduction strategy, and technology provided for in the selling operator’s plan on the same schedule; or

VIII.E.3.b.(ii)(C) Quantifies the emission reductions that would have been achieved under the selling operator’s greenhouse gas intensity plan consistent with the calculation methods used in Section VIII.E.1.d. and identifies how the acquiring operator will achieve equal or greater emission reductions at the same or other well production facilities involved in the transaction (or, if approved by the Division,

at other of the acquiring operator's well production facilities) on the same schedule.

VIII.F. Verification through achievement of a measurement-informed inventory.

VIII.F.1. [Repealed as on July 21, 2023]

VIII.F.2. Applicability

VIII.F.2.a. Intensity operators must comply with Section VIII.F.3. to calculate greenhouse gas intensity and new facility intensity for:

VIII.F.2.a.(i) Greenhouse Gas Intensity Plans submitted pursuant to Section VIII.E.2.b and VIII.E.2.c; and

VIII.F.2.a.(ii) Annual reports as required in VIII.G. submitted in 2026 through 2031.

VIII.F.2.b. The requirements of Section VIII.F.2.a do not apply to calculations of new facility greenhouse gas intensity pursuant to Section VIII.C for 2023 and 2024 as reported in annual reports as required in VIII.G. submitted in 2024 and 2025.

VIII.F.3. Greenhouse Gas Intensity Verification Calculation Methodology to Demonstrate Compliance with the Greenhouse Gas Intensity Targets in Sections VIII.B and VIII.C.

Intensity operators must comply with either Section VIII.F.3.a or Section VIII.F.3.b to develop a measurement-informed inventory used to demonstrate compliance with the intensity operator's required greenhouse gas intensity.

VIII.F.3.a. State Default Intensity Verification Factor

Starting in 2024, by December 31 of each year through 2029, the Division will publish one or more state default intensity verification factors valid for the following calendar year. Intensity operators must apply a state default intensity verification factor to their ONGAEIR methane emissions, as outlined by the Division, unless the operator elects to use an operator-specific program pursuant to Section VIII.F.3.b.

VIII.F.3.b. Operator-Specific Programs

As an alternative to the state default intensity verification factor outlined in Section VIII.F.3.a., operators may utilize an operator-specific program. The operator-specific program must include:

VIII.F.3.b.(i) A measurement strategy.

VIII.F.3.b.(i)(A) For calendar years 2025 and 2026, intensity operators must use a measurement

strategy developed by the Division. Starting in calendar year 2027, operators may use a measurement strategy developed by either the Division or the intensity operator.

VIII.F.3.b.(i)(A)(1) The Division will develop, in accordance with VIII.F.4., a list of approved measurement strategies that are sufficient to achieve a robust measurement-informed inventory, which will be published in the Intensity Verification Protocol.

VIII.F.3.b.(i)(A)(2) Intensity operators may develop their own measurement strategy for use beginning in calendar year 2027. Intensity operators must submit their measurement strategy to the Division for review and approval by March 31 of the year prior to which the intensity operator intends to implement the measurement strategy. The Division must review operator-developed measurement strategies, and within 90 days, may either approve the strategy, require revisions to the strategy, or deny the strategy. If the Division denies approval of the measurement strategy, the intensity operator may either use the state default intensity verification factor or a Division-developed measurement strategy.

VIII.F.3.b.(i)(B) The measurement strategy must define how direct measurement and, where it is used, parametric measurement informs reporting of emissions, considering: the appropriateness of the selected measurement technology or methodology, including the minimum detection limit; representativeness of monitoring sites; emission rates and probability of detection of

the monitoring technology; variability of emissions over time; and other reasonable and necessary monitoring considerations as determined by the Division.

VIII.F.3.b.(i)(C) The measurement strategy must include direct measurements at the site-level.

VIII.F.3.b.(i)(D) The direct measurement technology(ies) used across the intensity operator's assets must be fit for purpose, capture a sufficient portion of expected emissions, and be validated with appropriate testing.

VIII.F.3.b.(i)(E) The measurement strategy must include an operation and maintenance plan in accordance with the manufacturer recommendations for monitoring technology or as developed by the operator to ensure the accuracy of the measurement strategy.

VIII.F.3.b.(i)(F) Measurement strategies must be reviewed annually and updated as necessary to demonstrate compliance with Section VIII.F.3.b.(i).

VIII.F.3.b.(ii) An audit of the measurement-informed inventory for calendar years 2025, 2027, and 2030. No later than December 31 of the following calendar year, a certified third party auditor will provide a summarized report of their findings and recommendations as relates to the reporting of greenhouse gas emissions. The audit must include review of:

VIII.F.3.b.(ii)(A) Greenhouse gas emission calculations reported in ONGAEIR,

VIII.F.3.b.(ii)(B) Monitoring records collected under the measurement strategy required in VIII.F.3.b.(i),

VIII.F.3.b.(ii)(C) Records maintained in support of monitoring, testing, and reporting requirements of Regulation Number 7 that affect the operator's ONGAEIR.

VIII.F.3.b.(iii) The Division may review operator-specific programs, and may either require revisions to the

program or deny the program and require an operator to use the state default intensity verification factor.

VIII.F.4. Intensity Verification Protocol

The Division will create and maintain a protocol for intensity verification with the information contained in these Sections VIII.F. and VIII.G. The Division will review the protocol annually, and identify needed revisions. Any revisions must be published by June 30 of the calendar year preceding the verification year. Upon any revisions to the protocol beyond those that are administrative in nature, the Division must provide an opportunity for public participation. This includes:

VIII.F.4.a. A minimum of a 30-day public comment period.

VIII.F.4.b. A minimum of 2 public meetings for presentation of revisions and/or to accept public feedback.

VIII.F.5. Recordkeeping

VIII.F.5.a. Where Section VIII.F.3.b. applies, owners or operators must maintain records, including the measurement strategy and any subsequent updates and make them available to the Division upon request. In addition, for a period of five years, owners or operators must maintain the following records, or contract for access to such records as applicable, and make them available to the Division upon request:

VIII.F.5.a.(i) Records created by the measurement strategy, including the data associated with each monitoring technology and/or the monitoring report from the monitoring contractor.

VIII.F.5.a.(ii) Records of calibration of any equipment used in the measurement strategy, including the date(s) of the calibration.

VIII.F.5.a.(iii) Records of maintenance of any equipment used in the measurement strategy, including the date(s) and a description of the corrective actions.

VIII.F.5.b. Where Section VIII.F.3.b. applies, owners or operators must maintain the following records for a minimum of 5 years. Records must be made available to the Division upon request.

VIII.F.5.b.(i) Records of the complete submission to the certified third-party auditor.

VIII.F.5.b.(ii) Records of reports created by certified third-party auditors.

VIII.F.5.b.(iii) Records of actions taken in response to third-party audit.

VII.G. Reporting

VIII.G.1. Summary of measurement strategy

By September 30 of 2024 through 2029 for the next calendar year, intensity operators must notify the Division if the intensity operator intends to utilize an operator-specific program in Section VIII.F.3.b., and if so, submit to the Division a summary of the measurement strategy including all information identified by the Division in the Intensity Verification Protocol. Operators that submitted a notification of their intent to use an operator-specific program may revert back to using the state-default intensity verification factor(s) or a Division-developed measurement strategy for a given year, with Division approval, after a showing of good cause.

VIII.G.2. Annual verifications

By June 30 of 2024 through 2031 for the previous calendar year, intensity operators must submit annual verifications on a Division-approved form in accordance with Section VIII.F.2. to the Division summarizing the intensity operator's greenhouse gas intensity plan implementation during the preceding calendar year. For the annual verifications due in 2024 and 2025, the items in Sections VIII.G.2.a. through VIII.G.2.j. are required only as they are applicable to new facility intensity for calendar years 2023 and 2024. The annual verification must include, at a minimum:

VIII.G.2.a. The intensity operator's implementation of the types of BMPs, control measures, emission reduction strategies, and technologies in its greenhouse gas intensity plan, on a site-specific basis (by location name and AIRS ID, if applicable, and whether the site is located within a disproportionately impacted community) for each BMP, control method, emission reduction strategy, and technology implemented.

VIII.G.2.b. If applicable, an identification of new well production facilities subject to Section VIII.C. commencing operation in that calendar year.

VIII.G.2.c. If applicable, the intensity operator's implementation of BMPs, control measures, emission reduction strategies, and technologies to achieve the new facility intensity target at all sites subject to Section VIII.C. on a site-specific basis (by location name and AIRS ID, if applicable.

VIII.G.2.d. Instances of departure from the intensity operator's greenhouse gas intensity plan, reason(s) for departure, and any modifications of the applicable element(s) of the BMP plan.

VIII.G.2.e. Use of any alternative emission reduction approaches not specified in the intensity operator's greenhouse gas intensity plan.

VIII.G.2.f. A demonstration that emission reductions were prioritized in disproportionately impacted communities, including a quantification of co-benefits achieved.

VIII.G.2.g. Identification by location name, AIRS ID (if applicable), well API number, and COGCC location ID (if applicable) of any oil or natural gas wells acquired or divested during the previous calendar year; the date of acquisition or divestment; and the name of the operator from which the well(s) were acquired or to whom the well(s) were divested.

VIII.G.2.h. A certification by a company representative with oversight over the operator's greenhouse gas intensity program that the annual verification is accurate and complete, to the best of the representative's knowledge and, if applicable, that measures identified in an asset transfer update submitted under Section IV.E.3. have been implemented as described therein.

VIII.G.2.i. The annual company-wide and new facility greenhouse gas intensity.

VIII.G.2.j. If applicable, whether the operator utilized the state default intensity verification factor in Section VIII.F.3.a. or an operator-specific program in Section VIII.F.3.b.

VIII.G.3. Updated Greenhouse Gas Intensity Plan

By June 30, 2026 through 2031, if an intensity operator does not meet the required intensity target for the previous calendar year, the intensity operator must update their most recently submitted greenhouse intensity plan to demonstrate how the operator intends to meet its required intensity target and meet the additional reductions required by Section VIII.B.1. and submit that updated greenhouse gas intensity plan to the Division.

VIII.G.4. Operator-Specific Program Measurement Strategy

By June 30 of 2026 through 2031 for the preceding calendar year, where an intensity operator utilized an operator-specific GHG intensity verification program as allowed in Section VIII.F.3.b., the intensity operator must submit to the Division the following:

VIII.G.4.a. The measurement strategy including all information identified by the Division in the Intensity Verification Protocol.

VIII.G.4.b. An evaluation of the implementation of the measurement strategy, including all information identified by the Division in the Intensity Verification Protocol.

VIII.G.5. Operator-Specific Program Third-Party Audit Reports

Where the intensity operator utilized an operator-specific GHG intensity verification program as allowed in Section VIII.F.3.b., the intensity operator must submit to the Division a summarized report with a list of any findings of the certified third-party auditor that may indicate the ONGAEIR needs to be adjusted, along with any revisions the operator is making to address those findings. The report must also include the credentials and certification of the third-party auditor. The report is due by the following dates:

VIII.G.5.a. By December 31, 2026, for calendar year 2025,

VIII.G.5.b. By December 31, 2028, for calendar year 2027, and

VIII.G.5.c. By December 31, 2031, for calendar year 2030.

PART C Statements of Basis, Specific Statutory Authority and Purpose

A. December 21, 1995 (Section II.B.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, § 25-7-110.5, C.R.S.

Basis

Regulation Numbers 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted consolidate the list of NRVOCs into the Common Provisions, assuring that the same list of NRVOCs apply to all the Colorado regulations. This provides more consistency in those chemicals regulated as VOCs.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify regulations pertaining to organic solvents and photochemical substances. § 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to Organic solvents and photochemical substances. The Commission's action is taken pursuant to authority granted and procedures set forth in §§ 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulations Numbers 3, 7, and the Common Provision are intended to clarify substances that are negligibly reactive VOCs, which are reflected in the EPA list of non-photochemically reactive VOCs. By consolidating the list (which consists of the EPA list of non-photochemically VOCs), and adopting the EPA definition by reference, a single list of negligibly reactive VOCs will apply uniformly to all Colorado Air Quality Control Commission regulations.

This revision will also include EPA's recent addition of acetone to the negligibly reactive VOC list. The addition of acetone to the list of negligibly reactive VOC's provides additional flexibility to sources looking for an alternative to more photochemically reactive VOCs. Because the EPA has added acetone to their list of non-photochemically reactive VOCs many industries, which make and supply products to Colorado industries, are planning to substitute acetone for more reactive VOCs. This change in the content of products purchased by industry for use in Colorado would adversely affect industries in Colorado if acetone remains a regulated VOC in Colorado. By adopting acetone as a negligibly-reactive VOC, industry’s will be able to take advantage of and benefit from this possible shift in product contents.

B. March 21, 1996 (Sections I.A.1. through I.A.4.; II.D.; II.E.)

The changes to Regulation Number 7 were adopted as part of the Commission's decision to redesignate the Denver metro area as an attainment and maintenance area for ozone, together with the relevant amendments to the Ambient Air Quality Standards regulation and Regulation Number 3. The Ozone Maintenance Plan, also adopted by the Commission on March 21, 1996 as part of the redesignation, based part of its demonstration of maintenance on the continued existence of rules regulating VOC emissions.

Such rules include the application of the permit requirements of Regulation Number 3 to gasoline stations, and the continued application of Regulation Number 7 for the control of VOC in nonattainment areas. The VOC controls in Regulation Number 7 were adopted into the SIP in May 1995, after Denver attained the ozone standard. The maintenance demonstration was based on future inventories that assumed the continuance of existing VOC controls in the Denver Metro area. Pursuant to § 25-7-107(2.5), C.R.S., the Commission is required to take expeditious action to redesignate the area as an attainment area for ozone. The CAA requires the submittal of a maintenance plan demonstrating maintenance of the ozone standard for any such redesignation request. The changes to Regulation Number 7 are consistent with continued maintenance of the ozone standard and are not otherwise more stringent than the relevant federal requirements.

The purpose of the revisions to Regulation Number 7, Section I.A is to provide a de minimis source with an opportunity to obtain an exemption from the requirements of Regulation Number 7 through rule-making. This revision will be submitted to the EPA for inclusion in the State Implementation Plan (SIP). Upon inclusion of this revision in the SIP, exemptions from Regulation Number 7 adopted by the Commission shall apply for purposes of both federal and state law, pending review

by the state legislature pursuant to § 25-7-133(2), C.R.S. The rule revision includes several limitations on the scope of such exemptions:

1. The aggregate of all emissions from de minimis sources may not exceed five tons of emissions per day. The purpose of this limitation is to protect the projections contained in the emissions inventory, and to prevent growth in such emissions from exceeding the National Ambient Air Quality Standard (NAAQS) for ozone.

2. An exemption may not be granted if the Division demonstrates that such exemption will cause or contribute to air pollution levels that exceed the NAAQS, even if the total aggregate emissions from such sources is less than five tons per day.

3. The Commission rule prohibits more than one rulemaking hearing per year to consider potential de minimis exemptions in the aggregate. The purpose of this provision is to prevent the granting of case-by-case exemptions, and to conserve agency resources. The granting of exemptions on a case-by-case basis would grant an unfair advantage for those sources that are able to have their case heard by the Commission before other, similarly situated sources, submit a request for a de minimis exemption. However, upon a showing of an emergency, and at the discretion of the Commission, the Commission may always grant an exemption on a case-by-case basis.

4. The Commission rule provides that the growth in emissions due to such de minimis exemptions may not exceed the growth that was included in the emissions inventory in the SIP.

5. The Commission rule requires the de minimis exemptions to be included in a permit that is subject to review and comment by the public and by EPA.

The rule revision proposed by the Regional Air Quality Council (RAQC) did not include these limitations. However, the Commission may not have used the rule as proposed by RAQC to grant unlimited exemptions from the requirements of Regulation Number 7 because such an action would undermine the regulation and the maintenance demonstration contained in the SIP. The limitations adopted by the Commission were the subject of an alternative proposal submitted by the Division. The purpose of the limit is to ensure that the de minimis exemption provision cannot be used to jeopardize attainment of the NAAQs. Such a limit is necessary in order to obtain EPA approval of this SIP revision. The alternative proposal submitted by the Division and adopted by the Commission will have no regulatory impact on any person, facility, or activity. Even without an express provision limiting the de minimis exemptions to five tons per day, the Commission generally would not have granted de minimis exemptions in excess of that amount because such emissions are not accounted for in the emissions inventory and would undermine the maintenance demonstration.

Furthermore, the alternative proposed by the Division does not, by itself, create an exemption from any regulatory requirement. The alternative simply limits the scope of the exemptions that may become fully effective without a SIP revision. However, the rule does not in any way limit the Commission's authority to amend the SIP. The emissions inventory submitted to EPA anticipated growth in emissions in both the area source and minor source categories, as well as the major source category. In order to ensure that any growth in emissions due to the granting of de minimis exemptions will not cause total emissions to exceed the growth projections for these categories, the Division will keep track of the permitted allowable emissions that may result from sources and source categories entitled to such exemptions. In addition, the growth in emissions from area, major and minor source categories will be tracked when the Division performs the periodic inventories described in the SIP for the years 1999, 2002 and 2003. Any permitted growth in emissions due to de minimis exemptions will be added to the emissions for the source categories as reflected in the most recent periodic inventory. No further de minimis exemptions will be granted if the total growth in emissions exceeds the growth projections contained in the SIP. In addition, if the total growth exceeds the growth projections contained in the SIP, one or more of the contingency measures will be implemented to offset such growth, or the SIP will be revised as necessary to ensure continued maintenance of the standard.

The purpose of the addition of Regulation Number 7, Section II.E. is to provide sources with a process to obtain approval of an alternative emission control plan, compliance method, test method, or test procedure without waiting for EPA to approve of a site-specific SIP revision. The rule provides that any such alternative must be just as effective as the relevant regulatory provision, and that such effectiveness must be demonstrated using equally effective test methods and procedures. The changes to this section delegate the authority to the Division to approve of such alternatives. Since rulemaking is not required under Section II.E., the language allowing a source to assert that the relevant regulatory provision does not represent RACT has been omitted from this section. Such a change to the substantive requirements of Regulation Number 7 would require a rule change.

The rule revision proposed by the RAQC provided that alternative emissions control plans and compliance methods must be just as effective as those contained in the rule, but did not describe the test methods to be used to demonstrate such effectiveness. The Division proposed an alternative rule requiring such effectiveness to be demonstrated using test methods and procedures that are just as effective as those set out in the rule, or that have otherwise been approved by EPA. Such criteria for test methods and procedures are necessary in order to obtain EPA approval of this SIP revision. However, even without this language in the rule the Division would have required approved test methods and procedures in order to approve of proposed alternatives. The Division's alternative proposal provides the needed certainty in the most flexible manner possible.

Furthermore, the alternative proposed by the Division does not impose any new regulatory requirement. Instead, it merely establishes criteria for allowing persons’ subject to the regulation to propose, in their discretion, an alternative means of

complying with the existing regulatory requirements. Therefore, the alternative proposal submitted by the Division and adopted by the Commission will have no regulatory impact on any person, facility, or activity.

The rule revisions provide that no permit may be issued based on the provisions allowing for the creation of de minimis exemptions and the approval of alternative compliance plans without first revising the SIP unless EPA first approves of such regulatory revisions as part of the State Implementation Plan. The purpose of this condition is to address the possible disapproval of these revisions by EPA. In the event these changes are not approved by EPA, the remaining regulatory provisions of Regulation Number 7 will remain in full force and effect, and therefore, the EPA may approve of the maintenance plan and the redesignation request.

The revisions to Regulation Number 7 are procedural changes that are not intended to reduce air pollution.

For clarification, the Commission adopted these regulation revisions as follows:

REGULATION REVISION	OZONE SIP AND MAINTENANCE PLAN
Section I.A.1	Exists in Appendix C of the Ozone Maintenance Plan to become a part of that document approved March 21, 1996
Sections I.A.2., 3., 4.; Section II.D., II.E.	Adopted as subsequent regulation revisions to be submitted to the Governor and EPA separately and concurrently as a revision to the Ozone SIP (and Maintenance Plan)

The specific statutory authority to promulgate the rules necessary for redesignation is set out in §§ 25-7-105(1)(a)(I) and (2); -106(1)(a); -107 (1) and (2.5); and -301. The authority to adopt such rules includes the authority to adopt exceptions to the rules, and the process for applying for any such exemptions.

C. November 21, 1996 (Section XII.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, § 25-7-110.5, C.R.S.

Basis

Regulation Numbers 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted update the list of NRVOCs so that the state list remains consistent with the federal list. Additionally, because perchloroethylene will no longer be listed as a VOC in Regulation Number 7, Section XII, Control of VOC Emissions from Dry Cleaning Facilities using Perchloroethylene as a Solvent, is being deleted. Regulation Numbers 8 and 3 list the federal Hazardous Air Pollutants (HAPs). In the June 8, 1996 Federal Register the EPA removed Caprolactam (CAS 105-60-2) from the federal list of Hazardous Air Pollutants. The conforming changes in Regulation Number 3, Appendices B, C and D have been made to keep the list of federal HAPs in Regulation Number 3 consistent with the federal list. The list of HAPs in Regulation Number 8 has been removed and a reference to the list in Regulation Number 3 has been added.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify regulations pertaining to organic solvents and photochemical substances. § 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to organic solvents and photochemical substances. §§ 25-7-105(1)(I)(b) and 25-7-109(2)(h) provide authority to adopt emission control regulations and emission

control regulations relating to HAPs respectively. The Commission's action is taken pursuant to authority granted and procedures set forth in §§ 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulation Numbers 3, 7, 8 and the Common Provisions are intended to update the state lists of NRVOCs, the Ozone SIP, and HAPs for consistency with the federal lists.

D. October 15, 1998 (Section II.F.)

The Gates Rubber Co. Site-specific Revision

The Gates Rubber Co. (Gates), by and through its attorney, submitted this Statement of Basis, Specific Statutory Authority and Purpose for amendments to Regulation Number 7, Control of Emissions of Volatile Organic Compounds.

Basis

Regulation Number 3 contains a certification and trading of emission reduction credits section (Section V), which sets forth the definitions and process for obtaining emission credits and using those credits. This section was amended to permit the use of emission reduction credits (ERC) to satisfy reasonably available control technology (RACT) requirements. The criteria for approval of ERC transactions specifies that they must involve like pollutants (for volatile organic compounds, the same degree of toxicity and photochemical reactivity), must be within the same nonattainment area, may not be used to satisfy Federal technology control requirements and may not be inconsistent with standards or regulations or to circumvent new source performance standards, best available control technology, lowest available emission rate technology controls or NESHAPs.

Regulation Number 7 sets forth CTG and RACT emission limitations, equipment requirements and work practices intended to control emission of volatile organic compounds (VOC) from new and existing stationary sources. The control measures specified in Regulation Number 7 are designed to reduce the ambient concentrations of ozone in ozone nonattainment areas and to maintain adequate air quality in other areas.

Specific Statutory Authority

The provisions of C.R.S. §§ 25-7-105 and 25-7-109 to 110 provide the specific statutory authority for the amendments to this regulation adopted by the Commission. The Commission has also adopted in compliance with C.R.S. § 24-4-103(4), this Statement of Basis, Specific Statutory Authority and Purpose.

Purpose

The purpose of this amendment to Regulation Number 7 is to establish a source specific rule for Gates to allow the use of emission reduction credits to satisfy the RACT requirements for VOC emissions pursuant to Regulation Number 7 for surface coatings operations not specifically listed in Section IX of Regulation Number 7. Regulation Number 3 provides specific authorization to use emission reduction credit transactions as an alternative compliance method to satisfy CTG and RACT requirements.

Specifically, the VOC certified emissions reduction credits to be used in this emission credit transaction in an amount up to 12 tons per year are from Coors Brewing Company pursuant to their emissions reduction credit Permit. The emission reduction credits will be used to satisfy the general requirements that all sources apply RACT. These emission reduction credits will be used by Gates so that Gates

can use solvent-based surface coatings which contain VOCs periodically in lieu of the water-based coatings normally used on its 10 Cord coating line (S033, S034, and S035). These credits will allow Gates to meet RACT requirements without applying control technology to the 10 Cord line, other than the currently installed catalytic incinerator on the emissions from the drying oven from the fourth dip, which reduces those emissions by at least 90%. The relevant portion of Regulation Number 3, which applies to the Gates credit transaction is Section V.F., entitled “Criteria for Approval of all Transactions.” The first requirement is that the transaction involve like pollutants.

In the present case, the emission credit transaction involves the exchange of VOC pollutants. Coors credits for methanol will be exchanged for m-pyrol. Exhaust from the catalytic incinerator, which contains unconverted toluene and xylene, is routed to the curing ovens of the other zones of the 10 Cord line, including the first zone. The Division has previously found that, excluding the emissions from the non-compliant coatings addressed in this rule, the 10 Cord line has met RACT standards. The use of the non-compliant coatings adds no HAPs to the Gates emissions. Other non-criteria reportable pollutants are present at well below APEN de minimis quantities under scenario 2, which is applicable to the 10 Cord line. Regulation Number 3 further requires that toxic or VOC pollutants involve the same degree of toxicity and photochemical reactivity or else a greater reduction may be required. Since these pollutants are both toxics and VOCs (except that m-pyrol is not a toxic), both have been addressed.

All of these compounds are commonly used in the surface coating industry with appropriate safeguards during their use. With respect to toxicity of the Gates compounds, m-pyrol is not listed as a toxic compound on either the federal or state lists. Methanol, the VOC in the Coors credit, is a Bin C HAP. Because the m-pyrol in the non-compliant coatings is not a HAP, the Gates VOCs have equal or lower toxicity than those being purchased from Coors. Therefore, HAP emissions will be reduced in the airshed.

The photochemical reactivities of VOCs are important because of their impact on the ozone formation process in an airshed. The Air Pollution Control Division relied upon the work of Dr. William P.L. Carter, Professor at the University of California, whose article entitled “Development of Ozone Reactivity Scales for Volatile Organic Compounds” describes relative photochemical reactivity scales and comparisons. Dr. Carter notes that there are a number of ways to quantify VOC reactivities, but the most relevant measure of VOC effects on ozone is the actual change in ozone formation in an airshed. This results from changing the emissions of the VOC in that airshed which depends not only on how rapidly the VOC reacts and the nature of its atmospheric reaction mechanism, but also the nature of the airshed where it is emitted, including the effects of other pollutants which are present.

Dr. Carter further states that the VOC effect on ozone in the atmosphere can only be estimated using computer airshed models. The effect of changing the emissions of a given VOC on ozone formation in a particular episode will, in general, depend on the magnitude of the emissions change and on whether the VOC is being added to, subtracted from, or replacing a portion of the base case emissions.

Dr. Carter's derived relative reactivity scale includes reactive organic gases whose indices for maximum incremental reactivity (MIR) range from 0.004 to 6.5. The MIR values were updated in 1997. The VOCs and their respective MIR involved with this exchange are as follows:

Methanol	0.16	
m-Pyrol		0.57

The pending emission credits of VOCs being used in the proposed emissions credit transaction are for methanol. The VOCs emitted from uncontrolled use of solvent-

based coatings at Gates are from m-pyrol. Regulation Number 3 provides that if the VOCs are not of the same photochemical reactivity, a greater offset may be required. The Commission required that, based on a past ERC trade for Pioneer Metal Finishing, that methanol credits in a 1.1:1 offset ratio be exchanged for toluene and xylenes. Here, however, the Commission finds that m-pyrol and methanol have similar photochemical reactivities, so no offset will be required.

The second requirement states that the transaction must not result in an increased concentration, at the point of maximum impact of hazardous air pollutants. This provision was derived from the EPA Emissions Trading Policy Statement and referred to NESHAP requirements involved in bubble transactions. If this provision is interpreted to apply generally to a facility which is limited by an existing permit to some level of VOC emissions on a twenty-four-hour basis, any additional VOCs allowed pursuant to an emission transaction would by its application increase the concentration of VOCs at the maximum point of impact.

Since it appears to have been intended to limit NESHAP offsets in bubble transactions, and no NESHAPs are applicable in the Gates transaction, and recognizing the earlier action of the Commission in approving the use of ERC transactions to satisfy CTG requirements and in approving a previous ERC transaction for Pioneer Metal Finishing, the Commission determined that this requirement should not apply to this transaction. The next requirement states that no transaction may be approved which is inconsistent with any standard established by the Federal Act, the state Air Quality Control Act or the regulations promulgated under either, or to circumvent NSPS requirements or BACT or LAER, although the Commission may approve a transaction using a certified emission reduction credit in lieu of a specified CTG method or RACT. The emissions involved in this transaction at Gates are not subject to NSPS, BACT, or LAER. Regulation Number 7 applies only RACT to the Gates operations involved. Regulation Number 3 clearly permits the use of emission reduction credits to satisfy RACT.

The emission must involve sources which are located within the same nonattainment area. In the present case, both Gates, whose operations are located at 900 S. Broadway, Denver, Colorado, who is proposing to use the credits, and the source of the credits, Verticel, whose operations were located at 4607 South Windermere Street, Englewood, Colorado, are located in the Denver nonattainment area, less than five miles apart. The next requirement prohibits the use of emission reduction credits to meet applicable technology-based requirements for new sources, such as NSPS, BACT, or LAER. As stated, the Gates operations involved in this transaction are not subject to NSPS, BACT, or LAER or any other technology-based requirement except for RACT requirements for which an ERC transaction may be used to satisfy such requirements.

The next requirement states that VOC trades will be considered equal in ambient effect where the trade is a pound for pound trade in the same control strategy demonstration area. It appears that this requirement, which was taken from the EPA Emissions Trading Policy Statement, made the assumption that the “pound for pound” trend would have an equal impact on the ambient environment, with respect to ozone. Since there was no independent photochemical reactivity

equivalency requirement in the 1986 Policy Statement, this requirement appears to be redundant with the requirement for insuring the same degree of photochemical reactivity among traded pollutants. For VOC trades involving surface coating, the requirements state that emissions must be calculated on a solids-applied basis and must specify the maximum time period over which the emissions may be averaged, not to exceed 24 hours. The proposed emissions credit transaction is based on a 24-hour period. With respect to the solids-applied basis calculation, this transaction will be calculated on the basis of the pounds of VOCs from uncontrolled solvent-based coatings. The emissions credit transaction will require a SIP revision. The source specific rule for Gates will be forwarded to EPA for approval. The state emissions permit for Gates pursuant to the emissions credit transaction will be state effective (but not federally effective) until the SIP revision is approved by EPA.

Gates proposed the following VOC emissions limitation in its state permit taking into consideration the pounds per year VOC emissions allowed by this emissions credit transaction:

1. A daily maximum limitation of 400 lbs. of VOC emissions from uncontrolled solvent-based surface coatings, calculated on a monthly basis for compliance purposes. Calculations will be performed by the 30th of the following month.

2. An annual limitation of no more than 24,000 lbs. (12 tons) of VOC emissions from uncontrolled solvent-based surface coatings.

Gates proposes to calculate the annual total VOC limitation on a rolling 12-month basis. Gates further proposes to keep monthly totals of non-compliant surface coatings used and to calculate daily usage based on monthly usage divided by the number of days' non-compliant surface coatings were used. Records of usages and calculations will be kept and produced at the Division's request. This source-specific rule has a negligible or no effect upon the other provisions of the ozone SIP. It is contemplated that a State construction permit will be issued to Gates upon final approval by the Commission. Should the approval come after the issuance of Gates' Title V operating permit, the terms of the construction permit will be added to the operating permit.

E. January 11, 2001 (Sections III.C., IX.L.2.c.(1), and X.D.2. through XI.A.3.)

Readoption of Changes to Regulation Number 7 that were not printed in the regulation or the Colorado Code of Regulations.

Background

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedures Act, C.R.S. (1988), §§ 24-4-103(4) and (12.5) for adopted or modified regulations.

Basis

During a review of the version of Regulation Number 7 adopted by the Air Quality Control Commission and the version of Regulation Number 7 published in the

Colorado Code of Regulations, several significant discrepancies have been identified. This rule making will clarify the Commission's intent to adopt the following revisions to Regulation Number 7:

1. Section III.C regarding General Requirements for Storage of Volatile Organic Compounds omits the following revision:

   "Beer production and associated beer container storage and transfer operations involving volatile organic compounds with a true vapor pressure of less than 1.5 PSIA at actual conditions are exempt from the provisions of Section III.B."

2. Section IX.L.2.c.(i) contains discrepancies in reference to the permit number of Coors Brewing Company Emissions Reduction Credit Permit issued on July 25, 1994.

3. Section X.D.2. through Section XI.A.3. was omitted from the CCR as published in the current version of Regulation Number 7.

Specific Statutory Authority

§§ 25-7-109, C.R.S. (1997) authorize the Commission to adopt emission control regulations.

Purpose

Re-adoption of the proposed rule will eliminate the discrepancies between the Commission's adopted provisions within Regulation Number 7 and those contained within the Colorado Code of Regulations. Adoption of the amendments will benefit the regulated community by providing sources with consistent information.

F. November 20, 2003 (Sections I.A.2. through I.A.4., II.D. and II.E.)

The Commission repealed the provisions establishing a procedure for granting exemptions for de minimis sources, and the procedure for approving alternative compliance plans without source-specific SIP revisions. The Commission had adopted the repealed provisions in March 1996, but had delayed the effective date pending EPA approval through the SIP revision process. Earlier this year, EPA informed the Commission of its intent to disapprove the provisions unless they were withdrawn. Thus, the provisions that are the subject of this rulemaking action never took effect. The Commission hereby repeals such provisions in order to avoid disapproval of the earlier SIP submittal, and to remove extraneous provisions from Regulation Number 7. Such repeal is required in order to comply with federal requirements, and is not otherwise more stringent than the requirements of the federal act.

§§ 25-7-105(1)(a)(I) and 25-7-301 authorize the Commission to adopt and revise a comprehensive SIP, and to regulate emissions from stationary sources, as necessary to maintain the national ambient air quality standard for ozone in accordance with the federal act.

G. March 12, 2004 (Sections I.A, I.B., XII., and XVI.)

The March 2004 revisions were adopted in conjunction with the Early Action Compact Ozone Action Plan, which is a SIP revision for attainment of the 8-hour ozone standard by December 31, 2007. The Commission adopted four new control measures in Regulation Number 7 to reduce emissions of volatile organic compounds (VOC). The control measures require the installation of air pollution control technology to control: (1) VOC emissions from condensate operation at oil and gas (E&P) facilities; (2) emissions from stationary and portable reciprocating internal combustion engines; (3) certain VOC emissions from gas-processing plants; and, (4) emissions from dehydrators at oil and gas operations.

The new requirements in Sections XII., and XVI. apply to a larger geographic area than the pre-existing requirements of Regulation Number 7, as set out in Section I.A. of the rule. The reference to the "Denver Metro Attainment Maintenance Area", which is not a defined term, in Section I.A was changed to refer to the "Denver 1-hour ozone attainment/maintenance area", which is defined in the Ambient Air Quality Standards Rule. Similarly, the reference to the "Denver Metropolitan Nonattainment Area Ozone Maintenance State Implementation Plan" was changed to the "Ozone Redesignation Request and Maintenance Plan for the Denver Metropolitan Area," which is the correct name of the document submitted to EPA in May 2001.

Regarding VOC emissions from condensate operations, the Commission has determined that an overall reduction of 47.5% VOCs is required of each E&P operation so as to meet the requirements of the SIP. Further the Commission decided not to take a unit-by-unit approach, but rather, the amendments take a more flexible approach to regulating such emissions by requiring sources that have filed, or were required to file, APENs to choose emission controls and locations for applying those controls. This approach also minimizes the risk that sources may reconfigure tanks to avoid implementing the regulation.

Section XII.A.6. provides an exemption for owners and operators with less than 30 tpy of flash emissions subject to APEN reporting requirements. Regulation Number 7 previously included more general exemptions for emissions from condensate operations, but such pre-existing exemptions should have been repealed as part of this revision to Regulation Number 7. To the extent any pre-existing exemption for condensate operations remains, such pre-existing exemption shall not be construed to supersede the requirements of Section XII.

The rule also requires annual reports describing how E&P sources will achieve the requisite emission reductions. Such reports are necessary so that the Division can determine whether or not the emission reductions are being achieved.

Section XII.B. of Regulation Number 7 is required to ensure that existing and new natural gas processing plants employ air pollution control technology to control emissions from leaking equipment, and atmospheric condensate storage tanks (and tank batteries). The Commission is specifically requiring a leak detection and repair (LDAR) program for all gas plants, according to the provisions of 40 CFR Part 60, Subpart KKK, regardless of the date of construction of the affected facility. This is

necessary to ensure these large facilities are well controlled and VOC emissions minimized.

Section XII. C. pertains to control of VOC emissions from natural gas dehydration operations. The Commission determined that, in order to meet the requirements of the SIP, emissions must be reduced from all dehydration operations located in the 8-hour Ozone Control Area if such operations produce emissions above the minimum threshold specified in the rule. Further the Commission decided that flexibility should be allowed in how emissions are reduced, so several options are listed from which a source owner or operator may choose. If other equally effective measures or control devices are available, the Division may, on a case-by-case basis, approve the use of such alternatives.

Similarly, Section XVI. establishes controls for reciprocating internal combustion engines. Both "lean" and "rich" burn engines are addressed and though the Commission has specified the default control technology to be applied to each engine type, the Division is allowed to approve alternative technology if a demonstration can be made that the alternative is at least as effective as the listed device in reducing VOC emissions. Parties to the rulemaking hearing provided evidence that suitable, cost-effective control equipment may not be available for some existing engines. The rule adopted by the Commission includes an exemption for lean burn engines if the owner demonstrates that such emissions controls would cost $5,000 or more per ton of VOC removed. In calculating such costs, the Division shall use an appropriate amortization period and current discount rate. The Commission directs the Division to further investigate the question of whether controls are available and suitable for lean burn engines, and to recommend any revisions necessary for the regulation applicable to such engines. New engines locating in the control area must comply with the requirements effective June 1, 2004, but existing engines have until May 1, 2005 to come into compliance. Since the rule provides an exemption for existing engines that cannot be controlled for less than $5,000 per ton, the rule must make the distinction between new and existing engines so that engines will not be moved into the area during prior to May 2005 and subsequently apply for such an exemption.

The Commission recognizes that, at this point in time, the controls required by the rule amendments constitute Reasonably Available Control Technology (RACT), at a minimum, and in some cases, the controls mandated by this regulation may, in fact, constitute Best Available Control Technology (BACT). This means that this regulation shall not be used: (a) to preclude a source from asserting that one of the controls mandated herein constitutes BACT or Lowest Achievable Emissions Rate (LAER) for a new source or major modification, (b) require the Division or Commission to mandate different control technologies as BACT, or (c) preclude the Division or Commission from requiring additional or more stringent air pollution control technologies as necessary or appropriate to comply with applicable BACT or LAER requirements for new sources and major modifications.

By its terms, the New Source Performance Standard (NSPS) applicable to leaking equipment at onshore natural gas processing plants (40 CFR Part 60, Subpart KKK) applies to “affected facilities” and “process units” at such facilities as those terms

are defined in the standard. In general, plants that were constructed prior to January 20, 1984 are exempt from the standard, unless subsequently modified or reconstructed, or newly constructed after that date. Since process units at a single gas plant can be distinct, certain gas plants may contain equipment that is not presently subject to the NSPS because of its date of construction. The control requirement in Section XII.B. would extend leak detection and repair program requirements to such equipment.

The statutory authority for the revisions to regulation Number 7 is set out in §§ 25-7-105(1)(a) and (1)(b); 25-7-106(1)(c), (5) and (6); and 25-7-109(1)(a) and (2), C.R.S.

The March 2004 revisions to Regulation Number 7 are based on reasonably available, validated, reviewed, and sound scientific methodologies. All validated, reviewed and sound scientific methodologies and information made available by interested parties has been considered. Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution. The Commission chose the most cost-effective mix of control strategies available to comply with the 8-hour ozone NAAQS. Where possible, the regulations provide the regulated community with flexibility to achieve the necessary reductions. The Commission chose the regulatory alternative that will maximize the air quality benefits in the most cost-effective manner.

H. December 16, 2004 (Sections I.A., II.A., XII. and XVI.)

The December 2004 revisions were adopted to respond to U.S. EPA comments on the Ozone Action Plan the Commission adopted in March 2004. EPA required the rule revision in order to make the control measures incorporated into the State Implementation Plan practically enforceable as required by the federal Clean Air Act. The Federal Act requires all of the regulatory provisions adopted in this rulemaking action, and none of the provisions are more stringent than the requirements of the federal act.

The revised rule includes a process for obtaining emission reduction credit for pollution prevention measures. In order to qualify for an emission reduction credit, a pollution prevention measures must, among other things, be included in a permit even if it does not involve the construction of an air pollution source and would not otherwise trigger a requirement for a permit. The revisions to the regulation do not, however, create a requirement for sources to obtain a permit for pollution prevention measures for which the source will not take emissions reduction credit.

The Commission has the statutory authority to adopt the revisions pursuant to §§ 25-7-105(1)(a) and (1)(b); 25-7-106(1)(c), (5) and (6); and 25-7-109(1)(a) and (2), C.R.S.

The control measures necessary to achieve the 8-hour ozone standard were adopted in March 2004. The December 2004 rule changes do not impose new emission control requirements or emission reduction requirements on industry. Instead, the December 2004 rule revisions are intended to make the previously adopted requirements more enforceable, and to make sure that the requisite emission reductions occur during the ozone season when they are needed. Thus,

the December 2004 are administrative in nature in that they are intended to assist with the administration and enforcement of the previously adopted controls. The Commission recognizes that the December 2004 rule amendments impose additional recordkeeping and reporting requirements, and therefore costs, on the regulated community. The changes, however, are not intended to achieve further reduction in emissions of volatile organic compounds beyond the reduction requirements adopted in March 2004. They are instead intended to make the March 2004 revisions fully enforceable and acceptable to EPA. Since the December 2004 rule changes are administrative in nature, the requirements of § 25-7-110.8 C.R.S. do not apply.

I. December 17, 2006 (Section XII.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4), C.R.S. for new and revised regulations.

Basis

Regulation Number 7, Section XII imposes emission control requirements on oil and gas condensate tanks located in Adams, Arapahoe, Boulder, Douglas and Jefferson Counties, the Cities and Counties of Broomfield and Denver and parts of Larimer and Weld Counties (“8-Hour Ozone Control Area”). The condensate tank requirements, along with other requirements applicable to oil and gas operations and natural gas fired reciprocating internal combustion engines, were initially promulgated in March 2004, and later revised in December 2004, in connection with an Early Action Compact Ozone Action Plan (“EAC”) entered into between the State of Colorado and the United States Environmental Protection Agency. The purpose of the EAC is to prevent exceedances of the 8-Hour Ozone Standard and avoid a nonattainment designation for the area. Pursuant to the EAC, Colorado committed to limiting Volatile Organic Compound (“VOC”) emissions from condensate tanks located in the 8-Hour Ozone Control Area to 91.3 tons per day (“TPD”) as of May 1, 2007 and 100.9 TPD as of May 1, 2012. Because of unanticipated growth of condensate tank emissions since 2004, the control requirements for condensate tanks adopted during the 2004 rulemaking are insufficient to meet these daily emission numbers. The current revisions require a greater level of control of condensate tank emissions in the 8-Hour Ozone Control Area in order to meet the commitments set forth in the EAC and to prevent future exceedances of the 8-Hour Ozone Standard.

These revisions are based on reasonably available, validated, reviewed and sound scientific methodologies. All validated, reviewed and sound scientific methodologies made available by interested parties have been considered. Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution, and will reduce the risk to human health or the environment or otherwise provide benefits justifying the costs. Among the options considered, the regulatory option chosen will maximize the air quality benefits in the most cost-effective manner.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in Section, 25-7-105(1)(a), C.R.S., which gives the Air Quality Control Commission authority to promulgate rules and regulations necessary for the proper implementation of a comprehensive state implementation plan that will assure attainment of national ambient air quality standards. Additional authority for these revisions is set forth in Sections, 25-7-106 and 25-7-109, which allow the Commission to promulgate emission control regulations and recordkeeping requirements applicable to air pollution sources. Specifically, § 25-7-106(1)(c) authorizes the Commission to adopt emission control regulations that are applicable to specified areas within the state. § 25-7-109(1)(a) authorizes the Commission to adopt emission control regulations. § 25-7-109(3)(b) authorizes the Commission to adopt emission control regulations for the storage and transfer of petroleum products and any other volatile organic compounds.

Purpose

The Revisions to Section XII. were adopted in order to meet the commitments with respect to condensate tank emissions set forth in the Early Action Compact Ozone Action Plan entered into between the State of Colorado and U.S. EPA, prevent exceedances of the 8-Hour Ozone Standard, and simplify recordkeeping and reporting requirements. To accomplish these goals, the revised regulation raises the system-wide control requirements for the ozone season from the current 47.5% to 75% commencing in 2007 and 78% in 2012. While the rule establishes a higher percentage reduction in 2012 the Commission recognizes that given the uncertainty of emissions growth over the next 6 years, this reduction requirement may be too high and may need to be revisited as the 2012 deadline approaches.

For the non-ozone season the required reduction has been raised from 38% to 60% commencing October 2007, and 70% commencing January 1, 2008. Determination of compliance during the ozone season under the revisions will be on a weekly basis instead of a daily basis, in recognition of the fact that condensate production is not typically measured on a daily basis. Under the previous version of the Rule, production could be tracked on something greater than a daily basis and the total divided by the number of days to obtain a daily number. As such, the prior rule did not truly give a daily average and thus the move to a weekly average is of little substance. Apart from this change, calculation of emissions for compliance purposes will remain the same as under the previous version of the rule. In addition to raising the system-wide reduction requirements, the current rule adds significant new monitoring, record-keeping and reporting requirements, and a “backstop” threshold requirement to have emission controls on all condensate storage tanks with uncontrolled actual emissions of 20 tpy or more of VOC flash emission, as a state-only requirement within the EAC area pursuant to Section XVII.C.1. of Regulation Number 7. Owners and operators will continue to keep a spreadsheet that tracks emission reductions and submit an Annual Report as required under the previous version of the rule. Owners and operators are now also required to submit a semi-annual report on November 30 of each year detailing their emissions during the preceding ozone season. Additional record keeping has been added so as to

require that a weekly checklist be maintained detailing inspections of control devices. This checklist will assist operators in the inspection and maintenance practice and provide a record that proper inspections have been done. If the inspections show a problem with the control device, the owner or operator will be required to notify the Division of problems on a monthly basis. This requirement will allow the Division to track problems on a timelier basis and ensure compliance with the rule. Finally, a provision has been added to require owners or operators to submit a list of all their controlled tanks on April 30 of each year and notify the Division monthly during ozone season if the control status of any tank changes.

J. December 17, 2006 (Sections I.A.1.b. and XVII.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4), C.R.S. for new and revised regulations.

Basis

The Air Quality Control Commission has adopted these state-only provisions as a means of reducing air emissions from oil and gas operations throughout Colorado. Due to the large growth in oil and gas production in a number of regions of the state emissions from oil and gas operations have rapidly increased over the past few years and are expected to increase further in the foreseeable future. These revisions are a proactive measure designed to eliminate air emissions that could threaten attainment of ambient air quality standards and adversely affect visibility in Class I Areas. These revisions are based on reasonably available, validated, reviewed and sound scientific methodologies. All validated, reviewed and sound scientific methodologies made available by interested parties have been considered. Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution, and will reduce the risk to human health or the environment or otherwise provide benefits justifying the costs. Among the options considered, the regulatory option chosen will maximize the air quality benefits in the most cost-effective manner.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in §§ 25-7-106 and 25-7-109 of the Colorado Air Pollution Prevention and Control Act (“Act”), which allow the Commission to promulgate emission control regulations and recordkeeping requirements applicable to air pollution sources. Additional authority is set forth in § 25-7-105.1, which allows the Commission to adopt state-only standards. Specifically, § 25-7-106(1)(c) authorizes the Commission to adopt emission control regulations that are applicable to the entire state. § 25-7-109(1)(a) authorizes the Commission to adopt emission control regulations. § 25-7-109(3)(b) authorizes the Commission to adopt emission control regulations for the storage and transfer of petroleum products and any other volatile organic compounds.

Purpose

The Revisions to Section XVII. were adopted in order to reduce air emissions from oil and gas operations and natural gas fired reciprocating internal combustion engines in Colorado. These revisions constitute a forward-looking approach to deal with a rapidly growing source of air emissions, and are designed to reduce the possibility of future problems with respect to the attainment of National Ambient Air Quality Standards and state and federal Class I Area visibility goals. Since the requirements are not mandated under federal law and are not currently necessary to meet National Ambient Air Quality Standards they are being adopted as a state-only requirement in accordance with the Act and as provided for under the Federal Clean Air Act.

These revisions establish emission control requirements for condensate storage tanks, glycol dehydrators and natural gas fired reciprocating internal combustion engines in Colorado. These provisions require that condensate tank and dehydrator controls meet a 95% percent control efficiency. As in the EAC Area, this requirement does not contemplate stack testing in order to verify the control efficiency. The insertion of the word average allows operators some downtime without a violation

occurring so long as the downtime does not result in an average control efficiency of less than 95% considering the actual engineered control efficiency. For the purposes of XVII.C.4.b. observed operation of flare auto-igniters can include telemetric monitoring systems, physical on-site function tests or auditory confirmation of the auto-igniter function.

The requirements applicable to glycol dehydrators mirror the requirements applicable in the 8-Hour Ozone Control Area set forth in Section XII, and should be interpreted consistently with those provisions notwithstanding the addition of clarifying language. For example, language has been added clarifying that grouping of dehydrators is limited to dehydrators at a single site. Similarly, the word "production" has been added to the definition of condensate tank to clarify that the requirements, as within the EAC, do not apply to produced water tanks.

Determination of whether a condensate tank's emissions are at or above the threshold is based on the emissions from the tank during the preceding twelve-month period. If a tank has been in service for less than twelve months, applicability shall be based on uncontrolled actual emissions over the service period of the tank multiplied out to twelve months. Accordingly, if a tank has been in service for three months, applicability of the control requirements will be based on the uncontrolled actual emissions from the tank for those three months multiplied by four. If emissions from a controlled tank decrease, operators may remove the controls when emissions from the previous twelve-month period falls below the applicable threshold. Operators will remain responsible, however, for controlling a tank if a subsequent emission increase results in emissions being over the applicable threshold during the preceding twelve months.

For tanks serving newly drilled, recompleted or restimulated wells (including refrac'd wells) the owner or operator will have 90 days to determine anticipated production and, if necessary install a control device. In determining anticipated production, the owner or operator may use an appropriate decline factor to determine expected emissions over the first 12 months after the new drilling, recompletion or re-stimulation. If the owner or operator determines that emissions will be below the 20 tpy threshold following the new drilling, recompletion or restimulation, the owner or operator shall notify the Division of this determination.

Certain differences with the requirements applicable to the 8-Hour Ozone Control Area have been included in order to provide greater flexibility to operators in other areas of the state and in light of the fact that the regulation represents a proactive attempt to avoid future impacts from oil and gas emissions. Specifically, the standards for obtaining approval of an alternative pollution control device have been relaxed to promote innovative control strategies. Additionally, a provision has been added to allow an extension of the control requirement deadlines at the Division's discretion for good cause shown. This provision allows the Division to extend a deadline where shortages of control equipment, and crews may prevent an operator from meeting the deadlines, particularly in areas where access is limited by the weather or other issues.

With respect to Section VII.B.1.c. of the General Provisions, the Commission has determined that as a general rule during normal operations no emissions should be visible from the air pollution control equipment. Normal operations include reasonably foreseeable fluctuations in emissions from the condensate tank, including the fluctuations that occur during a separator dump. However, a transient (lasting less than 10 seconds) “puff” of smoke when the main burner ignites or shuts down would not be considered a violation of the “no visible emission” standard. Finally, a provision has been included that exempts units’ subject to the rule if such units are also subject to a control standard under the MACT, BACT or NSPS Programs. This exception is of most importance for new and newly relocated engines that may become subject to a currently pending NSPS Standard under Subpart JJJJ.

The engine provisions only apply to engines that are constructed or relocated into Colorado after the applicability date and do not impose requirements on units that are currently located in the state.

The Commission recognizes that the adopted emission control requirements represent a first step in addressing rapidly growing emissions from oil and gas operations throughout the state. Accordingly, the Commission directs the Division to provide an annual update on emission growth trends, environmental impacts, modeling and monitoring efforts, the adequacy of emission controls to protect the NAAQS and the health impacts of emissions from the oil and gas sector.

K. December 12, 2008 (Title, Sections I., II., VI. – XIII., XVII., XVIII., and Appendices A-F)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4), C.R.S. for new and revised regulations.

Basis

The Air Quality Control Commission has adopted revisions throughout Regulation Number 7 to address ozone formation in the 8-Hour Ozone Nonattainment Area (NAA), including the 9-county Denver Metropolitan Area and North Front Range (DMA/NFR) NAA. Specifically, the Commission has adopted revisions to reduce an ozone precursor, volatile organic compound (VOC) emissions, and thus reduce ozone formation. These revisions are necessary to ensure attainment with the current 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) set at 0.08 parts per million (ppm), and to achieve additional ozone reductions in light of both the new ozone NAAQS set at 0.075 ppm and the Governor's July 27, 2007 directive to proactively and pragmatically reduce ozone levels.

As of November 20, 2007, the EPA's deferral of a nonattainment designation for the area in question expired, signifying that the area is now considered nonattainment, or in violation of the 1997 8-hour Ozone NAAQS of 0.08 ppm for ground level ozone. The DMA/NFR includes all of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties as well as portions of Larimer and Weld Counties. This area is now known as the DMA/NFR NAA.

Pursuant to the Federal Clean Air Act, Colorado must prepare and submit a revision to the State Implementation Plan (SIP) to the EPA no later than June 30, 2009 that demonstrates attainment of the 8-Hour Ozone NAAQS no later than 2010. The Commission has adopted an Attainment Plan that satisfies this requirement. The Attainment Plan demonstrates attainment with no additional control measures.

Photochemical grid dispersion modeling indicates that without further emission controls, Colorado will attain the 8-hour standard by 2010. The dispersion modeling reflects that Colorado would attain the standard by a narrow margin. Photochemical dispersion modeling analysis is the primary tool used to assess present and future air quality trends, and is required for EPA to approve the state attainment demonstration in the SIP.

In addition, pursuant to EPA guidance, if modeling results indicate that the highest ozone levels will fall between 0.082 and 0.087 ppm, Colorado must conduct a "weight of evidence" analysis and other supplemental analyses in order to corroborate the modeling results. Colorado's model results are within this range, and thus the state has conducted this analysis. The analysis supports the conclusion that Colorado will attain the standard by 2010.

The Commission is also adopting State-only revisions to Regulation Number 7 to further address ozone formation in the DMA/NFR NAA. Specifically, the Commission has adopted revisions to reduce an ozone precursor, volatile organic compound (VOC) emissions, and thus reduce ozone formation. These revisions help Colorado make progress toward eventual compliance with the new ozone NAAQS set at 0.075 ppm as well as the Governor's directive to proactively and pragmatically reduce ozone levels.

Statutory Authority

The statutory authority for these revisions is set forth in the Colorado Air Pollution Prevention and Control Act ("Act"), C.R.S. § 25-7-101, et seq., specifically, C.R.S. §25-7-105(12) (authorizing rules necessary to implement the provisions of the emission notice and construction permit programs and the minimum elements of the operating permit program), 109(1)(a), (2) and (3) (authorizing rules requiring effective practical air pollution controls for significant sources and categories of sources, including rules pertaining to nitrogen oxides and hydrocarbons, photochemical substances, as well as rules pertaining to the storage and transfer of petroleum products and any other VOCs), and § 25-7-301 (authorizing the development of a program for the attainment and maintenance of the NAAQS).

Purpose

These revisions to Regulation Number 7 are part of an overall ozone reduction strategy. The Commission intends that this overall ozone reduction strategy accomplishes six objectives: A) reduce VOC and nitrogen oxides' (NOx) emissions from oil and gas operations in the Ozone NAA and across the state, B) revise the control requirements for condensate tanks by a refined system-wide control strategy in the Ozone NAA, C) expand VOC RACT requirements for listed source categories for 100 tpy sources such that all Ozone NAAs are subject to Regulation Number 7's RACT requirements, D) clarify how the RACT requirements in Regulation Numbers 3 and 7 interact in the Ozone NAA, E) improve the Division's inventory of condensate emissions and other relevant sources in the NAA; and F) make typographical, grammatical and formatting changes for greater clarity and readability.

In support of objectives A-D and F, the Commission adopts these revisions to Regulation Number 7 to revise condensate tank regulations, set pneumatic controller regulations, expand RACT applicability and make associated corrections (Regulation Number 7, Sections I., II., VI. – XIII., XVII., XVIII., and Appendices A-F).

In the course of this proceeding, the Division and certain parties supported a compromise proposal regarding the control of condensate tanks. The Commission finds this proposal to be appropriate with certain changes noted herein. The Commission is requiring an increase from 75% to 81% control on a system-wide basis in 2009; to 85% control on a system-wide basis in 2010; and to 90% control on a system-wide basis in 2011 in the 8-Hour Ozone NAA. The Commission is adopting new VOC controls for pneumatic controllers in the 8-Hour Ozone NAA in Regulation Number 7, Section XVIII.

These system-wide control percentages achieve significant ozone precursor reductions in 2009, 2010 and 2011, with emphasis on significant VOC emissions reductions in 2010, during the monitoring period for the attainment demonstration. These revisions will help to ensure that the non-attainment area realizes the necessary reductions during the 2010 attainment year. Further, these revisions are an important step in putting the State on a path towards attaining the 2008 8-Hour ozone standard.

A number of parties including the Regional Air Quality Council and the North Front Range Metropolitan Planning Organization supported this proposal to secure VOC

reductions from this source at these levels and according to this schedule. The system-wide approach has been approved by the Commission in the past, as well as by EPA in revisions to the State Implementation Plan. The Commission decided to defer decision making on the implementation of a 95% system-wide level of control, given concerns regarding the notable incremental cost associated with control to the equivalent of 2 tpy tanks as well as concerns regarding the flexibility intended to be afforded by a system-wide approach. Tank operators also expressed concern about the loss of incentive to over-control their systems to meet the standard, and the difficulty for small operators to control at the 95% system-wide level at this time.

The proposed control percentages continue to afford flexibility in operations to condensate tank operators, while ensuring attainment of the standard by 2010. Therefore, the Commission is deferring further control for future modeling, air quality analysis, and/or administrative review, whether to control this source in the future at the 95% system-wide control level or through some other approach for purposes of the 2008 8-Hour standard.

The provisions of the compromise proposal, including the commensurate emissions reductions, support the State Implementation Plan's ability to assure attainment and maintenance of the 1997 8-Hour Ozone NAAQS. Inclusion of these provisions enhances the Weight of Evidence demonstration supporting attainment by 2010 pursuant to this State Implementation Plan. The Commission recognizes parties subject to the compromise Regulation Number 7 provisions for condensate tank system-wide emissions reductions concur that these provisions are appropriate for inclusion in the State Implementation Plan.

Further the Commission intends to expand the applicability of RACT requirements to existing, new and modified sources in Ozone NAAs outside of the historic one-hour Ozone NAA or attainment/maintenance area (Regulation Number 7, Sections I and II). The Commission further intends to clarify how the control technology requirements of Regulation Number 7 interact with Regulation Number 3, Part B, Section II.D.2.

Finally, the Commission intends to make grammatical, typographical, formatting revisions, and other editing revisions throughout Regulation Number 7.

Condensate Tank Emissions Control

Condensate storage tank control requirements in Regulation Number 7, Section XII. are revised by reorganizing the rule, adding/revising definitions, adding monitoring requirements, revising recordkeeping and reporting requirements, and setting additional control requirements for tanks. The current requirements are reorganized by specifying applicability, definitions, general provisions, emissions controls, monitoring, and recordkeeping and reporting sections. The terms new, existing, modified/modification, auto-igniter, and surveillance system were defined.

Tanks serving newly drilled, recompleted or stimulated wells are required to employ air pollution control equipment during the first 90 days of production. After the first 90 calendar days, the control device may be removed. This requirement is designed

to address the fact that production, and thus emissions, is at their greatest during the period immediately after drilling, recompletion or stimulation, and the fact that the actual production/emission level is not known prior to drilling, recompletion or stimulation. By requiring controls on all tanks serving newly drilled, recompleted or stimulated wells, the proposed rule significantly reduces emissions during the initial period, while allowing owners and operators to remove control devices afterward, as part of the overall system-wide control regime. All tanks over 2 tpy must participate in the overall system-wide program.

Furthermore, since Regulation Number 7's system-wide program is essentially RACT for condensate tanks in the NAA, new and modified 2 tpy or greater condensate tanks (affected by Regulation Number 3 RACT) may also move their control devices after the first 90 days when participating in the overall system-wide control regime, as long as the overall system-wide requirements are being met. Such flexibility is provided as to avoid two regulatory programs: one for tanks that might never be allowed to move their control devices under Regulation Number 3 RACT and one for tanks that would be allowed the flexibility under a system-wide program. Finally, it is the intent of this rule that sources may use their 2 tpy or greater "modified" tanks emissions (i.e., during those tanks' first 90 days of production) in the source's overall system wide calculation. After 90 days, sources must include – whether controlled or otherwise - the 2 tpy or greater "modified" tanks in the overall system-wide calculation. In the case of modified tanks that fall below 2 tpy, it is not the intent of the commission for sources to include these less than 2 tpy tanks in any system-wide calculation. However, sources may use the less than 2 tpy controlled tanks, if necessary to demonstrate system-wide compliance.

The Commission is requiring the installation and operation of auto-igniters for each combustion device. In many cases, condensate tanks are remotely located and unmanned. Auto-igniters will provide greater assurance that the control devices are functioning, under these circumstances. Auto-igniters may be relied on to identify when the pilot is not lit and attempt to relight it, and ensure control operation. The Commission is also requiring surveillance on batteries with uncontrolled emissions greater than 100 tpy. Operators must use surveillance to document the duration of time when the pilot is not lit, and to discover if repairs are necessary to ensure proper control operation. The Commission is targeting this size of battery in order to strike a balance between the need to more carefully monitor performance among the largest batteries, the cost associated with surveillance and the division's capacity to manage the information. The Commission acknowledges that three well operators, Encana, Anadarko and Noble Energy, have agreed to participate with the Division in a pilot program regarding the implementation of electronic surveillance systems.

With regard to recordkeeping and reporting requirements, operators will still record estimated emissions each week (as part of the current Regulation Number 7 requirements) and will report this information to the Division semi-annually. In addition, the Division has revised these requirements so that sources now must keep monthly records throughout the year and provide any of those records within 5

business days of a division request. Further, operators may only use a Division-approved spreadsheet to submit emissions records.

Further, a responsible official must now certify the accuracy of the data in the semi-annual reports. This level of recordkeeping and reporting will allow the Division greater capacity to verify compliance and additional availability to work with sources (especially smaller operators). The Commission intends that record-keeping and reporting requirements for surveillance apply only to tanks with uncontrolled emissions greater than 100 tpy.

Controls on 2 Tons Per Year Tanks and Lower

The Commission intends that substantial emissions reductions be achieved from condensate storage tanks and that industry retain the flexibility to decide which tanks to control in order to achieve those reductions. The rule has been revised to subject any condensate storage tank to this rule in the Applicability Section, but stipulates in the Emission Control Section that in order to determine the appropriate system-wide emissions reductions, only two tons per year tanks be considered.

In doing this, the Commission intends that tanks that emit actual uncontrolled volatile organic compound emissions of two tons per year or more be considered in determining compliance with the system-wide emissions reductions for the specific ozone non-attainment or attainment maintenance area, and that industry have the flexibility to control smaller tanks in those specific ozone non-attainment or attainment maintenance areas if needed in order to meet the applicable system-wide emissions reductions.

For example, if a company owns 20 tanks that emit actual uncontrolled volatile organic compound emissions of two tons per year in a specific ozone non-attainment area, and 15 tanks that emit less than two tons per year, the company would determine its required emission reductions of the production through the 20 two tpy tanks, but be able to control any of the 15 additional less than 2 tpy tanks in order to comply with the system-wide emissions reduction or maintain the desired over control as buffer. However, all tanks controlled in order to comply with the system-wide emissions reduction standard must have filed an APEN and obtained a valid permit in order to be considered as part of the compliance demonstration.

Calendar Weekly and Calendar Monthly Records and Reports

The Commission intends that records and associated reports demonstrating compliance with the weekly emission reduction requirement shall start with the calendar week containing May 1st and end with the calendar week containing September 30th, or other specified dates in the rule. A calendar week begins midnight Sunday morning and ends the following Saturday evening at midnight. Thus, where May 1st falls on any day other than Sunday, the calendar week of May 1st begins on midnight of the preceding Sunday morning. Similarly, the weekly emission reduction requirement applies to the full calendar week that includes September 30th. So, if September 30th falls somewhere in the middle of a calendar week, the emissions reduction requirement applies to that calendar week in full,

beginning midnight Sunday morning and ending the following Saturday evening at midnight.

Consequently, calendar monthly records and associated reports demonstrating compliance with the monthly emission reduction requirement shall apply to midnight the morning of day 1 through midnight the evening of the last day of each specific calendar month.

The Commission intentionally broadened the definition of surveillance to provide that: 1) electronic surveillance is not specifically required, and other means to gather information from remote locations is allowed; and 2) data only had to be gathered on a daily basis. The Commission intends that currently required surveillance need only monitor combustion device flame presence or temperature once every day, in order to balance the need to gather adequate data on combustion device operation with the amount of data to be gathered, handled and processed. The Commission believes this is a fair approach considering that only the largest atmospheric condensate storage tanks (those with actual uncontrolled volatile organic compound emissions equal to or greater than 100 tons per year) are subject to this surveillance requirement.

Finally, the Commission intends that the monitoring be completed to ensure compliance, and has determined that failing to monitor as required, losing monitoring data, and failing to maintain monitoring data should be treated similarly to recordkeeping requirements. Thus, these actions “may be treated by the Division as if the data were not collected.”

The Commission intends that system-wide emissions control requirements apply to each specific ozone non-attainment or attainment maintenance area and not collectively to all ozone non-attainment or attainment maintenance areas state-wide. This means that the system-wide emissions control requirements apply specifically to the Ozone Control Area (a.k.a. the Denver Metropolitan Area/North Front Range Ozone Control Area), separately from any future designated ozone non-attainment area. Each new ozone non-attainment area designated in the future shall be subject to the system-wide control requirements by themselves. This is needed to ensure that necessary controls are achieved and maintained in each ozone non-attainment or attainment maintenance area, and that these controls are not removed and offset by system-wide controls in some other ozone non-attainment area.

Pneumatics Emissions Control

This revision establishes new VOC controls for pneumatic controllers in the 8-hour Ozone NAA in Regulation Number 7, Section XVIII. Pneumatic controllers are widely used in the oil and gas industry to control or monitor process parameters such as liquid level, gas level, pressure, valve position, liquid flow, gas flow and temperature. Pneumatic controllers of interest are instruments that are actuated using natural gas pressure (of which some natural gas may be bled to the atmosphere from the pneumatic controller and some may be vented from the associated valve). Natural gas-actuated pressure relief devices are not intended to be covered by this rule. There are high-bleed controllers designed to emit more than

six standard cubic feet of gas per hour (scfh) to the atmosphere, and low-bleed controllers that emit six scfh or less. Historically, high-bleed controllers have been used.

A 2003 EPA study reported that emissions from pneumatic controllers are collectively one of the largest sources of methane emissions in the natural gas industry. Estimated annual nationwide methane emissions are approximately 31 billion cubic feet (Bcf) from the production sector, 16 Bcf from the processing sector, and 14 Bcf from the transmission sector. As stated, by definition, high-bleed pneumatic controllers emit more than six scfh of natural gas to the atmosphere. The highest bleed rate listed in one source, a table published by the EPA, is 42 cubic feet per hour (cfh). The average bleed rate for high-bleed pneumatic controllers in the NAA is 21 cfh. Natural gas is primarily composed of methane, but also contains other compounds including VOCs and hazardous air pollutants (HAPs).

VOC emissions from pneumatic controllers within the NAA were 24.8 tons per day (tpd) for the 2006 baseline and have been projected to be 31.1 tpd for the 2010 baseline. These emissions represent 14.0 and 15.1 percent of the total VOC emissions from oil and gas sources in the NAA in 2006 and 2010, respectively. Therefore, emission reductions related to this source category have the potential to be significant.

These rules require that most high-bleed controllers must be replaced with the equivalent of low-bleed or better pneumatic controllers by May 1, 2009. There is an exception that allows high-bleed controllers that the Division agrees are necessary for safety purposes. Operators must inspect and maintain in-use high-bleed controllers on a monthly basis. Operators must also keep logs of the number of in-use high-bleed controllers, as well as the reasoning that high-bleed controller remains in place, and the inspection and maintenance of the in-use high-bleed controllers. These revisions further require operators to physically tag the in-use high-bleed controllers to enable the Division to track compliance.

The oil and gas industry has already begun replacing high-bleed controllers with low-bleed controllers, understanding the financial gain of minimizing the bleed rate of pneumatic controllers.

RICE Controls

Reciprocating internal combustion engine (RICE) requirements of Regulation Number 7, Section XVI. applies in what was the early action compact area (now the Ozone NAA). These revisions extend the RICE requirements' applicability to a state-wide basis.

Expand and Clarify RACT Requirements

Regulation Number 7 is revised to expand its application to all subject sources in any Ozone NAA and Attainment/Maintenance Areas. This previously applied to the one-hour attainment/maintenance area nonattainment area. Accordingly, this regulation will apply to some sources that were previously outside of its geographic scope. It is intended that existing sources become subject to previously adopted Control Technique Guidelines (CTGS) or general RACT requirements, and are given time to comply to implement the general RACT requirements.

Specifically, existing sources that have not been modified are allowed three years from the date of ozone non-attainment designation to implement general RACT requirements. All new or modified sources become subject to these general RACT requirements upon commencing operation after the new ozone non-attainment designation date. This revision is considered a measured approach to ensuring the consistent use of best practices across the NAA as well as reductions in ozone precursors considered necessary to attaining the 8-hour ozone standard.

This revision expands Regulation Number 7's applicability to any Ozone NAA or attainment/maintenance area. This is done intentionally to apply Regulation Number 7 requirements to current as well as any future Ozone NAA or attainment maintenance areas in Colorado.

Additionally, this revision clarifies how the Regulation Number 3 RACT requirements interact with Regulation Number 7. This revision specifies that pursuant to Regulation Number 7, Section II.C. all existing sources that emit 100 tons per year of VOC emissions and that are located in the 8-hour Ozone NAA become subject to RACT.

Further, Regulation Number 7 is currently unclear on whether or not existing sources that are modified become subject to new source requirements. This revision clarifies that existing sources that are modified are subject to the Regulation Number 3, Part B, Section II.D. requirements and are considered to be a new source for the purposes of Regulation Number 7.

This revision also clarifies that the both case-by-case and general RACT requirements of Regulation Number 7, Section II.C. only apply to existing, new and modified sources. For sources at which all air pollution generating activities at that source are already subject to RACT or BACT, the RACT analysis would show that all activities are already subject to RACT or BACT. For any other air pollution generating activities not covered by RACT or BACT, the source would only have to complete a RACT analysis specific to those activities.

Typographical, Grammatical, Formatting and Other Changes

The commission changed the title of Regulation Number 7 to include NOx. An outline of the sections is provided to better understand the contents of Regulation Number 7. Outdated sections are removed (i.e. Section II.F.1. specific to Gates Rubber Company, which is now out of business). Section XII., specific to condensate tanks in the Ozone NAA is reorganized for clarity. One appendix (new Appendix A) is added to provide maps of Ozone NAAs and chronologies of attainment designations, of which certain requirements key off. Finally, sections and appendices are renumbered and formatted as necessary.

Section 110.5 and 110.8 Analysis

Some of these revisions are not intended to be incorporated into Colorado's SIP. To the extent these revisions could be construed to exceed the requirements of federal law, the Commission provides the following additional statement, consistent with C.R.S. § 25-7-110.5(5)(a):

(I) These rules are intended to reduce uncontrolled emissions of ozone precursor pollutants. The rules thereby serve to attain and maintain compliance with the National Ambient Air Quality Standard (NAAQS) for Ozone. However, there are no comparable federal requirements that apply to the sources in question.

(II) There are no applicable federal requirements, other than the duty to attain the ozone NAAQS. There is considerable flexibility in meeting the NAAQS. However, there are very limited sources of uncontrolled anthropogenic ozone precursor emissions to target in order to reduce ozone. Consequently, the sources in question, as a significant source of uncontrolled VOCs and NOx, must be targeted in order to attain the standard.

(III) There are no applicable federal requirements, other than the duty to attain the ozone NAAQS. The ozone NAAQS was not determined taking into account concerns that are unique to Colorado.

(IV) These rules may prevent or reduce the need for costly retrofit to meet more stringent requirements at a later date. The DMA/NFR non-attainment area has violated the 0.08 ppm ozone NAAQS. Colorado will soon be required to comply with the new ozone NAAQS of 0.075 ppm. Colorado Governor Ritter has directed that Colorado air quality planning agencies implement measures to reduce ozone to a level below the NAAQS. If these rules are not adopted now, it may be necessary to require costlier retrofitting in order to meet the Governor's directive as well as the new NAAQS.

(V) Since there are no applicable federal requirements, there is no timing issue with regard to implementing federal requirements. However, these controls are intended to help the DMA/NFR attain the NAAQS. If the standard is not attained by the 2010 ozone season, the area may face a "moderate" non-attainment designation.

(VI) The adopted rules will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth.

(VII) The adopted rules establish reasonable equity for sources subject to the rules by providing the same standards for similarly situated sources.

(VIII) If the state rules were not adopted, other sectors may face a disproportionate share of the burden of reducing precursor pollutants.

(IX) There are no corresponding federal requirements.

(X) Demonstrated technology is available to comply. Sources are already using the control devices intended to be used to comply with these rules. However,

sources face an additional burden of implementing auto-igniters and surveillance. The Commission anticipates a reasonable degree of delay in securing and installing the technology in question and has accommodated the sources by providing for a reasonable delay for the application of these requirements.

(XI) The adopted rules will reduce VOC and NOx emissions, thereby contributing to the prevention of the formation of ozone through the most cost-effective means available.

(XII) Alternative rules requiring additional controls for other sources would also provide gains toward attaining the ozone NAAQS. However, oil and gas industry members are the largest anthropogenic stationary source of precursor pollutants in the State. A disproportionate benefit to this industry would accrue if their uncontrolled emissions remain at current levels compared to other stationary sources.

(XIII) A no-action alternative may address the ozone NAAQS. Modeling and other analysis suggests that the NAA would attain the standard by 2010 without these rules. However, this analysis suggests that ambient levels of ozone would be very close to the NAAQS. These rules provide more assurance of attaining the ozone NAAQS while also providing for reductions that are necessary to make progress toward the new ozone NAAQS. No action would only delay the necessary reductions.

Further, pursuant to C.R.S. § 25-7-110.8(1), the Commission makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of ground-level ozone.

(III) Evidence in this record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost effective, provide the regulated community flexibility, and achieve any necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

L. January 7, 2011 (Outline and Sections I. and XVII.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5, C.R.S (the Act).

Specific Statutory Authority

The Colorado Air Quality Control Commission (Commission) promulgates this regulation pursuant to the authority granted in §§ 25-7-105(1)(c), C.R.S. (authority to adopt a prevention of significant deterioration program); 25-7-109(1)(a) (authority to require the use of air pollution controls); 25-7-109(2)(a) (authority to adopt emission control regulations pertaining to visible pollutants); and 25-7-114.4(1) (authority to adopt rules for the administration of permits).

Basis and Purpose

The Commission intends that the current Regulation Number 7, Section XVII.E.3.a. identifying technology-based control requirements for existing rich burn reciprocating internal combustion engines (RICE), or rich burn RICE that were constructed or modified prior to February 1, 2009, become a NOx emission control measure that is included as part of the Regional Haze SIP and become federally enforceable upon EPA approval. The technology-based control requirements of Section XVII.E.3.a. reduce NOx. This proposal only changes the enforceability of these currently state-only requirements such that they become federally enforceable. This proposal does not change emission control, monitoring, recordkeeping or reporting requirements.

The Commission also intends that the following provisions, added in Sections XVII.E.3.a.(i)(a) through (c), will continue to be effective under the Regional Haze SIP. Specifically, these provisions require good air pollution control practices and allow for exemptions from the requirements for existing rich burn RICE. The exemptions apply to any existing rich burn RICE either with uncontrolled actual emissions below permitting thresholds or that is subject to a New Source Performance Standard (NSPS), National Emission Standard for Hazardous Air Pollutants (NESHAP), or Best Available Control Technology (BACT) limit.

Existing lean burn RICE requirements are not incorporated into the Regional Haze SIP, as the associated controls do not reduce NOx or SO2.

Colorado has determined that it is reasonable and appropriate to make these RICE requirements federally enforceable in this first planning period, as part of the state’s strategy for addressing reasonable progress towards achieving natural visibility conditions in federal Class I areas.

M. December 20, 2012 (Sections II., XII., and XVII.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4), Colorado Revised Statutes (C.R.S.) for new and revised regulations.

Basis

Regulation Number 7 is designed to implement substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act (Act) including provisions of the State Implementation Plan (SIP) addressed in C.R.S. § 25-7-105(1)(a), emission control regulations addressed in C.R.S. § 25-7-105(1)(b) and

authorization of the development of a program for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) in C.R.S. § 25-7-301, as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal. The revisions were made to address the U.S. Environmental Protection Agency's ("EPA") partial disapproval of Colorado's ozone SIP.

On August 5, 2011, EPA published the "Approval and Promulgation of State Implementation Plans; State of Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions" (76 Fed. Reg. 47443, August 5, 2011). EPA partially approved and partially disapproved revisions to Colorado's SIP adopted by the Air Quality Control Commission (Commission) in December 2008 and submitted to the EPA in June 2009.

Statutory Authority

The statutory authority for these revisions is set forth in the Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-101, et seq., specifically, C.R.S. § 25-7-105(12) (authorizing rules necessary to implement the provisions of the emission notice and construction permit programs and the minimum elements of the operating permit program), 109(1)(a), (2) and (3) (authorizing rules requiring effective practical air pollution controls for significant sources and categories of sources, including rules pertaining to nitrogen oxides and hydrocarbons, photochemical substances, as well as rules pertaining to the storage and transfer of petroleum products and any other VOCs), and § 25-7-301 (authorizing the development of a program for the attainment and maintenance of the NAAQS).

Purpose

The Commission revised Regulation Number 7 to address the EPA's partial disapproval of Colorado's Ozone State Implementation Plan ("SIP'). On August 5, 2011, the EPA issued a final action on Colorado's June 2009, Ozone SIP submittal, both approving Colorado's attainment demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) and disapproving specific revisions to Regulation Number 7. 76 Fed. Reg. 47443, August 5, 2011. Specifically, the EPA disapproved both the repeal of Regulation Number 7, Section II.D. and all revisions to Section XII. as adopted by the Commission in December 2008. As a basis for its action, the EPA stated that Colorado demonstrated attainment with the 1997 8-Hour Ozone NAAQS, however Colorado did not adequately provide an anti-backsliding demonstration for the revisions to Regulation Number 7 that were adopted by the AQCC in December 2008, and submitted to the EPA in June 2009.

The Commission intends that these 2012 revisions include both SIP and state-only revisions that address EPA's partial disapproval of SIP provisions in Sections II.D and XII., and make related state-only revisions to Section XVII. for consistency. The Commission does not intend that these 2012 revisions add or strengthen emissions control measures of Section II.D., XII. or XVII. at this time. All SIP revisions are intended to specifically address those provisions that EPA included as part of its basis for disapproving revisions to Regulation Number 7.

While the EPA indicated general approval of the concept of the June 2009 SIP submittal, the EPA took exception to some of the details in the SIP revisions, characterized as "deficiencies," that formed the basis of EPA's disapproval during the SIP review process. EPA's objections to the 2009 SIP revisions and the Commission's responses are summarized as follows:

1. Section II.D. – Alternative Control Plans and Test Methods

   EPA Objection: The EPA objected to the deletion of SIP approved language, allowing for alternative control plans and testing methods.

   Commission Response: The Commission reinstated the SIP approved language.

2. Section XII.C.2. – Emission Factor Calculation Methodology for Condensate Tanks

   EPA Objection: The EPA objected to the deletion of the term "gas-condensate-glycol separators" from the emission factor requirements for atmospheric condensate tanks.

   Commission Response: The Commission made no revision to the rule text, and instead explained to EPA that this term was used in error as such a separator does not exist. The term used here is a misnomer, which the Commission believes refers to a flash tank located on a glycol dehydration unit, covered by Section XII.H. It is inappropriate to apply emission factor calculation methodology for atmospheric

condensate tanks to glycol dehydrators because their emissions vary greatly.

3. Section XII.D.2.a. – System-wide Control Requirements for Condensate Tanks

   EPA Objection: The EPA objected to the sunset of the system-wide control requirement in Section XII.D.2.a.(x), which ended the control requirement as of April 30, 2013.

   Commission Response: The Commission revised the system-wide control requirements so that the system-wide control requirements do not sunset. Neither the Commission nor the parties to the December 2008 rulemaking intended for the system-wide control to end. The sunset was unintentionally caused when making other revisions to the rule text.

4. Section XII.E.3. – Monitoring Combustion Devices as Control for Condensate Tanks

   EPA Objection: The EPA objected to providing a state-only monitoring option (electronic surveillance) as a substitution for the SIP required monitoring of combustion devices being used to control emissions from condensate tanks in accordance with Section XII.

   Commission Response: The Commission removed the option of conducting state-only electronic monitoring in lieu of the SIP approved monitoring requirement. This allowance to substitute a SIP required monitoring provision for a state-only monitoring provision was unintentional. None of the sources employing electronic surveillance may use it in place of the SIP approved requirement. If conducted, the electronic surveillance monitoring option must occur in addition to the SIP approved monitoring requirement.

5. Section XII.F.3. – Recordkeeping for Condensate Tanks

   EPA Objection: The EPA objected to the lack of SIP required recordkeeping for the control requirement in Section XII.D.1., which requires all condensate tanks at exploration and production sites to be controlled during the first 90 days of well production.

   Commission Response: The Commission revised Section XII.D.1. to specify it is state-only. The Commission and parties to the December 2008 rulemaking intended for this first 90-day control requirement to be state-only, which corresponds to the state-only designation on the recordkeeping requirements under Section XII.F.3. Therefore, the Commission made no revision to Section XII.F.3., and instead revised Section XII.D.1. to alleviate this discrepancy.

6. Section XII.F.5. – Recordkeeping and Reporting Exemption for Compressor Stations and Drip Stations

EPA Objection: The EPA objected to the removal of a SIP approved provision that exempted natural gas compressors or drip stations from recordkeeping and reporting requirements, where total emissions from such facilities are less than 30 tons per year.

Commission Response: The Commission reinstated the SIP approved 30 tons per year provision.

7. Section XII.G.2. – Control Equipment Requirement for Natural Gas Processing Plants

EPA Objection: The EPA objected to two aspects of the revisions to this section. The first objection was replacement of the term “APEN de minimus levels” with “greater than or equal to two tons per year.” The second objection was inclusion of a rolling 12-month averaging period for the 95% control requirement.

Commission Response: The Commission made no revision to the replacement of the term “APEN de minimus levels.” The Commission explained to the EPA that the associated modeling relied on evaluating condensate tanks with emissions greater than or equal to two tons of volatile organic compounds per year. Therefore, the change in reference does not constitute a lessening of the stringency of the rule. In addition, the Commission removed the rolling 12-month averaging period.

8. Section XII.G.5. Recordkeeping and Reporting for Alternative Compliance Option

EPA Objection: The EPA objected to the reliance on Title V or construction permits as the location for recordkeeping and reporting requirements for condensate tanks at natural gas compressor or drip stations.

Commission Response: The Commission revised this section to specify recordkeeping and reporting requirements for condensate tanks at natural gas compressor and drip stations.

9. Section XII.H. Control Requirements for Glycol Dehydrators

EPA Objection: The EPA stated this entire section lacked clarity and contained redundant language.

Commission Response: The Commission revised the section in its entirety, while maintaining the intent and applicability of the requirements. Along with this revision, the Commission specified that this control requirement is applicable only to glycol dehydrators with emissions equal to or greater than one ton per year, but that all glycol dehydrators at a stationary source must be included for comparison to the 15 ton per year threshold. The term stationary source is defined in the Common Provisions. Further, the Commission revised the provision

to include emission calculation methodology requirements in Section XII. H.

Items 1-9 are all SIP revisions. In addition, the Commission is also revising the state-only Section XVII.D. for consistency with the 2012 SIP revisions. The Commission does not intend that this state-only revision change the applicability of the control requirements for glycol natural gas dehydrators. Finally, the Commission made typographical, grammatical, and formatting revisions, as necessary.

N. February 23, 2014 (Sections II., XVII., and XVIII.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4), the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5., and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

On October 18, 2012, the Commission partially adopted federal Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution found in 40 CFR Part 60, Subpart OOOO ("NSPS OOOO") into Regulation Number 6, Part A. During the partial adoption of NSPS OOOO, the Commission requested the Air Pollution Control Division ("Division") to consider full adoption at a later date and directed the Division to identify additional oil and gas control measures that complement and expand upon NSPS OOOO. This rulemaking is the result and further addresses the volatile organic compound ("VOC"), an ozone precursor, and other hydrocarbon emissions, such as methane, from the oil and gas sector.

The Commission supports the EPA's development of NSPS OOOO and believes that additional hydrocarbon control measures are warranted in Colorado for several reasons. First, the Denver Metropolitan Area/North Front Range is in nonattainment with EPA's current 8-Hour Ozone National Ambient Air Quality Standard ("NAAQS"); it is likely that EPA will lower the ozone NAAQS in the near future, potentially expanding Colorado's nonattainment area; and Division air monitors and other sampling indicate elevated levels of oil and gas related air emissions in oil and gas development areas. Second, Colorado has seen substantial growth of oil and gas development in recent years, which is a significant source of VOC emissions, and expects that growth to continue in the foreseeable future. In particular, oil and gas storage tanks contribute significantly to the VOC emissions from oil and gas development.

Further, oil and gas operations also emit methane, a negligibly reactive ozone precursor and potent greenhouse gas. Third, oil and gas operators have had difficulty meeting the current 95% control requirements in Regulation Number 7 established for condensate tanks in 2004 and 2006 due to “flash” emissions. Fourth, improved technologies and business practices, many already utilized by Colorado oil and gas operators, can reduce emissions of hydrocarbons such as VOCs and methane in a cost-effective manner. These technologies and practices include, without limitation, auto-igniters, low- or no-bleed pneumatic controllers, stabilized liquids or reduced tank pressures, flares achieving at least 98% destruction efficiency, and leak detection and repair (including the use of infrared (“IR”) cameras).

For these reasons and more, the Commission believes additional control measures beyond the current requirements in Regulation Number 7 and NSPS OOOO are appropriate. Colorado’s considerable experience with the regulation of oil and gas sources involves both SIP and state-only requirements. During the rulemaking process, various parties provided extensive evidence concerning whether the proposed revisions, in particular the STEM and LDAR requirements, should apply either statewide or only in the ozone nonattainment area. Based upon careful consideration of all the evidence provided during the rulemaking, the Commission determined it was appropriate to apply the proposed requirements statewide.

Further, in addition to the extensive evidence concerning the benefits of statewide hydrocarbon emission reductions, the Commission believes that the tiered and phased nature of many of the requirements properly focuses on emissions. Under this tiered approach, lower emitting sources such as marginal, stripper, and coal bed methane wells will appropriately be subject to less rigorous and costly requirements. In addition, evidence in the rulemaking record and testimony of industry members supports the conclusion that the rules can be effectively implemented.

Accordingly, the Commission concludes that the proposed rules are technologically feasible and cost-effective. Moreover, because these revisions apply on a state-wide, state-only basis, and are not a part of Colorado’s SIP, the Commission, the Division, and stakeholders have the opportunity to further assess the implementation and effectiveness of these requirements, to better inform future actions.

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., (“Act”), C.R.S. § 25-7-105(1) directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant and provides the Commission broad authority to regulate air pollutants. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations

applicable to the entire state, specified areas or zones, or a specified class of pollution. §§ 25-7-109(1)(a), (2), and (3) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, emission control regulations pertaining to nitrogen oxides and hydrocarbons, and emissions control regulations pertaining to the storage and transfer of petroleum products and other VOCs. § 25-7-109(2)(c), in particular, provides broad authority to regulate hydrocarbons.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7, and includes the technological and scientific rational for the adoption of the revisions. The Commission adopts revisions to Regulation Number 7 to address hydrocarbon emissions from oil and gas facilities, including well production facilities and natural gas compressor stations. The Commission expands existing oil and gas control requirements and establishes additional monitoring, recordkeeping, and reporting requirements. For example, the revisions increase control requirements and improve capture efficiency requirements for oil and gas storage tanks.

The Commission also seeks to minimize fugitive emissions from leaking components at natural gas compressor stations and well production facilities. Further, the Commission intends to minimize emissions at new and modified oil and gas wells and wells undergoing maintenance and during liquids unloading events. The Commission also expands control requirements for pneumatic devices and glycol natural gas dehydrators. The Commission believes that this combination of revisions is appropriate to complement the full adoption of NSPS OOOO, and to further reduce emissions produced by the oil and gas industry.

Among other things, these revisions:

- Expressly address hydrocarbon emissions in Section XVII. and XVIII.;
- Amend definitions in Section XVII.A. and XVIII.B.;
- Strengthen good air pollution control practices, require use of auto-igniters, remove the off-ramp for condensate tanks if subject to a NSPS, MACT, or BACT, and remove the leak detection and repair requirements off-ramp for glycol natural gas dehydrators and internal combustion engines if subject to a NSPS, MACT, or BACT in Section XVII.B.;
- Expand condensate tank control requirements to apply state-wide, to all hydrocarbon liquid storage tanks, and to smaller storage tanks in Section XVII.C.;
- Limit venting and establish a storage tank emissions monitoring system ("STEM"), and associated recordkeeping and reporting requirements in Section XVII.C.;
- Expand glycol natural gas dehydrator control requirements in Section XVII.D.;

- Establish a leak detection and repair program for natural gas compressor stations and well production facilities in Section XVII.F.;
- Establish control measures for oil and gas wells in Section XVII.G.;
- Limit venting during well maintenance and liquids unloading in Section XVII.H.; and
- Expand pneumatic device requirements in Section XVIII.

The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

The following explanations provide further insight into the Commission's intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

Joint Applicability of NSPS OOOO and Regulation Number 7, Sections XII. and XVII.

It is possible for storage tanks to be subject to NSPS OOOO and Regulation Number 7, Sections XII. and XVII. While this creates some overlap between the different requirements, the requirements secure different emissions reductions. Regulation Number 7, Section XII. applies to condensate storage tanks in the 8-Hour Ozone Nonattainment Area, whereas NSPS OOOO applies to storage vessels that contain more than just condensate, such as produced water and crude oil. NSPS OOOO also applies to individual storage vessels, whereas Regulation Number 7, Sections XII. and XVII. apply to single tanks and, if manifolded together, the series of tanks in tank batteries. In addition, NSPS OOOO applies to storage vessels with six (6) tons per year ("tpy") of controlled actual VOC emissions, whereas Regulation Number 7, Sections XII. and XVII. base applicability on uncontrolled actual emissions. For these reasons, and considering that portions of Regulation Number 7, Section XII. are approved in Colorado's SIP, the Commission intends for the federal and state rules to jointly apply to storage tanks in Colorado.

Furthermore, because NSPS OOOO allows oil and gas operators to avoid applicability by establishing enforceable emission limits below NSPS OOOO applicability thresholds through a state, federal, or local requirement, most storage tanks subject to Regulation Number 7 will not be subject to NSPS OOOO monitoring or recordkeeping requirements. It is the Commission's intent that compliance with Regulation Number 7, Sections XII. and XVII. shall serve to establish legally and practically enforceable limits for the purpose of estimating emissions from storage vessels under NSPS OOOO. In those limited cases where storage tanks are subject to both NSPS OOOO and Regulation Number 7 control requirements, Regulation Number 7 will require some additional emissions monitoring. However, joint applicability is anticipated to be limited to those storage tanks whose uncontrolled actual VOC emissions are one hundred and twenty (120) tpy, the equivalent of the NSPS OOOO six (6) tpy VOC on a controlled actual basis. While this means that more storage tanks are regulated under Regulation Number 7, Section XVII., they are regulated on a state-only basis, and are not federally enforceable like NSPS OOOO.

Thus, the Commission believes joint applicability is necessary and intentionally removed storage tanks from the exemption in Section XVII.B.4. that allowed sources subject to an NSPS, MACT, or BACT control requirement to avoid having to comply with Section XVII.

It is also possible for glycol natural gas dehydrators and internal combustion engines to be subject to both federal and Regulation Number 7, Section XVII. leak detection and repair requirements. NESHAP HH and HHH require glycol natural gas dehydrators at major sources of hazardous air pollutants (“HAP”) that utilize a closed-vent system to conduct annual visual inspections for leaks and defects that could result in air emissions. NESHAP HH and HHH also require detected leaks and defects be repaired within fifteen days, as long as it is technically feasible to do so without a shutdown. NESHAP HH also requires triethylene glycol (“TEG”) natural gas dehydrators located at area sources of HAPs that utilize a closed-vent system to conduct annual visual inspections. However, the revisions to Regulation Number 7 require more frequent inspections of all types of glycol natural gas dehydrators at all facilities, resulting in more emissions reductions than NESHAP HH and HHH. Therefore, the Commission believes joint applicability concerning leak detection and repair requirements is necessary.

Applicability of Parts of Regulation Number 7 to Hydrocarbons

Many of the control measures set forth in these revisions have the benefit of reducing both VOC and other hydrocarbon emissions, such as methane. Sections XVII. and XVIII. have been revised to reflect the Commission’s intent that the provisions contained therein reduce emissions of the broader category of hydrocarbons.

Visible Emissions

Regulation Number 7, Sections XII. and XVII. have historically contained a prohibition on visible emissions from combustion devices, such as flares. The Commission is not proposing to relax this requirement. To address comments from diverse stakeholders, the Commission is clarifying how Division inspectors and the regulated community are to determine compliance with the prohibition on visible emissions. The Commission has qualified that visible emissions are emissions of smoke that are observed for a period in duration of greater than or equal to one (1) minute during a fifteen (15) minute time period, pursuant to EPA Method 22. The Commission expects that both Division inspectors and the regulated community will, if any smoke is observed, determine whether the emissions are considered visible emissions for purposes of Regulation Number 7. The regulated community may, alternatively, immediately shut-in the equipment to investigate the cause for smoke and perform repairs. While the presence of visible emissions constitutes a violation of the rules, the Commission recognizes that there may be instances where visible emissions occur notwithstanding the owner or operator’s best efforts, such as when an upset or malfunction occurs. Accordingly, the Division should consider the owner or operator’s efforts and whether the visible emissions resulted from factors outside the owner or operator’s control in determining how to best enforce this requirement.

Definitions (Section XVII.A.)

The Commission has revised or added definitions for several terms. Further explanation for a few of these terms is set forth.

“Approved instrument monitoring method” (“AIMM”) means the methods and technologies utilized for monitoring storage tanks and components at well production facilities and natural gas compressor stations. The instrument being used for AIMM inspections must be capable of measuring hydrocarbon compounds at the applicable leak definition concentration specified in the revisions, and calibrated as appropriate. See EPA Method 21 at 6.0. In addition, while the definition lists EPA Method 21 and IR cameras, the Commission does not intend to limit industry to only EPA Method 21 and IR cameras as the Division may approve the use of additional monitoring devices and methods.

“Component” excludes compressor seals and open-ended valves and lines, which are defined separately, because they are designed to leak and are better addressed with equipment specific work practices, also included separately. Based on concerns that the requirements for small reciprocating compressors at well production facilities may not be cost-effective, the adopted work practices for reciprocating compressors are limited to reciprocating compressors located at natural gas compressor stations. Nevertheless, there is an issue as to whether compressors at well production facilities are a significant source of emissions. The Commission, therefore, directs the Division to investigate whether reciprocating compressors at well production facilities are a significant source of emissions, and if so, whether there may be appropriate, cost-effective work practices to reduce fugitive emissions from reciprocating compressors at well production facilities. The Commission further directs the Division to brief the Commission on this investigation in March, 2015.

“Date of first production” is meant to coincide with the date reported to the Colorado Oil and Gas Conservation Commission’s (“COGCC”) as the “date of first production,” as currently used in COGCC Form 5A. The Commission intends for oil and gas sources to use only one date for compliance with both COGCC and Commission requirements.

“Natural gas compressor stations” are subject to leak detection and repair requirements. This definition is meant to exclude compressors at well production facilities and gas processing plants. This definition is also meant to exclude natural gas compressor stations that are downstream of the natural gas processing plant at this time.

“Normal operation” is considered to include all operation, including maintenance and other activities, as long as the operation does not meet the definition of “malfunction” as set forth in the Common Provision regulations.

“Storage tank,” means a single storage tank or a storage tank battery if the storage tanks are manifolded together. In recent years, it has become more common for multiple storage tank batteries, sometimes containing different hydrocarbon liquids, to be manifolded at the emissions line and routed to a common control device. To further clarify the concept of manifolded within the definition of “storage tank,” the

Commission revises the definition of storage tank to specify that a storage tank battery must be manifolded by liquid line, and not just by gas or emission line. This revision is in keeping with the rationale that a single tank could have been used to capture liquids in place of multiple small storage tanks in a battery. The Commission's definition, and Colorado's approach to emissions reporting and permitting for storage tanks, differs from EPA's definition of "storage vessel" and the description of an affected storage vessel facility in NSPS OOOO because EPA considers each individual tank, even those in a battery manifolded by liquid line, to be a storage vessel for comparison against the applicability threshold. The Commission intends to maintain this distinction and, therefore, deletes the previously used definition of "atmospheric condensate storage tank" and creates a new definition of "storage tank" which expands upon the definition of storage vessel in NSPS OOOO to include storage vessels manifolded together by liquid line.

"Well production facilities" are also subject to leak detection and repair requirements and storage tank maintenance requirements. This definition is meant to include all of the emission points, as well as any other equipment and associated piping and components, owned, operated, or leased by the producer located at the same stationary source (a defined term specific to permitting). The "owned, operated, or leased" qualifier in the definition is not meant to reduce the stringency of LDAR requirements in situations where there are multiple owners or operators of the well production facility. This definition is meant to exclude natural gas compressor stations from "well production facility" and avoid overlapping LDAR requirements. This definition is also meant to exclude natural gas storage wells.

Good Air Pollution Control Practices (Section XVII.B.)

The Commission intends that all oil and gas operations, including those below control thresholds or even below Regulation Number 3 APEN and permitting thresholds, adhere to good general air pollution control practices. Examples of what the Commission considers to be a good air pollution control practice include, but are not limited to:

- Keeping the thief hatch, pressure relief valve, or other access point on storage tanks closed and properly sealed during normal operation, unless being actively used during periods of maintenance or liquids loadout from the storage tank;
- Inspecting and repairing seals on thief hatches, access points, or other openings of storage tanks;
- Initiating timely action to address leaks or unpermitted emissions; and
- Maintaining equipment and the facility in good operating condition.

Venting vs. Leaking (Sections XVII.B., XVII.C., and XVII.F.)

The Commission believes that emissions caused by over pressurization of oil and gas equipment are foreseeable, are not adequately addressed by NSPS OOOO, and should be addressed in Colorado specific regulations. The Commission intends these revisions to address venting emissions from storage tank thief hatches, pressure

relief valves, or other access points during normal operations. Access points are not limited to points of entry of liquids or gas into the storage tank but include any route from which emissions can escape. The Commission recognizes that pressure release valves and other devices are meant to operate as safety devices and that venting for safety purposes may occur due to sudden, unavoidable equipment failures or surges beyond normal or usual activities that could not have been reasonably foreseeable, avoided, or planned. For example, an unplanned third party outage resulting in increased pressure along the system may be the type of malfunction or scenario where venting may be necessary for safety purposes. The Commission does not intend to increase risk or compromise safety of personnel and equipment. However, inadequate design of a storage tank emissions capture system is not a legitimate reason for venting.

Therefore, the Commission intends that the malfunction affirmative defense in the Common Provisions regulation continue to be available to owners or operators, provided that the owners or operators demonstrate that the elements of the malfunction defense have been met. The Commission intends that the burden remain on the owner or operator to demonstrate that an emission should not be considered venting as provided in Section XVII.C.2. The Commission further recognizes that meeting the no venting requirement may be challenging in some cases, and accordingly has adopted additional provisions requiring owners and operators to develop a STEM plan to help ensure compliance. In some cases, development and implementation of the STEM plan may be an iterative process involving ongoing improvements before continuous compliance with the no venting standard is achieved. With this in the mind, the Division should consider the efforts of owners and operators in developing and implementing their STEM plan as part of the Division’s assessment about how best to enforce the no venting requirement.

In contrast with venting, leaking as used in Section XVII.F. more specifically relates to unintended emissions from components at well production facilities and natural gas compressor stations. Identification and repair of leaks in accordance with these revisions benefits the public, the environment, and the oil and gas industry. The Commission has determined that leaks discovered by the owner or operator or the Division inspector pursuant to the detection methods specified in Section XVII.F. shall not be subject to enforcement by the Division under certain circumstances.

For example, if a leak is identified and the owner or operator is in the process of timely and properly addressing the leak in accordance with these revisions, the Division should afford the owner or operator the opportunity to fix the leak absent enforcement. However, by this provision, the Commission does not intend to exempt owners or operators from their obligation to operate without venting or to utilize good air pollution control practices at all times.

Storage Tanks Controls (Section XVII.C.)

EPA established a six (6) tpy VOC threshold on a controlled actual emissions basis for applying storage vessel controls. In contrast, Colorado uses the sum total emissions from a tank battery, where multiple tanks are manifolded together, on an uncontrolled actual emissions basis for applying reporting, permitting, and control

requirements. This means that the EPA's six (6) tpy threshold on a controlled actual emissions basis applies to individual tanks having the equivalent of one hundred and twenty (120) tpy VOC on an uncontrolled actual basis. Thus, more storage tanks are regulated under Regulation Number 7, Section XVII. than under NSPS OOOO.

The Commission intends that under Regulation Number 7, Section XVII., air pollution control equipment may be removed if: (1) the storage tank (including manifolded tanks) emissions fall below the uncontrolled actual six (6) tpy threshold, on a rolling twelve-month basis; and (2) those controls are not required by other applicable requirements. Conversely, if storage tank emissions increase above the uncontrolled actual six (6) tpy threshold on a rolling twelve-month basis, air pollution control equipment must be installed within sixty (60) days of discovery of the increase.

The Commission does not intend for the storage tank control, or related, requirements to apply to frac tanks that are located at a well production facility for less than 180 consecutive days.

Control Efficiency (Section XVII.C.)

The Commission expands the 95% control efficiency requirement to apply to storage tanks containing any hydrocarbon liquids (including condensate, crude oil, produced water, and intermediate hydrocarbon liquids), for consistency with NSPS OOOO. Produced water and crude oil storage tanks, which in years past were thought to have insignificant emissions, can instead be significant sources of emissions. This rule change is also a result, in part, of the removal of the APEN exemption in 2008 for tanks containing crude oil and less than 1% crude. The Commission intends that the air pollution control equipment achieve an average hydrocarbon control efficiency of at least 95%, and if a combustion device is used the device must have a design destruction efficiency of at least 98%, with few exceptions. The Commission recognizes and expects that most flares can control hydrocarbon emissions by 98% or more when properly operated.

Audio, Visual, Olfactory ("AVO") and Visual Inspections (Section XVII.C.)

The Commission intends that owners and operators of subject storage tanks (including storage tanks during the first ninety (90) days of production and storage tanks containing only stabilized liquids) conduct applicable AVO and visual inspections for venting or leaking. Visual inspections are in addition to AVO monitoring and require further inspections of the storage tank and associated equipment, such as thief hatches and air pollution control equipment. These inspections are not required to occur at the same time as loadout. Instead, loadout triggers the requirement for AVO and visual inspection, and indicates the frequency at which inspection is required.

Storage Tank Emission Management System ("STEM") Plan, Monitoring, and Recordkeeping (Section XVII.C.)

Owners and operators of storage tanks with uncontrolled actual emissions equal to or greater than six (6) tpy must develop, certify, and implement a STEM plan designed to ensure compliance with the "without venting" requirement of Section XVII.C.2., among other requirements. Through STEM, owners and operators must evaluate and employ appropriate control technologies, monitoring, maintenance, and operational practices to avoid venting of emissions from storage tanks. The Commission intends that sources have flexibility to develop STEM plans on an individual basis for each storage tank or for multiple storage tanks. However, upon request, the owner or operator must be able to identify to the Division what STEM plan applies to a storage tank and make that plan available for review. Owners and operators of storage tanks controlled during the first ninety (90) days of production or containing only stabilized liquids are not required to develop and implement a STEM plan. However, owners or operators of such storage tanks must still comply with applicable control, capture, monitoring, and recordkeeping requirements.

For purposes of clarification, the STEM plan is intended to include, but is not limited to, the following elements:

- A monitoring strategy including, at a minimum, the applicable inspection frequencies and methodologies;
- An identification of the personnel conducting the monitoring, and any training program, materials, or training schedule for such personnel. This element does not require training, but ensures that any training be documented to permit the owner or operator to demonstrate the quality and achievements of the STEM plan;
- The calibration methodology and schedule for emission detection equipment used in the monitoring;
- An analysis of the engineering design of the storage tank and air pollution control equipment, and where applicable, the technological or operational methods employed to prevent venting;
- An identification of the procedures to be employed to evaluate ongoing capture performance after implementation of the STEM plan;
- A procedure to update the STEM plan when capture performance is not adequate, the STEM design is not operating properly, when otherwise desired by the owner or operator, or when required by the Division; and
- The certification made by the appropriate personnel with actual knowledge of the STEM design for each storage tank.

In addition to AVO and visual inspections for storage tanks, STEM plans must include AIMM inspections on a frequency schedule that is tied to the uncontrolled actual VOC emissions from the storage tank. The Commission intends that the AIMM inspection satisfy any simultaneous AVO and visual inspection requirement.

The STEM plan should be maintained by the owner or operator for the life of the storage tank, while records of applicable monitoring only need to be retained for a period of two years. Upon sale or transfer of ownership of a storage tank, the relevant documentation and records should be transferred with the ownership. Owners and operators are encouraged to reevaluate any existing STEM plan for the storage tank upon purchase or acquisition of the storage tank.

Unsafe, Difficult, or Inaccessible to Monitor (Sections XVII.C. and XVII.F.)

The Commission does not intend to require owners or operators to conduct either AVO or AIMM inspections of unsafe, difficult, or inaccessible components or storage tanks and associated equipment. The Commission acknowledges that, in limited circumstances, unsafe to monitor may include unsafe weather or travel conditions. However, in those limited circumstances, the Commission expects the owner or operator to resume monitoring once the weather or travel conditions cease to be unsafe. Importantly, the Commission does not intend to allow owners or operators to delay required monitoring for the entire winter season.

Glycol Natural Gas Dehydrators (Section XVII.D.)

The Commission expanded the state-wide control requirements for glycol natural gas dehydrators. This revision requires that all existing glycol natural gas dehydrators with uncontrolled actual VOC emissions of six (6) tpy or greater be controlled with air pollution control equipment achieving at least a 95% reduction. This revision also requires that existing glycol natural gas dehydrators with uncontrolled actual VOC emissions of two (2) tpy or greater be controlled if the dehydrator is located within 1,320 feet of a building unit or designated outside activity area. The definitions for building unit and designated outside activity area are taken from COGCC regulations.

The Commission does not intend to apply this proximity requirement to the glycol natural gas dehydrator owner or operator’s buildings, where public access to the building is also restricted. Further, because glycol natural gas dehydrators are different and unique sources, a similar proximity requirement for storage tanks is not appropriate at this time as storage tanks are more appropriately addressed based on emission thresholds.

This revision also requires that all new glycol natural gas dehydrators with uncontrolled actual VOC emissions of two (2) tpy or greater be controlled with air pollution control equipment achieving at least 95% reduction. If a combustion device is used, it must have a design destruction efficiency of at least 98%, with few exceptions. The Commission recognizes and expects that most flares can control hydrocarbon emissions by 98% or more when properly operated.

Leak Detection and Repair Requirements (Section XVII.F.)

The Commission believes the detection and timely repair of leaks is important in the efforts to reduce hydrocarbon emissions. The use of appropriate inspection instruments and methods, such as IR cameras, enhances the detection and reduction of emissions. The leak detection and repair program more broadly targets leaks from components at natural gas compressor stations and well production facilities, even if such facilities do not include storage tanks. In contrast, STEM targets venting from storage tanks. The use of an AIMM as it relates to leak detection and repair frequency is generally intended to complement the STEM monitoring schedule. The Commission has created a phased schedule and tiered approach for leak detection and repair that is based on emissions, recognizing that smaller operators and facilities may have lower emissions and may need additional

time to comply. Owners or operators have flexibility in how to meet the leak detection and repair requirements, including utilizing their own equipment and personnel or hiring a third party contractor. Owners or operators also have flexibility in timing the AVO and AIMM inspections to coordinate overlapping AVO and AIMM inspections, as well as inspections of facilities in the same area or on the same inspection frequency. The Commission intends that the AIMM inspection satisfy any simultaneous AVO inspection requirement. However, the Commission expects that owners and operators will also utilize this flexibility to ensure that inspections are appropriately spaced on the frequency schedule (e.g. quarterly inspections will occur every three months but not, for example, on March 31 and April 1).

The Commission distinguished between new and existing well production facilities by utilizing an October 1, 2014, commenced construction date and created an inspection phase-in schedule for existing facilities. The Commission also distinguished the emissions thresholds for determining inspection frequencies for well production facilities with storage tanks and well production facilities without storage tanks. For well production facilities with storage tanks, the threshold determining inspection frequency is based on the uncontrolled actual VOC emissions from the highest emitting storage tank. For well production facilities without storage tanks, the threshold determining inspection frequency is based on "facility emissions." The Commission has determined that "facility emissions" means the controlled actual VOC emissions from all permanent equipment, including fugitive emissions calculated using the emission factors defined as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates.

The Commission has defined a leak requiring repair in a manner that is dependent on the monitoring methodology. Leak detection methodologies have varied abilities to identify emission quantity and chemical makeup. EPA Method 21, for example, detects and quantifies hydrocarbon emission concentration, but does not speciate hydrocarbons (e.g., methane from other hydrocarbons) or identify the emission rate. Similarly, while IR cameras are becoming much more prevalent as a more affordable, time-saving, and user-friendly tool, they also do not speciate hydrocarbons or quantify the emission concentration. The Commission provides owners and operators flexibility in selecting a leak detection methodology.

If EPA Method 21 is utilized, the Commission set the threshold at which component leaks must be repaired at 2,000 parts per million ("ppm") hydrocarbons for existing natural gas compressor stations and 500 ppm for new (constructed after May 1, 2014) natural gas compressor stations and new and existing well production facilities. Where IR camera or AVO monitoring is utilized, a leak is any detectable emission not associated with normal equipment operation (e.g. the acceptable level of leaks from a component designed to leak). These values were determined based in part on a review of current federal or state leak detection and repair requirements for natural gas processing plants, refineries, and other oil and gas sources.

Leak detection values have decreased over time, in recognition of improved technologies and business practices. NSPS OOOO identifies leaks at natural gas processing plants at 500 ppm. Prior to NSPS OOOO, leaks were identified in other New Source Performance Standards (NSPS KKK and NSPS VVa) at 10,000 ppm. In addition, California, Wyoming, and Pennsylvania have varying leak detection and repair requirements and approaches to defining a leak. Some California air quality districts generally define a minor leak as between 1,000 and 10,000 ppm. Wyoming does not have a numerical limit. Pennsylvania essentially defines a leak at a well pad as anything with detectable emissions utilizing Method 21, as more than 2.5% methane or 500 ppm VOC, or no visible leaks using an IR camera. Upon consideration of all of the evidence presented, the Commission chose to define component leak at the foregoing thresholds.

The Commission expects that leaks that are not located specifically at a component will be addressed and repaired, in accordance with the general requirements to minimize emissions and employ good air pollution control practices. Further, the Commission finds that the repair deadlines set forth in Section XVII.F.7. provide flexibility for operational differences, including the potential range of leaks and degrees of repair difficulty that may be encountered. The Commission anticipates that many operators will choose to utilize IR cameras, in light of their relative ease of use and increased reliance by both by industry and regulators within Colorado and across the country. The Commission expects that owners and operators will remonitor leaks requiring repair with either the approved instrument monitoring method the owner or operator used to identify the leak or any method approved for remonitoring of leaks under EPA Method 21.

The Commission expects that in most instances the leak detection and repair requirements of this regulation will apply in lieu of leak detection and repair requirements in permits existing as of the promulgation date of the revisions. The Commission recognizes that leak detection and repair requirements in a few state permits may be federally enforceable, and this state-only regulation cannot supersede federal requirements. The Commission expects the Division and owners and operators to work cooperatively on the efficient implementation of leak detection and repair requirements, in those rare instances where there may be duplicative or competing requirements. During the rulemaking, several parties requested more stringent requirements for all oil and gas operations located within 1,320 feet of a building unit or designated outside activity area. Residents living within close proximity to oil and gas operations, particularly those living within 1,320 feet of oil and gas operations, may understandably have heightened concerns regarding potential impacts of emissions from such facilities. It is the Commission's understanding that some oil and gas owners and operators implement practices beyond what is currently required under state law in order to minimize emissions and otherwise be good neighbors, including conducting increased site inspections. The Commission supports such practices.

Also during the rulemaking, various parties provided extensive evidence concerning the frequency of instrument monitoring method inspections, the timing of leak repair, and the costs and benefits associated with more or less frequent monitoring and repair. The Commission recognizes that additional information would benefit the Commission, Division, industry, and other stakeholders and therefore encourages the Division to work with energy companies, to evaluate the comparative effectiveness of various kinds of instrument based monitoring methods and program designs at a range of types, sizes, and frequencies at well production facilities and natural gas compressor stations. The Commission also encourages the Division to work with industry and other stakeholders to evaluate emissions from and potential control strategies for downstream natural gas compressor stations and intermittent pneumatic controllers.

Lastly, several parties to the rulemaking requested greater transparency and public access to air quality information associated with oil and gas development. In particular, a coalition of local community organizations requested that owner and operators' annual reports as required by these rules be posted on the Division's website. The Commission believes these reports will provide important information when reviewing the efficacy of the inspection and maintenance program, as well as valuable information to interested citizens, particularly those who live in close proximity to oil and gas facilities. Therefore, the Commission requests that the Division make this information available in the most efficient means possible, which may include posting on the Division's website individual reports and/or a compilation summary. In addition, the Commission requests an annual briefing on these regulations. Such briefing will assist the Commission and interested stakeholders to understand the data and implementation issues relating to this new program, as well as other initiatives covered in this rulemaking. The Commission believes that this information would also be valuable to all parties.

Well Maintenance and Liquids Unloading (Section XVII.H.)

Over time, liquids build up inside a well and reduce flow out of the well. These liquids can slow and even block gas flow in wet gas wells and are removed during a well blowdown, also called liquids unloading. As a result of recent information, EPA has significantly increased their emission factor for liquids unloading. The uncontrolled emission factor is based upon fluid equilibrium calculations used to estimate the amount of gas needed to blow down a column of fluids blocking a well and Natural Gas STAR partner data on the amount of additional venting after a blowdown. Similar to the issues with well maintenance and well completion emissions, considerable uncertainty for liquid unloading emissions arises from the limited data sources used and the applicability of Natural Gas STAR program activities to calculate industry baseline emissions. This is especially important as liquid unloading emissions are estimated to comprise 33% of the uncontrolled methane emissions from the natural gas industry in the latest greenhouse gas inventory. EPA's Natural Gas STAR program advocates the use of a plunger lift system to reduce the need for liquids unloading, and indicates that such systems may pay for themselves in about one year. The Commission has determined that the use of technologies and practices to minimize venting, including plunger lift systems, are available and economically feasible, and encourages their use in Colorado.

Pneumatic Controllers (Section XVIII.)

The Commission recognized in a December 2008, rulemaking that pneumatic devices are a significant source of emissions. In addition, a 2013 University of Texas study concluded that methane emissions from pneumatics are higher than EPA previously estimated. Therefore, expanding the current low-bleed pneumatic device requirements statewide and further reducing emissions is appropriate and cost-effective. However, the Commission does not intend to expand the pneumatic device requirements to intermittent pneumatic controllers at this time. Further, while the use of low-bleed pneumatic controllers will result in a significant reduction of VOC and methane emissions from Colorado oil and gas facilities, no-bleed pneumatic controllers are currently commercially available to further reduce emissions from these sources.

However, because these devices can only be used at facilities with adequate electric power, and given the high cost of electrifying a facility, the Commission is only requiring the use of no-bleed pneumatic controllers at facilities that are connected to the electric grid, using electricity to power equipment, and where technically and economically feasible.

Additional Considerations

In accordance with C.R.S. §§ 25-7-105.1 and 25-7-133(3) the Commission states the rules in Sections XVII. and XVIII. of Regulation Number 7 adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado's SIP at this time.

In accordance with C.R.S. § 25-7-110.5(5)(b), the Commission determines:

(I) The revisions to Regulation Number 7 address VOC and other hydrocarbon emissions from oil and gas facilities, including storage tanks, glycol natural gas dehydrators, pneumatic controllers, well production facilities, and natural gas compressor stations. In addition to NSPS OOOO, NSPS Kb, and NSPS KKK, NESHAP HH, and NESHAP HHH may also apply to such oil and gas facilities. However, the Regulation Number 7 revisions apply on a broader basis to more storage tanks, glycol natural gas dehydrators, leaking components, and pneumatic controllers, and address more hydrocarbon emissions. For example, the Regulation Number 7 revisions address more glycol natural gas dehydrators than the major source provisions of NESHAP HH and HHH as well as more glycol natural gas dehydrators than the area source provisions of NESHAP HH, which are limited to TEG dehydrators. Similarly, the Regulation Number 7 revisions address more storage tanks than the major source provisions of NESHAP HH, as well as NSPS Kb, which exempt certain storage vessels storing condensate or petroleum prior to custody transfer. In addition, the Regulation Number 7 revisions address more component leaks than the major source provisions of NESHAP HH, as well as NSPS KKK, which has a 10,000 ppm leak threshold and only applies at natural gas processing plants.

Compared to NSPS OOOO, the revisions to Regulation Number 7 will apply a low- or no-bleed control requirement to more pneumatic controllers because NSPS OOOO only requires zero bleed pneumatic controllers at natural gas processing plants, while the Regulation Number 7 revisions no-bleed provision applies to all facilities. The revisions to Regulation Number 7 will also require a leak detection and repair program for more oil and gas operations because NSPS OOOO only requires leak detection and repair for natural gas processing plants, AVO inspections for storage vessels with controlled actual emissions greater than six (6) tpy, and annual visual inspections for leaks for subject centrifugal compressors. In contrast, the revisions to Regulation Number 7 require a leak detection and repair program for all components at all well production facilities and natural gas compressor stations.

Further, the revisions to Regulation Number 7 will require storage tanks with uncontrolled actual emissions equal to or greater than 6 tpy VOC to control emissions with 95% efficiency, while NSPS OOOO’s threshold is 6 tpy controlled actual emissions (i.e. 120 tpy uncontrolled actual emissions). It is the Commission’s determination that, given the current and projected levels of oil and gas development in Colorado combined with the advances in technology and business practices utilized by oil and gas operators, the revisions to Regulation Number 7 are appropriate to further address hydrocarbon emissions from this sector. Such emission reductions will, among other things, protect public health and the environment, address current and future ozone

concerns specific to Colorado, reduce greenhouse gas emissions, and ensure the maximum beneficial use of a valuable natural resource.

(II) NSPS OOOO, and the other federal rules discussed in (I), are primarily technology-based in that they largely prescribe the use of specific technologies in order to comply. EPA has provided some flexibility in NSPS OOOO by allowing a storage vessel to avoid being subject to NSPS OOOO if the storage vessel is subject to any state, federal, or local requirement that brings the storage vessel's emissions below the NSPS OOOO threshold (greater than or equal to 6 tpy controlled actual VOCs). The Commission chose to set the revised Regulation Number 7 controls at 6 tpy on an uncontrolled actual emissions basis, and therefore provide Colorado's oil and gas operators a limit for calculating the controlled potential to emit of their storage vessels, which may be used to avoid NSPS OOOO applicability.

(III) Other federal requirements do not specifically and fully address the issues of concern to Colorado, or take into account concerns that are unique to Colorado. Specifically, during the development of NSPS OOOO, Colorado submitted comments regarding, among other things, concerns with the storage vessel definition, storage vessel control requirements, and lack of leak detection and repair requirements. Colorado's concerns were not fully addressed in NSPS OOOO, therefore, the Commission believes the revisions to Regulation Number 7 are necessary to: (a) address hydrocarbon emissions in a more comprehensive manner; (b) address oil and gas operations and equipment at lower thresholds than NSPS OOOO thresholds, yet that collectively have significant VOC and other hydrocarbon emissions in Colorado; (c) address venting of emissions from storage tanks at oil and gas facilities caused primarily by over pressurization; and (d) address leaks of fugitive hydrocarbon emissions, particularly from well production facilities and natural gas compressor stations.

(IV) Compliance with the control requirements in the revisions to Regulation Number 7 provide Colorado's oil and gas operators a limit for calculating the controlled potential to emit of their storage vessels, thereby allowing many of these sources to avoid regulation under NSPS OOOO. Additionally, the revisions may prevent or reduce the need for costlier retrofits at a later date. Colorado may be required to comply with a lower ozone NAAQS in the near future and the Denver Metro/North Front Range area is currently in nonattainment with the ozone NAAQS, while other areas in the State are seeing elevated ozone levels, including areas of increasing oil and gas development. The revised rules are proactive and intended to reduce ozone levels now by utilizing controls and techniques already being used by some Colorado oil and gas operators, or that are readily available.

(V) Adoption of these revisions at this time allows many of Colorado's oil and gas operators to utilize the controls established in the revisions to

Regulation Number 7 to avoid NSPS OOOO storage vessel requirements. Postponement of adoption would potentially subject these sources to compliance with NSPS OOOO and then compliance with State requirements once State controls become effective.

(VI) The revisions to Regulation Number 7 do not place limits on the growth of Colorado's oil and gas industry. Instead, the rules address hydrocarbon emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry. Indeed, the oil and gas industry has already grown in Colorado while utilizing many of the technologies and practices set forth in these revisions.

(VII) The revisions to Regulation Number 7 establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources. Rules of general applicability have been developed along with tiered requirements and exclusions that tailor the rules to the regulated sources within the oil and gas sector. Furthermore, the application of the Regulation Number 7 revisions to oil and gas owners and operators regardless of location in the ozone nonattainment or attainment areas is equitable because the nonattainment area is not the only area in Colorado with ozone issues. For example, the Rangely monitor in western Colorado shows violations of the 2008 ozone standard and existing modeling shows that either the nonattainment area has increased its contribution to background ozone or ozone concentrations in the attainment area flowing into the nonattainment area have increased. Notably, the Division's inventory shows that the oil and gas industry contributes more than 50% of the VOC emissions outside the nonattainment area. This monitoring, modeling, and inventory data, considered with the likelihood of a lower ozone NAAQS and the expected growth of the oil and gas sector state-wide, supports the application of the Regulation Number 7 revisions to oil and gas sources in both the nonattainment and attainment areas.

(VIII) The oil and gas industry is a large anthropogenic stationary source of VOCs, a precursor pollutant to ozone. If the revisions to Regulation Number 7 are not adopted, other aspects of oil and gas operations or other sectors may be looked to for additional emission reductions. In reductions must come from other operations or sectors at this time, the cost effectiveness would decrease because these revisions reduce emissions from the most significant contributors to VOC emissions and costs will be higher for less emissions reductions from less significant contributors.

(IX) The majority of sources subject to the revised rules in Regulation Number 7 will not be subject to federal procedural, reporting, or monitoring requirements. Those few sources subject to both NSPS OOOO (e.g. storage vessels emitting 120 tpy uncontrolled actual VOC

emissions) or NESHAP HH and HHH (e.g. glycol natural gas dehydrators at major sources of HAPs and TEG glycol natural gas dehydrators at area sources of HAPs) and Regulation Number 7 will be required to comply with both regulations. The procedural, reporting, and monitoring requirements of Regulation Number 7, to the extent different than federal requirements, are necessary to ensure compliance with and document the effectiveness of the revisions.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable in the 8-Hour Ozone Nonattainment Area state-wide, such as the requirements for auto-igniters and pneumatic controllers. In addition, oil and gas owners and operators are already using many of the control devices and techniques intended to be used to comply with these revisions. The lead-in time provides owners and operators time to install control devices and develop plans for compliance. Should unanticipated events occur, such as a lack of availability of control devices, the revisions provide for Division approved extensions to compliance.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will contribute to the prevention of hydrocarbon emissions in a cost-effective manner. Significantly, the Commission expressly finds that the cost-effectiveness of the VOC emission reductions alone supports the revisions to Regulation Number 7. The reductions of other hydrocarbon emissions, such as methane, add to the already cost-effective and appropriate emission reduction requirements.

(XII) Alternative rules, such as the alternative proposals provided by several parties during the rulemaking process, requiring differing or additional controls for oil and gas facilities could also provide reductions in hydrocarbon emissions. The Commission could have adopted some or all of the proposed revisions or proposed alternatives. However, the proposed revisions to Regulation Number 7 were developed during a lengthy stakeholder process and provided a balanced approach, reducing emissions from the oil and gas industry while allowing the sector to continue to play a critical role in Colorado's economy and the nation's energy independence. The alternative proposals provided during the rulemaking process were primarily either more or less stringent versions of the proposed revisions, further illustrating the balanced approach of the proposed revisions. Furthermore, a no action alternative would very likely only delay future reductions in hydrocarbon emissions, including ozone precursor pollutants, necessary for reducing ozone in Colorado.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

The incorporation by reference of NSPS OOOO in Regulation Number 6 does not affect the requirements of these revisions to Regulation Number 7. Instead, these revisions to Regulation Number 7 are designed and intended to address differences and overlaps between NSPS OOOO and current state requirements, and to include additional emission control measures for oil and gas production and equipment. To the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of hydrocarbon emissions.

(III) Evidence in the record supports the finding that the rules shall being about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(VI) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

O. November 17, 2016 (Sections I., X., XII., XIII., XVI., XIX.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4), the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5., and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

On May 21, 2012, the Denver Metro/North Front Range ("DMNFR") area was designated as Marginal nonattainment for the 2008 8-hour Ozone National Ambient Air Quality Standard ("NAAQS"), effective July 20, 2012 (77 Fed. Reg. 30088). On May 4, 2016, the U.S. Environmental Protection Agency's ("EPA") published a final rule that determined that DMNFR area failed to attain the 2008 8-hour Ozone NAAQS by the applicable Marginal attainment deadline and therefore reclassified the DMNFR area to Moderate and required attainment of the NAAQS no later than July 20, 2018, based on 2015-2017 ozone season data. Due to the reclassification, additional planning requirements were triggered, including the requirement to submit revisions to the State Implementation Plan ("SIP") that address the Clean Air Act's ("CAA") Moderate nonattainment area requirements, as set forth in CAA Section 182(b) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (*See* 80 Fed. Reg. 12264 (March 6, 2015)).

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive state implementation plan that will assure attainment and maintenance of national ambient air quality standards. § 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state.

§ 25-7-106 provides the Commission flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106(1)(c) and (2) also authorize the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution, and monitoring and recordkeeping requirements. § 25-7-109(1)(a) authorizes the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources of air pollutants.

Purpose

The Regional Air Quality Council (“RAQC”) and the Colorado Department of Public Health and Environment, Air Pollution Control Division (“Division”) conducted a public process to develop the associated SIP and supporting rule revisions. Separately, EPA had expressed concerns with approving previous Regulation Number 7 revisions related to oil and gas control requirements and submitted in 2009 and 2013 for inclusion in Colorado’s ozone SIP.

In response to these related but separate issues, the Commission revised Regulation Number 7 to strengthen Colorado’s ozone SIP; and include reasonably available control technology (“RACT”) requirements for lithographic and letterpress printing, industrial cleaning solvents, and major sources of volatile organic compounds (“VOC”) or nitrogen oxides (“NOx”). More specifically, the Commission revised the applicability of Regulation Number 7 in Section I.A.1.; included the existing combustion device auto-igniter requirements in Section XII.C.1.e. and XII.E.2. in Colorado’s ozone SIP; included existing audio, visual, olfactory (“AVO”) storage tank inspection requirements for condensate storage tanks in Colorado’s ozone SIP in Section XII.E.4.e.; added requirements for lithographic and letterpress printing in Section XIII.B.; added requirements for industrial cleaning solvents in Section X.E.; and added requirements for major sources in Sections XVI. and XIX.

Apart from the Moderate nonattainment area ozone SIP, the Commission revised Regulation Number 7 to address EPA’s monitoring, recordkeeping, reporting, and other concerns with previously submitted Regulation Number 7 revisions. The Commission updated federal rule references for natural gas processing plants in Section XII.G.1.; renumbered the current Sections XII.G.5. and XII.G.6. under Section XII.I.; added monitoring, recordkeeping, and reporting requirements for glycol natural gas dehydrators in Sections XII.H.5. and XII.H.6.; and addressed other EPA concerns in Sections XII.C.1.c., XII.C.1.d., XII.C.2.a.(ii)(B), XII.E.3., and XII.H.4.

The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

The following explanations provide further insight into the Commission’s intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

Ozone reclassification SIP revisions

8-hour ozone control area

All provisions of Regulation Number 7 currently apply to the Denver 1-hour ozone nonattainment and attainment/maintenance area. The 1-hour ozone area does not include all of Adams and Arapahoe counties or the portions of Larimer and Weld counties included in the 8-hour ozone control hour. Therefore, to ensure that all sources in the 8-hour ozone nonattainment area are subject to applicable RACT requirements in Regulation Number 7 on a federally enforceable basis, the Commission revised Regulation Number 7, Section I.A.1.a. to state that all provisions apply to both the 1-hour and 8-hour ozone areas. The Commission intends that provisions clearly marked “state-only” continue to be enforceable only on a state-only basis, and are not included in the SIP.

Auto-igniter and storage tank AVO

Regulation Number 7, Section XII.C.1.e. includes auto-igniter requirements for combustion devices used to control emissions of VOCs. Pursuant to Section XII.E., the auto-igniter must be inspected weekly to ensure it is properly functioning. Prior to the revision, these requirements were “state-only”. The Commission revised these provisions to include the auto-igniter installation, operation, and monitoring requirements in the SIP.

Regulation Number 7, Section XII.E. includes requirements for owners or operators of condensate storage tanks subject to Section XII.D. to inspect combustion devices, vapor recovery units, control devices, and thief hatches. These are SIP requirements. Regulation Number 7, Section XVII.C.1.d. also requires of owners or operators of storage tanks subject to Section XVII. to conduct AVO and additional visual inspection at the same frequency as liquids load-out. The requirements of Section XVI.C.1.d. are enforceable on a “state-only” basis. The Commission revised Section XII. to include in the SIP, the requirement that owners and operators conduct AVO inspections of condensate storage tanks with uncontrolled actual VOC emissions of 6 tons per year (“tpy”) or greater, making them federally enforceable.

Lithographic and letterpress printing RACT

Pursuant to CAA Section 182(b), Colorado’s ozone SIP must provide for implementation of RACT at sources of VOC for which EPA has issued a Control Technique Guideline (“CTG”). EPA’s Offset Lithographic Printing and Letterpress Printing CTG (“Printing CTG”) addresses VOC emissions from the use of fountain solutions, cleaning materials, and inks at lithographic and letterpress printing operations. The Printing CTG recommends controlling VOC emissions from heatset printing with dryer emissions of at least 25 tpy of VOC from heatset inks with add-on control technology. The Printing CTG recommends controlling VOC emissions from cleaning materials and fountain solutions at printing operations with facility emissions equal to or greater than 15 lb/day by limiting the VOC content of cleaning materials and fountain solutions. The Printing CTG also recommends work practices for printing operations with facility emissions equal to or greater than 15 lb/day.

Colorado has sources in the ozone nonattainment area in this CTG VOC source category not currently subject to regulatory RACT requirements. Therefore, the Commission included these requirements in Section XIII.B. as RACT for these sources. However, rather than an applicability threshold of 15 lbs/day, the Commission adopted an applicability threshold of 3 tpy. This is roughly equivalent to the 15lbs/day threshold recommended in the Printing CTG. Based on the Printing CTG, the Commission added language to Section XIII.B.1.b. clarifying that fountain solutions, cleaning materials, inks (which include varnishes) and coatings used in lithographic and letterpress printing presses are considered part of the printing process and are not subject to the surface coating or industrial cleaning solvent requirements in Regulation Number 7. With respect to the compliance threshold for Section XIII.B., if the preceding 2 calendar year average indicates that a source meets or exceeds the 3 tpy threshold, then the source must comply with Section X.E. for the current calendar year. Only emissions from the printing operation and cleaning thereof should be considered in determining if emissions exceed 3 tpy.

The Commission included additional work practices, a VOC content limit for inks and monitoring, recordkeeping and performance testing requirements that are not specified in the Printing CTG but are intended to correspond to current permit requirements and ensure the enforceability of the requirements. With respect to the work practice requirements contained in Section XIII.B.1.c., the Commission applied these requirements to all lithographic and letterpress printing operations, regardless of potential or actual VOC emissions, because they are minimally burdensome, good housekeeping requirements that reduce emissions and correspond to current permit requirements.

With respect to the VOC content limit for inks, the Commission included a 40% limit for heatset web offset and heatset web letterpress printing operations that require higher VOC content ink, and a 30% limit for all other lithographic and letterpress printing operations that are commonly already using low VOC inks. Compliance with the VOC content requirement for inks is demonstrated using a weighted average which takes into account the amount of the different inks used and their respective VOC contents.

For consistency with the Printing CTG, cleaning solutions are subject to VOC content or vapor pressure requirements, except that sources using less than 110 gallons of non-compliant cleaning materials per calendar year are exempt from the VOC content or vapor pressure requirements. Larger heatset printing operations, whose maximum allowable emissions before controls from petroleum inks are 25 tpy VOC or more, are subject to a control requirement (not capture and control). Printing operations' emissions are more difficult to capture, and so capture is not considered in the percent control requirements. However, good air pollution control practices apply at all times.

Industrial cleaning solvents RACT

EPA's CTG for Industrial Cleaning Solvent ("Cleaning Solvent CTG") addresses solvent use in cleaning operations such as spray gun cleaning, spray booth cleaning, large manufactured components cleaning, parts cleaning, equipment

cleaning, line cleaning, floor cleaning, tank cleaning, and small manufactured components cleaning. The Cleaning Solvent CTG applies to facilities with VOC emissions from the use of industrial cleaning solvents equal to or greater than 15 lb/day of VOC. The Cleaning Solvent CTG recommends a cleaning solvent VOC content limit and work practices.

Colorado has sources in the ozone nonattainment area in this Cleaning Solvent CTG VOC source category not currently subject to regulatory RACT requirements. Therefore, the Commission included requirements in Section X.E. as RACT. However, rather than an applicability threshold of 15 lbs/day, the Commission adopted an applicability threshold of 3 tpy on a calendar basis. This is roughly equivalent to the 15lbs/day threshold recommended in the CTG. The Commission intended for the term “industrial cleaning solvent operation” to be broad and apply to a wide range of work areas where manufacturing or repair activities are performed, but not to residential or janitorial cleaning.

The Commission included language to clarify that VOC emissions that are exempt from the industrial cleaning solvent rule do not count toward this 3 tpy threshold. Therefore, when determining whether a facility meets the applicability threshold of 3 tpy, a source should include facility-wide emissions from all industrial cleaning solvent operations and subtract those emissions that are exempt under Section X.E.4. In adopting the VOC content limit in Section X.E.1.a. and the vapor pressure limit in Section X.E.1.b., the Commission intended for these to be straight, as-applied limits for all industrial cleaning solvents used and not a weighted average. Additionally, in adopting the 90% control efficiency compliance option in Section X.E.1.c., the Commission did not intend for this control efficiency to include capture efficiency. The Commission acknowledged that capture efficiency may be lower than the control efficiency because industrial cleaning solvents are often used over large industrial complexes and result in relatively small VOC emissions.

With respect to the compliance threshold for Section X., if the preceding 2 calendar year average indicates that a source meets or exceeds the 3 tpy threshold, then the source must comply with Section X.E. for the current calendar year. The Commission also included monitoring, recordkeeping and reporting requirements that are not specified in the Cleaning Solvent CTG but are intended to align with current permit recordkeeping requirements and ensure the enforceability of the requirements.

The Commission included language in Section X.E.4.a.(ii) providing that industrial cleaning solvent operations subject to a work practice or emission control requirement in another federally enforceable section of Regulation Number 7 that establishes RACT are exempt from the requirements of Section X. This provision was included so as not to subject sources to overlapping, duplicative, or contradictory RACT requirements.

Therefore, if an industrial cleaning solvent operation is subject to a work practice or emission control requirement contained in another, federally approved section of Regulation Number 7, including but not limited to Sections IX. (surface coating operations), X.B. through X.D. (solvent cold-cleaners, non-conveyorized degreasers, and conveyorized degreasers), and XIII. (graphic arts and printing), then that operation would not also be subject to the requirements of Section X.E.4. However, this provision is not intended to exempt an industrial cleaning solvent operation from Section X. when the operation is subject to the restriction on disposal of VOCs by evaporation or spillage contained in to Section V.A. (and RACT is determined to be nothing). Therefore, if an industrial cleaning solvent operation is subject to Section V.A. and RACT is determined to be nothing, the operator must comply with Section X. Conversely, if an industrial cleaning solvent operation is subject to Section V.A. and RACT is determined to be a work practice or emission control requirement, then the operation is exempt from Section X. Lastly, the Commission adopted additional exemptions recommended in the Cleaning Solvent CTG in Section X.E.4.b. as well as an alternative compliance option for area source aerospace facilities in Section X.E.4.c. due to the unique solvent cleaning needs of those source categories.

Control requirements do not account for capture and control. General industrial solvent use emissions are more difficult to capture, and so capture is not considered

in the percent control requirements. However, good air pollution control practices apply at all times.

Major VOC and NOx source RACT

Colorado has major sources of VOC or NOx (sources that emit or have the potential to emit greater than 100 tpy) in the DMNFR. While many of these sources are currently subject to regulatory RACT requirements in Colorado's SIP, some of the sources or emissions points are subject to RACT requirements in federally enforceable permits or New Source Performance Standard ("NSPS") or National Emission Standard for Hazardous Air Pollutants ("NESHAP"). However, as a Moderate nonattainment area, Colorado is submitting a SIP revision to include provisions requiring the implementation of RACT for major sources of NOx or VOC in the DMNFR. Therefore, the Commission included a work practice for combustion equipment at major sources of NOx emissions in Section XVI., a requirement for specific major sources to provide RACT analyses to the Division in Section XIX.B., and incorporated by reference applicable requirements of a NSPS or NESHAP in Sections XIX.C-G.

Specifically, the Commission adopted a combustion process adjustment requirement for individual pieces of combustion equipment at major sources of NOx in Section XVI.D., expanding on work practices currently required in federal NESHAP. The combustion process adjustment was modeled after NESHAP DDDDD, which applies to boilers and process heaters at major HAP sources, and NESHAP ZZZZ, which establishes various requirements for stationary reciprocating internal combustion engines. Section XVI.D. is intended to apply to some equipment that is not subject to work practices under the NESHAPs (e.g., natural gas fired boilers at area sources of HAPs) that have uncontrolled actual NOx emissions (annual emission rate corresponding to the annual process rate listed on the Air Pollutant Emission Notice without consideration of any emission control equipment or procedures) equal to or greater than 5 tpy. The Commission intended major NOx sources to use the most recent APEN submitted to the Division as of January 1, 2017, to determine whether the combustion equipment is subject to the requirement to conduct an initial combustion process adjustment by April 1, 2017, or alternatively document reliance on an allowed, alternative adjustment. Subsequent determinations will be based on the most recent APEN submitted to the Division as of the year the combustion equipment may be subject to the combustion process adjustment requirements (e.g., most recent APEN submitted to the Division as of January 1, 2018, to determine whether a combustion process adjustment is required in 2018). In addition to the specific adjustment requirements, the Commission intended owners and operators to operate and maintain subject equipment consistent with manufacturer specifications or best combustion engineering practices.

The Commission also established RACT requirements for emission points at major sources of VOC or NOx in the DMNFR area in Section XIX. In Section XIX.A., the Commission listed all major sources of VOC or NOx at the time of adoption of the Moderate nonattainment area RACT SIP. The Commission determined that not all emission points above permitting thresholds at major sources were necessarily

subject to existing regulatory RACT requirements in Regulation Number 7 or federally enforceable emission limits in Colorado's Regional Haze SIP. Therefore, in Sections XIX.C. through XIX.G., the Commission incorporated federal NSPS or NESHAP requirements, including monitoring, recordkeeping, and reporting requirements, for some sources to further satisfy Colorado's RACT obligation for Colorado's major VOC and NOx sources. The Commission acknowledges concerns over potential EPA revisions to NSPS and NESHAP incorporated by reference in Sections XIX.C. through XIX.G., and intended that sources comply with applicable requirements in the most up-to-date version of the federal rule, or alternative requirements approved by EPA in accordance with the NSPS or NESHAP. The Commission also directs the Division to initiate efforts to update the incorporation by reference in the SIP, as necessary and with all due diligence. Sources identified in Section XIX.A. but not specifically included in Sections XIX.B. through XIX.G., were determined to be subject to other, existing regulatory RACT requirements in Colorado's SIP (see the Moderate ozone SIP revision, RACT Chapter 6 and the Technical Support Document for Reasonably Available Control Technology for Major Sources for additional detail). Concerning major sources or source emission points not subject to other, existing regulatory RACT requirements in Colorado's SIP or specified in Sections XIX.C. through XIX.G., the Commission required owners or operators to submit RACT analyses for the facility or specific emission points to the Division by December 31, 2017. The RACT analyses should identify potential options to reduce NOx and/or VOC emissions from the facility or emission point(s), propose RACT for that facility or point, propose associated monitoring, propose a schedule for implementation, and include economic and technical information showing why the RACT proposal is RACT for the particular facility or point. These RACT analyses are not to be limited by a January 1, 2017, implementation date.

CoorsTek submitted a permit application to limit permitted emissions of VOC below 100 tpy. Metro Wastewater Reclamation District submitted an application for minor modification to its Title V permit to correct inconsistencies and remove obsolete limits, which lowered the combined Metro Wastewater/Suez Denver Metro permitted NOx emission limit below 100 tpy. Consequently, the Commission determined that the facilities no longer met the definition of a major source, and therefore were not included in Section XIX. Should either source fail to obtain such federally enforceable permits by July 1, 2018, the Commission directs the Division, with all due diligence, to initiate efforts to establish RACT requirements for that source in Colorado's ozone SIP.

Current SIP review

In 2009, the Commission submitted revisions to Regulation Number 7, Section XII. to EPA related to the 1997 ozone NAAQS attainment plan. In 2011, EPA approved the attainment demonstration but disapproved portions of the Regulation Number 7 revisions. In 2013, the Commission submitted revisions to Regulation Number 7, Section XII. to EPA to address EPA's disapproval. During the review of the 2013 submittal, EPA noted additional concerns with the monitoring, recordkeeping, and reporting requirements for natural gas processing plants and glycol natural gas dehydrators, as well as other concerns unrelated to the attainment demonstration for the SIP revision required following the reclassification of the DMNFR area to Moderate.

Natural gas processing plants

Regulation Number 7, Section XII.G.1. identifies a leak detection and repair ("LDAR") program applicable to natural gas processing plants. This "LDAR program" includes all applicable requirements in NSPS KKK. EPA has promulgated new LDAR programs for natural gas processing plants in NSPS OOOO and NSPS OOOOa. Therefore, the Commission updated references to applicable federal NSPS (i.e., NSPS OOOO and NSPS OOOOa) monitoring, recordkeeping, and reporting requirements for natural gas processing plants in the SIP.

Glycol natural gas dehydrators

Regulation Number 7, Section XII.H. already includes a 90% control requirement for glycol natural gas dehydrators. This is a SIP requirement. During the review of the 2013 submittal, EPA noted practical enforceability concerns with the monitoring, recordkeeping, and reporting requirements for glycol natural gas dehydrators. Therefore, the Commission added monitoring, recordkeeping, and reporting requirements for glycol natural gas dehydrators in the SIP to address EPA's concerns with ensuring compliance with the control requirement. The Commission based these requirements off of the Division's glycol natural gas dehydrator Operation and Maintenance Plan template to align the Section XII.H. monitoring, recordkeeping, and reporting requirements with the Operation and Maintenance Plan template, where possible. For any glycol dehydration system monitoring, recordkeeping and reporting requirement adopted for inclusion in the SIP during this hearing that conflicts with a similar provision in a Division approved Operation and Maintenance Plan, the Commission intends that sources only have to comply with the provision adopted for inclusion in the SIP and not the competing requirement in the approved Operation and Maintenance Plan. Further, the Commission directs the Division to work with industry to revise the Division's glycol dehydration systems Operating and Maintenance Plan template to remove requirements that are duplicative of the Section XII.H. monitoring, recordkeeping, and reporting requirements, to alleviate competing requirements with Section XII.H., as necessary.

EPA requested revisions

EPA also noted concerns with other previously submitted provisions in Section XII. EPA requested minor changes to Section XII.C.1.c., and a reversion to previously

approved SIP language in Sections XII.C.1.d. and XIII.E.3.a. to address concerns with discretionary language. In response, the Commission revised Section XII.C.1.c. and reverted to previously approved SIP language in Sections XII.C.1.d. and XII.E.3.a., as requested by EPA.

Incorporation by Reference in Section XIX

§ 24-4-103(12.5) of the Colorado Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of §24-4-103(12.5) are met by including specific information, making the regulations available and because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. However, these regulations are included in the SIP in order to establish RACT, which must be included in the SIP to satisfy CAA Sections 172(c) and 182(b). Therefore, in order to comply with Part D of the CAA, the Commission has incorporated federal regulations in Section XIX.C through H by reference.

Additional Considerations

Colorado must revise Colorado's ozone SIP to address the ozone Moderate nonattainment area requirements. The CAA does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the 8-hour ozone NAAQS and requires Colorado to develop a SIP adequate to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to ensure attainment with the 2008 8-hour ozone NAAQS and satisfy Colorado's Moderate nonattainment area obligations, including those related to RACT. The Commission also adopted revisions to Regulation Number 7 to address EPA concerns that are unrelated to the reclassification to Moderate. These revisions do not exceed or differ from the federal act due to state flexibility in developing nonattainment area SIPs; however, in accordance with C.R.S. § 25-7-110.5(5)(b), the Commission nonetheless determines:

(I) The revisions to Regulation Number 7 address combustion device auto-igniters, condensate storage tank inspections, and glycol natural gas dehydrators at oil and gas facilities and equipment leaks at natural gas processing plants. NSPS OOOO, NSPS OOOOa, NSPS Kb, NSPS KKK, NESHAP HH, and NESHAP HHH may also apply to such oil and gas facilities. However, the Regulation Number 7 revisions apply on a broader basis to more storage tanks and glycol natural gas dehydrators. For example, Regulation Number 7 addresses more glycol natural gas dehydrators than the major source provisions of NESHAP HH and HHH as well as more glycol natural gas dehydrators than the area source provisions of NESHAP HH, which are limited to tri ethylene glycol ("TEG") dehydrators. The Commission revised Regulation Number 7 to include glycol natural gas dehydrator monitoring, recordkeeping, and reporting requirements to ensure compliance with the current 90% system-wide control requirement in Section XII.D.

Similarly, Regulation Number 7 addresses more storage tanks than the major source provisions of NESHAP HH, as well as NSPS Kb, which exempt certain storage vessels storing condensate or petroleum prior to custody transfer. Regulation Number 7 also addresses a broader set of storage tanks than NSPS OOOO and NSPS OOOOa, which address only those storage tanks with emissions greater than 6 tpy controlled

actual emissions (i.e., 120 tpy uncontrolled actual emissions) and do not require auto-igniters on combustion devices. The Commission revised Regulation Number 7 to include the auto-igniter and condensate storage tank AVO inspections in Colorado's SIP to strengthen Colorado's SIP and support Colorado's 2017 emissions inventory. In addition, Regulation Number 7 addresses more equipment leaks at natural gas processing plants than NSPS KKK, which only applies to natural gas processing plants constructed, reconstructed, or modified after January 20, 1984. The Commission revised Regulation Number 7 to reference the more recent equipment leak detection and repair requirements in NSPS OOOO and NSPS OOOOa.

The revisions to Regulation Number 7 also address RACT requirements for lithographic and letterpress printing, industrial cleaning solvents, and major sources of VOC and NOx in Colorado's ozone nonattainment area. EPA published CTGs for lithographic and letterpress printing and industrial cleaning solvents in 2006. The Commission revised Regulation Number 7 to include regulatory RACT requirements for these VOC source categories. Colorado's major sources of VOC and NOx are subject to various and numerous NSPS or NESHAP, Regulation Number 7 RACT requirements, or RACT/beyond RACT analyses. The Commission revised Regulation Number 7 to include regulatory RACT requirements for Colorado's major sources of VOC and NOx in the SIP. Specifically, the Commission revised Regulation Number 7, Sections XVI. and XIX. to include source specific regulatory RACT requirements and a combustion process adjustment for combustion equipment at major sources of NOx. MACT DDDDD, MACT JJJJJJ, MACT ZZZZ, MACT YYYY, NSPS GG, NSPS KKKK, NSPS IIII, and NSPS JJJJ may apply to such combustion equipment. However, the Regulation Number 7 revisions apply on a broader basis to more combustion equipment.

(II) The federal rules discussed in (I), are primarily technology-based in that they largely prescribe the use of specific technologies in order to comply. EPA has provided some flexibility in NSPS OOOO and NSPS OOOOa by allowing a storage vessel to avoid being subject to NSPS OOOO if the storage vessel is subject to any state, federal, or local requirement that brings the storage vessel's emissions below the NSPS OOOO threshold.

(III) The CAA establishes the 8-hour ozone NAAQS and requires Colorado to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's Moderate nonattainment area RACT obligations. Instead, Colorado can adopt applicable provisions into its SIP directly, as the Commission has done here.

(IV) Colorado will be required to comply with a lower ozone NAAQS in the near future. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as RACT analyses and efforts conducted to support the revisions adopted by the Commission may prevent or reduce the need to conduct additional RACT analyses for the more stringent NAAQS.

(V) EPA has established a January 1, 2017, deadline for this SIP submission. There is no timing issue that might justify changing the time frame for implementation of federal requirements.

(VI) The revisions to Regulation Number 7 Section XII. strengthen Colorado's SIP, which currently addresses emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry. The revisions to Regulation Number 7 Sections X. and XIII. recognize products and practices currently utilized by printing and industrial cleaning solvent operations. The revisions to Regulation Number 7 Sections XVI. and XIX. are also specific to existing emission points at major sources of VOC and NOx, allowing for continued growth at Colorado's major sources.

(VII) The revisions to Regulation Number 7 Section XII. establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources. The revisions to Regulation Number 7 Sections X., XIII., and XVI. similarly establish the categorical RACT requirements for similarly situated and sized sources. Where a source is not subject to a categorical RACT requirement, RACT is, by its nature, determined on a case-by-case basis.

(VIII) If Colorado does not attain the 2008 ozone NAAQS by July 20, 2018, EPA will likely reclassify Colorado as a serious ozone nonattainment area, which automatically reduces the major source thresholds from 100 tons per year of VOC and NOx to 50 tons per year; thus subjecting more sources to major source requirements. If EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. Either of these outcomes may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable, such as the requirements for auto-igniters, condensate storage tank inspections, and equipment leaks at natural gas processing plants. Other revisions reflect changes in industry practice and market forces, such as the VOC content of printing materials and cleaning solvents. Similarly, the revisions concerning major sources of VOC and NOx generally reflect current emission controls and work practices.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 contribute to the prevention of ozone in a cost-effective manner.

(XII) Alternative rules could also provide reductions in ozone and help to attain the NAAQS. The Commission determined that the Division's proposal was reasonable and cost-effective. However, a no action alternative would very likely result in an unapprovable SIP.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

Colorado must revise Colorado's ozone SIP to address the Moderate Nonattainment area requirements. However, to the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of the ozone precursors VOC and NOx.

(III) Evidence in the record supports the finding that the rules shall being about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

P. November 16, 2017 (Revisions to Section II., XII., Section XVII., and Section XVIII.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act §§ 25-7-110 and 25-7-110.5, C.R.S. ("the Act").

Basis

On May 4, 2016, the U.S. Environmental Protection Agency's ("EPA") published a final rule that determined that Colorado's Marginal ozone nonattainment area failed to attain the 2008 8-hour Ozone National Ambient Air Quality Standard ("NAAQS"). EPA, therefore, reclassified the Denver Metro North Front Range ("DMNFR") area to Moderate and required attainment of the NAAQS no later than July 20, 2018, based on 2015-2017 ozone data.

As a result of the reclassification, on May 31, 2017, Colorado submitted to EPA revisions to its State Implementation Plan ("SIP") to address the Clean Air Act's ("CAA") Moderate nonattainment area requirements, as set forth in CAA § 182(b) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (*See* 80 Fed. Reg. 12264 (March 6, 2015)). As a Moderate nonattainment area, Colorado must revise its SIP to include Reasonably Available Control Technology ("RACT") requirements for each category of volatile organic compound ("VOC") sources covered by a Control Technique Guideline ("CTG") for which Colorado has sources in the DMNFR that EPA finalized prior to a nonattainment area's attainment date. EPA finalized the Control Techniques Guidelines for the Oil and Natural Gas Industry ("Oil and Gas CTG") on October 27, 2016, with a state SIP submittal deadline of October 27, 2018. Given this timing, the November 2016, SIP revisions did not include RACT for the oil and natural gas source category and Colorado must further revise its SIP.

The Oil and Gas CTG recommends controls that are presumptively approvable as RACT and provide guidance to states in developing RACT for their specific sources. In many cases, Colorado has similar, or more stringent, regulations comparable to the recommendations in the Oil and Gas CTG, though many of these provisions are not currently in Colorado's Ozone SIP. Therefore, the Commission is adopting RACT for the oil and gas sources covered by the Oil and Gas CTG (CTG as of October 27, 2016) into the Ozone SIP (Sections XII. and XVIII.). In order to make additional progress towards attainment of the NAAQS, the Commission is also adopting State Only revisions to require owners or operators of natural gas-driven pneumatic controllers in the DMNFR area to inspect and maintain pneumatic controllers. Further, the Commission is making clarifying revisions and typographical, grammatical, and formatting corrections throughout Regulation Number 7.

Specific Statutory Authority

§ 25-7-105(1) of the Act directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and are necessary for the proper implementation and administration of the Act. The Act broadly defines air pollutant and provides the Commission broad authority to

regulate air pollutants. § 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. §§ 25-7-109(1)(a), (2), and (3) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, emission control regulations pertaining to nitrogen oxides and hydrocarbons, and emissions control regulations pertaining to the storage and transfer of petroleum products and other VOCs. § 25-7-109(2)(c), in particular, provides the Commission broad authority to regulate hydrocarbons.

Purpose

As discussed, Colorado must adopt RACT into its Ozone SIP for sources covered by the Oil and Gas CTG. While the Oil and Gas CTG recommends presumptive RACT, it does allow states the flexibility to determine what constitutes RACT for the state's covered sources. Further, while EPA's Oil and Gas CTG implementation memorandum provides guidance that the emission controls determined by the state to be RACT for the sources covered by the Oil and Gas CTG must be implemented as soon as practicable but in no case later than January 1, 2021, states also have the flexibility to determine the appropriate implementation timeframe for the sources within the state's ozone nonattainment area. The Commission determined that some of Colorado's existing regulations (*i.e.,* the "system-wide" control program for condensate tanks in Section XII.D.2.) achieve greater emission reductions than the RACT recommended by the Oil and Gas CTG. The Commission determined that some sources covered by the Oil and Gas CTG were not addressed in existing regulations (*i.e.,* pneumatic pumps).

The Commission also determined that some sources addressed in the Oil and Gas CTG (*i.e.,* components at well production facilities and natural gas compressor stations, compressors, pneumatic controllers) are already subject to existing regulations that were not yet part of Colorado's Ozone SIP. The Commission adopted many of these rules in 2014, and intends to preserve the substance of these rules, where possible, in moving them into the Ozone SIP, while making a few adjustments and improvements in response to recommendations in the Oil and Gas CTG. The Commission also adopted correlating revisions to the applicability provisions of Sections II. and XII.

The Commission relied on existing regulations in the Ozone SIP for RACT for condensate storage tank controls to satisfy Colorado's obligation to address storage vessels under the Oil and Gas CTG. The Commission adopted requirements for pneumatic pumps in Section XII. to address recommendations in the Oil and Gas CTG. The Commission revised the existing SIP requirements in Section XII.G. for equipment leaks at natural gas processing plants to address recommendations in the Oil and Gas CTG. The Commission duplicated into the Ozone SIP from Section

XVII. provisions for compressors and leak detection and repair (“LDAR”) for components at well production facilities and natural gas compressor stations. The Commission adjusted these LDAR requirements to address recommendations in the Oil and Gas CTG, along with updates to the recordkeeping and reporting requirements. Corresponding revisions to the LDAR program in Section XVII. are made on a State Only basis. The Commission also revised Section XVIII. to include existing State Only requirements for continuous bleed, natural gas-driven pneumatic controllers in the Ozone SIP and specify that continuous bleed, natural gas-driven pneumatic controllers located at natural gas processing plants maintain a natural gas bleed rate of zero scfh.

The Commission adopted State Only provisions for the inspection and maintenance of natural gas-driven pneumatic controllers in Section XVIII.

The Commission also made clarifying revisions and corrected typographical, grammatical, and formatting errors found within the regulation.

The following explanations provide further insight into the Commission’s intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

Oil and Gas CTG, generally

The Oil and Gas CTG provides recommendations for states to consider in determining RACT for certain oil and natural gas industry emission sources. EPA included storage vessels, pneumatic controllers, pneumatic pumps, compressors, equipment leaks, and fugitive emissions in the Oil and Gas CTG because EPA determined that these sources are significant sources of VOC emissions. EPA defines RACT as “the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.” States may implement approaches that differ from the recommendations in the Oil and Gas CTG so long as they are consistent with the CAA, EPA’s implementing regulations, and policies on interpreting RACT.

Applicability to hydrocarbons (Section II.B.)

Section II.B. currently exempts negligibly reactive volatile organic compounds, such as methane and ethane, from requirements of the SIP, while making hydrocarbon emissions, including methane and ethane, subject to State Only regulation under Sections XVII. and XVIII. Section XVII. sets a threshold for leaks requiring repair that is based on the concentration of hydrocarbons, as determined using EPA Method 21. Section XII.L. applies the same EPA Method 21 hydrocarbon threshold for leaks requiring repair. The Commission revised Section II.B. to clarify that the Section XII.L. hydrocarbon threshold and Section XVIII. natural gas emission standards serve only as VOC indicators and the SIP does not regulate hydrocarbon emissions.

The continuous bleed, natural gas-driven pneumatic controller requirements in Section XVIII. reduce natural gas emissions, which consists of other pollutants in addition to VOCs. Despite the presence of other constituents, natural gas is

principally methane and the Commission intends to regulate emissions of natural gas as hydrocarbons, including methane and ethane, on a State Only basis as described in Sections II.B. and XVIII. The Oil and Gas CTG also utilizes a natural gas bleed rate standard for continuous bleed pneumatic controllers and the Oil and Gas CTG LDAR program employs a methane-based threshold for EPA Method 21 leak detection. Therefore, these revisions are consistent with the Oil and Gas CTG and the CAA.

While the revisions to Sections XII. and XVIII. to include provisions in Colorado's Ozone SIP are limited to the DMNFR, the Commission acknowledges the importance of reducing hydrocarbon emissions from the oil and gas sector (*i.e.*, upstream, midstream, and transmission) statewide. Therefore, without prescribing any particular outcome, the Commission directs the Division to initiate and lead a stakeholder process over the 2018-2019 timeframe to evaluate potential areas for cost-effective hydrocarbon emission reductions. Stakeholders will nominate topics for evaluation, which may include, but are not limited to, the frequency of LDAR inspections, transmission segment compressor emissions, natural gas-driven and zero emission pneumatic controllers outside the DMNFR (to be informed by the pneumatic study and inspection program), and potential expansion of the requirements adopted in the DMNFR as part of this rulemaking. The Division will brief the Commission on the stakeholder process in January 2019 and present recommendations for any new proposals for emission reductions by no later than January 2020. The Commission intends that one representative of industry, local government, and the environmental community each will have the opportunity to speak during the briefings.

Applicability of Section XII. (Section XII.A.)

The Commission is clarifying the applicability of Section XII. Historically, Section XII. has applied to operations that involve the collection, storage, or handling of condensate in the DMNFR. While this remains the case, the requirements in Section XII.J. for compressors, Section XII.K. for pneumatic pumps, and Section XII.L. for components at well production facilities and natural gas compressor stations also apply to those facilities and equipment collecting, storing, or handling other hydrocarbon liquids.

Section XII.A.5. further provides that subject well production facilities are those with uncontrolled actual VOC emissions greater than or equal to one ton per year ("tpy"). This applicability threshold addresses the Oil and Gas CTG's recommended barrels of oil equivalent ("BOE") exemption. EPA crafted the BOE exemption believing that well production facilities with an average production less than 15 BOE per well per day were inherently low emitting facilities. EPA later determined that information submitted on the draft CTG and proposed NSPS OOOOa did not support this conclusion. Therefore, in addition to the complications concerning tracking BOE, the Commission chose to rely upon an uncontrolled actual VOC tpy threshold for well production facility applicability. The use of a tpy threshold is also consistent with Colorado's current air pollutant reporting and permitting thresholds. Further, Section XII.A. historically exempted from the requirements of Section XII. those operations reflecting a total of less than 30 tons-per-year of actual uncontrolled emissions of

VOCs in the DMNFR area. That exemption continues to apply to Sections XII.B. through XII.I., but is not extended to Sections XII.J., XII.K., and XII.L.

Definitions (Sections XII.B. and XVII.A.)

The Commission is adopting definitions into Section XII.B., most of which are consistent with the existing definitions of Section XVII. In the definition of "component", the Commission is clarifying both in Section XII.B. and in Section XVII.A., that thief hatches and other openings on storage tanks are included in the definition as a pressure relief device. This revision clarifies that leaks can occur from the thief hatch (*e.g.*, faulty or dirty seals) that are different than vented emissions under the standard in Section XVII.C.2.a., and that such leaks are subject to the LDAR program. The Commission anticipates that emissions from storage tanks identified as leaks requiring repair through the LDAR inspections under Sections XII.L. or XVIII.F. will be recorded and reported as leaks starting in 2018 for the 2019 annual report. The Commission is adding a definition of "custody transfer" that applies to custody transfers of both natural gas and oil products. The Commission is also adding definitions for "natural gas driven diaphragm pump" and "natural gas processing plant" that correspond to federal definitions.

Operate without venting clarification (Section XVII.C.2.a.)

The Commission is providing additional detail concerning provisions adopted in 2014 that established an "operate without venting" standard for storage tanks. In response to industry concern that Section XVII. does not sufficiently define "venting" or delineate "venting" from "leaking," the Commission is adopting provisions clarifying which emissions from storage tanks are considered "venting". Section XVII.F. defines "leaking" in terms of infra-red camera or EPA Method 21 inspections of components. While storage tanks may also have leaks, as the Commission recognizes by including thief hatches or other openings on storage tanks in the definition of component, the Commission now further clarifies the "venting" standard by specifying that "venting" is emissions that are primarily the result of over-pressurization or that are from an open or visibly unseated pressure relief device (*e.g.*, thief hatch). The Commission intends that "visibly unseated" means visible from the outside of the pressure relief device and does not require an owner or operator to open a pressure relief device to determine if the seal is proper. The Commission also authorizes the Division to request a demonstration from the owner or operator that "venting" emissions observed by the Division were not primarily the result of over-pressurization. The Commission intends that such demonstration request allow an owner or operator to provide case specific information or other sufficient details that the design, operation, and maintenance of the facility is adequate to prevent over-pressurization. In clarifying a difference between "leaking" and "venting," the Commission does not prohibit component leaks, per se, so long as leaks are repaired under the applicable repair time frames but does continue to prohibit "venting" from storage tanks.

Ozone season clarification (Sections XII.F.4. and XII.H.6.)

In October 2015, the EPA finalized a revision to the ozone NAAQS. (80 Fed. Reg. 65292 (Oct. 26, 2015)). In publishing its final rule, the EPA revised the length of

Colorado's ozone season. Colorado's ozone season is now year-round, rather than the months of May through September. The Commission therefore revised references to "ozone season" in Sections XII.F.4. and XII.H.6. to reflect that the requirements now apply during the months of May to September. There are no substantive changes to the underlying requirements resulting from this revision.

Equipment leaks at natural gas processing plants (Section XII.G.)

The Commission is updating the LDAR program applicable to equipment leaks at natural gas processing plants in the DMNFR by requiring owners or operators to comply with 40 C.F.R. Part 60 (NSPS), Subparts OOOO or OOOOa instead of complying with NSPS Subpart KKK, which is an earlier NSPS and less stringent. Subpart KKK requires sources to implement a NSPS Subpart VV level LDAR program, while Subpart OOOO requires sources to implement a NSPS Subpart VVa level LDAR program. A Subpart VVa level LDAR program is recommended for equipment at natural gas processing plants in the Oil and Gas CTG. The Commission determined that a 2019 implementation date would provide owners and operators of existing natural gas processing plants a reasonable period of time to establish and obtain the necessary resources to transition from Subpart KKK to Subpart OOOO LDAR requirements.

Compressors (Section XII.J.)

The Commission is adopting the centrifugal and reciprocating compressor provisions from existing Section XVII.B.3. into new Section XII.J. in order to include the requirements in Colorado's Ozone SIP. The Commission is expanding the existing reciprocating compressor requirements to reciprocating compressors located at natural gas processing plants to address recommendations in the Oil and Gas CTG. Owners or operators of existing reciprocating compressors at natural gas processing plants must begin monitoring the reciprocating compressor hours of operation on January 1, 2018, starting at zero, in relation to the rod packing replacement requirement, conduct the first rod packing replacement prior to January 1, 2021, or route emissions to a process beginning May 1, 2018.

The Commission intends to allow owners or operators the option to reduce VOC emissions by routing centrifugal compressor emissions to a process or control and reciprocating compressor emissions to a process, consistent with the recommendations in the Oil and Gas CTG. With respect to centrifugal compressors, the Oil and Gas CTG and related federal requirements reveal that "process" generally refers to routing emissions via a closed vent system to any enclosed portion of a process unit (*e.g.*, compressor or fuel gas system) where the emissions are predominantly recycled, consumed in the same manner as a material that fulfills the same function in the process, transformed by chemical reaction into materials that are not regulated materials, incorporated into a product, or recovered. Similarly, with respect to reciprocating compressors, routing to a process includes using a rod packing emissions collection system that operates under negative pressure and meets cover and closed vent system requirements. The negative pressure requirement ensures that all emissions are conveyed to the process and avoids inducing back pressure on the rod packing and resultant safety concerns. The Commission recognizes that there may a distinction between air pollution control equipment and process equipment (see e.g., U.S. EPA Letter to Timothy J. Mohin RE: Criteria for Determining Whether Equipment is Air Pollution Control Equipment or Process Equipment (Nov. 27, 1995)). For example, as noted in the Oil and Gas CTG, vapor recovery units and flow lines that "route emissions to a process" may be considered part of the process and not a control device, however, a related cover and closed vent system, if present, are still subject to applicable requirements. Further, components (as defined in these rules) located within a process or that are part of process equipment are subject to the Section XII.L. LDAR requirements. The Commission intends that owners or operators will follow similar procedures when complying with centrifugal and reciprocating compressor requirements in Section XII.J.

The Commission has adopted an inspection program for compressors, but also intends to provide owners or operators with the alternative of complying with other requirements, including the LDAR program adopted into Section XII.L. While the requirements of the LDAR program would replace the annual visual inspections and EPA Method 21 inspections of the cover and closed vent systems for defects and leaks, owners or operators would still need to conduct monthly inspections of their combustion devices. Compliance with the LDAR program is not limited to the

inspection frequency and methods specified therein; owners or operators will also need to maintain records of the inspections and submit reports to the Division, consistent with the requirements of the LDAR program. The Commission has specified an inspection and repair schedule for compressors, but has recognized that there may be reasons that a system is unsafe or difficult to inspect, or where a repair may not be feasible. Owners or operators will need to maintain records of each cover or closed vent system that is unsafe or difficult to inspect and schedule for inspection when circumstances allow. Similarly, when a repair is infeasible, insofar as it would require a shutdown of the equipment, repair can be delayed until the next scheduled shutdown but must be completed within two years after discovery. The Commission expects owners or operators to attempt to confirm repair before starting up operation after shutdown, to the extent practicable. The Commission also expects that if the repair attempt can be made during an unplanned shutdown, it will be.

The Commission adopts the monitoring and recordkeeping requirements to ensure and demonstrate compliance with the control requirements. As an alternative to complying with the control, monitoring, and recordkeeping requirements in Section XII.J., owners or operators may instead comply with centrifugal or reciprocating compressor control, monitoring, recordkeeping, and reporting requirements in a NSPS, including Subparts OOOO, OOOOa, or future standards.

Natural gas driven diaphragm pumps (Section XII.K.)

The Oil and Gas CTG contains recommendations for RACT for natural gas-driven diaphragm pumps. The Commission has not previously adopted regulations specifically directed at this type of equipment, and does so in Section XII.K.

The Oil and Gas CTG recommends that the pumps located at a natural gas processing plant have zero VOC emissions. The Oil and Gas CTG also recommends that owners or operators of pumps located at well sites route VOC emissions from the pneumatic pump to an onsite control device or process, unless the pneumatic pump operates on fewer than 90 days or an engineering assessment shows that routing the pneumatic pump emissions to a control device or process is technically infeasible. The assessment of technical feasibility may include safety considerations, distance from the control device, pressure losses and differentials in the closed vent system, gas pressure, and the capacity of the control device, among other things. The Commission acknowledges that RACT, by EPA definition, includes both technological and economic feasibility elements. The Commission determined that the cost of routing pneumatic pump emissions to an existing control device or process is reasonable and is, therefore, only providing an exemption from the emission control requirement based on technical infeasibility. However, the Commission does not intend to limit future RACT determinations due to limiting the pneumatic pump infeasibility analysis to technical ability. In addition, the 90-day exemption for pumps was included to address intermittently used or portable pumps. Consistent with the Oil and Gas CTG, the Commission intends that if a pump operates on any period of a calendar day, that day would be included in the calculation for applicability of the 90-day exemption.

The Commission does not expect an owner or operator to install new equipment specifically to route pneumatic pump emissions to a control or process but intends that when an owner or operator subsequently otherwise installs a control device or it becomes technically feasible to route pump emissions to a process, then the owner or operator will capture the emissions from the pneumatic pump and route the emissions to the newly installed control device or feasible process. Routing to a control or process generally refers to routing the emissions through a closed vent system to a vapor recovery unit, combustion device, or enclosed portion of a process where emissions are recycled and/or consumed.

The Commission has applied the same flexibility for pneumatic pumps as it has for compressors; owners or operators may comply with the inspection requirements in Section XII.K. or may follow the LDAR program in Section XII.L. Also similar to compressors, owners or operators may delay subsequent repair attempts of equipment where, during a scheduled shutdown, the owner or operator unsuccessfully repaired the leak or equipment requiring repair so long as repair is completed within two years after discovery. As with compressors, the Commission expects owners or operators to attempt to confirm repair before starting up operation after a shutdown and make an attempt to repair during unscheduled shutdowns, to the extent practicable.

As an alternative to complying with the control, monitoring, recordkeeping, and reporting requirements in Section XII.K., owners or operators may instead comply with pneumatic pump emission control, monitoring, recordkeeping, and reporting requirements in a NSPS, including Subparts OOOO, OOOOa, or future standards.

Fugitive emissions at well production facilities and natural gas compressor stations (Section XII.L.)

The Oil and Gas CTG recommends LDAR programs at well sites *(i.e.*, well production facilities) and gathering and boosting stations (*i.e.*, natural gas compressor stations), including inspection frequencies, recordkeeping, and reporting. The Commission established Colorado's well production facility and natural gas compressor station LDAR program in 2014 in Section XVII.F., which is not part of the Ozone SIP. In creating a LDAR program in the Ozone SIP, the Commission intends to maintain as much of the current program as feasible. Where the Commission adopted revisions in Section XII.L. that differ from language currently found in the State Only LDAR program, the Commission in most cases made the same or similar revisions to the corresponding provisions in Section XVII.F.

Inspection, repair, and remonitoring

The Oil and Gas CTG recommends LDAR inspections at a minimum quarterly frequency for gathering and boosting stations and a minimum semi-annual frequency for well sites. The Commission is adopting inspection frequencies to address those recommendations in Section XII.L. The Commission is not modifying the LDAR schedules in Section XVII.F. The Commission intends that for those sources required by Section XVII.F. to conduct more frequent LDAR monitoring than specified in Section XII.L., the owner or operator may comply with Sections XII L.1. and XII.L.2. by complying with Sections XVII.F.3. and XVII.F.4. As with the LDAR inspection

frequency in Section XVII.F., the Commission expects that owners or operators will ensure that inspections are appropriately spaced on the frequency schedules (*e.g.,* quarterly inspections will occur every three months but not, for example, on March 31 and April 1).

The Oil and Gas CTG does not recommend a semi-annual LDAR inspection frequency at well sites with a gas to oil ratio less than 300 and which produce, on average, less than or equal to 15 BOE per well per day. The Commission recognizes that a component of RACT is balancing the emission reductions with the cost of the controls, and agrees that there should be a floor below which the recommended minimum frequency does not apply. The Commission determined a threshold of one tpy VOC emissions addresses this balance and the recommendation in the Oil and Gas CTG. Adopting an emissions based threshold maintains consistency with the current Regulation Number 7 applicability program and promotes the clarity and effectiveness of the regulation.

The Commission determined that annual LDAR inspections of well production facilities with uncontrolled actual VOC emissions greater than or equal to one tpy and equal to or less than six tpy and semi-annual LDAR inspections of well production facilities with uncontrolled actual VOC emissions greater than six tpy address the Oil and Gas CTG's recommendations.

The Commission understands that the revised inspection frequencies will result in a significant number of new inspections. However, annual LDAR inspections of well production facilities with uncontrolled actual VOC emissions greater than or equal to one tpy and equal to or less than six tpy will be less burdensome than semi-annual inspections. The Commission has determined that the emission reductions achieved by this program will improve the ability of the DMNFR area to attain the ozone standard and are cost-effective. While the rule specifies that the new inspection frequencies begin to apply as of June 30, 2018, the rule does not require that the first periodic inspection be completed by June 30, 2018. The Commission also does not require that monitoring be conducted in advance of this date; however, inspections done after January 1, 2018, that are in addition to current required LDAR monitoring frequencies may count towards the first annual or semi-annual inspection, or inspections done in the previous quarter at natural gas compressor stations. The Commission encourages owners or operators to conduct inspections prior to the 2018 summer ozone months to more effectively take advantage of the resulting emission reductions.

To ensure that the Ozone SIP LDAR program in Section XII.L. works with the existing State Only LDAR program in Section XVII.F., the Commission has maintained the same thresholds for identifying leaks that require repair. While the Oil and Gas CTG employs a methane concentration threshold when detected with EPA Method 21, Colorado's LDAR program uses a hydrocarbon concentration threshold. The Commission has also revised Section II. to clarify that Section XII.L. includes the use of hydrocarbons as an indicator of VOC emission reductions.

Concerning the use of non-quantitative instrument monitoring methods, the Commission adopted a quality assurance requirement that owners or operators

maintain and operate such devices according to manufacturer recommendations. This requirement corresponds to recommendations in the Oil and Gas CTG concerning the maintenance and operation of OGI uses to detect fugitive emission components. The Commission intends for the Division to work with owners or operator to address any concerns that arise from manufacturer specifications for the maintenance of non-quantitative instrument monitoring methods.

Consistent with the current LDAR program in Section XVII.F., the Commission adopted a requirement to make a first attempt to repair an identified leak within five working (*i.e.,* business) days of discovery. In both Section XII.L. and in Section XVII.F., the Commission has included a requirement that repairs be completed within 30 days unless one of the existing justifications for delay of repair applies. As with compressors and pneumatic pumps, owners or operators may delay subsequent repair attempts of equipment where, during a scheduled shutdown, the owner or operator unsuccessfully repaired the leak requiring repair so long as repair is completed within two years of discovery. The Commission has also maintained the flexibility of the State Only LDAR program in the SIP by giving owners or operators detecting leaks with a non-quantitative method (*e.g.,* IR camera) the ability to quantify the leaks within five working days. If the quantification shows that the leak must be repaired under Section XII.L.5., the deadline to repair runs from the date of discovery, not from the date of quantification.

As it did for Section XVII.F.7.c. in 2014, the Commission has also memorialized its intent, in Section XII.L.5.c., that operators not be subject to enforcement for leaks so long as operators are complying with the LDAR program requirements. However, as it also explained in 2014, the Commission does not intend to relieve owners or operators of the obligation to comply with the general requirements of Section XII.C. For example, closing an open thief hatch within five days of an LDAR inspection does not shield an owner or operator from a possible violation of the requirement to minimize emissions to the maximum extent practicable.

Similarly, the Commission does not intend to relieve owners or operators of the obligation, on a State Only basis, to comply with the requirements of Section XVII., including the requirements in Sections XVII.B. and XVII.C.2. to minimize leakage to the extent reasonably practicable and operate without venting, respectively. However, the Commission does not intend these State Only provisions be enforceable under the Ozone SIP.

Recordkeeping and reporting

The Commission has determined that the current requirements did not adequately incentivize owners or operators to make all reasonable good faith efforts to obtain parts necessary to complete repairs. As a result, some leaks continued on delay of repair lists for an unreasonable length of time. Therefore, the Commission has determined that a review and record of such delays by a representative of the owner or operator is necessary for those occasions where unavailable parts have resulted in a delay of repair beyond 30 days.

The Commission expanded the recordkeeping for repair dates to include records of the type of repair method applied. The Commission determined this recordkeeping element aligns with recommendations in the Oil and Gas CTG and will more accurately inform repair activities. The Commission intends for the Division to work with owners and operators to establish a generally standardized set of different types of repair to ensure that owners and operators are consistently recording the information required.

The Commission also expanded the requirements for the annual LDAR report to ensure that the data submitted to the Division more accurately represents and summarizes the activities and effectiveness of the LDAR program. The Commission intends that the LDAR reports include the number of inspections, leaks requiring repair, leaking component type, and monitoring method by which the leaks were found – broken out by facility type (*i.e.,* inspection frequency tier of well production facility or natural gas compressor station).

The Commission intends that both the SIP and State Only LDAR reporting requirement can be satisfied by one report. The Commission expects that the first annual report containing the information required by these revisions will be submitted by May 31, 2019 (*i.e.,* no changes are expected to current requirements for the May 31, 2018, annual report representing leak detection and repair activities conducted during 2017).

Alternative approved instrument monitoring method ("AIMM")

The Commission has adopted a process for the review and approval of alternative instrument monitoring methods. The CAA prohibits a state from modifying SIP requirements except through specified CAA processes. EPA interprets this CAA provision to allow EPA approval of SIP provisions that include state authority to approve alternative requirements when the SIP provisions are sufficiently specific, provide for sufficient public process, and are adequately bounded such that EPA can determine, when approving the SIP provision, how the provision will actually be applied and whether there are adverse impacts. (State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 Fed. Reg. 33917-33918, 33927 (June 12, 2015)) Therefore, the Commission includes an application and review process in the SIP for the potential approval of instrument monitoring methods as alternatives to an infra-red camera or EPA's Method 21. The approval may also include modified recordkeeping and reporting requirements based on the capabilities of the potential alternative instrument monitoring method. This proposed process does not alter the stringency of Colorado's well production facility and natural gas compressor station LDAR program because an alternative AIMM must be capable of reducing emissions through the detection and repair of leaks comparable to the leaks detected and repaired as specified in the SIP to be potentially approvable.

The Commission received comments from stakeholders requesting that the Commission explicitly provide for the ability to employ certain alternatives not equipped with the leak detection capabilities of infra-red cameras or Method 21. These stakeholders emphasized that monitoring technologies are evolving rapidly and new technologies and monitoring programs are being developed that, when used on their own or in conjunction with other methods, may provide the same or better leak detection and repair results, at potentially lower costs. The process outlined in Section XII.L.8. requires an applicant to demonstrate that the proposed alternative monitoring achieves emission reductions that are at least as effective as the leak detection and repair program in Section XII.L. The Commission intends that

the rule be flexible enough to allow the Division to consider such alternative monitoring methods or programs, as long as the applicant can demonstrate that the proposed method or program achieves emission reductions that are as effective as other approved technologies or methods. To make this demonstration, an applicant may consider demonstrating that a program of alternative inspection frequencies, pollutants detected, or leak thresholds for repair achieves emission reductions comparable to the inspection frequencies and leaks requiring repair thresholds in Section XII.L., thus the consideration of an alternative leak detection program. The Commission recognizes that current, established approaches or methodologies to evaluate the performance of alternative monitoring technologies and programs as compared to baseline monitoring technologies (infra-red camera, EPA Method 21) do not yet exist. However, such methodologies are being developed.

For example, the Interstate Technology and Regulatory Council (ITRC), in which Colorado participates, is developing, but has not yet published, a guidance document to establish, if possible, a consensus for evaluating and comparing the effectiveness of leak detection technologies. While the criteria for evaluating the effectiveness of an alternative program as compared to the base program is being developed, alternative monitoring method applicants may submit an application for approval of an alternative monitoring method but must be prepared to present a robust and complete evaluation of the technology or program’s performance that allows for comparison to the base technologies in the SIP. It is possible the Division may delay consideration and final determination regarding an alternative monitoring method or program application until established comparison criteria are developed or submitted. Taking into account the deliberations of the ITRC process, the Commission expects that the Division will consider complete applications in a timely manner.

The Commission also received comments from stakeholders requesting that the Commission clarify EPA's participation regarding potential alternative monitoring methods. As discussed, the Commission believes that the process to review and potentially approve alternative monitoring methods is sufficiently constrained such that EPA, when approving the process, can be assured as to what emission reductions any such alternative monitoring will achieve in the context of the Section XII.L. LDAR program. However, the Commission also recognizes EPA's technical knowledge and is requiring the Division to continue to engage with EPA concerning alternative monitoring methods. Specifically, the Division must provide complete applications to EPA early in the review process, which has previously ranged from three to nine months. The Division must also provide EPA six (6) months after approval of an alternative for further EPA review. The Commission believes this process provides sufficient time for meaningful engagement with EPA.

Clarifications

The Commission is clarifying, both in Section XII.L. and Section XVII.F., that all detected emissions are leaks, but that only those leaks above specified thresholds require repair. The Commission did not intend that leaks falling below the specified thresholds would not be considered "leaks," only that those leaks did not require repair in accordance with the prescribed schedules. The Commission has further clarified that only records of leaks requiring repair need to be maintained. Regulation Number 7 already requires that owners or operators remonitor repaired leaks with an AIMM. AIMM includes EPA Method 21, which includes the soapy water method, and the Commission further clarifies that an owner or operator may use the soapy water method in EPA Method 21 to remonitor a repaired leak. Some stakeholders asked the Commission to "clarify" that the LDAR repair, remonitoring, recordkeeping, and reporting requirements applied only to those leaks discovered by the owner or operator, and not those discovered by the Division. The Commission believes that would not be a clarification, but a change to the current program, and does not make that requested revision at this time. Therefore, the repair, remonitoring, recordkeeping, and reporting requirements continue to apply to leaks discovered by the Division.

Pneumatic controllers (Section XVIII.)

The Commission is adopting both Ozone SIP and State Only revisions to Section XVIII. The Commission added definitions of continuous bleed and intermittent pneumatic controller. The Commission also added "continuous bleed" to several provisions throughout Sections XVIII.C. through XVIII.E. to clarify that the provisions adopted in 2014 primarily applied to continuous bleed pneumatic controllers (which emit continuously) as opposed to intermittent pneumatic controllers (which emit only when actuating).

Pneumatic controllers at or upstream of natural gas processing plants

Section XVIII. already requires that owners or operators install low-bleed pneumatic controllers at or upstream of natural gas processing plants, unless a high-bleed pneumatic controller is required for safety or process purposes. This requirement is

consistent with the Oil and Gas CTG and the Commission intends that these provisions be included in Colorado's Ozone SIP.

The Commission adopts additional requirements, consistent with the Oil and Gas CTG, related to pneumatic controllers at natural gas processing plants. The Commission is requiring that all continuous bleed, natural gas-driven pneumatic controllers at a natural gas processing plant have a bleed rate of zero (*i.e.,* no VOC emissions), unless a pneumatic controller with a bleed rate greater than zero is necessary due to safety and process reasons. To satisfy this requirement, owners or operators of natural gas processing plants could, for example, drive pneumatic controllers with instrument air, use mechanical or electrically powered pneumatic controllers, or use self-contained pneumatic controllers that release natural gas to a downstream pipeline instead of to the atmosphere. The requirements to submit a justification for a pneumatic controller exceeding the emission standard to the Division, as well as the requirements for tagging and records, duplicate and are intended to be consistent with existing requirements related to high-bleed pneumatic controllers.

The requirement to maintain pneumatic controllers exceeding the applicable emission standard are also duplicated from the existing high-bleed maintenance requirement, but revised to include the suggested maintenance actions specifically in the applicable provisions, instead of referring to an “enhanced maintenance” definition. The Commission revised the maintenance requirement in this manner to separate the actions taken to maintain a pneumatic controller exceeding the applicable emission standard from the, potentially very similar, actions taken to return a pneumatic controller to proper operation. For example, the owner or operator of a high-bleed pneumatic controller or a pneumatic controller with a bleed rate greater than zero at a natural gas processing plant is required to perform specified maintenance on the pneumatic controller regardless of whether or not the pneumatic controller is determined to be properly operating. In contrast, the owner or operator of a pneumatic controller inspected under Section XVIII.F. must conduct enhanced response to return that pneumatic controller to proper operation.

Additionally, the Commission is requiring owners or operators to maintain records demonstrating their continuous bleed, natural gas-driven pneumatic controllers meet the applicable low-bleed or bleed rate of zero standards. These records are also intended to inform the extent to which continuous bleed pneumatic controllers are used in the DMNFR. The Commission understands that the number of continuous bleed, natural gas-driven pneumatic controllers in use by an operator can change frequently, and is not requiring a running log or count of each individual pneumatic controller. The Commission adopted these recordkeeping requirements with the expectation that owners or operators can keep records including, but not limited to, site-specific documentation of continuous bleed, natural gas-driven pneumatic controllers such as manufacturer specifications, engineering calculations, field test data, or documentation of a company’s continuous bleed, natural gas-driven pneumatic controller purchase and installation program ensuring that any such pneumatic controller meets the applicable bleed rate standard.

Clarification

The Commission is also clarifying the intent behind provisions adopted in 2014 regarding the use of pneumatic controllers powered by instrument air (as opposed to natural gas) when grid power is being used. In 2014, the Commission intended that when a pneumatic controller was proposed for installation, owners or operators would power the pneumatic controller via electrical power instead of natural gas when electrical grid power was being used on-site. The provisions adopted in 2014 allowed owners or operators to install a pneumatic controller with VOC emissions equal to or less than a low-bleed pneumatic controller in some situations. The Commission has learned that some owners or operators interpret the rule as providing the option of installing either no-bleed or low-bleed pneumatic controllers in all situations.

Even though the Commission believes its intent was clear, the Commission recognizes that the rule could fairly be described as ambiguous and that there is a good faith legal argument for the alternative interpretation. The Commission is revising the rule to clarify that where electric grid power is being used on site and it is technically and economically feasible to install no-bleed pneumatic controllers,

any newly installed pneumatic controllers must be no-bleed. Where the owner or operator determines it is not technically and economically feasible to install a no-bleed pneumatic controller, the owner or operator may install a low-bleed or intermittent pneumatic controller.

The Commission recognizes that the installation of an electrically-powered controller may have been feasible in 2014, but may not be feasible to retrofit at this time. The Commission nonetheless encourages owners or operators statewide who, based on a misreading of the regulation, did not install a no-bleed pneumatic controller to evaluate whether retrofitting controllers – with no-bleed or self-contained pneumatic controllers – at this time is technically and economically feasible. The Commission also encourages owners and operators statewide to install, or retrofit with, no-bleed or self-contained pneumatic controllers at locations across the state, even where on site electrical grid power is not available to the extent there is no significant air quality disbenefit in doing so.

Natural gas driven pneumatic controller inspection and enhanced response (State Only)

Following the 2014 rulemaking, the Commission requested that the Division continue its investigation into potential regulations for intermittent pneumatic controllers. During the recent 2016 ozone rulemaking, stakeholders again asked the Commission to address intermittent pneumatic controllers. In response, the Commission again directed the Division to evaluate potential emission reduction measures for intermittent pneumatic controllers.

The Commission is adopting an inspection and enhanced response (*e.g.*, maintenance) program for natural gas-driven pneumatic controllers. While the Oil and Gas CTG notes the value of pneumatic controller inspection and maintenance, the Oil and Gas CTG does not specify a pneumatic controller inspection and maintenance as presumptive RACT. Therefore, while the Commission determined that these revisions are technically and economically feasible, the revisions are proposed as State Only in the DMNFR and are not made part of the Ozone SIP at this time. Natural gas-driven pneumatic controllers include continuous bleed, intermittent, and self-contained pneumatic controllers. Recent studies of pneumatic controllers have found that malfunctioning devices contribute a significant amount of hydrocarbon emissions to the atmosphere.

The Oil and Gas CTG suggests that maintenance of pneumatic controllers, including cleaning and tuning, can eliminate excess emissions from the devices. While the Oil and Gas CTG's recommended RACT (low-bleed or zero emissions) applies to continuous bleed, natural gas-driven pneumatic controllers, the discussion concerning enhanced maintenance of pneumatic controllers builds on earlier EPA discussions, such as EPA's 2014 Pneumatic Controller White Paper, and is not limited to continuous bleed pneumatic controllers. The Commission recognizes that continuous bleed and intermittent pneumatic controllers are designed to have emissions, however these pneumatic controllers can also have excess emissions when not operating properly. As a result, the Commission believes that a pneumatic

controller inspection and response program will reduce the excess emissions from such pneumatic controllers.

The Commission intends to apply the same find and fix approach used in the LDAR requirements in Sections XII.L. and XVII.F. to all natural gas-driven pneumatic controllers in the DMNFR. The Commission is requiring that natural gas-driven pneumatic controllers at well production facilities and natural gas compressor stations in the DMNFR be inspected periodically to determine whether the pneumatic controller is operating properly, in contrast to quantitatively comparing pneumatic controller emissions to a regulatory threshold. The Commission is requiring that owners or operators inspect pneumatic controllers at well production facilities annually, semi-annually, quarterly, or monthly, depending on the well production facility VOC emissions, and at natural gas compressor stations quarterly or monthly, depending on the natural gas compressor station fugitive emissions.

The Commission expects that owners or operators will inspect their pneumatic controllers during the same LDAR inspections, and using the same AIMM, conducted for compliance with Sections XII.L. or XVII.F. The pneumatic controller inspection and enhanced response process is intended to be a multi-step process. First, the owner or operator must inspect all natural gas-driven pneumatic controller using AIMM to screen for detectable emissions. This first step allows owners or operators to narrow potential response efforts to only those pneumatic controllers with detected emissions. Second, the owner or operator must determine whether the pneumatic controllers with detected emissions are operating properly. Use of an AIMM is not required during this second step; the Commission does not at this time intend to mandate to owners or operators how to determine if their pneumatic controllers are operating properly. During this second step, if an owner or operator determines that the pneumatic controller is operating properly, no further action is necessary. Third, where an owner or operator determines the pneumatic controller is not operating properly, the owner or operator must take actions to return an improperly operating pneumatic controller to proper operation. Fourth, general recordkeeping and reporting requirements apply broadly to the number of facilities inspected and number of inspections. More detailed recordkeeping and reporting is required for those pneumatic controllers that the owner or operator determined not to be operating properly.

Similar to the LDAR records, owners or operators must keep records of the date the pneumatic controller was returned to proper operation and a description of the types of actions taken. As with well production facility and natural gas compressor station LDAR records, the Commission intends for the Division to work with owners and operators to establish a generally standardized set of different types of response actions to ensure that owners and operators are consistently recording the information required. The Commission expects that owners or operators will include the pneumatic controller information as State Only information in their LDAR annual reports. In returning a pneumatic controller to proper operation, the Commission relies upon the previously defined term, now enhanced response, found in Section XVIII.B. related to maintaining high-bleed pneumatic controllers. The Commission has expanded this definition to guide responsive activities concerning all natural

gas-driven pneumatic controllers. Recognizing that the function and potential maintenance or repair of pneumatic controllers can be variable, owners or operators are not restricted to using an AIMM to determine proper operation or verify the return to proper operation. The Commission has adopted a “reassessment” provision for this inspection and enhanced response program following a Division led study of pneumatic controller emission reduction options, including the rate, type, application, and causes of pneumatic controllers found operating improperly; inspection and repair techniques and costs; available preventative maintenance methods; appropriateness of the definitions of enhanced response, intermittent pneumatic controller, no-bleed pneumatic controller, self-contained pneumatic controller, and pneumatic controller; and other related information. The Commission also recognizes that owners and operators may currently have limited information on “good engineering and maintenance practices” for pneumatic controllers and intends that more information on these practices will be gathered during the pneumatic study and implementation of Section XVIII.F. to inform the reassessment of the inspection and enhanced response program. The data collection effort will include data from a representative cross-section of well production facilities and natural gas compressor stations in the DMNFR.

In accordance with industry’s proposal, a task force will be convened by January 30, 2018, consisting of representatives from industry, the Division, local governments, environmental groups, and other interested parties. Data collection will begin no later than by May 1, 2018. The task force will brief the Commission annually and make any recommendations on its findings in a report to the Commission, due May 1, 2020. The Commission intends that the Division, industry, local government, and environmental group task force participants each have the opportunity to contribute to the final report and provide one representative to speak during the briefings to the Commission. The Commission intends that this information be used to reassess the natural gas-driven pneumatic controller requirements of Section XVIII.F. Section XVIII.F. will remain in effect until rescinded, superseded, or revised. The Commission recognizes that there is much to learn about the inspection and maintenance of natural gas-driven pneumatic controllers, which highlights the need for the reassessment of Section XVIII.F. as well as enforcement discretion. The Commission intends that while the task force is actively working on data collection and the 2020 report to the Commission, the determination of whether a pneumatic controller is operating properly will be made by the owner or operator. Any information gathered through the task force, including on preventative, good engineering, and maintenance practices, will be used to reassess Section XVIII.F. and will not be used for enforcement purpose through 2020.

Additional Considerations

Colorado must revise Colorado’s Ozone SIP to address the ozone Moderate nonattainment area requirements. The CAA does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the 8-hour ozone NAAQS and requires Colorado to develop a SIP adequate to attain the NAAQS. The Commission carefully considered what provisions to include in Colorado’s Ozone SIP, especially given Colorado’s pre-existing emission control requirements that

address most of the same sources addressed by the Oil and Gas CTG, yet do so differently. Some of these pre-existing requirements were adopted into Colorado's SIP and some will remain as State Only requirements. In determining what existing provisions would be included in Colorado's Ozone SIP, the Commission considered: 1) whether or not Colorado had existing emission control measures for the same sources covered by the Oil and Gas CTG; 2) whether these existing requirements were already adopted for inclusion in the Ozone SIP; and 3) the degree of emissions reductions achieved by any existing Colorado emission control measures in comparison to the Oil and Gas CTG.

In resolving differences between existing Colorado provisions and the Oil and Gas CTG, preference was given to existing Colorado provisions, especially those already incorporated into Colorado's Ozone SIP and Colorado's existing regulatory framework. For example, the Commission relied upon existing storage tank requirements already adopted into Colorado's Ozone SIP. In the case of well production facility LDAR, the Commission adopted a tpy applicability threshold in place of the Oil and Gas CTG's BOE threshold, which applies to more sources than the Oil and Gas CTG, yet adopted a less frequent inspection frequency into the Ozone SIP for the smaller facilities than the Oil and Gas CTG.

In determining whether or not any additional requirements would be relied upon in establishing RACT in Colorado's Ozone SIP for the oil and gas sector, the Commission determined whether or not the emission control measures were necessary for the ozone attainment demonstration. In the case of LDAR for pneumatic controllers at well production facilities and natural gas compressor stations, the Commission adopted emission control measures as State Only measures given the need to obtain emission reductions as well as more information on this source type. These examples illustrate the Commission's careful consideration of what provisions to include in Colorado's Ozone SIP. The CAA requires that Colorado's Ozone SIP include RACT for all sources covered by a CTG, such as the emission sources addressed in the Oil and Gas CTG. Therefore, the Commission adopted certain revisions to Regulation Number 7 to ensure attainment with the 2008 8-hour ozone NAAQS and satisfy Colorado's Moderate nonattainment area obligations, including those related to RACT. These revisions do not exceed or differ from the federal act due to state flexibility in developing nonattainment area SIPs.

The Commission is also revising certain State Only regulations to reduce emissions and promote attainment of current federal ozone standards. Specifically, the Commission is adopting requirements related to the inspection of natural gas-driven pneumatic controllers at oil and gas facilities. As discussed, malfunctioning pneumatic controllers can result in significant hydrocarbon emissions. The DMNFR ozone nonattainment area is currently classified as a Moderate nonattainment area under the 2008 ozone NAAQS. The deadline for the DMNFR to attain the 2008 ozone NAAQS is July 2, 2018. If the DMNFR does not attain the standard or does not receive an extension, EPA may reclassify the DMNFR as a Serious nonattainment area under the 2008 ozone NAAQS. In addition, the Commission approved a designation recommendation for the DMNFR under the 2015 ozone NAAQS in September 2016. While EPA has not yet acted on this recommendation, the Commission expects the DMNFR will be designated as nonattainment under the 2015 ozone NAAQS and is taking action to promote attainment of the more stringent standard. Given both the potential for a reclassification to Serious under the 2008 ozone NAAQS and the need to reduce ozone to meet the more stringent 2015 ozone NAAQS, the Commission is adopting the State Only pneumatic controller inspection requirements that further reduce ozone precursors emissions, notwithstanding the fact that a pneumatic controller inspection program is not specified as presumptive RACT in the Oil and Gas CTG.

In accordance with C.R.S. § 25-7-110.5(5)(b), the Commission determines:

(I) CAA Sections 172(c) and 182(b) require that Colorado submit a SIP that includes provisions requiring the implementation of RACT at sources covered by a CTG. The EPA issued the final Oil and Gas CTG in October 2016, leading to the revisions to the Ozone SIP adopted by the Commission. The EPA revised the ozone NAAQS in 2015 and the DMNFR must attain the new standard or face additional requirements. The revisions to Regulation Number 7 address RACT for compressors, pneumatic pumps, pneumatic controllers, natural gas processing plants, natural gas compressor stations, and well production facilities. The revisions apply to equipment already regulated by Colorado on a State Only basis and apply to equipment not previously subject to regulation. NSPS OOOO, NSPS OOOOa, NSPS Kb, NSPS KKK, NESHAP HH, and NESHAP HHH may also apply to the regulated equipment. The Commission determined that the adopted RACT SIP requirements are comparable to the Oil and Gas CTG's recommendations. The Commission also determined that there are not comparable federal rules requiring the inspection and maintenance of natural gas-driven pneumatic controllers.

(II) The federal rules discussed in (I), are primarily technology-based in that they largely prescribe the use of specific technologies in order to comply. EPA has provided some flexibility in NSPS OOOO and NSPS OOOOa by allowing a storage vessel to avoid being subject to NSPS OOOO if the storage vessel is subject to any state, federal, or local requirement that brings the storage vessel's emissions below the NSPS OOOO threshold. EPA has also provided some flexibility in NSPS OOOOa to allow an owner or operator to request EPA approve compliance with an alternate emission limitation (e.g., alternative monitoring, state program) instead of related requirements in NSPS OOOOa.

(III) The CAA establishes the 8-hour ozone NAAQS and requires Colorado to develop SIP revisions that will ensure timely attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's Moderate nonattainment area RACT obligations. Instead, Colorado can adopt applicable provisions into its SIP directly, as the Commission has done here. Further, the State Only pneumatic controller inspection requirements address the lack of federal requirements concerning emissions from malfunctioning pneumatic controllers.

(IV) Unless federal law changes, Colorado will be required to comply with the more stringent 2015 ozone NAAQS in the near future and may be required to comply with the more stringent requirements for a Serious nonattainment area. These current SIP and State Only revisions may improve the ability of the regulated community to comply with new, more stringent, future requirements. In addition, these revisions build upon the existing regulatory programs being implemented by Colorado's oil and gas industry, which is more efficient and cost-effective than a wholesale adoption of EPA's recommended oil and gas RACT provisions.

(V) EPA has established October 27, 2018, deadline for this SIP submission. EPA has not yet established deadlines for the DMNFR to attain the 2015 ozone NAAQS. However, given the potential reclassification of the DMNFR to Serious under the 2008 ozone NAAQS, the Commission determined that taking action to reduce ozone precursor emissions as soon as practicable, either as part of the SIP or on a State Only basis, is warranted.

(VI) The revisions to Regulation Number 7 Sections XII. and XVIII. strengthen Colorado's SIP and State Only provisions, which currently addresses emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry.

(VII) The revisions to Regulation Number 7 Sections XII. and XVIII., including the State Only provisions, establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources.

(VIII) If Colorado does not attain the 2008 ozone NAAQS by July 20, 2018, or qualify for an extension of the attainment deadline, EPA will likely reclassify Colorado as a Serious ozone nonattainment area, which automatically reduces the major source thresholds from 100 tons per year of VOC and NOx to 50 tons per year; thus subjecting more sources to major source requirements. If EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. Either of these outcomes may subject others to increased costs. The State Only rule revisions are expected to reduce future costs by achieving emissions reductions that will assist the DMNFR in attaining both the 2008 and 2015 ozone NAAQS thus avoiding additional ozone nonattainment area CAA requirements.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements. The State Only pneumatic controller inspection program is tailored to be consistent with the SIP required LDAR program, thereby reducing costs related to pneumatic controller inspections.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable, such as the requirements for compressors, pneumatic controllers, leak detection and repair at well production facilities and natural gas compressor stations, and equipment leaks at natural gas processing plants. Further, pneumatic controller inspections will be conducted using accepted technologies and some owners or operators already repair and maintain pneumatic controllers.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 contribute to the prevention of ozone in a cost-effective manner.

(XII) Alternative rules could also provide reductions in ozone and help to attain the NAAQS. However, a no action alternative would very likely result in an unapprovable SIP. The Commission determined that the Division's proposal was reasonable and cost-effective. The Commission further determined the State Only natural gas-driven pneumatic controller inspection program is reasonable and cost-effective, given the potential for reducing emissions from malfunctioning pneumatic controllers and the absence of federal requirements addressing pneumatic controller emissions.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

Colorado must revise Colorado's Ozone SIP to address the Moderate nonattainment area requirements. Colorado must also continue to reduce ozone concentrations to address both the possibility of reclassification under the 2008 ozone NAAQS and the 2015 ozone NAAQS. However, to the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, including regulatory changes made on a State Only basis, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of the ozone precursors VOC.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

Q. July 19, 2018 (Sections XVI. and XIX.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act §§ 24-4-103(4), the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5., and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

On May 21, 2012, the Denver Metro/North Front Range ("DMNFR") area was designated as Marginal nonattainment for the 2008 8-hour Ozone National Ambient Air Quality Standard ("NAAQS"), effective July 20, 2012, with an attainment date of July 20, 2015 (77 Fed. Reg. 30088). On May 4, 2016, the U.S. Environmental Protection Agency ("EPA") published a final rule that determined that DMNFR area failed to attain the 2008 8-hour Ozone NAAQS by the applicable Marginal attainment deadline and therefore reclassified the DMNFR area to Moderate, effective June 3, 2016, and required attainment of the NAAQS no later than July 20, 2018, based on 2015-2017 ozone season data.

Due to the reclassification, Colorado must submit revisions to its State Implementation Plan ("SIP") to address the Clean Air Act's ("CAA") Moderate nonattainment area requirements, as set forth in CAA § 182(b) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (*See* 80 Fed. Reg. 12264 (March 6, 2015)). The SIP revision must include Reasonably Available Control Technology ("RACT") requirements for major sources of VOC and/or NOx (i.e. sources that emit or have the potential to emit 100 tons per year ("tpy") or more). The CAA does not define RACT. However, EPA has defined RACT as the "lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." 44 Fed. Reg. 53762 (Sept. 17, 1979). RACT can be adopted in the form of emissions limitations or work practice standards or other operation and maintenance requirements as appropriate.

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. § 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. § 25-7-106 provides the Commission flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106(1)(c) and (2) also authorize the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution, and monitoring and recordkeeping requirements. Section 109(1)(a) authorizes the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources of air pollutants.

Purpose

The Regional Air Quality Council ("RAQC") and the Air Pollution Control Division ("Division") conducted a public process to develop the associated SIP and supporting rule revisions. In response to the reclassification, the Commission revised Regulation Number 7 to satisfy RACT SIP requirements for Moderate

nonattainment areas by establishing categorical RACT requirements for major sources of VOC and/or NOx in the DMNFR. Specifically, the Commission adopted RACT requirements in Section XVI.D. for existing boilers, stationary combustion turbines, lightweight aggregate kilns, glass melting furnaces, and compression ignition reciprocating internal combustion engines (“RICE”) (collectively referred to as “stationary combustion equipment”) located at major sources of NOx in the DMNFR as of June 3, 2016. The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

The following explanations provide further insight into the Commission’s intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

Major VOC and NOx source RACT

Colorado has major sources of VOC and/or NOx in the ozone nonattainment area. The following sources were known by the Commission to be major sources of VOC and/or NOx as of June 3, 2016 and were analyzed in Colorado's Moderate Area SIP for the 2008 8-Hour Ozone NAAQS:

Anheuser-Busch, Fort Collins Brewery (069-0060) and Nutri-Turf (123-0497) (major for VOC and NOx)

Ball Metal Beverage Container Corporation (059-0010 major for VOC)

Buckley Air Force Base (005-0028 major for NOx)

Carestream Health (123-6350 major for NOx)

Cemex Construction Materials (013-0003 major for VOC and NOx)

Colorado Interstate Gas, Latigo (005-0055 major for NOx)

Colorado Interstate Gas, Watkins (001-0036 major for VOC and NOx)

Colorado State University (069-0011 major for NOx)

CoorsTek (059-0066 major for VOC)

Corden Pharma Colorado (013-0025 major for VOC)

DCP Midstream, Enterprise (123-0277 major for VOC and NOx)

DCP Midstream, Greeley (123-0099 major for VOC and NOx)

DCP Midstream, Kersey/Mewbourn (123-0090 major for VOC and NOx)

DCP Midstream, Lucerne (123-0107 major for VOC and NOx)

DCP Midstream, Marla (123-0243 major for VOC and NOx)

DCP Midstream, Platteville (123-0595 major for VOC and NOx)

DCP Midstream, Roggen (123-0049 major for VOC and NOx)

DCP Midstream, Spindle (123-0015 major for VOC and NOx)

Denver Regional Landfill, Front Range Landfill, Timberline Energy (123-0079 major for NOx)

Elkay Wood Products (001-1602 major for VOC)

IBM Corporation (013-0006 major for NOx)

Kerr-McGee Gathering, Frederick (123-0184 major for VOC and NOx)

Kerr-McGee Gathering, Hudson (123-0048 major for VOC and NOx)

Kerr-McGee Gathering, Fort Lupton/Platte Valley/Lancaster (123-0057 major for VOC and NOx)

Kodak Alaris (123-0003 major for VOC)

Metal Container Corporation (123-0134 major for VOC)

Metro/Suez Waste Water Cogeneration Facility (001-0097 major for NOx)

MillerCoors Golden Brewery, Rocky Mountain Metal Container (059-0006), MMI/EtOH (059- 0828), and Colorado Energy Nations Company, LLC (059-0820) (major for VOC and NOx)

Owens-Brockway Glass (123-4406 major for NOx)

Phillips 66 Pipeline, Denver Terminal (001-0015 major for VOC)

Plains End (059-0864 major for VOC and NOx)

Public Service Company, Cherokee (001-0001 major for NOx)

Public Service Company, Denver Steam Plant (031-0041 major for NOx)

Public Service Company, Fort Lupton (123-0014 major for NOx)

Public Service Company, Fort Saint Vrain (123-0023 major for NOx)

Public Service Company, Rocky Mountain Energy Center (123-1342 major for NOx)

Public Service Company, Valmont (013-0001 major for NOx)

Public Service Company, Yosemite (123-0141 major for NOx)

Public Service Company, Zuni (031-0007 major for NOx)

Rocky Mountain Bottle Company (059-0008 major for NOx)

Sinclair Transportation Company, Denver Terminal (001-0019 major for VOC)

Spindle Hill Energy (123-5468 major for NOx)

Suncor Energy, Commerce City Refinery Plants 1, 2, and 3 (001-0003 major for VOC and NOx)

Thermo Cogeneration, JM Shafer (123-0250 major for NOx)

Tri-State Generation, Frank Knutson (001-1349 major for NOx)

TRNLWB, LLC (Trinity Construction Materials, Inc.) (059-0409 major for NOx)

University of Colorado Boulder (013-0553 major for NOx)

WGR Asset Holding, Wattenberg (001-0025 major for VOC and NOx)

Many of the major sources listed are subject to regulatory RACT requirements. Some of the sources or source emissions points are subject to regulatory RACT requirements in Colorado's SIP; other sources or source emissions points are subject to individual RACT requirements established in federally enforceable permits as a minor source RACT requirement of inclusion of an applicable federal New Source Performance Standards ("NSPS") or National Emission Standard for Hazardous Air Pollutants ("NESHAP"). However, as a Moderate nonattainment area, Colorado must include in the SIP, provisions to implement RACT for Colorado's major sources. During the November 17, 2016 rulemaking, the Commission adopted source specific RACT for a number of major sources of VOC and/or NOx (again greater than or equal to 100 tons per year) in the DMNFR. These were originally adopted as Sections XIX.C.-XIX.G. for stationary combustion turbines, stationary internal combustion engines, wood furniture manufacturing, and municipal landfills, respectively, during the November 17, 2016 rulemaking. These sections have changed to Sections XVI.D.4.b. and XIX.A.-D. during this July 19, 2018 rulemaking, where requirements for stationary combustion turbines were removed and consolidated into Section XVI.D.4.b. The original Section XIX.C.-XIX.G. RACT requirements became effective on January 1, 2017. However, during the November 17, 2016 rulemaking, the Commission determined that little, if any, additional controls could be implemented by certain major sources by January 1, 2017. The Commission also determined that not all major sources or major source emission points were subject to existing regulatory RACT requirements in Regulation Number 7 or federally enforceable emission limits in Regulation Number 3, Part F. Therefore, the Commission opted to adopt RACT for Colorado's existing major sources of NOx on a categorical basis in this July 19, 2018 rulemaking.

Establishing RACT on a categorical basis is a distinctly different process from Colorado's minor source RACT permitting requirement found in Regulation Number 3, Part B, Section III.D.2. Minor source RACT permitting is specific to new or modified sources (i.e. sources that have already committed to a capital expenditure to construct or modify a process), and the designs of which can more easily accommodate changes prior to construction. Categorical RACT applies much more broadly to source category, including both existing sources/equipment and new/modified sources/equipment. This inclusion of existing equipment significantly impacts costs, as those sources are not already committed to a capital expenditure and any associated shut down to add controls. This ultimately impacts the decision on what controls are determined to be reasonably available, technologically and economically feasible for the source category as a whole. Thus, categorical RACT may in some cases be different from any RACT established for a specific source or piece of equipment under the minor source permitting RACT requirement.

To determine RACT on a categorical basis, the Commission required specific owners or operators to submit a RACT analysis for the facility or specific emission points to the Division by December 31, 2017. In these RACT analyses, sources were required to identify potential options to reduce VOC and/or NOx emissions from the facility or emission point(s), propose RACT for that facility or point(s), propose associated monitoring, propose a schedule for implementation, and include economic and

technical information demonstrating why the proposal established RACT for the particular facility or emission point(s).

The following major sources were required to submit RACT analyses:

Anheuser-Busch (069-0060) – emission points equal to or greater than 2 tpy VOC or 5 tpy NOx

Buckley Air Force (005-0028) – engines and engine test cell (pt 102, 103, 104, 105, 101)

Carestream Health (123-6350) – boilers (pt 004)

Colorado Energy Nations Company, LLC (059-0820) – boilers (pt 001, 002)

Colorado Interstate Gas, Latigo (005-0055) – engines (001, 011)

Colorado Interstate Gas, Watkins (001-0036) – engines (001, 002)

Colorado State University (069-0011) – boilers (pt 003, 005, 007, 013)

IBM (013-0006) – engines and boilers (pt 088, 090, 001, 011, 095)

Kerr-McGee Gathering, Fort Lupton/Platte Valley/Lancaster (123-0057) – turbine (pt 052) and engines (pt 038 through 044, and 047 through 049)

Metro/Suez Waste Water Cogeneration Facility (001-0097 major for NOx)

MillerCoors Golden Brewery (059-0006) – emission points with emissions equal to or greater than 2 tpy VOC or 5 tpy NOx

MMI/EtOH (059-0828) – emission points with emissions equal to or greater than 2 tpy VOC or 5 tpy NOx

Nutri-Turf (123-0497) – emission points with emissions equal to or greater than 2 tpy VOC or 5 tpy NOx

Owens-Brockway (123-4406) – emission points with emissions equal to or greater than 5 tpy NOx (pt 001-023, 025)

Public Service Company, Cherokee (001-0001) – turbines (pt 028, 029)

Public Service Company, Fort Saint Vrain (123-0023) – turbines (pt 010, 011, 001)

Public Service Company, Denver Steam Plant (031-0041) – boilers (pt 001, 002)

Public Service Company, Zuni (031-0007) – boilers (pt 001, 002, 003)

Public Service Company, Fort Lupton (123-0014) – turbines (pt 001, 002)

Public Service Company, Valmont (013-0001) – turbine (pt 002)

Rocky Mountain Bottle (059-0008) – glass melt furnaces (pt 001)

Suncor (001-0003) – boilers (pt 309, 019, 021, 023)

Tri-State Generation and Transmission, Frank Knutson (001-1349) – turbines (pt 001, 003)

TRNLWB, LLC (Trinity Construction Materials) (059-0409) – shale kiln (pt 001)

University of Colorado (013-0553) – Power House and East District – boilers (pt 001, 002, 012, 013) and Williams Village– boilers (pt 016, 017)

WGR Asset Holding, Wattenberg (001-0025) – boiler (pt 012), turbine and duct burner (pt 021) and engines (pt 004 and 018)

Based on the information provided in these RACT analyses as well as the Division's own in-depth review of rules adopted by Moderate nonattainment areas in other states and EPA guidance such as the RACT/BACT/LAER Clearinghouse, the Commission adopted RACT requirements in Section XVI.D. for stationary combustion equipment located at existing major sources of NOx in the DMNFR. The requirements of Section XVI.D. only apply to existing stationary combustion equipment located at sources in the DMNFR that were major for NOx as of June 3, 2016 (i.e. the effective date of the DMNFR's reclassification to Moderate nonattainment).

Definitions

The definition for “stationary combustion equipment” refers to individual emission points and not grouped emission points.

Emission limitations and operational requirements

The Commission adopted categorical emission limitations (Section XVI.D.4.), which vary based on fuel type and size of the stationary combustion equipment, where applicable. Affected stationary combustion equipment is required to comply with these exemptions by October 1, 2021. This compliance period is necessary in order to allow affected sources sufficient time to complete any capital expenditures, install any control or monitoring equipment, and/or satisfy any permitting requirements necessary to comply with the applicable emission limitation. The heat input size threshold for determining whether an emission limitation applies refers to the maximum design value of the stationary combustion equipment. De-rated heat input is not the equivalent of maximum design value heat input. Therefore, stationary combustion equipment cannot simply de-rate to fall below the size threshold. For certain categories of stationary combustion equipment, if the equipment’s heat input is below the applicability threshold for the emission limitations, then the equipment would still be required to comply with the combustion process adjustment requirements originally adopted by the Commission during the November 17, 2016 rulemaking (now in Section XVI.D.6.) The compliance date for the categorical emission limits (i.e. XVI.D.4 and XVI.D.5) is independent of the compliance date for the combustion process adjustment (i.e. XVI.D.6(b)(vi)(A)).

The combustion process adjustment requirements shall apply as RACT to a particular piece of equipment in accordance with the applicability provision, Section XVI.D.6.a., regardless of whether or not that piece of equipment is subject to a categorical emission limit in Section XVI.D.4. As described in Section XVI.D.6.a., the combustion process adjustment requirements only apply to stationary combustion equipment with uncontrolled actual emissions of NOx equal to or greater than 5 tons per year located at major sources of NOx. For stationary combustion turbines, the heat input capacity threshold for the emission limitations takes into account to the heat input capacity of the stationary combustion turbine only and not the heat input capacity of the stationary combustion turbine and any duct burner that may be used.

For glass melting furnaces at major sources of NOx, the Commission adopted a production-based categorical emission limitation (Section XVI.D.4.d.). Emissions from some glass melting furnaces are routed through a common stack, where total emissions from multiple furnaces are monitored on a continuous basis. Where this is the case, the total emissions, as monitored from the common stack, shall be divided by the total glass production from all glass melting furnaces associated with the common stack to demonstrate compliance with the categorical RACT limit.

Exemptions

The Commission determined several exemptions from compliance with the categorical RACT standards to be appropriate for Colorado’s source mix. In Section

XVI.D.2.a., the Commission adopted a 20% capacity factor exemption for boilers and a 10% capacity factor exemption for stationary combustion turbines and compression ignition reciprocating internal combustion engines. The Commission established the 20% and 10% capacity factor exemptions, in part, as a consolidation of a number of limited-use exemptions that were analyzed and considered by the Division to limit the complexity of the categorical rules and adequately accommodate technical and cost concerns for limited-use equipment. A number of stakeholders requested reasonable exemptions for specific equipment types involving seasonal operation, limited-use, natural gas curtailment, emergency electric generation, provision of replacement capacity during periods of extended primary unit outage for major maintenance, and the lack of manufacturer emission rate guarantees for low capacity units. The Commission determined that the capacity factor exemptions addressed each of these concerns, and thus that additional individual exemptions were not necessary beyond the capacity factor exemption.

At low capacities, controls are often cost prohibitive or technologically infeasible. The Commission determined that there are multiple facilities with excess steam capacity that have the ability to shift capacity (and therefore emissions) away from older higher emitting boilers that are not currently configured to comply with the categorical standard or monitoring requirements. Many of the older boilers are not equipped with continuous emission monitoring systems (“CEMS”) and may require add-on controls to comply with the categorical standard. The shift in capacity to newer, lower emitting boilers which are already equipped with NOx controls and CEMS will result in a net emissions reduction. The 20% capacity factor exemption for boilers provides a secondary compliance option and incentive to facilities that have this ability, and the resulting shift in emissions from high emitting units to low emitting units will result in an overall environmental benefit.

Some stakeholders expressed concerns that a few boilers with low historical use (e.g. heat input below 25%) may need to install controls that cannot meet the RACT standard because manufacturer emission rate guarantees usually apply only when the units operate between 25-100% of the boiler maximum continuous rating (“MCR”). Generally, the boiler burners have a limited range of heat input where the manufacturer can guarantee compliance with a specific emission rate. Emissions from boilers operating at heat inputs below 25% MCR are generally classified as startup/shutdown emissions. Thus, if the Division proposed a RACT standard that a particular low utilization boiler was unable to meet and the Division did not offer an adequate capacity factor exemption, the operator would need to install controls and operate the boiler at higher capacity factors to ensure the installed controls meet manufacturer guaranteed emission rates in order to comply with the RACT standard.

The installation of boiler controls coupled with increasing boiler heat input in order to ensure compliance with a categorical RACT standard runs contrary to the original intent of reducing emissions, thus the Commission concludes that it is reasonable to allow exclusion of limited-use boilers from the categorical standard and associated CEMS requirements, particularly regarding boilers with historically low heat inputs that could not rely on the manufacturer emission rate guarantees if the installation

of emission controls are needed in order to comply with the categorical standard. Consequently, the Commission determined that a 20% capacity factor averaged over a 3-year period is reasonable for these limited-use boilers.

For stationary combustion turbines and compression ignition RICE, a 10% capacity factor exemption from the proposed categorical emission standards and monitoring requirements is appropriate because combustion turbines and compression ignition RICE are more likely to operate during the summer months. Moreover, for turbines and compression ignition RICE that are used primarily for emergency power generation or peak demand, historic capacity factors are extremely low (0%-5%), and a 10% capacity factor exemption will provide enough operational flexibility to respond to emergency and peak demand events.

Separately, the categorical RACT for glass melting furnaces provides a 35% low usage allowance similar to capacity factor.

The capacity factor is determined based on the rolling 3-year average of the actual heat input for each calendar year divided by maximum allowable heat input. Alternatively, for electric generating units, the proposal allows for capacity factor to be determined based on electric output, which is consistent with the federal Acid Rain Program.

The Commission intended that the exemption for stationary combustion equipment with total uncontrolled actual emissions less than 5 tpy NOx was based on the permitting threshold in Regulation Number 3. Similarly, this equipment was not exempted from having to undergo a RACT analysis. The owner or operator must use the most recent air pollution emission notice (“APEN”) submitted to the Division to determine total uncontrolled actual emissions.

Stationary combustion equipment that meets one of the exemptions contained in Section XVI.D.2. is not required to comply with the emission limitations, the compliance demonstration requirements and the related recordkeeping and reporting requirements contained in Sections XVI.D.4., XVI.D.5., XVI.D.7., and XVI.D.8., except for XVI.D.7.g, which requires a source that qualifies for an exemption under Section XVI.D.2., to maintain records demonstrating an exemption applies. All stationary combustion equipment is subject to some level of recordkeeping and may also be subject to combustion process adjustment requirements.

Once stationary combustion equipment no longer qualifies for any exemption, the owner or operator must comply with the applicable requirements of Section XVI.D. as expeditiously as practicable but no later than 36 months after the equipment is no longer exempt. Therefore, if any stationary combustion equipment has to undertake a capital expenditure, such as installing a CEMS, in order to comply with Section XVI.D., then they have up to a maximum of three years to come into compliance. However, if no such capital expenditure or change in operational practice is required, then the stationary combustion equipment should comply sooner than three years (i.e. as expeditiously as practicable.) Additionally, once stationary combustion equipment no longer qualifies for any exemption, the owner or operator must conduct a performance test using EPA test methods within 180 days and notify the Division of the results and whether emission controls will be required to comply with the emission limitations. This means that a source can fall into and out of having to comply with the emission limitation, monitoring, recordkeeping and reporting requirements of the rule if they satisfy the performance test requirements (i.e. the Division will not follow a “once in/always in” approach with respect to emission control requirements of exemptions.) Similarly, this 180-day period starts once the equipment is no longer exempt.

Monitoring, recordkeeping and reporting requirements

The Commission determined that affected stationary combustion equipment comply with certain monitoring, recordkeeping and reporting requirements by October 1, 2021. In order to provide clarity and regulatory certainty, many of the monitoring requirements adopted by the Commission incorporate by reference existing federal requirements and are consistent with rules in Moderate nonattainment areas in other states establishing RACT for these source categories.

The Commission is requiring CEMS or continuous emissions rate monitoring systems (“CERMS”) for boilers with a maximum design heat input capacity equal to or greater than 100 MMBtu/hr, lightweight aggregate kilns with a maximum heat input design capacity equal to or greater than 50 MMBtu/hr, and glass melting. CERMS may require a stack gas flow rate monitor, where necessary, in order to measure volumetric flow rate and mass emissions. Where stack gas velocity is extremely low, as may be the case for a glass melting furnace, flow can be measured using a Division approved calculation methodology if flow cannot be accurately measured using traditional differential pressure or ultrasonic flow measuring devices. Moreover, where measuring emission rates in terms of emissions per unit of heat

input (i.e. lb/MMBtu), EPA Method 19 calculations may be used using the appropriate F factor (i.e. the ratio of combustion gas volumes to heat inputs).

Further, it is the Commission's intent to allow electric utility boilers and stationary combustion turbines subject to the Acid Rain Program to use the quality assurance/quality control and data validation procedures in 40 CFR Part 75 for monitoring emissions to satisfy monitoring, recordkeeping and reporting requirements in this rule. Affected units that are subject to a NOx emission limitation in an NSPS and use CEMS or CERMS to monitor compliance with that limit can use those monitoring, recordkeeping and reporting requirements to demonstrate compliance with this rule. Similarly, owners or operators of stationary combustion turbines using performance testing to demonstrate compliance with NOx emission limitations of NSPS GG or KKKK may utilize those procedures for demonstrating compliance with the emission limitation in this rule. Where an initial performance test has already been conducted to determine compliance with NSPS GG or KKKK, it is not expected that another initial performance test must be performed for purposes of demonstrating compliance with Section XVI.D. Where an initial performance test has not been previously conducted, it must be completed by October 1, 2021 to demonstrate compliance.

For each initial or periodic test, sources should calculate the backup fuel's heat input for the calendar year prior to the year in which the performance test is required to determine if a test is required for each fuel or only for the primary fuel. Moreover, periodic performance tests must be conducted no more than 24 months apart.

With respect to the fuel flowmeter requirements, the Division reserves the right to audit quality assurance procedures with respect to manufacturer's instructions. The heat input measured and recorded by the fuel flowmeter is to be in the same unit of measurement as the applicable emission limitation. With respect to the quarterly or semi-annual reporting requirement, the Commission intended to only require that reports be submitted no less than semi-annually, but a source may submit quarterly reports in order to be consistent with existing reporting frequencies established in a permit and/or applicable NSPS or NESHAP.

With respect to the performance test reports, all performance test reports must compare average emissions determined by the performance test with the applicable emission limitation using the same number of significant figures as the emission limitation.

Incorporation by Reference in Sections XIX. and XVI.

§ 24-4-103(12.5) of the Colorado Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of §24-4-103(12.5) are met by including specific information, making the regulations available and because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. However, these regulations are included in the SIP in order to establish RACT, which must be included in the SIP to satisfy CAA Sections 172(c) and 182(b). Therefore, in order to

comply with Part D of the CAA, the Commission has incorporated federal regulations in Sections XVI.D.5. and XIX.A. through D. by reference.

Additional Considerations

Colorado must revise its ozone SIP to address the ozone Moderate nonattainment area requirements. The CAA does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the 8-hour ozone NAAQS and requires Colorado to develop a SIP adequate to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to ensure attainment with the 2008 8-hour ozone NAAQS and satisfy Colorado's Moderate nonattainment area obligations, including those related to RACT. These revisions do not exceed or differ from the federal act due to state flexibility in developing nonattainment area SIPs; however, in accordance with C.R.S. § 25-7-110.5(5)(b), the Commission nonetheless determines:

(I) The revisions to Regulation Number 7 address RACT requirements for major sources of VOC and NOx in Colorado's ozone nonattainment area. Colorado's major sources of VOC and NOx are subject to various and numerous NSPS or NESHAP, Regulation Number 7 RACT requirements, or RACT/beyond RACT analyses. The Commission revised Regulation Number 7 to include regulatory RACT requirements for Colorado's major sources of VOC and NOx in the SIP. Specifically, the Commission adopted RACT requirements in Section XVI.D. for combustion equipment located at major sources of NOx in the DMNFR. MACT DDDDD, MACT JJJJJJ, MACT ZZZZ, MACT YYYY, NSPS Db, NSPS GG, NSPS KKKK, NSPS IIII, NSPS JJJJ, NSPS OOOO, NSPS OOOOa, and the compliance demonstration requirements in 40 CFR Parts 60 and 75 may apply to such stationary combustion equipment. However, the Regulation Number 7 revisions apply on a broader basis to specific existing stationary combustion equipment in the DMNFR.

(II) The federal rules discussed in (I) are primarily technology-based in that they largely prescribe the use of specific technologies in order to comply. EPA has provided some flexibility in certain NSPS and MACT. Certain stationary combustion equipment with a lower heat input may trigger the combustion process adjustment work practice requirements of this rule.

(III) The CAA establishes the 8-hour ozone NAAQS and requires Colorado to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's Moderate nonattainment area RACT obligations. Instead, Colorado must adopt applicable provisions into its SIP directly, as the Commission has done here.

(IV) Colorado will be required to comply with the lower 2015 ozone NAAQS. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as RACT analyses and efforts conducted to support the revisions adopted by the

Commission may prevent or reduce the need to conduct additional RACT analyses for the more stringent NAAQS.

(V) EPA has established a January 1, 2017, deadline for this SIP submission. There is no timing issue that might justify changing the time frame for implementation of federal requirements.

(VI) The revisions to Regulation Number 7, Sections XVI. and XIX. establish categorical RACT for major sources of VOC and/or NOx, and thus are necessary to satisfy RACT SIP requirements for Moderate nonattainment areas and are specific to existing emission points at major sources of VOC and NOx, allowing for continued growth at Colorado's major sources.

(VII) The Revisions to Regulation Number 7, Sections XVI., and XIX. establish reasonable equity for major sources of VOC and/or NOx by providing the same categorical standards for similarly situated and sized sources.

(VIII) If Colorado does not attain the 2008 ozone NAAQS by July 20, 2018 (Colorado has requested a 1-year clean data extension), EPA will likely reclassify Colorado as a serious ozone nonattainment area, which automatically reduces the major source thresholds from 100 tons per year of VOC and NOx to 50 tons per year; thus subjecting more sources to major source requirements. If EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. Either of these outcomes may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal additional monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. The revisions concerning major sources of VOC and/or NOx generally reflect current emission controls and work practices.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 contribute to the prevention of ozone in a cost-effective manner.

(XII) Although alternative rules could also provide reductions in ozone and help to attain the NAAQS, the Commission determined that the Division's proposal was reasonable and cost-effective. However, a no action alternative would very likely result in an un-approvable SIP and possibly an EPA FIP and/or sanctions.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

Colorado must revise Colorado's ozone SIP to address the Moderate nonattainment area requirements. However, to the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of the ozone precursors VOC and NOx.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

R. November 15, 2018 (Sections I., II., VI., VIII., IX., X., XII., XIII., XVI., XVII., XIX., XX., and XXI.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act §§ 24-4-103(4), the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5., and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

On May 21, 2012, the Denver Metro/North Front Range ("DMNFR") area was designated as marginal nonattainment for the 2008 8-hour Ozone National Ambient Air Quality Standard ("NAAQS"), effective July 20, 2012, with an attainment date of July 20, 2015 (77 Fed. Reg. 30088). On May 4, 2016, the U.S. Environmental Protection Agency ("EPA") published a final rule that determined that DMNFR area failed to attain the 2008 8-hour Ozone NAAQS by the applicable marginal attainment deadline and therefore reclassified the DMNFR area to moderate, effective June 3, 2016. Due to the reclassification, Colorado must submit revisions to its State Implementation Plan ("SIP") to address the Clean Air Act's ("CAA") moderate nonattainment area requirements, as set forth in CAA § 182(b) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (*See* 80 Fed. Reg. 12264 (March 6, 2015)). The SIP revision must include Reasonably Available Control Technology ("RACT") requirements for major sources of VOC and/or NOx (i.e., sources that emit or have the potential to emit 100 tons per year ("tpy") or more) and VOC source categories addressed by an EPA Control Techniques Guideline ("CTG").

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient

air quality standards. § 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. § 25-7-106 provides the Commission flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106(1)(c) and (2) also authorize the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution, and monitoring and recordkeeping requirements. Section 109(1)(a) authorizes the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources of air pollutants.

Purpose

In November 2016, the Commission determined that some major sources and CTG VOC source categories were adequately addressed under existing SIP requirements. The Commission also adopted new requirements for some major sources and CTG VOC source categories. In November 2017, the Commission adopted categorical RACT requirements for the oil and gas industry in response to EPA's Oil and Gas CTG. In July 2018, the Commission adopted categorical RACT requirements for combustion equipment at major sources that the Commission determined in 2016 were not addressed by SIP RACT requirements.

In this rulemaking, the Commission adopts SIP requirements that further support and complete Colorado's obligation as a moderate ozone nonattainment area to revise Colorado's SIP to include provisions that implement RACT for all major sources of VOC and/or NOx and for all CTG VOC source categories in the DMNFR ozone nonattainment area. Specifically, the Commission adopts categorical RACT requirements for major source breweries, wood furniture manufacturing, and addresses EPA concerns with the industrial cleaning solvent, metal furniture surface coating, and miscellaneous metal surface coating requirements. The Commission also revises specific rule or reference methods incorporated by reference to add applicable citation dates. Last, the Commission adopts specific revisions in a SIP clean-up effort.

Further, the Commission corrects typographical, grammatical, and formatting errors found throughout Regulation Number 7.

Major source RACT

Colorado has major sources of VOC and/or NOx in the DMNFR. Under marginal and moderate ozone nonattainment classifications, major sources are sources with the potential to emit greater than or equal to 100 tpy of NOx or VOC. Many of the major sources analyzed in 2016 were already subject to regulatory RACT requirements in Colorado's SIP, individual RACT requirements established in federally enforceable permits as a minor source RACT requirements, or an applicable federal New Source Performance Standard ("NSPS") or National Emission Standard for Hazardous Air Pollutant ("NESHAP"). However, as a moderate nonattainment area, Colorado must include provisions in the SIP to implement RACT for Colorado's major sources. In November 2016, the Commission directed some major sources to submit RACT analyses to the Division, including two major source breweries. The Commission adopts in this November 2018, rulemaking categorical RACT requirements for major source brewing activities.

Major source breweries

The Commission adopts RACT requirements for owners and operators of breweries producing malt beverages and their brewery related operations at a major source VOC as of June 3, 2016, located in the DMNFR. In a moderate ozone nonattainment area, a major VOC source is one that emits or has the potential to emit greater than 100 tpy VOC. A brewery includes brewhouse, fermentation, aging, and/or packaging operations. Brewery related operations include operations that support the

production of malt beverages such as wastewater management, container manufacturing, and ethanol distillation. The Commission established RACT for combustion equipment, including at breweries, in July 2018, in Regulation Number 7, Section XVI. The Commission now adopts a process loss limit and pollution prevention requirements for brewery packaging operations. These pollution prevention provisions include performance metrics to reduce product loss, operator training, and packaging equipment to reduce container breakage and product loss. The Commission also adopts wastewater management and treatment requirements for land application of wastewater. Lastly, the Commission adopts requirements for owners or operators to keep records of production, pollution prevention activities, and wastewater to demonstrate compliance with the operational requirements.

The largest VOC emissions sources inside a brewery are associated with packaging operations, including can, bottle, and other container fillers. Breweries can reduce VOC emissions by optimizing packaging operations. The process loss limitation is representative of packaging and filling optimization and, therefore, is an indicator, and potential driver, of the resulting VOC emission reductions. The process loss limitation does not include the railcar loading of beer concentrate that is shipped off-site for packaging. In this process, empty railcars are filled with beer concentrate held in beer concentrate receiving tanks after the aging process. The process loss from the automated loading of the beer concentrate from tanks into railcars is minimal and emissions from the filling of cans, bottles, kegs, or other containers are included with the emissions of the off-site packaging facility.

The process loss is calculated on calendar month and rolling 12-month bases across all packaging operations (i.e., filling lines), which aligns with existing product tracking programs. Process loss equates to the difference in the quantity of malt beverage metered at the filler and the quantity in containers as tracked for the Alcohol and Tobacco Tax and Trade Bureau (“TTB”). Operators determine the average calendar month process loss by comparing the total volumes metered at the fillers to the total volume counted by the TTB case counters. Owners or operators will then determine monthly average process loss percentage by dividing the difference in meter and case counter values by the total volume metered at the fillers. Utilizing an average process loss limit also allows for variations in individual line or brand product loss due to specialty brands or innovative containers. The brewing industry is seeing decreased sales of high-volume brands and increased consumer demand for small-volume unique or complex brands. This market change impacts process loss as the high-volume brands have low process loss values whereas specialty brands often result in higher process loss values due to brand recipe complexity, brand mix complexity, and production schedule complexity. The packaging of more types of brands and more complex brands result in higher process loss values because of differences in recipes that require more time for the filler to adjust to the appropriate fill level, more frequent product change-overs of the filling lines, and more unique packaging. The requirement to completely flush a filling line between brands also increases process loss values when the specialty brands are produced in lesser quantities than high-volume brands. Further, bottle filling lines often have different process loss values than can filling lines, therefore the change in container demand can impact the overall process loss. The average

process loss limit of 6 percent on a calendar month and 4 percent on a 12-month rolling average leaves the necessary margin for variability and innovation, while still providing an indicator of RACT-level control of brewery packaging operations VOC emissions.

The Commission exempts from the process loss, pollution prevention, and recordkeeping requirements emissions units' subject to a work practice or emission control requirement in another federally enforceable section of Regulation Number 7 and emission units with total uncontrolled actual VOC emissions less than two tons per year. The first exemption was adopted to avoid subjecting sources to overlapping, duplicative, or contradictory RACT requirements. The second exemption was adopted for consistency with other major source RACT provisions and the use of Colorado's permitting thresholds for NOx and VOC to identify the emission points at major sources for which Colorado evaluated RACT.

The Commission also exempts equipment or activities related to research and development and newly installed, upgraded, or replaced packaging operations. Research and development activities include testing different recipes and packaging types before a product is distributed into commerce. The six-month startup exemption for newly installed, upgraded, or replaced packaging operations allows for the testing and adjustment of the new equipment to meet performance requirements. Examples of newly installed, upgraded, or replaced packaging operations include a new filling line or an upgraded or replaced man-to-machine-interface. Startup of newly installed, upgraded, or replaced packing operations does not include the startup or changeover of malt beverages or new recipes. Quality assurance teams follow a statistical process to verify that equipment is meeting quality standards prior to releasing salable product. These processes may include additional container testing, product sampling, or additional filler flushes while packaging operations are fine-tuned to meet key performance indicators. The volume of the product metered at the filler during the research and development and startup processes is excluded from the monthly process loss calculations. However, new, upgraded, or replaced packaging operations are not exempt from employees training requirements to ensure that employees understand the new packaging operations after startup.

Pollution prevention provisions also include the use and operation of packaging equipment to reduce container breakage and product loss. The Commission exempts from the automated filling equipment requirements packaging operations at pilot brewery operations. Automated filling equipment may be mechanical with a set fill quantity or electric with a flow meter and adjusting fill quantity. Both processes improve consistency, reduce spillage and product loss, and reduce the variation that may occur from human error.

The automated filling lines also include fill level detectors that will reject inadequately filled containers for recovery and recycling. A pilot brewery operation may serve the purposes of research and development but can also be utilized to produce very small quantities of product that is distributed into commerce. Pilot brewery operations can include different filling operations (e.g., bottles, kegs) but may use some manual filling related processes instead of automated processes. The

use of manual processes is consistent with industry practices for operations of this small size, less than 50,000 barrels per year, and provides flexibility to account for production variations that may occur during research and development or small batch production.

Wood furniture manufacturing

In 2016, the Commission determined that only one source in the DMNFR exceeded the Wood Furniture CTG applicability threshold, and that source was a major source of VOC. Therefore, the Commission incorporated by reference requirements in 40 CFR Part 63, Subpart JJ (National Emission Standards for Wood Furniture Manufacturing Operations) into the SIP for wood furniture surface coating operations. In the 2008 Ozone NAAQS Implementation rule, EPA stated that states could streamline their RACT analysis by relating MACT controls to VOC RACT considerations. However, EPA has since expressed concerns that the NESHAP JJ volatile hazardous air pollutant ("VHAP") coating content limits may not adequately address coating VOC emissions. The Commission therefore removes the incorporation by reference of NESHAP JJ for wood furniture manufacturing operations in Section XIX. and is instead including the CTG recommended coating VOC content limits and work practices in Section IX.O.

The coating VOC content limits apply to sealers, topcoats, acid-cured alkyd amino vinyl sealers, or acid-cured alkyd amino conversion varnish topcoats. EPA's Wood Furniture CTG does not define acid-cured topcoats or sealers but does describe acid-catalyzed finishes as the most common catalyzed finishes. The Wood Furniture CTG further states that the film-forming resins in these finishes are usually a urea-formaldehyde or melamine-formaldehyde prepolymer mixed with an alkyd resin that serves as a plasticizer. Common catalysts contained in the acid-catalyzed finishes include sulfuric acid and p-toluenesulponic acid and film formation occurs through curing (polymerization) of the resins rather than drying.

SIP Clean-up

Industrial Cleaning Solvent

In 2016, the Commission adopted provisions in Regulation Number 7, Section X. to include RACT requirements related to the use of industrial cleaning solvents. The Commission adopted several exemptions recommended by EPA's Industrial Cleaning Solvents CTG as well as exemption for sources complying with cleaning solvent requirements in a federally enforceable NSPS, NESHAP, Best Available Control Technology requirement, or Lowest Achievable Emissions Rate requirement, which was similar to an EPA approved exemption in Colorado's Regional Haze SIP. EPA has since indicated concerns with approving this broad exemption due to a perceived lack of specificity. The Commission therefore removes the broad exemption in Section X.E.4.a.(i).

Metal furniture and miscellaneous metal surface coating

EPA published Metal Furniture CTGs in 1977 and 2007 and Miscellaneous Metal Parts and Products CTGs in 1978 and in 2008. In the 2008 Ozone NAAQS Implementation rule, EPA stated that states could conclude that sources already addressed by RACT determinations for a previous ozone NAAQS do not need to implement additional controls because a new RACT determination would result in the same or similar control technology as the initial RACT determination and any incremental emissions reduction from the application of a second round of controls would be small and the cost unreasonable.

Therefore, in 2016 the Commission relied on the RACT provisions relating to the 1977 and 1978 CTGs adopted into Regulation Number 7, Sections IX.H. and IX.L. in 1978 and 1980 to continue to establish RACT for metal furniture and miscellaneous metal coating operations. EPA has since indicated concerns with the existing provisions due to a lack of specified application technique. The Commission therefore revises Section IX. to specify the use of good air pollution control practices, including efficient application methods.

1990 and 1991 RACT Reports

In 1990, the Commission adopted one of several requirements in Regulation Number 7, specifically Sections I.B.2.f. and I.B.2.g., for existing sources to address EPA concerns with the design, implementation, and enforceability of Colorado's previously submitted and approved Ozone SIP. The provisions included one-time reporting requirements concerning source emissions and RACT for sources existing as of 1989. The provisions were not an ongoing reporting requirement potentially necessary for monitoring compliance with applicable emissions limits. EPA approved these provisions into Colorado's SIP in 1995, without discussion. Due to these one-time requirements having passed and Colorado's major stationary sources being subject to RACT requirements in Regulation Number 7, as adopted by the Commission through 2018, the Commission removed these historic provisions. Removal of these provisions does not remove or modify any control measures, therefore does not affect emissions nor interfere with attainment or reasonable further progress. Where information in the Sections I.B.2.f. and I.B.2.g. reports informed RACT requirements under Section II.C., sources remain subject to applicable RACT requirements and any emission reporting requirements as addressed by the emission statement rule last approved by EPA in 2015 (See 80 Fed. Reg. 50205 (August 19, 2015)).

Incorporation by Reference

§ 24-4-103(12.5) of the Colorado Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of §24-4-103(12.5) are met by including specific information and making the regulations available because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. To fully comply with these criteria, the Commission included reference dates to rules and reference methods incorporated in Regulation Number 7, Sections II., VI., VIII., IX., X., XII., XIII., XVI., and XVII.

Additional Considerations

Colorado must revise its Ozone SIP to address the moderate ozone nonattainment area requirements. The CAA does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the 8-hour ozone NAAQS and requires Colorado to develop a SIP adequate to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to ensure attainment with the 2008 8-hour ozone NAAQS and satisfy Colorado's moderate nonattainment area obligations, including those related to RACT. These revisions do not exceed or differ from the federal act due to state flexibility in developing nonattainment area SIPs; however, in accordance with C.R.S. § 25-7-110.5(5)(b), the Commission nonetheless determines:

(I) The revisions to Regulation Number 7 address RACT requirements for major sources of VOC in Colorado's ozone nonattainment area. Colorado's major sources of VOC are subject to various and numerous NSPS or NESHAP, Regulation Number 7 requirements, or RACT/beyond RACT analyses. The Commission revised Regulation Number 7 to include regulatory RACT requirements for Colorado's major sources of VOC in the SIP. Specifically, the Commission adopted RACT requirements in Section XX. for brewing activities located at major sources of VOC in the DMNFR. The Commission also adopted RACT requirements from EPA's Wood Furniture CTG for wood furniture surface coating in Section IX. MACT JJ may apply to wood furniture surface coating operations.

(II) The federal rule discussed in (I) is primarily technology-based in that it largely prescribes the use of specific coating VHAP contents in order to comply. The federal rule provides flexibility by allowing subject facilities to select any coating meeting the specified VHAP content limits.

(III) The CAA establishes the 8-hour ozone NAAQS and requires Colorado to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's moderate nonattainment area RACT obligations. Instead, Colorado must adopt applicable provisions into its SIP directly, as the Commission has done here.

(IV) Colorado will be required to comply with the lower 2015 ozone NAAQS. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as RACT analyses and efforts conducted to support the revisions adopted by the Commission may prevent or reduce the need to conduct additional RACT analyses for the more stringent NAAQS.

(V) EPA has established a January 1, 2017, deadline for this SIP. There is no timing issue that might justify changing this time frame.

(VI) The revisions to Regulation Number 7, Sections IX., X., and XX. establish categorical RACT for major sources of VOC and CTG VOC source categories,

and thus are necessary to satisfy RACT SIP requirements for moderate nonattainment areas. The provisions are specific to emission points at sources of VOC, allowing for continued growth at Colorado's sources.

(VII) The Revisions to Regulation Number 7, Sections IX., X., and XX. establish reasonable equity for sources of VOC by providing the same categorical standards for similarly situated and sized sources.

(VIII) If Colorado does not attain the 2008 ozone NAAQS by July 20, 2018 (Colorado has requested a one-year clean data extension) EPA will likely reclassify Colorado as a serious ozone nonattainment area, which automatically reduces the major source thresholds from 100 tons per year of VOC and NOx to 50 tons per year; thus subjecting more sources to major source requirements. If EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. Either of these outcomes may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. The revisions concerning major sources of VOC generally reflect current emission controls and work practices.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 contribute to the prevention of ozone in a cost-effective manner.

(XII) Although alternative rules could also provide reductions in ozone and help to attain the NAAQS, the Commission determined that the Division's proposal was reasonable and cost-effective. However, a no action alternative would very likely result in an un-approvable SIP and possibly an EPA FIP and/or sanctions.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

Colorado must revise Colorado's ozone SIP to address the moderate nonattainment area requirements. However, to the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of the ozone precursors VOC and NOx.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

S. December 19, 2019 (Sections I. through XX. and Appendices A through F – reorganized into Parts A through F)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act §§ 24-4-103(4), the Colorado Air Pollution Prevention and Control Act, Colorado Revised Statutes (CRS) §§ 25-7-110 and 25-7-110.5., and the Air Quality Control Commission's (Commission) Procedural Rules.

Basis

During the 2019 legislative session, Colorado's General Assembly adopted revisions to several Colorado Revised Statutes in Senate Bill 19-181 (SB 19-181) (Concerning additional public welfare protections regarding the conduct of oil and gas operations) that include directives for both the Oil and Gas Conservation Commission and the Air Quality Control Commission (Commission). This proposed rulemaking focuses on the Air Quality Control Commission directives in § 25-7-109, CRS, SB19-181 directs the Commission to adopt regulations to "minimize emissions of methane and other hydrocarbons, volatile organic compounds (VOC), and oxides of nitrogen (NOx)" from all the "natural gas supply chain." Further, SB 19-181 identifies specific provisions the Commission should consider including semi-annual leak detection and repair (LDAR) inspection requirements at all well production facilities, transmission pipeline and compressor station inspection requirements, continuous methane emission monitoring requirements, and pneumatic device requirements. This rulemaking addressed many of the specific provisions for consideration, except continuous methane monitoring, but is only the first of many rulemakings to come in addressing SB 19-181.

Further, on August 15, 2019, the Environmental Protection Agency (EPA) proposed to reclassify the Denver Metro North Front Range (DMNFR) to Serious, after 2015-2017 ozone data failed to show attainment of the 2008 8-hour Ozone National Ambient Air Quality Standard (NAAQS) of 75 parts per billion (ppb). See 84 Fed. Reg. 41,674 (Aug. 15, 2019). As a Serious area, the major source threshold lowers from 100 tons per year (tpy) of VOC or NOx to 50 tpy and the DMNFR's attainment date becomes July 20, 2021. EPA has also designated the DMNFR as Marginal nonattainment for the 2015 ozone NAAQS of 70 ppb, with an attainment date of August 3, 2021.

Therefore, as a first step to addressing the new statutory directives, and ensuring progress towards attainment of the 2008 and 2015 ozone NAAQS, the Commission is adopting revisions to Regulation Number 7 to minimize emissions from the oil and gas sector and to include reasonably available control technology (RACT) requirements for major sources with VOC and/or NOx emissions equal to or greater than 50 tpy. The oil and gas industry is a significant source of VOC, NOx, ethane, and methane emissions, and the Commission expects the industry's growth to continue in the foreseeable future. Improved technologies and business practices, many already utilized by Colorado oil and gas operators, can reduce emissions of hydrocarbons such as VOCs, ethane, and methane in a cost-effective manner. These technologies and practices include, without limitation, frequent LDAR inspections, reducing emissions from pneumatic controllers, reducing emissions from the transmission segment, storage tank measurement systems, and vapor collection and return equipment.

For these reasons and more, the Commission believes additional control measures beyond the current requirements in Regulation Number 7 and NSPS OOOO (and NSPS OOOOa) are appropriate. Colorado's considerable experience with the regulation of oil and gas sources involves both State Implementation Plan (SIP) requirements that apply in the DMNFR and state-only requirements that apply state-wide. In addition, evidence in the rulemaking record supports the conclusion that the rules can be implemented effectively. Accordingly, the Commission concludes that the rules are technologically feasible and cost-effective.

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, §§ 25-7-101, CRS, *et seq.* (Act), specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant to include essentially any gas emitted into the atmosphere (and, as such, includes VOC, NOx, methane and other hydrocarbons) and provides the Commission broad authority to regulate air pollutants.

Section 105(1)(a)(I) directs the Commission to adopt a state implementation plan (SIP) to attain the NAAQS. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-

106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. §§ 25-7-109(1)(a), (2), and (3) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, emission control regulations pertaining to nitrogen oxides and hydrocarbons, and emissions control regulations pertaining to the storage and transfer of petroleum products and other VOCs. § 25-7-109(2)(c), in particular, provides broad authority to regulate hydrocarbons. § 25-7-109(10) directs the Commission to adopt emission control regulations to minimize emissions of methane, other hydrocarbons, VOC, and NOx from oil and gas operations.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7, and includes technological and scientific rational for the adoption of the revisions. The Commission adopts revisions to Regulation Number 7 to address hydrocarbon emissions from oil and gas operations, including well production facilities and natural gas compressor stations. The Commission expands the inspection and enhanced response program for pneumatic controllers it adopted in 2017 for pneumatic controllers in the DMNFR to a state-wide applicability. The Commission adopts a new, innovative performance based program to reduce emissions from the downstream transmission segment.

The Commission is replacing the system-wide condensate storage tank control strategy in the SIP with a more straight-forward storage tank control threshold. The Commission is also seeking to reduce emissions from storage tank measurement and sampling and loadout activities, and to minimize fugitive emissions from leaking components at natural gas compressor stations and well production facilities. Further, the Commission is expanding the requirement to employ best management practices to minimize emissions at oil and gas wells during well plugging activities. The Commission is also establishing an annual emissions inventory report that oil and gas operators will submit to the Division, which will ensure accountability and assist the Commission in understanding the emissions of methane, ethane, VOC, CO, and NOx associated with different activities and equipment in oil and gas operations. The Commission believes that this combination of revisions is appropriate as a first step in minimizing emissions from oil and gas operations and continuing to make progress towards attainment of the ozone NAAQS.

The Commission is revising Regulation Number 7 to include provisions in the SIP that require the implementation of RACT for major sources ($\geq$ 50 tpy NOx and/or VOC) including expanding existing requirements, incorporating federal requirements, including categorical RACT requirements, and requiring the submission of RACT analyses.

The Commission is also updating requirements for gasoline transport trucks, bulk terminals, and service stations to align with current federal requirements in a SIP clean-up effort.

The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

The following explanations provide further insight into the Commission's intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

Reorganization

Over the years, Regulation Number 7 has grown. In an effort to facilitate readability, and to better allow the regulated community to identify and understand the provisions governing their activities, the Division is proposing a full reorganization of

Regulation Number 7 into parts. A table identifying the new section(s) along with the prior section/location is shown. This Statement of Basis and Purpose will refer to the reorganized section numbers in the discussion of revisions and new provisions.

Reorganized Regulation Number 7 Section	Regulation Number 7 Section (as of 11/15/2018)
Part A	
Part A, Section I.	I. Applicability
Part A, Section II.	II. General Provisions
Part A, Appendix A	Appendix A. Colorado Ozone Nonattainment or Attainment Maintenance Areas
Part B	
Part B, Section I.	III. General Requirements for Storage and Transfer of Volatile Organic Compounds
Part B, Section II.	IV. Storage of Highly Volatile Organic Compounds
Part B, Section III.	V. Disposal of Volatile Organic Compounds
Part B, Section IV.	VI. Storage and Transfer of Petroleum Liquids
Part B, Section V.	VII. Crude Oil
Part B, Section VI.	VIII. Petroleum Processing and Refining
Part B, Section VII.	XV. Control of Volatile Organic Compound Leaks from Vapor Collection Systems and Vapor Control Systems Located at Gasoline Terminals, Gasoline Bulk Plants, and Gasoline Dispensing Facilities
Part B, Appendix B	Appendix B. Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks
Part B, Appendix C	Appendix C. Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants (Vapor Balance System)
	Appendix E – deleted, paragraphs B and E moved into section, and references replaced with EPA Method 27

Part C	
Part C, Section I.	IX. Surface Coating Operations
Part C, Section II.	X. Use of Cleaning Solvents
Part C, Section III.	XI. Use of Cutback Asphalt
Part C, Section IV.	XIII. Graphic Arts and Printing
Part C, Section V.	XIV. Pharmaceutical Synthesis
Part C, Appendix D	Appendix D. Minimum Cooling Capacities for Refrigerated Freeboard Chillers on Vapor Degreasers
Part C, Appendix E	Appendix F. Emission Limit Conversion Procedure

Part D	
Part D, Section I.	XII. Volatile Organic Compound Emissions from Oil and Gas Operations
Part D, Section II.	XVII. (State Only, except Section XVII.E.3.a., which was submitted as part of the Regional Haze SIP) Statewide Controls for Oil and Gas Operations and Natural Gas-Fired Reciprocating Internal Combustion Engines
Part D, Section III.	XVIII. (State Only) Natural Gas-Actuated Pneumatic Controllers Associated with Oil and Gas Operations
Part D, Section IV. (State Only) Control of emissions from the transmission and storage segment	NEW
Part D, Section V. (State Only) Oil and Natural Gas Operations Emissions Inventory	NEW

Part E	
Part E, Section I.	XVI.A.-C. (natural gas fired reciprocating internal combustion engines in the 8-hour ozone control area) and XVII.E. (new, modified, existing, and relocated natural gas fired reciprocating internal combustion engines)

Part E, Section II.	XVI.D. Control of Emissions from Stationary and Portable Combustion Equipment in the 8-Hour Ozone Control Area
Part E, Section III.	XIX. Control of Emissions from Specific Major Sources of VOC and/or NOx in the 8-Hour Ozone Control Area
Part E, Section IV.	XX. Control of Emissions from Breweries in the 8-Hour Ozone Control Area

Part F	
	XXI. Statements of Basis, Specific Statutory Authority and Purpose

State Implementation Plan Revisions (Part D, Section I. (formerly Section XII.))

The Commission adopted several revisions to the SIP provisions that were previously found in Section XII. While not strictly necessary to comply with a particular CAA requirement pertaining to ozone, the revisions implement the mandate of SB 19-181, strengthen Colorado's Ozone SIP, and will achieve further reductions in ozone precursors and other hydrocarbons.

Applicability (Section I.A)

The Commission revised the applicability language of Part D, Section I. to clarify that all oil and gas operations at and upstream of the natural gas processing plant are subject to the provisions of Section I., as more specifically set forth in Sections I.A through L. The Commission also revised the applicability to ensure that storage tanks containing hydrocarbon liquids (*e.g.*, condensate, crude oil) and produced water are subject to the provisions of Section I., which previously applied only to condensate storage tanks.

Further, under previous provisions, owners and operators of condensate storage tanks for which the APENs reflecting emissions from all operations were 30 tpy VOC or less were exempted from Section I. Given the challenges with attaining the ozone NAAQS, the number of tanks that were exempt under this provision, and the need for further reducing emissions from those tanks, the Commission removed this exemption.

However, the Commission retained the exemption from the system-wide control strategy in Section I.I. (formerly Section XII.I.) for owners or operators of natural gas compressor stations that do not also own or operator exploration and production facilities and the exemption in Section I.G. (formerly XII.G.) for owners or operators of natural gas processing plants. Owners or operators of these facilities must continue to control condensate storage tanks as specified in Sections I.I. and I.G. By retaining these exemptions, the Commission does not intend to exempt these facilities from any applicable requirements in Part D, Section II.

Storage Tank Controls (Section I.D)

In 2004, the Commission adopted the initial system-wide control strategy, which required operators to reduce emissions from their system of condensate tanks. The "system" was comprised of condensate tanks with uncontrolled actual VOC emissions equal to or greater than 2 tpy, and allowed operators to decide which tanks to control so long as emissions from the "system" were reduced by specified percentages. The system-wide control strategy involved complicated and often times confusing recordkeeping and reporting. Further, the system-wide control strategy had the unintended impact of disincentivizing operators to build new facilities without storage tanks (a real emissions benefit), because operators could not take credit for the production at tankless facilities in their "system." As a result, the Commission replaced the system-wide control strategy with a straightforward control threshold. Operators in the 8-hour Ozone Control Area will have until May 1, 2020, (prior to summer ozone season 2020) to install controls on storage tanks with uncontrolled actual VOC emissions equal to or greater than 2 tpy. Only the requirements for storage tanks with uncontrolled actual VOC emissions equal to or greater than 4 tpy are included in the SIP, while the requirements for the storage tanks between 2 and 4 tpy will remain state-only. This provision expands the control requirements to crude oil and produced water tanks, and will result in several hundred more tanks being controlled. The Commission has reviewed the evidence and has determined that the 4 tpy SIP threshold and implementation timetable is cost-effective, technically feasible, and will ensure no backsliding as provided for in the Clean Air Act, Section 110(l). In Sections I.D.3.b.(v) and I.D.3.b.(vi)., the Commission has required that storage tanks below the 2 tpy threshold that increase emissions above the threshold must be in compliance with 60 days of the first date of the month after which the threshold was exceeded. As a result, if a storage tank exceeds the 2 tpy threshold in September 2020, based on a rolling twelve-month total (*i.e.*, October 2019-September 2020), the tank must have controls installed and operating within 60 days of October 1, 2020. These provisions will not only minimize emissions from storage tanks but will ensure clarity in the applicability of control requirements and will assist Colorado in making additional progress towards attainment of the ozone NAAQS.

The Commission has also determined that storage tanks that cannot install controls by the applicable compliance date may shut-in all wells producing to the applicable storage tanks, so long as production from any well producing into the storage tank is not resumed until controls are installed. It is the Commission's intent that this allowance not apply unless the operator shuts in all wells feeding in to the storage tank/battery requiring controls. This will avoid the need for operators to install control equipment when wells are shut-in and where the operator may determine not to return those wells to production. Further, the Commission intends that the Division will work with operators in the DMNFR to allow for appropriate time to conduct design analyses to comply with Sections I.C.1.b. and II.C.2.a., as long as operators install required controls by May 1, 2020, and are pursuing compliance with reasonable diligence.

The Commission has also included in the SIP in Sections I.D.2.a. and II.C.1.b.(ii) the existing requirements (formerly Sections XII.D.1. and XVII.C.1.c.) that operators of newly constructed tanks employ controls during the first 90 days after the date of first production (this provision was previously designated state-only). However, these revisions to Regulation Number 7, in conjunction with revisions to Regulation Number 3, use the term “commencement of operation” instead of “date of first production.” This SIP revision is not part of Colorado’s ozone attainment requirements but is directed at making this requirement enforceable by the EPA and members of the public under the CAA. While the Commission does not believe inclusion of this provision in the SIP was required for compliance with Colorado’s permitting program in Regulation Number 3 with CAA requirements, including ozone nonattainment area requirements, pursuant to § 25-7-105.1(1), CRS, including this provision in the SIP will avoid confusion as to whether compliance with this requirement can be considered a limitation upon a source’s potential to emit for purpose of permitting.

Storage Tank Monitoring (Section I.E)

The Commission revised Section I.E. to apply the monitoring requirements to all storage tanks controlled pursuant to Section I.D., which will ensure monitoring not only of condensate tanks, but also of crude oil and produced water tanks on a weekly basis. The required inspections have also been updated to include common-sense elements that can have a real impact on performance of well production facility equipment and can reduce emissions. For example, checking that burner trays are not visibly clogged can improve the performance of air pollution control equipment. The Commission does not intend that operators should shut-in the combustor for the sole purpose of performing this inspection to observe the burner tray, and need only inspect those portions of burner trays that are visible without shutting in. The Commission also adopted into Section I.E. requirements that previously existed in Section II. (formerly Section XVII.) to check that pressure relief valves are properly seated and that vent lines are closed. Similarly, to the inspection in Section II.C.1.d.(i), operators are not expected to disassemble or otherwise manipulate the pressure relief valve to complete the inspection, unless the visual observation of the valve reveals it is unseated and corrective action needs to be taken. Further, the Commission does not expect operators to climb on top of a tank to observe the pressure relief valve. However, operators are expected to use an available catwalk or similar permanent access to ensure the best opportunity for inspection, except when a catwalk is not accessible due to a safety hazard.

The Commission has removed references to recordkeeping from Section I.E. and has attempted to condense all recordkeeping requirements in Section I.F. For example, Section I.E.2.c.(iv) no longer provides that operators must “check for and document” the inspection; instead, Section I.E.2.c. requires operators to “check”, and the requirement to “document” the inspection is found in Section I.F.2.c.

Recordkeeping and Reporting (Section I.F)

As a result of replacing the system-wide control strategy with the fixed control threshold, the Commission revised the recordkeeping and reporting requirements for demonstrating compliance with Section I.D. Operators subject to the system-wide control strategy will still be required to submit an annual report for calendar year 2019 by the same deadline of April 30, 2020, and are given until August 31, 2020, to submit the report for the time period in 2020 during which the system-wide control strategy remains effective (*i.e.* January 1 – April 30, 2020). In Sections I.F.2. and I.F.3., the Commission has created a new recordkeeping and reporting scheme for the tanks subject to the new control threshold provisions. The Commission has largely maintained the same recordkeeping and reporting requirements for the monitoring provisions in Section I.E. However, the Commission streamlined the new storage tank recordkeeping and reporting requirements, which are included in the SIP for storage tanks at or above the 4 tpy threshold, but are included on a state-only basis for the storage tanks between 2 and 4 tpy.

Miscellaneous

The Commission adopted revisions to definitions (Section I.B.) and the general provisions (Section I.C.). A new definition for "commencement of operation" was added for consistency with Regulation Number 3 and for clarity as to the applicability of other control requirements (previous versions of Regulation Number 7 were tied to the "date of first production," which was not implemented consistently amongst operators). The Commission adopted the term "date of first production" in 2014 with the intent that it coincides with the date reported to the Colorado Oil and Gas Conservation Commission (COGCC) on COGCC Form 5A. Through implementation of the 2014 revisions, differences between the Commission's and the COGCC's use of the term were realized. Therefore, the Commission has replaced "date of first production" with the more clearly defined "commencement of operation" term.

The Commission also adopted new definitions for "hydrocarbon liquid," "produced water," "storage tank," and "storage vessel" to ensure consistency with the state-only program in Part D, Section II. The definition of "storage tank" referred to the federal definition of "storage vessel" and, therefore, captured crude oil and produced water tanks, in addition to condensate tanks. The federal definition has now been included as a standalone definition of "storage vessel."

The Commission also revised Section I.C.1.b. to reflect that Section I. now applies to oil and gas operations collecting, storing, processing, and handling hydrocarbon liquids and produced water, not just condensate. The Commission replaced the term "leakage" with the term "emission" in order to be consistent with the Common Provisions definition of "emission." The Commission does not intend this latter revision to reflect a change in the meaning or applicability of Section I.C.1.b. (or Section II.B.1.a., where this revision is also made), but only to improve clarity.

The Commission revised Section I.C.2., which specifies how operators must calculate emissions and emission reductions for purposes of demonstrating compliance with the control requirements. These revisions expand the current provisions to storage tanks storing hydrocarbon liquids other than condensate and to storage tanks storing produced water. For crude oil tanks and produced water tanks, operators will need to refer to default emission factors as established and updated by the Division. *See, e.g.* PS Memo 14-03, *Oil & Gas Industry Crude Oil, Condensate and Produced Water Atmospheric Condensate Storage Tanks, Regulatory Definitions and Permitting Guidance for General Permit GP08.*

The Commission has not substantively revised the LDAR SIP provisions of Section I.L. but clarified that applicability is based on emissions on a rolling twelve-month basis, not a calendar year basis. Such was the Commission's intention in adopting the program in 2017.

The Commission has also determined to incorporate Section II.F. (formerly Section XVII.G.) into the SIP. This provision requires control of emissions coming off a separator after a well is newly constructed, hydraulically fractured, or recompleted. These emissions must be routed to a gas gathering line or controlled by air pollution control equipment. This SIP revision is not part of Colorado's ozone attainment compliance requirements, but is directed at clarifying that this requirement is

enforceable by the EPA and members of the public under the CAA. Including this provision in the SIP will avoid confusion as to whether compliance with this requirement can be considered a limitation upon a source's potential to emit for purposes of permitting. *See* § 25-7-105.1(1), CRS.

State-wide, State-Only Revisions (Part D, Section II. (formerly Section XVII.))

In Part D, Section II., the Commission adopted several revisions to begin its implementation of SB 19-181. These revisions further support existing control requirements and also seek reductions from previously unregulated emissions activities (*e.g.,* gauging and loadout).

Storage Tank Controls, Monitoring, Recordkeeping, and Reporting (Sections II.C.1.c., II.C.1.d., II.C.2.b. and II.C.3.)

Since 2011, Colorado has made significant progress in reducing emissions from storage tanks. However, storage tanks remain the largest source not only of oil and gas VOC emissions, but of all anthropogenic VOC emission sources in the state (per the 2017 nonattainment area emissions inventory in the Moderate area ozone nonattainment SIP). The Commission has determined that it is cost effective and technically feasible to lower the control threshold from 6 tpy VOC (as established in 2014) to 2 tpy VOC. However, the Commission does not want to facilitate or encourage the use of supplemental fuel to operate control equipment, and understands that this can occasionally be an issue on the West Slope, in particular, where the facilities have lower pressure. The Commission has therefore adopted a provision that allows operators to seek from the Division an exception to controlling tanks between 2 and 6 tpy VOC under these circumstances. Exceptions should be sought prior to compliance deadlines, and will be effective upon submittal unless and until the Division determines an exception is not appropriate. Storage tanks constructed on or after March 1, 2020, must have controls upon commencement of operation, ensuring reductions during the 2020 summer ozone season. Storage tanks outside the nonattainment area constructed prior to March 1, 2020, must be in compliance by May 1, 2021. The Commission determined it was appropriate to give tanks outside the nonattainment area between 2 and 6 tpy VOC extra time to install controls. The Commission does not intend to give extra time to storage tanks with air pollution control equipment already installed, even where controls are not currently required by Regulation Number 7 (e.g., where an operator has submitted an APEN claiming controls).

The Commission revised the approved instrument monitoring method (AIMM) schedule for inspections of controlled storage tanks to align with the Commission's revision of the LDAR inspection frequencies in response to SB 19-181, discussed further. The Commission adopted a semi-annual frequency for storage tanks with emissions greater than or equal to 2 tpy and less than or equal to 12 tpy. For storage tanks with emissions greater than or equal to 6 tpy and less than or equal to 12 tpy, this is an increase in inspection frequency from annual to semi-annual. Where the Commission specifies that semi-annual monitoring must "begin" in a certain year, the Commission intends that there be at least two AIMM inspections during that year. The Commission also removed the phase-in schedule for storage

tanks inspections (within 90 days of January 1, 2016 for storage tanks $\geq$ 6 and within 30 days for storage tanks > 50 tpy) as those schedules have passed. The Commission updated the recordkeeping requirements for AIMM inspections to be consistent with the LDAR recordkeeping in Section II.E. Records of AIMM inspections under Sections II.C. and II.E. may be maintained together, and need not be kept separately.

The Commission has also strengthened monitoring requirements for storage tanks and associated equipment. In Section II.C.1.d., the Commission has determined that it is cost effective and feasible, while already on-site for visual inspection, to check the dump valve on the separator to ensure that it is not stuck open or visibly clogged. The Commission does not intend that operators will need to manipulate equipment or stay on-site for the purpose of observing actuation of the dump valve for purposes of this inspection requirement. The Commission has also determined that excess liquids in the vapor lines can cause a multitude of problems, including over pressurization of the tanks or smoking flares. Therefore, the Commission is directing operators to check liquid knockout vessels, when present, unless the vessel is set up to drain automatically, and to drain liquids if above the low-level indication point. If the knockout vessel is not equipped with a liquid level indicator, operators can comply with this requirement by draining the knockout vessel during the inspection. Further, for underground lines and above-ground lines where no knockout vessel is used, operators should establish a procedure by which they evaluate for the presence of liquids in the vapor lines, and drain as necessary. Appropriate operating and maintenance program documents should set forth this procedure so as to provide clarity on how an operator determines draining is necessary. These actions can be taken while the operator is already on-site for the inspections previously required, are consistent with actions the Commission generally understands operators are already taking in the field and therefore, the Commission does not expect these actions to create additional burden.

The LDAR program in Section II.E. (formerly Section XVII.F.) has required remonitoring following repair of a leak (as has Section I.L.). However, Section II.C. did not include an explicit remonitoring requirement following actions taken to address venting from storage tanks. Operators must now confirm that actions taken to address venting were effective through remonitoring. This confirmation must be made within 24 hours of the action taken to address the venting. This requirement does not reflect a timeframe in which the operator may address the venting without incurring liability for the violation. There is currently no regulatory period in which venting will not be considered a violation of Section II.C.2.a., unless the venting is reasonably necessary for one of the reasons expressly contemplated by Section II.C.2.a. Only where the initial emissions observation was observed through AIMM does the success of the response action need to be verified through AIMM. However, the Commission believes that if the venting was found with an IR camera and was addressed while the IR camera operator was on-site, then there is little to no burden to use the IR camera to confirm, for example, an effective seating of the thief hatch upon closure. In Section II.C.3.f., the Commission has established supplemental recordkeeping requirements when venting is observed and addressed.

In Section II.C.3.d., the Commission has strengthened recordkeeping requirements of inspections under Section II.C.1. These recordkeeping requirements are consistent with the recordkeeping required in Section I.F. (formerly Section XII.F.). The Commission has maintained the exemption from recordkeeping under Section II.C.3.b., for instances where venting is reasonably necessary for maintenance, gauging (unless a storage tank measurement system is required under and the operator complies with Section II.C.4.), or safety of personnel and equipment. However, the Commission expects that the emissions associated with these venting events will be reported in the annual emissions inventory.

Storage Tank Measurement Systems (Section II.C.4.)

Historically, operators have needed – for operational purposes – to open the thief hatch on storage tanks in order to sample and measure the level of the liquid to be sold (i.e., to determine quality and quantity). Technology has advanced over the past few years, including, without limitation, the use of Lease Automatic Custody Transfer (LACT) units, automated tank gauges, and the development of API 18.2 (Custody Transfer of Crude Oil from Lease Tanks Using Alternative Measurement Methods), which allow for the sampling and measurement of liquids without opening the thief hatch. It is the Commission's intention that owners and operators of facilities and tanks constructed after the deadlines in new Section II.C.4. must measure the level of the liquid (e.g., use tank level sensors) and sample the liquids (e.g., check for temperature, BS&W, and other indicia of merchantability) without opening the thief hatch. These storage tank measurement systems can be employed at facilities with and without automation.

Further, a significant number of operators have already deployed such systems at large and small facilities in the DJ Basin, in some cases voluntarily and in some cases as required pursuant to a Consent Decree or Compliance Order on Consent. The Commission notes that a storage tank management system may be different for tanks where liquids are both sampled and measured than for tanks where liquids are not sampled. For example, Commission understands that some produced water tanks are not sampled for quality, and therefore do not need to have equipment to allow for the sampling of the liquids without opening of the thief hatch.

Therefore, the Commission adopted a requirement to employ storage tank measurement systems to determine the quantity of the liquid at well production facilities, natural gas compressor stations, and natural gas processing plants constructed on or after May 1, 2020. Any such facilities that are constructed after January 1, 2021, must have storage tank management systems in place that determine both the quality and the quantity of the liquid. This requirement also applies to storage tanks at existing well production facilities, natural gas compressor stations, and natural gas processing plants that are modified by adding storage tanks. When operators add new storage vessels to existing facilities (e.g., to add capacity because production or throughput is expected to increase), they must outfit the new storage vessels and retrofit the existing vessels in the same battery with a storage tank management system. However, the ability to retrofit an existing battery may not exist, and is therefore not required, where a single storage tank is replaced due to maintenance concerns or where a tank is installed to provide extra head space in the vapor control system, but no production increase is associated with the installation.

The Commission has adopted minimal recordkeeping provisions for this requirement, including a description of the storage tank measurement system and records of the annual training program. The description must be sufficiently detailed to enable the Division to determine whether the operator is in compliance (e.g., sampling the liquids without opening the thief hatch). If an operator relies on a third party (e.g., hauler) to perform the gauging activities, those operators will need to

work with the haulers to facilitate the training that will familiarize haulers with this new requirement.

The Commission has also adopted a requirement to allow for periodic calibration and testing of the storage tank measurement system. The Commission recognizes that while the Bureau of Land Management expressly allows for automatic tank gauging (*see e.g.* 42 C.F.R. Section 3174.3(33), incorporating by reference API 18.2), it can be necessary to test and calibrate the automatic tank gauging system. *See* 42 C.F.R. Section 3174.6(b)(5)(ii)(B). It is not the Commission's intent to adopt requirements at odds with the Bureau of Land Management. Further, some manufacturers may recommend inspection, testing, or calibration more frequently than specified by the Commission; the Commission intends to allow for those maintenance procedures, as reasonably necessary (i.e., the exception should not render ineffective the Commission's intent that thief hatches remain closed during the sampling and measurement process). Operators that perform maintenance procedures more frequently than semi-annually need to document the manufacturer's recommendation for the increased frequency and provide those materials to the Division upon request.

Hydrocarbon Liquids Loadout (Section II.C.5)

In Section II.C.5., the Commission has adopted new requirements to control or avoid emissions associated with the unloading of hydrocarbon liquids into transport vehicles (e.g., trucks). These requirements do not apply to produced water loadout. The Commission has determined to prohibit the venting of hydrocarbons during loadout activities, because the venting is not reasonably necessary within the meaning of Section II.C.2.a.; however, the Commission notes that some thief hatches may be "open" during loadout but are not emitting and are instead operating only as vacuum relief for the storage tank. An "open" pressure relief device that does not emit, but instead creates a vacuum, would not be a violation of the prohibition on venting during loadout, though the burden will remain on operators to demonstrate that any open pressure relief devices are not venting.

These requirements will apply to well production facilities, natural gas compressor stations, and natural gas processing plants constructed before and after May 1, 2020, with annual hydrocarbon liquid loadout throughput equal to or greater than 5,000 barrels per year, on a 12-month rolling basis. Throughput is based on the throughput of liquids loaded out to transport vehicles and does not include liquids loaded out to pipeline. Facilities constructed after May 1, 2020, must control emissions from loadout upon commencement of operation if they anticipate having a loadout throughput over 5,000 barrels per year. Facilities that are modified (e.g., new well drilled, well re-fracked or recompleted) that expect to have throughput over 5,000 barrels per year must also control loadout operations upon commencement of operation following the modification. Facilities that increase throughput such that loadout throughput reaches 5,000 barrels must control the emissions from loadout upon reaching 5,000 barrels. The Commission does not intend that operators may loadout more than 4,999 barrels of hydrocarbon liquids without controls. Thus, if an operator currently loads out to pipeline, and is not subject to this requirement, but the pipeline becomes unavailable (e.g., due to maintenance, whether scheduled or unscheduled) and the operator has 6,000 barrels stored in tanks, the operator must control the emissions from the loadout to transport vehicles or wait to loadout to transport vehicles until it can arrange for controls.

The Commission recognizes that compliance may be more cost effective at newly constructed facilities for several reasons. Operators may account for the vapors associated with loadout in the initial evaluation of air pollution control equipment required. Operators may also design the facility to make compliance easier, with both these requirements and Section II.C.4. However, the Commission has determined that it is also cost-effective and technically feasible to retrofit existing facilities to control loadout emissions. Operators using air pollution control equipment to control loadout emissions must also comply with other Regulation Number 7 requirements applicable to air pollution control equipment (e.g., inspections, recordkeeping). Further, if operators employ vapor collection and return systems, operators should include this vapor source in the engineering evaluation of their storage tanks and vapor control systems to avoid over-pressurizing the tanks.

The Commission has also established additional requirements to ensure the effective control of loadout emissions, including many requirements that the Division has previously established as permit RACT (under Regulation Number 3 and not as categorical RACT used for ozone SIP purposes) in loadout permits. The Commission determined that observation of and/or training and signage related to the loadout process by operators will help ensure that new staff and third parties are effectively implementing these requirements. The Commission directed the Division to develop a template and/or guidance regarding expectations for signage. However, if tanks are loaded out less frequently than monthly, the observation needs to take place during loadout when it does occur, unless observation is not feasible. If observation is not feasible (e.g., the operator did not receive notice of the loadout, which occurred during the middle of the night when no operator personnel was on site), the operator must inspect the facility within 24 hours to ensure that loadout equipment was properly stored and that thief hatches were closed. The Commission encourages the Division to work with operators to better understand when observation is, or is not, feasible.

Leak Detection and Repair (Section II.E)

In SB 19-181, the Legislature directed the Commission to minimize emissions from the oil and gas sector, including the gathering and boosting segment (i.e., compression). In conjunction with this directive, SB 19-181 further instructed the Commission to consider semi-annual monitoring for leaks at well production facilities. Therefore, the Commission has revised the LDAR program of Section II.E. (formerly Section XVII.F.) to increase the frequency of approved instrument monitoring method (AIMM) inspections to semi-annual at compressor stations with emissions between 0 and 12 tpy VOC and at well production facilities with emissions between 2 and 12 tpy VOC. Phase-in of these new inspections begins in 2020, and the Commission expects that operators will conduct the first semi-annual inspection prior to the start of the summer ozone season (i.e., May 1, 2020). Current requirements in place for larger facilities to inspect on a more frequent basis remain unchanged.

The Commission adopted a proposal to require enhanced leak detection and repair requirements for facilities within 1,000 feet of an occupied structure. The commission also directed the Division to work on a proposal that would speed up repair times in these areas and bring forward for the Commission's consideration in a future rulemaking hearing as soon as possible.

There are no other substantive changes to the existing LDAR program.

Emissions Associated with Well Maintenance, Unloading, and Plugging Activities (Section II.G)

In 2014, the Commission adopted a requirement that operators use best management practices (BMPs) to minimize hydrocarbon emissions and the need for well venting associated with well liquids unloading and well maintenance. The Commission is replacing the term "venting" with "emissions" or "emitting" to ensure consistency with the Common Provisions definition of "emission" and to avoid any confusion with the new definition of "venting" that was added to Section II.C.2.a.(i) (formerly Section XVII.C.2.a.(i)) in 2017, though no change in meaning or applicability is intended. The Commission has determined that BMPs should also be employed to reduce emissions from the well associated with well plugging activities. These activities have been increasing in frequency in the DMNFR in recent years, and the Commission finds that BMPs are a cost-effective and flexible proactive strategy to address this emerging emissions source. BMPs include both practices that reduce the need for well liquids unloading or well maintenance activities and practices that reduce or control emissions resulting from the well maintenance, well liquids unloading, and well plugging activities.

The Commission has also clarified and strengthened the recordkeeping and reporting requirements associated with the well emissions and BMPs. The inventories that will be required to demonstrate attainment with the ozone NAAQS in future SIPs necessitate detailed information on the emissions associated with these activities. Further, understanding BMPs employed to reduce or eliminate these emissions will assist the Commission in developing both voluntary and regulatory strategies to make further progress towards attainment. In an effort to minimize

duplication with the new emissions inventory in Section V., the Commission intends that all information associated with activities covered by this Section II.G. will be reported on a separate form and not as part of the Section V. inventory. While recordkeeping is to begin in July 2020, the Commission understands that current methods of reporting emissions from these activities may need to be updated or improved in the future, and the Commission directs the Division to work with stakeholders to update emission factors and/or calculation methods as necessary.

Miscellaneous

Section II.C.2.a. prohibits the venting of hydrocarbons, unless reasonably required for maintenance, gauging, or safety. The Commission now clarifies that venting during gauging is expressly prohibited under this requirement where a storage tank measurement system is required under Section II.C.4. If Section II.C.4. allows for the opening of the thief hatch, that activity will not be considered venting within the meaning of Section II.C.2.a.

The Commission has revised Section II.C.2.b.(i), to reflect its intention in adopting the STEM provisions in 2014. The Commission intended in 2014, and specifically noted in the Statement of Basis and Purpose at that time, that STEM plans should include an analysis of the engineering design of the storage tank and associated air pollution control equipment (i.e., the vapor control system) to ensure that storage tanks are not over pressurized, causing excess emissions. The Commission believes that operators now largely understand and comply with this requirement, but has clarified the language in the rule itself principally to aid operators that may be new to the control program as a result of the new, lower control threshold. The Commission notes that this requirement does not require that operators maintain a site-specific design analysis for each facility. Worst-case design analyses or like-kind design analyses for similarly configured facilities may be utilized; however, the burden remains with the operator to show that the design analysis provided for the facility demonstrates adequacy of design.

Further, the Commission acknowledges that closed-loop tank pressure control systems designed to maintain tank pressures below a specified point can be, if designed and operated property, indicative of adequate design. The Commission also acknowledges that design analyses do not need to be maintained within the STEM plan itself, so long as the STEM plan contains a description of the design analysis method employed and specifies the name and location of the design analysis for each facility covered by that STEM plan.

Pneumatic Controllers (Part D, Section III.)

SB 19-181 also directed the Commission to consider a requirement to reduce emissions from pneumatic devices. In the 2017 emissions inventory for the Moderate area ozone nonattainment SIP, pneumatic devices were identified as the second largest oil and gas area source (after tanks). In 2017, the Commission convened the Statewide Hydrocarbon Emission Reduction (SHER) team, to consider measures – both regulatory and voluntary – to reduce hydrocarbon emissions from the oil and gas sector. The Commission, at the same time, also established the Pneumatic Controller Task Force (PCTF), with a mission to collect and review data about pneumatic controllers and identify ways to reduce emissions from that equipment. After almost two years of work, the SHER team developed an early recommendation concerning pneumatic controllers, which the Commission has now adopted.

The SHER team supported a three-prong approach. First, the expansion of the pneumatic controller inspection and enhanced response program state-wide. Second, the SHER team recommended including language in this Statement of Basis

and Purpose, directing the continued work to evaluate the use of zero-bleed pneumatic devices. Third, the SHER team supported a compliance assistance approach for operators outside the nonattainment area, while those operators get up to speed on the pneumatic controller inspection and enhanced response program that has been implemented in the nonattainment area since 2018.

The Commission approves of this approach and commends both the SHER team and PCTF for their work since 2017, building the knowledge that informed provisions of this rulemaking. The Commission has therefore expanded the pneumatic controller inspection and enhanced response program state-wide. At the same time, the Commission recognizes that there is much to learn about the inspection and maintenance of natural gas-driven pneumatic controllers outside the nonattainment area, which highlights the need for enforcement discretion. The Commission intends that for operations outside the nonattainment area, the determination of whether a pneumatic controller is operating properly will be made by the owner or operator, with minimal oversight by the Division for the first year of implementation.

The Commission further directs the SHER team and PCTF to continue their work on the mandates established in 2017, and to bring back to the Commission in 2020 their recommendations on the use of zero-bleed pneumatic devices. Specifically, the Commission continues to direct the PCTF to make recommendations on its findings in a report to the Commission in May 2020. However, the Commission revises its directive to the SHER team to present recommendations by no later than January 2020, to by no later than July 2020. This revised timeline will provide additional time for the SHER team to make any additional recommendations on cost-effective hydrocarbon emission reduction strategies evaluated by the SHER team. The Commission anticipates that the SHER team will also evaluate continuous methane emission monitoring and engage in discussions to determine actual leak rate percentages of components at oil and gas facilities for use in future rulemakings.

Downstream transmission (Part D, Section IV.)

SB 19-181 also directed the Commission to consider adopting a requirement that owners and operators of oil and gas transmission pipeline and compressor stations inspect and maintain all equipment and pipelines. The Commission’s Regulation Number 7 has not historically regulated the transmission and storage segment, which includes pipeline, compressor stations, and other equipment transporting and storing natural gas downstream of the natural gas processing plant and prior to the distribution segment. Transmission pipelines, however, have been subject to federal and state pipeline safety regulations.

To address the new directive to minimize emissions from the transmission segment, the Commission adopted an innovative program that directs the setting of a methane intensity target and associated programmatic framework. This approach is the second recommendation from the SHER team, and again comes before the January 2020 deadline established by the Commission in November 2017. SHER team stakeholders involved in developing this program include trade associations, transmission segment operators, environmental and citizen groups, local

governments, and the Division. The Division will approve a steering committee charter that will detail the purpose, responsibilities, and deliverables of the steering committee. The steering committee will develop an emissions protocol detailing the calculation and reporting of VOC, CO, NOx, ethane, and methane emissions and any associated program guidance documents or templates by September 30, 2020, determine a segment methane emissions intensity target by October 1, 2023, and certify initial target compliance based on the 2024 data. Each owner or operator in the segment will develop a company-specific best management practice (BMP) plan, the elements of which are enforceable by the Division. A goal of this program is continual improvement over time through review of BMPs, assessment of reported emissions and emissions intensity, and analysis of other data and best practices. In furtherance of this goal, the steering committee will periodically reassess the emissions intensity target and may consider, among other factors, the potential to reduce emissions from events beyond the control of the owner or operator.

The Division will provide an update on the development of the program to the Commission in 2021 as well as periodic updates regarding the progress of the program. The program will include a reporting element to demonstrate compliance and continual improvement. The steering committee will develop the criteria by which the industry participants will select a third-party contractor to collect and aggregate the company-wide reports into the segment-wide report prior to the first report due date of September 30, 2022. The third-party contractor, with involvement from the transmission segment owners or operators, may also provide VOC, NOx, and CO emissions data from the annual company-wide reports to the Division related to ozone modeling as needed and requested. Each year after the segment-wide emissions intensity target is established, the steering committee will submit a compliance certification to the Division that the transmission segment achieved the target. If such certification cannot be made, the steering committee will develop a plan for the segment to achieve compliance with the target. This plan, if needed, may include amendments to the program guidance documents, prescriptive control requirements, or other strategies to reduce methane emissions such that the transmission segment achieves the segment-wide emissions intensity target.

The inventory protocol may be based on existing EPA estimation and reporting mechanisms, specifically the EPA's Greenhouse Gas Reporting Program (GHGRP) and the Greenhouse Gas Inventory (GHGI). The emission estimation mechanisms may be updated as emission factors or calculation methods are revised. The inventory protocol will include the method(s) by which the transmission segment owners or operators will quantify and report emissions. The findings of the Economic Analysis of Methane Emission Reduction Potential from Natural Gas Systems (MAC) report (May 2016), among other data sources, may be used to develop the segment-specific methane emission reduction goals that, when combined, will achieve the transmission segment's emission intensity target in a cost-effective manner.

Annual inventory (Part D, Section V)

The Commission established an annual emissions reporting requirement to regularly update the Division's emissions inventory for equipment and activities in oil and gas operations. This inventory is intended to assist Colorado in ozone planning and the creation of emission inventories for use in ozone attainment modeling, as well as to comply with the directives in SB 19-181 to minimize emissions from the oil and gas sector. This inventory will provide missing information about oil and gas operations and will supplement the limited information provided on other aspects of those operations to assist the Commission in identifying emission sources appropriate for further emission reduction strategies.

Additionally, this inventory will also help Colorado move forward in beginning to address the broad greenhouse gas directives in SB 19-096 (Concerning the collection of greenhouse gas emissions data to facilitate the implementation of measures that would most cost-effectively allow the state to meet its greenhouse gas emissions reductions goals) and HB 19-1261 (Concerning the reduction of greenhouse gas pollution, and, in connection therewith stablishing statewide greenhouse gas pollution reduction goals). This inventory is separate and apart from the APEN reporting and fee structure in Regulation Number 3, though the Commission expects that the Division, in consultation with stakeholders, will consider ways to align the reporting programs in the future to minimize duplication.

Operators will be required to submit a company-wide report on June 30 of each year for the preceding year. The first report will be due on June 30, 2021, covering emissions from July 1, 2020, through December 31, 2020. Operators are required to use the Division-approved form. The Commission expects that the Division will consult with stakeholders in the development of this form (or forms). The Commission understands that some of the emissions source category activities and equipment are not currently well defined, nor is there necessarily a well understood method of calculation for emissions (e.g., downhole well maintenance). The Commission therefore directs the Division to work with stakeholders from the adoption of this regulation throughout 2020 to, among other things: (1) appropriately define each emissions source category, activity, and equipment; and (2) identify reasonable methods of calculation for each emissions source category activity and equipment. For some emissions source category activities and equipment, achieving both goals may not be realistic before recordkeeping must

begin in July 2020. Therefore, for those limited categories, the Commission expects that the Division will identify parameters that may be reported (e.g., frequency and duration) until such time as the category can be well defined and an appropriate calculation method can be identified. The Commission's intent here applies also to the well emissions reported under Section II.G.

Operators will need to include actual emissions information for various air pollutants, specifically methane, ethane, VOC, CO and NOx, for each emissions source category activity and equipment, as well as company-wide. The Commission has determined that monthly emissions information should be submitted for the summer months (May through September), while emissions for the remaining months can be aggregated into the annual figures. The Commission recognizes that, over time, these emissions inventories are likely to reflect ongoing emission reductions from the industry resulting from both the continued implementation of emission reduction strategies and the refinement of emissions estimation techniques.

The Commission also recognizes that the emission estimation techniques used for inventory purposes may differ from regulatory methods for calculating, recording, and reporting emissions under the APEN and permitting program, and intends that such differences will be considered in any enforcement matter. It is critical that these inventories be as accurate and complete as possible, and operators are expected to perform quality assurance on the data prior to submittal. However, these inventories will require the submittal of a large amount of information, so operators are provided with timeframes for correcting information found to contain substantive errors. The Commission directed the Division to report back to the Commission in 2020 regarding the inventory and progress made.

Ozone State Implementation Plan Revisions for Serious Reclassification (Part C, Section II.F. (new section in former Section X.; Part E, Sections II. and III. (formerly Sections XVI.D. and XIX.)

Due to the reclassification to Serious, Colorado must submit revisions to its SIP to address the CAA's Serious ozone nonattainment area requirements, as set forth in CAA Sections 172 and 182(c) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (See 80 Fed. Reg. 12264 (March 6, 2015)). A Serious SIP revision must include provisions that require the implementation of RACT for major sources of VOC and/or NOx (i.e., major stationary sources that emit or have the potential to emit 50 tpy or more) and for each category of VOC sources covered by a Control Technique Guideline (CTG) for which Colorado has sources in the DMNFR.

Therefore, to address the CAA Serious RACT SIP requirements, the Commission adopted revisions to Regulation Number 7 to include RACT requirements in Colorado's ozone SIP for 50 tpy major sources of VOC and/or NOx (which became major sources as of the effective date of the reclassification to Serious). The revisions include expanding the applicability of the combustion equipment requirements, including the combustion process adjustment requirements, in Section II. to equipment located at facilities with NOx emissions greater than or equal to 50 tons per year; incorporating by reference NSPS and/or NESHAP requirements for specific points at some 50 tpy major sources in Section III.; requiring some sources submit RACT analyses to the Division in Section III.; and a new categorical rule regarding general solvent use in Part C, Section II.F.

Consistent with Senate Bill 19-181, House Bill 19-1261 and Senate Bill 19-096, the Commission directs the Division to propose regulatory recommendations to the Commission in 2020 regarding: pneumatic devices that do not vent gas; continuous emission monitoring; alternatives to combustion for emissions control; enhanced LDAR, especially near occupied dwellings; and other options to "minimize emissions of methane and other hydrocarbons, volatile organic compounds, and oxides of nitrogen from oil and natural gas exploration and production facilities and natural gas facilities in the processing, gathering and boosting, storage, and transmissions segments of the natural gas supply chain," Colo. Rev. Stat. § 25-7-109(10)(a), including "pre-production activities, drilling, and completion," id. § 25-7-109(10)(c).

To increase transparency and accountability, the Commission further directs that in 2020 the Division explore options for developing a publicly accessible and

searchable oil and gas complaint filing and tracking tool, and to accept public input on the development of this tool. The Division will report back to the Commission on its progress in 2020.

SIP Streamlining (Part B, Sections IV. and VII. (formerly Sections VI. and XV.) & Appendices B, C, and E)

As a SIP clean-up effort, the Commission adopted revisions to Regulation Number 7, Part B, Sections IV. and VII. and removed Appendix E so the requirements align with current EPA methods and requirements.

In 1980, the Commission adopted requirements in Regulation Number 7, Section IV. requiring an annual pressure test for gasoline transport trucks. Those requirements were based on EPA's Control Techniques Guidelines (CTG) Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (December 1978) and included the test procedures for annual pressure and vacuum testing of gasoline transport trucks, as outlined in Appendix E.

In 1980, the Commission also adopted Appendix B which specifies the criteria for controlling vapors from gasoline transfer to storage tanks. Those requirements are based on EPA's CTG Design Criteria for Stage I Vapor Control Systems Gasoline Service Stations (November 1975). EPA approved these provisions into Colorado's SIP in 1995.

Since the publication of EPA's CTGs, EPA has published similar requirements for gasoline transport trucks in EPA's NSPS Subpart XX Standards of Performance for Bulk Gasoline Terminals (40 CFR Part 60, Subpart XX (August 18, 1983, last revised December 19, 2003)); NESHAP R National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (40 CFR Part 63 Subpart R (December 14, 1994, last revised April 6, 2006)); NESHAP Subpart BBBBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities (40 CFR Part 63, Subpart BBBBBB (January 10, 2008, last revised January 24, 2011)); and NESHAP Subpart CCCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities (40 CFR Part 63, Subpart CCCCCC (January 10, 2008, last revised January 24, 2011)). These federal standards reference EPA's Method 27, Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure Vacuum Test, in contrast to the CTG's pressure-vacuum test.

The Commission adopted provisions to replace the outdated vacuum-pressure test in Regulation Number 7 with the more current EPA Method 27. The Commission also updated the test values in Regulation Number 7, which are based on EPA's CTG but also correspond to the EPA Method 27 test values in EPA's NSPS XX, NESHAP R, NESHAP BBBBBB, and NESHAP CCCCCC. The Commission also revised the recordkeeping and certification requirements in Section IV. to correspond to EPA's Method 27 and federal standards. Lastly, the Commission clarified the requirements for owners or operators using vapor collection systems that such systems must be leak-tight and properly maintained and operated.

These revisions will update Colorado's SIP and align the gasoline transport truck, terminal, and service station control and testing requirements with current EPA NSPS and NESHAP standards.

Miscellaneous

The Commission has also adopted revisions to provisions not discussed in detail in order to facilitate and align the substantive revisions identified, including revisions to the Applicability in Part A, Section I.A., and exemptions in Part A, Section II.B.

Further, these revisions will correct any typographical, grammatical, and formatting errors found within the regulation.

Incorporation by Reference

§ 24-4-103(12.5) of the State Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of § 24-4-103(12.5) are met by including specific information and making the regulations available because

repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. To fully comply with these criteria, the Commission included reference dates to rules and reference methods incorporated in Regulation Number 7, Part E, Section II.

Additional Considerations

Colorado must revise Colorado's ozone SIP to address the ozone serious nonattainment area requirements. The Clean Air Act does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the ozone NAAQS and requires Colorado to develop a SIP adequate to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to satisfy Colorado's serious nonattainment area obligations.

The Commission also adopted revisions to Regulation Number 7 that are unrelated to the reclassification to serious to update and streamline requirements for gasoline transport trucks, terminals, and service stations to align with current federal requirements; therefore, these revisions do not exceed or differ from the federal act or rules thereunder. Further, the Commission adopted revisions to Regulation Number 7 to achieve further emission reductions in the oil and gas sector.

In accordance with §§ 25-7-105.1 and 25-7-133(3), CRS, the Commission states the rules in Part D, Sections II. (except II.C.1.b.(ii) and II.F.), III.F., IV., and V. of Regulation Number 7 adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado's SIP at this time.

These revisions do not exceed or differ from the federal act due to state flexibility in determining what control strategies to implement to reduce emissions. However, where the proposal may differ from federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

(I) The revisions to Regulation Number 7 address equipment and operations in the oil and gas sector including storage tanks, storage tank loadout, fugitive emissions from components, pneumatic controllers, and downstream transmission operations. The proposed revisions also include an annual oil and gas sector emissions inventory report. NSPS OOOO, NSPS OOOOa, NSPS Kb, NSPS KKK, NESHAP HH, NESHAP HHH, the Greenhouse Gas Reporting Program (GHGRP), and Pipeline and Hazardous Materials Safety Administration (PHMSA) may also apply to such oil and gas facilities and operations. The revisions to Regulation Number 7 apply on a broader basis to more storage tanks and fugitive emissions components then the NSPS and NESHAP and more facilities and operations than the GHGRP and PHMSA.

The Commission revised Regulation Number 7 to include regulatory RACT requirements for Colorado's major sources of VOC and/or NOx (> 50 tpy) in the SIP. Specifically, the Commission revised Regulation Number 7, Part E, Sections II. and III. to include categorical RACT requirements for combustion equipment at major sources of NOx and incorporate by reference federal standards for specific sources or points. MACT DDDDD, MACT JJJJJJ, MACT ZZZZ, MACT YYYY, NSPS GG, NSPS KKKK, NSPS IIII, and NSPS JJJJ may apply to

such combustion equipment. However, the Regulation Number 7 revisions apply on a broader basis to more combustion equipment. The Commission also revised Regulation Number 7 to include categorical RACT requirements for general solvent use and is not aware of federal rules applicable to general solvent use.

(II) The federal rules discussed in (I) are primarily technology-based in that they largely prescribe the use of specific technologies or work practices to comply. EPA has provided some flexibility in NSPS OOOO and NSPS OOOOa by allowing a storage vessel to avoid being subject to NSPS OOOO if the storage vessel is subject to any state, federal, or local requirement that brings the storage vessel's emissions below the NSPS OOOO threshold. EPA has also provided some flexibility in NSPS OOOOa by allowing a company to apply to EPA for an alternative means of emission limitations for fugitive emissions components.

(III) The CAA establishes the 8-hour ozone NAAQS and requires Colorado to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. Similarly, EPA develops NSPS or NESHAP considering national information and data, not Colorado specific issues or concerns. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's nonattainment area RACT obligations. Instead, Colorado can adopt applicable provisions into its SIP directly, as the Commission has done here.

(IV) In addition to the 2008 ozone NAAQS, Colorado must also comply with the lower 2015 ozone NAAQS. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as RACT analyses and efforts conducted to support the revisions adopted by the Commission may prevent or reduce the need to conduct additional RACT analyses for the more stringent NAAQS. The current revisions also attempt to maintain the air quality in areas of Colorado currently attaining the NAAQS; should an area slide into nonattainment, a nonattainment area designation would likely result in the imposition of costlier retrofits.

(V) EPA has established a Serious SIP-RACT implementation deadline of July 20, 2021, for strategies not needed for any attainment demonstration. There is no timing issue that might justify changing the time frame for implementation of federal requirements.

(VI) The revisions to Regulation Number 7 Part D, Sections I. through IV. strengthen Colorado's SIP state-only provisions. These sections currently address emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry. The revisions to Regulation Number 7, Part C, Sections II.F. recognize practices currently utilized by solvent operations. The revisions to Regulation Number 7, Part E, Sections II. and III. are also specific to existing emission points at major sources of VOC and NOx, allowing for continued growth at Colorado's major sources.

(VII) The revisions to Regulation Number 7 Part D, Sections I. through V. establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources. The revisions to Regulation Number 7, Part C, Sections II. and Part E, Section II. similarly establish the categorical RACT requirements for similarly situated and sized sources.

(VIII) If EPA does not approve Colorado's SIP, or if Colorado continues to fail to achieve the NAAQS, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. This outcome may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements. The revisions to Regulation Number 7 establishing an annual oil and gas inventory report are different than EPA's GHGRP in that more sources will be required to report under Regulation Number 7. This is necessary for Colorado to better understand the oil and gas emission sources and the opportunities to pursue additional emission reductions. Newly enacted legislation in Colorado has also established a compelling reason to adopt the monitoring, recordkeeping, and reporting requirements in the revisions.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable, such as the requirements for storage tanks and component leaks. Other revisions reflect changes in industry practice, such as for solvent use. Similarly, the revisions concerning major sources of VOC and NOx generally reflect current emission controls and work practices.

(XI) The revisions adopted will reduce significant amounts of VOC and methane, addressing both Colorado's ozone problems and making strides to reduce the impact of climate change. As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will reduce emissions in a cost-effective manner.

(XII) Alternative rules could also provide reductions in ozone, VOC, NOx, methane, and other hydrocarbons to address SB 19-181 and help to attain the NAAQS. SB 19-181 specifically directs the Commission to "consider" revising its rules to adopt more stringent requirements related to LDAR, pneumatic devices, monitoring, and the transmission segment. The Commission determined that the Division's proposal was reasonable and cost-effective. However, a no action alternative would very likely result in an unapprovable SIP.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in CRS § 25-7-109(1)(b).

Colorado must revise Colorado's ozone SIP to address the serious nonattainment area requirements. However, to the extent that CRS § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of methane, VOCs, and other hydrocarbons.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

Hundreds of people from across the state submitted written comments on the proposed changes to Regulations 3 and 7. Most of these written comments called for additional regulation of oil and gas operations, to fulfill the directives of SB 19-181, protect public health, and reduce greenhouse gas emissions. Prior to the rulemaking hearing, the Commission held public comment sessions in Rifle, Durango, and Loveland, on December 10, 11 and 16, respectively. Dozens of members of the public spoke at each of these sessions. Many commenters expressed support for the proposed changes to Regulations 3 and 7, citing concerns about risks to health and to the climate from oil and gas emissions. Many commenters at the Rifle and Durango meetings emphasized the need for rules to be applied statewide. Commenters also called on the Commission to develop requirements for continuous monitoring of oil and gas emissions. Some speakers at each comment session expressed concern that the industry was being overregulated, with some on the Western Slope emphasizing that their part of the state was in attainment with ozone standards and expressing concerns with the impact more stringent rules might have on the industry.

T. September 23, 2020 (Part D, Sections II., IV., V., VI. and Part E, Section I.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act § 24-4-103(4), the Colorado Air Pollution Prevention and Control Act, Colorado Revised Statutes (CRS) §§ 25-7-110 and 25-7-110.5., and the Air Quality Control Commission's (Commission) Procedural Rules.

Basis

The Commission revised Part E, Section I. to reduce emissions from natural gas fired reciprocating internal combustion engines (RICE) greater than or equal to 1,000 horsepower (hp) on a state-wide basis. The revisions are in response to four distinct directives to secure reductions: Senate Bill 19-181 (SB 19-181); the second implementation period of the Regional Haze Rule pursuant to Clean Air Act Section 169A; progress towards the 2008 ozone National Ambient Air Quality Standard (NAAQS) of 75 ppb and 2015 ozone NAAQS of 70 pp; and to address nitrogen deposition at Rocky Mountain National Park (RMNP).

The Commission also revised Part D, Sections II.G., IV., and V. to include annual reporting of carbon dioxide (CO2) and nitrous oxide (N2O) and Section V. to include additional emissions reporting from class II disposal well facilities. The Commission adopted a new Part D, Section VI. requiring owners and operators of pre-production oil and gas operations to monitor pollution during pre-production (i.e., drilling through flowback) and early-production and to control emissions from pre-production tanks and vessels (i.e., flowback vessels). Lastly, the Commission expanded the requirements in Part D, Section II. to control emissions from hydrocarbon liquids loadout at class II disposal well facilities. These proposed revisions are a next step in addressing the directives of SB 19-181, SB 19-096, and HB 19-1261, building upon revisions adopted by the Commission in December 2019.

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, §§ 25-7-101, CRS, et seq. (Act), specifically § 25-7-109(10) directs the Commission to adopt emission control regulations to minimize emissions of methane, other hydrocarbons, VOC, and NOx from oil and gas operations. §§ 25-7-109(1)(a), (2), and (3) authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources; emission control regulations pertaining to NOx, hydrocarbons, and hazardous air pollutants; and emissions control regulations pertaining to the storage and transfer of petroleum products and other VOCs. § 25-7-109(2)(c), in particular, provides broad authority to regulate hydrocarbons. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. § 25-7-105(1) directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant to include essentially any gas emitted into the atmosphere (and, as such, includes VOC, NOx, methane, and other hydrocarbons) and provides the Commission broad authority to regulate air pollutants.

Purpose

To address SB 19-181, SB 19-096, HB 19-1261, ozone, visibility, and nitrogen deposition, the Commission adopted revisions to Regulation Number 7 that limit emissions from engines, limit emissions from pre-production tanks, reduce emissions from hydrocarbon liquids loadout at class II disposal well facilities, require reporting of emissions from class II disposal well facilities, expand annual reporting to include additional greenhouse gases, and require monitoring at pre-production and early production oil and gas operations. These revisions are all adopted on a state-wide and state-only basis.

Engines (Part E)

The Commission adopted requirements in Part E, Section I. to minimize emissions from natural gas fired RICE. The requirements apply to natural gas fired RICE greater than or equal to 1,000 HP. The requirements are responsive to SB 19-181 as it applies to engines used in the oil and gas sector, as well as securing NOx reductions that will also reduce ozone, visibility, and nitrogen deposition at RMNP.

Except for the combustion process adjustment requirements for engines at major sources, the Commission has not revised the requirements pertaining to engines since 2010, and emissions from engines associated with oil and gas production in Colorado have continued to increase. While the Commission recognizes the twin challenges currently faced by the oil and gas industry in Colorado - the COVID-19 pandemic and low oil prices - this regulation's provisions for phasing in compliance over time and, particularly, the unique characteristics of the Alternative Company-Wide Compliance Plan (Company-Wide Plan, affords the industry the flexibility necessary to achieve emission reductions necessary to protect public health and the environment in a cost effective manner.

Applicability (Section I.D.5.a.)

The Commission adopted a new subpart, Section I.D.5., to establish state-only standards to reduce emissions from a subset of existing stationary engines operating over or equal to 1,000 HP and those placed in service, modified, or relocated after November 14, 2020. As defined in the rule, "placed in service" addresses when an engine is brought to a site for utilization. "Placed in service" is a new term that deviates from the Division and industry's traditional reliance on the defined term "commence construction" or NSPS JJJJ's reliance upon manufacture date.

The Commission is clarifying when replacement of an engine under an authorized alternative operating scenario (AOS) would not trigger the engine to be subject to the standards in Table 2 for engines "placed in service" after November 14, 2020. Subsequent replacements under an authorized AOS also would not trigger the replacement engine to be subject to the standards in Table 2 for engines "placed in service" after November 14, 2020. If an engine is replaced under an AOS, while it may not trigger the lower standards based on "placed in service," it may nonetheless trigger the lower standards if it is "relocated" – i.e. if the replacement engine is brought into Colorado from outside Colorado, or brought into the nonattainment area from outside the nonattainment area. The return of an engine to the same site from which it was removed for the sole purpose of repair or maintenance is not considered "placed in service" or "relocated" for purposes of this Section I.D.5.

The Commission also adopted a different framework for "relocated" engines in Regulation Number 7, Part E, then in Regulation Number 6, Part B, which provides that engines brought to a site from another location in Colorado are not considered "new" and are not subject to the more stringent standards of the applicable NSPS. Under Regulation Number 7, there are only two exceptions to when an engine is considered new: when an engine is replaced under an alternative operating scenario

(AOS) in an existing permit, which requires the engine to meet the same standards as the engine replaced, or when an engine subject to a Company-Wide Plan is moved from one site to another site with the same owner or operator. When an engine is subject to a Company-Wide Plan, the operator will have more flexibility to move an engine as long as it achieves at least the same emission reductions under the plan. However, an engine brought into the 8-Hour Ozone Control Area is considered “relocated” and must meet or exceed the standards as of the date it begins operation, whether or not it is subject to a Company-Wide Plan.

Emission Standards (Section I.D.5.b.)

The Commission adopted different emission standards based on engine configuration and the date that the engine was placed in service, modified, or relocated. The Commission intends that the applicable engine configuration is determined by the most current Division-issued permit or APEN filed prior to November 14, 2020. If the engine configuration is not identified in a Division-issued permit or APEN, the owner or operator is required to submit an APEN with this information to the Division by May 1, 2021. After November 14, 2020, any change to the identified configuration that results in an emissions increase is considered a modification.

The Commission adopted, generally, more stringent NOx standards applicable to engines placed in service, modified, or relocated after November 14, 2020. However, for 2-stroke lean burn engines, the NOx standard is the same whether the engine is currently in use at a site or brought on at a later date. The Commission also intends that any engines subject to a more stringent standard under a permit or other rule, such as Section I.D.2.b. of Regulation Number 7, must still comply with that more stringent limit. The Commission adopted varying timing requirements for owners or operators to meet the emission standards, based on the location of subject engines inside and outside of the 8-Hour Ozone Control Area. Owners or operators with any engines in the 8-Hour Ozone Control Area are subject to a more aggressive timeline, which requires 100% of engines inside the 8-Hour Ozone Control Area to meet the emission standards by May 1, 2024, and 100% of engines outside the 8-Hour Ozone Control Area meet the emission standards by May 1, 2026. Operators with no engines inside the 8-Hour Ozone Control Area must follow the second timeline and meet the standards of at least 20% of engines each year from 2022 to 2026.

The Commission intends that the emission standards in Table 2 are a gram per horsepower-hour limit based on appropriate averaging times. The Commission also intends that operators demonstrate compliance with the certification and recordkeeping requirements through the performance testing results required by Section I.D.5.d and the portable analyzer results obtained in accordance with Section I.D.5.e., using the appropriate averaging times.

The Commission requests that the Division consider evaluating strategies to increase the electrification of engines, lower emissions standards for engines, and possible controls applicable to smaller engines.

Notification to Division (Section I.D.5.b.(iii))

If an owner or operator has subject engines, the owner or operator must submit a notice to the Division no later than May 1, 2021. However, the owner or operator of engines covered by a Company-Wide Plan will not need to submit the information required by Section I.D.5.b.(iii) for all engines.

Permit Modification (Section I.D.5.b.(iv))

The Commission adopted two deadlines for when a permit modification application is required. If the engine can meet the standards through only a permit modification, the application is due May 1, 2021. If the engine cannot meet the standards through only a permit modification, the application is due 365 days prior to that engine's compliance deadline. An example of the first scenario is where an engine currently permitted with a high emission rate can meet the standards if operated at a lower emission rate and it is, in fact, already operating as of November 14, 2020, at that lower emission rate. In contrast, an example of the second scenario is where an engine is permitted at an emission rate above the applicable standard and operates at its permitted level, which would require the operator to change the operation of the engine in order to comply. This engine, therefore, would have a compliance date in accordance with Section I.D.5.b.(v)(B), and the permit application would be due 365 days prior to that engine's compliance deadline. Stakeholders expressed concerns that the Division may not be able to timely process all of the permit modifications.

Therefore, the Commission determined that the flexibility outlined in the rule was necessary for both industry and the Division. In the case of a pending permit modification, the Commission intends that the most current APEN requested limits will be used to determine compliance with the rule.

Industry stakeholders have expressed that the rules need to be more accommodating for Division delays in permit issuance for those situations where owners and operators cannot take action to comply with the emission standards without a permit in hand. Industry notes that without a revised permit, owners and operators would be out of compliance with federal and state permit requirements, leaving the operator with the choice of what standards to comply with. Based on information provided by these stakeholders, the Division believes that there are only 15 such permits. Additionally, the vast majority of engine upgrades do not necessitate a permit modification prior to completing the upgrade.

The Division has indicated that it has enough dedicated staff to complete the required permit modifications in a timely fashion so long as the operator submits the permit application at least one year in advance of the compliance deadline. To address stakeholder concerns, the Commission expects the Division to work with operators that require a permit prior to commencing upgrades and create a process to give these permit applications priority. Should any permits push up against the one-year issuance deadline, the Division, in its discretion, will evaluate any potential operator compliance deadline extensions on a case-by-case basis.

Alternative Company-Wide Compliance Plan (Company-Wide Plan) *(Section I.D.5.c)*

The Commission adopted a Company-Wide Plan option to allow flexibility for each owner or operator to develop a technologically and economically feasible timeline tailored to its individual operations to achieve the same or better emission reductions than would be achieved through compliance with the emission standards on an individual engine basis. The Company-Wide Plan requires an overall emissions percentage reduction based on company-wide engine operations. Owners or operators using this option must demonstrate that the total NOx emissions allowed under the Company-Wide Plan are less than or equal to the total NOx emissions allowed through compliance with the emission standards on an individual engine basis. Engines included in a Company-Wide Plan remain subject to the performance testing, monitoring, recordkeeping, and reporting requirements.

This Company-Wide Plan option is available only to owners or operators with five or more engines that are subject to Section I.D.5.b(v)(B). For purpose of the Company-Wide Plan only, the term owner/operator refers to owners or operators that are participating in a Company-Wide Plan and are owned or operated by the same parent company. Engines that already meet the emission standards of Table 2 but only need a permit modification to reflect compliance may not be part of a Company Wide Plan for which credit is claimed by the operator. However, if the operator makes a further retrofit to the engine, the operator may include that engine in the Company Wide Plan and claim credit for the reductions achieved by the further retrofit. For example, if Engine A, a 4-stroke lean burn engine, has a permit limit of 1.8 g/hp-hr, but currently operates at 1.2 g/hp-hr, Engine A would not

be included in the Company Wide Plan. However, if the operator installs additional control technology such that Engine A can now operate at 1.0 g/hp-hr, the emission reductions associated with the drop in emissions from 1.2 g/hp-hr to 1.0 g/hp-hr can be included in the Company-Wide Plan. Only physical retrofits, and not operational changes, can be accounted for in this manner.

Owners or operators will submit a notification (referred to as a compliance plan) using a Division-approved form that will be developed with stakeholder input. Recognizing that the Company-Wide Plan is intended to afford flexibility only where it will achieve the same or better reductions, the Commission has provided for detailed information to be submitted to the Division for review. The information submitted will allow the Division to compare the emission standards and operating conditions that an engine is meeting before and after the Company-Wide plan as well as the maximum emissions permissible if all Company-Wide Plan engines complied individually with the standards versus the permissible emissions under the Company-Wide Plan.

Owners or operators must calculate “Plan Emission Reductions” - i.e. a summation of NOx emission reductions from all engines in the Company-Wide Plan. This figure is calculated by looking at the maximum amount of NOx emissions from the engines before November 14, 2020 (using the current permitted emission rate) and subtracting the maximum amount of NOx emissions that will be allowed from those engines under the Company-Wide Plan.

Owners or operators must also demonstrate that the Company-Wide Plan will result in real emission reductions, and the Division is directed to disapprove any Company-Wide Plan that the Division determines does not achieve those reductions. Owners or operators will calculate the estimated historic emissions from the plan’s engines in tons per year as a baseline, using the most stringent regulatory or permitted emission standards and operating conditions in conjunction with actual operating hours (averaged over 2017-2019). That baseline figure is then compared to the maximum amount of emissions permissible from the Company-Wide Plan engines to ensure that the Company-Wide Plan will result in emission reductions. The demonstration also includes a comparison of the emission reductions that would be achieved from the actual baseline figure if each engine complied with the emission standards on an individual basis to the reductions that will be achieved under the Company-Wide Plan. In this way, the Commission seeks to ensure that a Company-Wide Plan achieves demonstrable reductions in NOx emissions.

Owners or operators will not be allowed to utilize reductions in permitted operating hours to offset emission reductions that would otherwise be achieved where permitted hours are higher than actual hours of operation (on average over 2017, 2018, and 2019). For example, an operator with a permit to operate at 8,760 hours per year but that operated only at 5,000 hours per year (on average over 2017, 2018, and 2019) cannot modify its permit to lower the permitted hours of operation to 5,000 and thereby create NOx emissions for which it can take credit in its Company-Wide Plan.

Some stakeholders have expressed concerns over how engines that began operation during or after the averaging years will calculate “historic” emissions. For these types of engines, the Commission expects that the most recent year(s) of operation should be used to calculate “historic” emissions. If there is less than one year of operation during this time frame, the Commission expects that the operator should extrapolate the available operation emission data to one year to estimate “historic” emissions.

Owners or operators must also submit notice of relocated engines in the annual update to the Company-Wide Plan, beginning in 2022. A relocated engine will be categorized by its new location (inside or outside of the 8-Hour Ozone Control Area) for purposes of the engine’s compliance deadline.

To assist with implementation, the Commission directs the Division to provide timely guidance to the regulated community as to how to develop a Company-Wide Plan. The Commission recognizes that the Company-Wide Plan provisions are complicated, and believes providing the following examples of how the Commission intends the program to work will be helpful.

Example 1:

An engine in a Company-Wide Plan is located inside the 8-Hour Ozone Control Area. It is moved from site A to site B (same owner/operator), also within the 8-Hour Ozone Control Area. The engine was not “placed in service” or “relocated” within the meaning of this rule, and compliance deadlines would not change. The owner/operator just submits the new location in its annual update.

Example 2:

An engine in a Company-Wide Plan is located outside the 8-Hour Ozone Control Area. It is moved from site A to site B (same owner/operator), except that site B is located inside the 8-Hour Ozone Control Area. The engine is not “placed in service” within the meaning of this rule but it is “relocated.” The engine’s relocation into the 8-Hour Ozone Control impacts both the standard with which it must comply and the timing of when the new standard must be achieved.

If the engine was not proposed for retrofit or if it was proposed for retrofit but under the Company-Wide Plan it would not meet the standard, the engine will need to meet the emission standards as of its date of operation following relocation. If the engine was proposed for retrofit to achieve performance below the emission standards (retrofit/shut-down, etc.), the engine must meet the more stringent of either the applicable standard or the proposed Company-Wide Plan standard as of the date of operation following the relocation date. Conversely, if an engine subject to a Company-Wide Plan located in the 8-Hour Ozone Control Area is moved to a different site (same owner/operator) outside of the 8-Hour Ozone Control Area, the engine is not “placed in service” or “relocated” within the meaning of this rule. The engine must meet the standard specified in the Company-Wide Plan consistent with the applicable compliance date.

Example 3:

Operator A has 20 engines and submits a Company-Wide Plan that includes modifying five engines (in 2022 and 2023) and shutting down two engines (in 2024). Operator A then transfers ownership of one of the engines (either the engine or the entire facility) to be shut down to Operator B; that shutdown would have achieved 20 tons per year (tpy) NOx reduction. Operator A must find an additional 20 tpy NOx reduction from the 19 engines remaining in its Company-Wide Plan.

Example 4:

A Company-Wide Plan includes shutting down an engine. The operator then realizes it needs a replacement engine at that same site. The operator has a few options. First, the operator can amend its Company-Wide Plan to no longer shut down the engine (assuming the engine's compliance deadline has not yet passed) and can identify other actions to be taken to achieve the emission reductions that would have otherwise been realized from the shutdown of the engine. Second, the operator can shut down the engine as originally intended and bring on a new engine. The new engine will be subject to the emission standards as an engine "placed in service" after November 14, 2020, and cannot be a part of the operator's Company-Wide Plan because an engine scheduled for shut down under a Company-Wide Plan cannot be replaced with a different engine subject to the Company-Wide Plan. Because the operator must comply with the Company-Wide Plan, the operator will still need to cancel the APEN and permit for the existing engine and permit the new engine as a new source.

Example 5:

An operator has ten engines subject to a Company-Wide Plan and intends to modify five of those engines to achieve the required Plan Emission Reductions. However, in order to meet the CO standards for one of the engines that will not be modified to achieve Plan Emission Reductions, the operator must make an adjustment that has the effect of increasing NOx emissions from that engine. In calculating the maximum allowable NOx emissions from engines in the compliance plan and Plan Emission Reductions required, the operator must account for the increase in NOx emissions from the engine.

Performance Testing, Monitoring, Recordkeeping, and Reporting (Sections I.D.5.d., I.D.5.e., I.D.5.f., and I.D.5.g.)

The Commission adopted performance testing requirements to establish a baseline for evaluating an engine's performance – i.e. to enable an operator to know whether the engine was meeting the standards already or how much action might be required to meet the standards. To conserve the resources of both the Division and the operators, the Commission has allowed for operators to rely on existing ongoing semi-annual portable analyzer testing requirements, as well as performance testing conducted under NSPS JJJJ, a permit, or testing conducted voluntarily after January 1, 2020. The Commission also adopted semi-annual portable analyzer testing requirements. The portable analyzer monitoring must commence within twelve (12) months of the initial performance test. The Commission intends that operators will conduct two portable analyzer tests in 2022, the first of which must be completed by June 30, 2022.

The Commission has also adopted new monitoring, recordkeeping and reporting requirements. With respect to oil and filter changes under Section I.D.5.e.(iv)(A), the Commission acknowledges that the development of an oil analysis program that tests to ensure that oil does not need to be changed meets the requirements of that section.

In the recordkeeping section, the Commission requires that for both performance tests and portable analyzer tests, the owner or operator retains records regarding the date, engine settings on the date of the test, and documentation of the methods and results of the testing/monitoring. The Commission acknowledges that maintaining the test reports (for performance tests) and maintaining records consistent with the Division's Portable Analyzer Monitoring Protocol (for portable analyzer test), is sufficient to demonstrate compliance with the requirements to maintain the date, engine setting on the date of the test, and documentation of the methods and results of the testing/monitoring. The Commission has required the reporting of the results of performance tests (Section I.D.5.g.(i)) and semi-annual portable tests (Section I.D.5.g.(iv)). By "results," the Commission means that the owner/operator shall indicate whether the tests were passed or failed. Other, more detailed results are required to be maintained as part of the recordkeeping requirements and will be available to the Division upon request.

General provisions (Section I.D.2.)

In 2019, the Commission adopted a reorganization of Regulation Number 7 moving like-sections together, including engines. The Commission now completes the reorganization of the engine sections by duplicating the applicable general provisions that applied to engines in Part D, Section II. (formerly numbered Section XVII.) in Part E, Section I.D.2. These provisions will continue to apply to engines addressed in Part E, Sections I.D.3. and I.D.4. (formerly Sections XVII.E.) and will also apply to engines addressed under the new Part E, Section I.D.5.

Oil and gas operations (Part D)

The Commission expanded or adopted additional requirements in Part D to further minimize emissions of greenhouse gases, ozone precursors, and other hydrocarbons from the oil and gas sector.

Pre-production and early production monitoring

The Commission adopted a new Section IV. that requires owners or operators to monitor air quality at and/or around pre-production operations (i.e., drilling, fracturing, drill-out, flowback) and early production operations (i.e., six months). The purpose of this air quality monitoring is multi-faceted in that the Commission anticipates the monitoring program will gather information about the evolving oil and gas monitoring technologies, data about potential emissions during pre-production and early production operations (e.g., ozone precursor emissions, greenhouse gas emissions, hazardous air pollutants), and inform future monitoring efforts. Owners or operators will also monitor air quality for ten days prior to beginning pre-production operations. The Commission recognizes that ten days does not provide a comprehensive or long-term baseline but intends that it cover

day-of-week variability in surrounding activities and short-term meteorological variability, in order to provide a reference point for interpreting subsequent data.

Owners or operators must submit an air quality monitoring plan to the Division for approval prior to monitoring air quality. The Commission created a flexible air quality monitoring program that allows the operator to specify what pollutant(s) representative of pre-production and early production hydrocarbon emissions will be monitored and by what monitoring technology. The Commission anticipates that the additional elements of the air quality monitoring plan, such as monitor siting, frequency of measurements, monitoring equipment limitations, and ability to trigger or collect speciated samples, will vary based on the monitoring objectives and technology utilized.

The Commission also anticipates that the response level(s) will vary based on the monitoring technology, monitor placement, the pollutant(s) monitored, data collection and averaging times, and other factors. The response level may differ from a lower detection level established by the owner or operator that triggers an initial investigation of potential emissions at the facility. The Commission expects that the monitoring technology selected will have a detection ability sufficient to detect the pollutant(s) monitored at an appropriate level above area concentrations such that the monitoring objectives (e.g., detect ozone precursors, detect hazardous air pollutants, detect greenhouse gas emissions, associate elevated monitored values to an emission source within the monitored operations) are achieved. The Commission recognizes that not every elevated measurement constitutes a detection requiring a response but instead may be accompanied by analytics evaluating the measurements in comparison to an emission source or activity. The Commission also expects that placement of the monitors will be designed to be adequate to meet the objectives of the monitoring plan and that operators will select a monitoring technology that collects measurements at short-term intervals (e.g., 1 minute, 15 minutes, 1 hour) and appropriate sensitivity.

For example, concentrations at 2000-4000 feet away from the operations are likely to be low and, therefore, would require high-sensitivity instruments; monitors placed in close distance to the operations may need to be placed at variable heights to detect emissions from equipment of different heights; or monitors may need to be placed in both upwind and downwind locations, depending on the monitoring technology. In addition, the Commission expects the Division to work with operators in approving air quality monitoring plans to make sure that local jurisdiction air quality monitoring requirements and COGCC site preparation requirements are considered. The Commission expects the Division to consult with relevant local governments in reviewing monitoring plans, to obtain their input on local circumstances or concerns that may guide the Division’s determinations on plan adequacy.

Owners or operators will also submit monthly reports of air quality monitoring to the Division. These monthly reports will include descriptions of activities that occurred during the monitoring period such that monitoring data can be understood in relation to activity onsite (e.g., accounting for engine emissions). The Commission recognizes that monitoring data often requires additional analysis to interpret the resulting data. Therefore, for this first oil and gas air quality monitoring program, the Commission expects that operators will make the raw data (e.g., monitor/sensor and meteorological readings prior to analysis or processing) available to the Division upon request (and expects the Division to make the raw data available to the relevant local government entities upon request) but submit the analyzed data results in the monthly reports. The Commission believes these reports will provide valuable information to interested citizens, particularly those who live in close proximity to oil and gas facilities. Therefore, the Commission requests that the Division make the reports publicly available in the most efficient means possible, which may include posting on the Division’s website individual reports and/or a compilation summary. This flexible monitoring program is intended as an initial step to help inform future oil and gas monitoring efforts.

Recognizing that this pre-production emissions monitoring program represents a first step in understanding both pre-production emissions and the rapidly evolving technologies that may be used to monitor them, the Commission directs the Division to report back to the Commission no later than March 31, 2022 with an initial summary of activities to implement the rule since September, 2020; learnings and insights on monitoring technologies, including technologies for continuous methane monitoring; appropriate data summaries on observed emissions based on the monthly reports received; initial feedback on the adequate length of monitoring time during and possible identification of exemptions from monitoring for certain types of facilities.

Flowback vessels

The Commission also adopted in the new Section VI. a requirement for owners of operators of pre-production operations to control emissions from flowback vessels. After hydraulic fracturing, operators bring the frac fluids and entrained solids to the surface. EPA's NSPS OOOOa Section 60.5375a requires operators to route flowback during the initial flowback stage into one or more well completion vessels or storage vessels and commence operation of a separator unless it is technically infeasible for a separator to function. During the separation flowback stage, NSPS OOOOa requires operators to route all recovered liquids from the separator to one or more well completion vessels or storage vessels, re-inject the liquids into a well, or route the liquids to a collection system. NSPS OOOOa allows operators to use open vessels to contain flowback fluids and solids and does not consider a well completion vessel a storage vessel, which means operators are not required to control well completion vessel emissions. Therefore, to build on the NSPS reduced emission completion requirements and further reduce pre-production tank emissions, owners or operators of pre-production operations must use enclosed flowback vessels after the drill-out phase, which the Commission recognizes has a high ratio of solids to liquids, and route emissions from flowback vessels to air pollution control equipment.

Class II disposal well facilities

The Commission added a new definition of class II disposal well facilities. This definition is based on EPA's Underground Injection Control Program: Criteria and Standard definition of class II well (see 40 CFR Section 146.5(b)(1)). The Commission did not include the element of EPA's definition concerning enhanced recovery of oil or natural gas as storage tanks related to those activities are considered part of the associated well production facility. The Commission recognizes that some class II disposal well facility operators interpret Part D, Section II.C. such that their storage tanks have not been subject to the storage tank control requirements. Although the Commission understands that the Division intended Part D, Section II.C. to apply to storage tanks serving class II disposal well facilities, the Commission also recognizes that a good faith argument existed under the prior rule language to support the alternative interpretation. The Commission intends for the Division to work with owners or operators to address implementation concerns that may arise including related to the May 1, 2021, state-wide compliance deadline for controlling emissions from storage tanks $\geq$ 2 tpy and associated monitoring requirements as well as concerns related to the need for supplemental fuel to control emissions.

The Commission also expanded the hydrocarbon liquids loadout requirements in Part D, Section II.5. to hydrocarbon liquids loadout at class II disposal well facilities. Operators inject fluids, primarily brines, associated with oil and natural gas production into class II wells. Current regulatory requirements in the Safe Drinking Water Act for class II wells relate to the construction, operation, and monitoring of the well. The Safe Drinking Water Act does not require emissions reporting or storage tank or loadout emissions controls at class II disposal well facilities.

Therefore, the Commission expanded the hydrocarbon liquids loadout requirements to class II disposal well facilities to reduce emissions from these operations.

The Commission directs the division to evaluate potential emission issues associated with load ins at class II disposal facilities

Annual emissions reporting

In 2019, the Commission adopted annual emissions reporting requirements for Colorado's oil and gas sector in Part D, Sections II.G., IV., and V. Owners and operators are required to report VOC, NOx, CO, ethane, and methane emissions to the Division on an annual basis. To further address and inform the GHG directives of Senate Bill 19-096 and House Bill 19-1261, the Commission expanded the reporting requirements to include the reporting of CO2 and N2O emissions from Colorado's oil and gas sector.

As described, the Safe Drinking Water Act does not require emissions reporting. Therefore, the Commission also clarified and expanded the annual emissions reporting requirements for class II disposal well facilities to better understand the emissions from these facilities and activities. Related to the fluids accepted for injection disposal, the Commission is requiring owners or operators to take periodic samples of the liquids to inform emission estimates. Acknowledging that fluid intake and facility designs may differ, the Commission expects the Division will work with owners and operators to develop sampling frequencies and protocols and to ensure accurate and consistent methods are used for emissions estimation and reporting. Further, these revisions will correct any typographical, grammatical, and formatting errors found within the regulation.

Incorporation by Reference

§ 24-4-103(12.5) of the State Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of § 24-4-103(12.5) are met by including specific information and making the regulations available because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. To fully comply with these criteria, the Commission includes reference dates to rules and reference methods incorporated in Regulation Number 7.

Community Engagement

§ 25-7-105(e) requires engagement with disproportionately impacted communities, other state agencies, stakeholders, and the public. The Division provided multiple ways for the public, local governments, industry, environmental groups, and other stakeholders to provide comment during the development of the proposed rules, including email and remote stakeholder meeting participation.

Additional Considerations

The Clean Air Act does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the ozone NAAQS and Regional Haze Rule and requires Colorado to attain the NAAQS and reduce visibility. Therefore, the Commission adopted certain revisions to Regulation Number 7 to reduce VOC and NOx emissions in Colorado. In accordance with §§ 25-7-105.1 and 25-7-133(3), CRS, the Commission states the rules adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado’s SIP at this time.

These revisions do not exceed or differ from the federal act due to state flexibility in determining what control strategies to implement to reduce emissions. However, where the proposal may differ from federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

(I) The revisions to Regulation Number 7 address equipment and operations in the oil and gas sector including engines, pre-production operations, and class II disposal well facilities storage tanks and storage tank loadout. The proposed revisions also revise the annual oil and gas sector emissions

inventory report to include GHGs and class II disposal well facilities. NSPS JJJJ, NSPS OOOO, NSPS OOOOa, NSPS Kb, NSPS KKK, NESHAP HH, NESHAP HHH, NESHAP ZZZZ, and the Greenhouse Gas Reporting Program (GHGRP) in 40 CFR Part 98 may also apply to such oil and gas facilities and operations. The revisions to Regulation Number 7 apply on a broader basis to more storage tanks then the NSPS and NESHAP, more engines than NESHAP JJJJ, and more facilities and operations than the GHGRP.

(II) The federal rules discussed in (I) are primarily technology-based in that they largely prescribe the use of specific technologies or work practices to comply. EPA has provided some flexibility in NSPS OOOO and NSPS OOOOa by allowing a storage vessel to avoid being subject to NSPS OOOO if the storage vessel is subject to any state, federal, or local requirement that brings the storage vessel's emissions below the NSPS OOOO threshold.

(III) The CAA establishes the 8-hour ozone NAAQS and requires Colorado to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. The Regional Haze Rule was also not determined taking into account concerns unique to Colorado. Similarly, EPA develops NSPS or NESHAP considering national information and data, not Colorado specific issues or concerns.

(IV) In addition to the 2008 ozone NAAQS, Colorado must also comply with the lower 2015 ozone NAAQS. And, Colorado must improve visibility in accordance with Regional Haze. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as efforts conducted to support the revisions adopted by the Commission may prevent or reduce the need to conduct additional analyses for the more stringent NAAQS. The current revisions also attempt to maintain the air quality in areas of Colorado currently attaining the NAAQS; should an area slide into nonattainment, a nonattainment area designation would likely result in the imposition of costlier retrofits. And, the current revisions will improve visibility across the state, in particular in Colorado's class I areas.

(V) Colorado must attain the 2008 ozone NAAQS by July 20, 2021, and the 2015 ozone NAAQS by August 3, 3021, or risk being reclassified. Colorado must make reasonable progress toward improving visibility or risk EPA establishing a federal regional haze plan for Colorado. EPA has established a Serious SIP-RACT implementation deadline of July 20, 2021, for strategies not needed for any attainment demonstration. EPA has established a Regional Haze SIP submittal deadline of July 1, 2021. There is no timing issue that might justify changing the time frame for implementation of federal requirements.

(VI) The revisions to Regulation Number 7 address emissions from engines and the oil and gas sector in a cost-effective manner, as detailed in the Economic Impact Analysis, allowing for continued growth of Colorado's industry.

(VII) The revisions to Regulation Number 7 establish reasonable equity for owners and operators subject to these rules by providing the same standards for similarly situated and sized sources.

(VIII) If Colorado continues to fail to achieve the NAAQS or make progress to reduce visibility, EPA may promulgate Federal Implementation Plans; thus potentially determining requirements for Colorado's sources. This outcome may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements. The revisions to Regulation Number 7 establishing and revising annual oil and gas inventory reporting are different than EPA's GHGRP in that more sources will be required to report under Regulation Number 7. This is necessary for Colorado to better understand the oil and gas emission sources and the opportunities to pursue additional emission reductions. Newly enacted legislation in Colorado has also established a compelling reason to adopt the monitoring, recordkeeping, and reporting requirements in the revisions.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable, such as the requirements for hydrocarbon liquid loadout. Other revisions reflect changes in industry practice, such as for controlling emissions from flowback vessels.

(XI) The revisions adopted will reduce NOx, VOC, and methane, addressing both Colorado's ozone problems, making strides to reduce the impact of climate change, and making progress to improve visibility. As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will reduce emissions in a cost-effective manner.

(XII) Alternative rules could also provide reductions in greenhouse gases, ozone, VOC, NOx, other hydrocarbons, impacts to visibility, and nitrogen deposition to address Regional Haze, SB 19-181, and help to attain the NAAQS. SB 19-181 specifically directs the Commission to "consider" revising its rules to adopt more stringent requirements for the oil and gas sector. The Commission determined that the Division's proposal was reasonable and cost-effective. However, a no action alternative would very likely result in the need for much more stringent requirements to reduce nitrogen deposition in RMNP, improve visibility in Colorado's Class I areas, and reduce ozone across the state but particularly in the DMNFR.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in CRS § 25-7-109(1)(b).

To the extent that CRS § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of methane, VOCs, and other hydrocarbons.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

U. December 18, 2020 (Part D, Section II.; Part E, Sections II., IV., and V.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-101, C.R.S., et. seq., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 Code Colo. Reg. §1001-1.

Basis

On December 26, 2019, the Environmental Protection Agency (EPA) reclassified the Denver Metro North Front Range (DMNFR) to Serious, after 2015-2017 ozone data failed to show attainment of the 2008 8-hour Ozone National Ambient Air Quality Standard (NAAQS). See 84 Fed. Reg. 247 (December 26, 2019). As a Serious area, the major source threshold lowers from 100 tons per year (tpy) of VOC or NOx to 50 tpy. EPA has also designated the DMNFR as Marginal nonattainment for the 2015 ozone NAAQS of 70 ppb. Therefore, to ensure progress towards attainment of the 2008 and 2015 ozone NAAQS, the Commission is adopting revisions to Regulation Number 7 to include reasonably available control requirements (RACT) for major sources with VOC and/or NOx emissions equal to or greater than 50 tpy; specifically, for foam manufacturing, boilers, turbines, landfill gas and biogas fired engines, and wood surface coating.

Statutory Authority

The State Air Act, specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant to include essentially any gas emitted into the atmosphere (and, as such, includes VOC, NOx, methane and other hydrocarbons) and provides the Commission broad authority to regulate air pollutants. Section 105(1)(a)(I) directs the Commission to adopt a state implementation plan (SIP) to attain the NAAQS. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6) further authorizes the Commission to require

owners and operators of any air pollution source to monitor, record, and report information.

§§ 25-7-109(1)(a), (2), and (3) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, emission control regulations pertaining to nitrogen oxides and hydrocarbons, and emissions control regulations pertaining to the storage and transfer of petroleum products and other VOCs. § 25-7-109(2)(c), in particular, provides broad authority to regulate hydrocarbons. § 25-7-109(10) directs the Commission to adopt emission control regulations to minimize emissions of methane, other hydrocarbons, VOC, and NOx from oil and gas operations.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7, and includes technological and scientific rational for the adoption of the revisions.

The Commission is revising Regulation Number 7 to include provisions in the SIP that require the implementation of RACT for major sources ($\geq$ 50 tpy NOx and/or VOC) including expanding existing requirements, incorporating federal requirements, and including categorical RACT requirements.

The Commission is also clarifying requirements related to leak detection and repair (LDAR) inspections. The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

Major source RACT

Due to the reclassification to Serious, Colorado must submit revisions to its SIP to address the Clean Air Act's (CAA) Serious ozone nonattainment area requirements, as set forth in CAA §§ 172 and 182(c) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (See 80 Fed. Reg. 12264 (March 6, 2015)). A Serious SIP revision must include provisions that require the implementation of RACT for major sources of VOC and/or NOx (i.e., sources that emit or have the potential to emit 50 tpy or more) and for each category of VOC sources covered by a Control Technique Guideline (CTG) for which Colorado has sources in the DMNFR. Therefore, the Commission adopted revisions to Regulation Number 7 to include RACT requirements in Colorado's ozone SIP for 50 tpy major sources of VOC and/or NOx including a NOx emission limit for boilers between 50 MMBtu/hr and 100 MMBtu/hr, a NOx emission limit for landfill gas or biogas fired engines, NOx emission limits for combustion turbines, categorical requirements to reduce VOC emissions related to foam manufacturing, and expanded categorical requirements to reduce VOC emissions related to wood surface coating.

Boilers

In 2019, the Commission expanded the combustion equipment requirements adopted in 2016 and 2018 for the 100 tpy major sources to the 50 tpy major sources. Specifically, for boilers, the Commission adopted provisions requiring boilers greater than or equal to 50 MMBtu/hr at 50 tpy major sources to comply with a 0.2 lb/MMBtu NOx emission limit. The Commission now further expands the categorical RACT requirements to require 50-100 MMBtu/hr boilers at 50 tpy major sources to comply with a 0.1 lb/MMBtu NOx emission limits. The owners or operators of these boilers will continue to comply with the combustion process adjustment, periodic performance testing, and recordkeeping requirements.

Engines

In 2019, the Commission expanded the NOx emission limit requirements for compression ignition reciprocating internal combustion engines (RICE) and combustion process adjustment requirements for stationary RICE. The Commission now further expands the categorical RACT requirements for engines to include landfill gas and biogas fired RICE and require the engines to comply with the NOx emission limit in EPA's NSPS JJJJ for landfill/digester gas fired engines. The owners or operators of these engines will continue to comply with the combustion process adjustment, periodic performance testing, and recordkeeping requirements.

Turbines

In 2019, the Commission adopted provisions requiring turbines constructed before February 18, 2005, to comply with NSPS GG and turbines construction after February 18, 2005, to comply with NSPS KKKK. During review of the submitted SIP RACT requirements, EPA questioned Colorado's reliance on EPA's NSPS GG as RACT and requested Colorado consider the NOx emission limits in EPA's NSPS KKKK for Colorado's NSPS GG and pre-NSPS GG turbines at major sources. While the Commission does not agree that NSPS GG is inappropriate as SIP RACT for Colorado's NSPS GG and pre-NSPS GG turbines, the Commission revised the requirements for turbines to reference NSPS KKKK NOx emission limits for the turbines constructed before February 18, 2005, but retain the testing and monitoring requirements of NSPS GG. Turbines with CEMS that are capable of operating in both combined and simple cycle modes are to show compliance with a 30-day average. Similar to EPA's discussion in the preamble to NSPS KKKK, the Commission recognizes turbines may have emission spikes during unit startup and that, therefore intends the turbine NOx emission limits to be implemented as under NSPS KKKK. See 71 Fed. Reg. 38,482 at 38,488-38,489 (July 6, 2006) "While continuous compliance is not required, excess emissions during startup, shutdown, and malfunction must be reported." All turbines will continue to comply with good air practices for minimizing emissions, combustion process adjustment, and recordkeeping requirements.

Wood coating

In 2018, the Commission adopted requirements for wood furniture surface coating based on recommendations in EPA's Control of Volatile Organic Compound

Emissions from Wood Furniture Manufacturing Operations CTG (Wood Furniture CTG) (1996), including topcoat and sealer VOC content limits, work practices, and recordkeeping requirements. Wood furniture is defined to mean “any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard,” which is not inclusive of all wood products such as doors. However, in EPA’s A Guide to the Wood Furniture CTG and NESHAP (1997), EPA states that “States may choose to extend their rules to other operations. For example, some States have developed rules for manufacturers of wood products so they may include limitations for manufacturers of items such as musical instruments or doors.” Therefore, the Commission expanded the wood furniture surface coating requirements to the surface coating of other wood products such as doors, door casings, and decorative wood accents.

Foam manufacturing

The Commission adopted new VOC control requirements for foam manufacturing operations. The new provisions affect three foam manufacturing operations, although one of the sources is modifying their permit to more accurately reflect their actual emissions and will, therefore, have VOC emissions below 50 tpy. These new provisions include emission control requirements, work practices, monitoring, and recordkeeping requirements for foam manufacturing operations.

LDAR (Part D, Section II.)

The Commission also adopted clarifying revisions to the leak detection and repair (LDAR) provisions the Commission adopted in December 2019 including clarification to applicability and requirements for recordkeeping and reporting. The clarifications to Sections II.E.4.c. and II.E.4.d. ensure that operators continue to determine applicability in accordance with the storage tank or facility emissions as they have since the LDAR program was adopted in 2014. The inclusion of recordkeeping and reporting elements specific to increased inspections based on location from occupied areas ensure that the Commission can evaluate the efficacy of the LDAR program. The Commission acknowledges that not all operators will need to conduct a precise analysis concerning their location in relation to occupied areas (i.e., proximity analysis) based on their general distance.

However, the Commission believes it is important for operators to provide at least general documentation that they considered their location, even if to describe an extreme remote location. The Commission also acknowledges that some operators may elect to comply with the increased frequency inspections for certain facilities without conducting a proximity analysis. Documentation of this decision to comply with the increased inspection frequency satisfies the proximity analysis requirement.

The Local Community Organizations proposed an alternate rule to establish shorter repair deadlines for leaks discovered at well production facilities within 1,000 feet of an occupied area. The Local Community Organizations, industry, and the Division negotiated and agreed to the final language adopted by the Commission. For leaks identified at a well production facility located within 1,000 feet of an occupied area, operators must make a first attempt to repair the leak as soon as practicable, but no later than five working days after discovery of the leak. If repair cannot be completed within five days and the leak is not stopped using other means, the owner or operator must notify the local government with jurisdiction over the location and the Division. Reasons why an operator may be unable to attempt or complete repair within five days include, among other things, inclement weather that prevents a timely repair or repair attempt or delays in procuring necessary heavy equipment and workover rigs. The industry parties also raised the issue about local government or other agency requirements potentially delaying repair. Such impacts to repair schedules should be considered as the program is implemented.

The Commission notes that it will be the operator's responsibility to demonstrate the need for the delay beyond five working days, and the Commission expects that

operators will be able to explain the types of reasonable efforts the operator undertakes to avoid the delay (e.g., reasonable efforts in procuring the equipment). If a leak is detected at a facility without a proximity analysis, operators may conduct a proximity analysis and may follow the repair deadlines in Section II.E.7.a. if there are no occupied areas within 1,000 feet.

Consistent with the existing LDAR program, leaks detected are not subject to enforcement by the Division so long as the operator complies with the repair and recordkeeping requirements of Section II.E. However, as the Commission noted in 2014 and again in 2017, the Commission does not intend to relieve owners or operators of the obligation to comply with the general requirements of Part D, Sections I.C, II.B, or II.C (as applicable), including the requirements to minimize emissions and to operate without venting.

Further, these revisions will correct any typographical, grammatical, and formatting errors found within the regulation.

Incorporation by Reference

§ 24-4-103(12.5) of the State Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of §24-4-103(12.5) are met by including specific information and making the regulations available because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. To fully comply with these criteria, the Commission included reference dates to rules and reference methods incorporated in Regulation Number 7, Part E, Section II.

Additional Considerations

Colorado must revise Colorado’s ozone SIP to address the serious ozone nonattainment area requirements. The CAA does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the ozone NAAQS and requires Colorado to develop a SIP adequate to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to satisfy Colorado’s serious nonattainment area obligations.

The Commission also adopted revisions to Regulation Number 7 to achieve further emission reductions in the oil and gas sector.

In accordance with §§ 25-7-105.1 and 25-7-133(3), CRS, the Commission states the rules in Part D, Section II. of Regulation Number 7 adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado’s SIP at this time.

These revisions do not exceed or differ from the federal act due to state flexibility in determining what control strategies to implement to reduce emissions. However, where the proposal may differ from federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), CRS, the Commission determines

(I) The revisions to Regulation Number 7 address equipment and operations in the oil and gas sector including fugitive emissions from components. NSPS

OOOO and NSPS OOOOa may also apply to such oil and gas facilities and operations. The revisions to Regulation Number 7 apply on a broader basis to more fugitive emissions components then the NSPS. The Commission revised Regulation Number 7 to include regulatory RACT requirements for Colorado's major sources of VOC and/or NOx ($\geq$ 50 tpy) in the SIP. Specifically, the Commission revised Regulation Number 7, Part B, Section I. and Part E, Sections II. and V. to include categorical regulatory RACT requirements. MACT DDDDD, MACT JJJJJJ, MACT ZZZZ, MACT YYYY, NSPS GG, NSPS KKKK, NSPS IIII, and NSPS JJJJ may apply to such combustion equipment. However, the Regulation Number 7 revisions apply on a broader basis to more combustion equipment.

(II) The federal rules discussed in (I) are primarily technology-based in that they largely prescribe the use of specific technologies or work practices to comply. EPA has provided some flexibility in NSPS OOOOa by allowing a company to apply to EPA for an alternative means of emission limitations for fugitive emissions components.

(III) The CAA establishes the 2008 NAAQS and requires Colorado to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. Similarly, EPA develops NSPS or NESHAP considering national information and data, not Colorado specific issues or concerns. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's Moderate nonattainment area RACT obligations. Instead, Colorado can adopt applicable provisions into its SIP directly, as the Commission has done here.

(IV) In addition to the 2008 NAAQS, Colorado must also comply with the lower 2015 ozone NAAQS. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as RACT analyses and efforts conducted to support the revisions adopted by the Commission may prevent or reduce the need to conduct additional RACT analyses for the more stringent NAAQS.

(V) EPA has established a Serious SIP-RACT implementation deadline of July 20, 2021, for strategies not needed for any attainment demonstration. There is no timing issue that might justify changing the time frame for implementation of federal requirements.

(VI) The revisions to Regulation Number 7 strengthen Colorado's SIP and state-only provisions. These sections currently address emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry. The revisions to Regulation Number 7, Part C, Sections I. recognize practices currently utilized by wood coating operations. The revisions to Regulation Number 7, Part E, also consider specific existing major sources of VOC and NOx, allowing for continued growth at Colorado's major sources.

(VII) The revisions to Regulation Number 7 Part D establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources. The revisions to Regulation Number 7, Part C and Part E similarly establish the categorical RACT requirements for similarly situated and sized sources.

(VIII) If EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. This outcome may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable, such as the requirements for component leaks. Other revisions reflect changes in industry practice, such as for wood coating and foam manufacturing. Similarly, the revisions concerning major sources of VOC and NOx generally reflect current emission controls and work practices.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will reduce emissions in a cost-effective manner.

(XII) Alternative rules could also provide reductions in ozone, VOC, NOx, methane, and other hydrocarbons to address SB 19-181 and help to attain the NAAQS. The Commission determined that the Division's proposal was reasonable and cost-effective. However, a no action alternative would very likely result in an unapprovable SIP.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in CRS § 25-7-109(1)(b).

Colorado must revise Colorado's ozone SIP to address the serious nonattainment area requirements. However, to the extent that CRS § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of methane, VOCs, and other hydrocarbons.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

V. February 18, 2021 (Part D, Section III.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-101, C.R.S., et. seq., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 Code Colo. Reg. §1001-1.

Basis

During the 2019 legislative session, Colorado's General Assembly adopted revisions to several Colorado Revised Statutes in Senate Bill 19-181 (SB 19-181) (Concerning additional public welfare protections regarding the conduct of oil and gas operations) that include directives for the Commission. SB 19-181 revised the Air Quality Control Commission's directives in § 25-7-109, CRS, to consider pneumatic device requirements. Additionally, in HB 19-1261, the legislature mandated a 26% reduction in GHG by 2025, 50% by 2030, and 90% by 2050 (from a 2005 baseline), §§ 25-7-102(2)(g), 25-7-105(1)(e)(II), CRS.

Further, on December 26, 2019, the Environmental Protection Agency (EPA) reclassified the Denver Metro North Front Range (DMNFR) to Serious, after 2015-2017 ozone data failed to show attainment of the 2008 8-hour Ozone National Ambient Air Quality Standard (NAAQS). See 84 Fed. Reg. 247 (December 26, 2019). As a Serious area, the major source threshold lowers from 100 tons per year (tpy) of VOC or NOx to 50 tpy. EPA has also designated the DMNFR as Marginal nonattainment for the 2015 ozone NAAQS of 70 ppb. Therefore, to further minimize

emissions from the oil and gas sector and ensure progress towards attainment of the 2008 and 2015 ozone NAAQS and necessary greenhouse gas emission reductions, the Commission is adopting revisions to Regulation Number 7 to require non-emitting controllers in certain situations.

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant to include essentially any gas emitted into the atmosphere (and, as such, includes VOC, NOx, methane and other hydrocarbons) and provides the Commission broad authority to regulate air pollutants. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information.

§§ 25-7-109(1)(a), (2), and of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, emission control regulations pertaining to nitrogen oxides and hydrocarbons, and emissions control regulations pertaining to the storage and transfer of petroleum products and other VOCs. § 25-7- 109(2)(c), in particular, provides broad authority to regulate hydrocarbons. § 25-7-109(10) directs the Commission to adopt emission control regulations to minimize emissions of methane, other hydrocarbons, VOC, and NOx from oil and gas operations.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7 and includes the technological and scientific rationale for the adoption of the revisions. The revisions also correct typographical, grammatical, and formatting errors found through the regulation. As discussed, SB 19-181 identifies specific requirements the Air Quality Control Commission should consider, including pneumatic controller requirements. In December 2019, the Commission expanded the pneumatic controller inspection and maintenance requirements, adopted in 2017, from nonattainment area applicability to statewide applicability.

As part of that rulemaking, the Commission directed the Statewide Hydrocarbon Emission Reduction (SHER) team and Pneumatic Controller Task Force (PCTF), stakeholder processes directed by the Commission in 2017, to continue their stakeholder processes and bring to the Commission in 2020 their recommendations on the use of zero-bleed pneumatic devices. Both the SHER team and PCTF continued to meet through the spring of 2020. The stakeholder discussions from 2017-2020 informed the Commission's adopted provisions regarding non-emitting controllers. Non-emitting controllers are a broader category than no-bleed pneumatic controllers and can include, but are not limited to, air-driven controllers, mechanical controllers, electric controllers, self-contained controllers and controllers where exhaust gas is routed to a combustion device.

Definitions

The Commission took the opportunity to amend the definitions associated with pneumatic controllers to reflect more accurate and appropriate technical definitions. The definition of "intermittent pneumatic controller" is intended to include controllers that are not designed to have a continuous bleed rate. Although intermittent pneumatic controllers are not designed to emit between actuations, de minimis emissions may occur between actuations. Such de minimis emissions do not alter a controller's classification as "intermittent."

New Facilities and Certain Retrofits

The revisions to Regulation Number 7 adopted in this rulemaking require the use of non-emitting controllers at well production facilities and natural gas compressor stations that commence operations on or after May 1, 2021. The revisions also require retrofits of natural gas emitting pneumatic controllers to non-emitting controllers at well production facilities where a well first begins production or is

recompleted or refractured on or after May 1, 2021 and at natural gas compressor stations that increase horsepower on or after May 1, 2021.

Company-wide plans

Additionally, the Commission has required operators with well production facilities or natural gas compressor stations that commenced operations prior to May 1, 2021 to develop plans on a company-wide basis to convert some of such facilities to use non-emitting controllers. For purposes of Section III.C.4, retrofit refers to converting a natural gas emitting pneumatic controller to a non-emitting controller. Plugging and abandoning an existing well production facility constitutes an alternative method of compliance with retrofit requirements as described in Section III.C.4.c. (iii).

Specifically, the Commission has adopted a program that requires owners or operators of well production facilities that commenced operations prior to May 1, 2021 to determine the percentage of their total liquids production at facilities with non-emitting controllers. Facilities that commenced operation prior to May 1, 2021 shall be included in the relevant (well production or compressor station) companywide plan, and the companywide plan shall reflect operations as of May 1, 2021. If any of the events described in Sections III.C.4.a.(ii) or (iii) occur on or after May 1, 2021 and before May 1, 2023, then the owner or operator may count, as applicable, the: (1) percentage of production allocated to that facility as of May 1, 2021 as retrofit for purposes of the well production facility companywide plan; or (2) the pneumatic controllers emitting to atmosphere as of May 1, 2021 as retrofit for purposes of the compressor station companywide plan.

Where facility production must be estimated pursuant to Section III.C.4.c.(ii)(A)(3), owners or operators will follow the same process that would be used to establish permit limitations on production throughput, such as summation of anticipated production curves. Of note, if a facility operating in 2019 was subsequently acquired by a new operator, then the facility (and its percent of production) is associated with the company-wide plan of the entity owning the facility as of May 1, 2021.

Based upon this percentage, operators will be required to retrofit facilities incrementally by May 1, 2022 and May 1 2023; the required retrofits correspond to an increasing percentage of each operator’s total liquids production flowing through facilities with non-emitting controllers. The incremental percentage increases for well production facilities are found in Table 1. Operators that increase their total non-emitting facility percent production up to a specified threshold are not required to achieve the entire incremental percentage increase that would otherwise apply for that year. However, the minimum incremental increases and specified thresholds do not restrict operators from exceeding the requirements.

Each well production facility operator is required to submit a company-wide plan by September 1, 2021 that lists specific information regarding its facilities that commenced operations prior to May 1, 2021, its total liquids production, facilities with non-emitting controllers, total percentage of liquid production flowing through facilities with non-emitting controllers, and the facilities that the operator intends to retrofit or plug and abandon in order to achieve the incremental increases in total liquids production flowing through facilities with non-emitting controllers. This company-wide plan should be updated in July 2022, with a final company- wide plan reflecting all facilities that were retrofit or plugged and abandoned submitted in July 2023.

The Commission has also required operators of natural gas compressor stations that commenced operations prior to May 1, 2021 to develop plans on a company-wide basis to convert pneumatic controllers at such facilities to non-emitting controllers. Specifically, the Commission has adopted a program that requires operators to determine the percentage of emitting and non-emitting pneumatic controllers and based upon that percentage, operators will be required to increase the percentage of non-emitting controllers incrementally by May 1, 2022 and May 1, 2023. The incremental percentage requirements for natural gas compressor stations are found

in Table 2. As for well production facilities, operators that increase their total percentage of non-emitting controllers up to a specified threshold are not required to achieve the entire percentage increase for that year that would otherwise apply. The minimum percentage increases and specified thresholds do not restrict operators from exceeding these requirements.

Each operator is required to submit a company-wide plan by September 1, 2021 that lists specific information regarding its facilities that commenced operations prior to May 1, 2021, total controllers, percentage of emitting and non-emitting controllers, the required incremental increases in non-emitting controllers, and the pneumatic controllers that the operator intends to retrofit or remove from service to achieve the incremental increases in non-emitting controllers.

For well production facilities and natural gas compressor stations, an owner or operator may elect to combine facilities with other owners or operators that are owned or operated by the same parent company in complying with company-wide compliance plan requirements.

At this time, operators will not be subject to the requirement to retrofit pneumatic controllers if they have facilities that on a company-wide basis, and taking into account only wells that produced oil or gas or both in calendar year 2019, averaged 15 barrels of oil and gas equivalent (“BOE”) or less per day per well. However, in 2021, the Commission plans to consider additional emission reductions for the oil and gas sector that would enable the state to meet its ambitious climate goals as set forth in HB 19-1261. The Commission directs the Division to consider whether additional requirements to reduce emissions at the sites not subject to retrofit pursuant to Section III.C.4.c.(iv), including retrofit of pneumatic controllers, should be included in that rulemaking.

The requirement to submit an acknowledgement or certification under Sections III.C.4.c.(v) and III.C.4.d.(v) (regarding sale or transfer) does not apply to well production facilities or natural gas compressor stations that, at the time of sale or transfer are not intended to and will not be used to achieve the Total Required Non-Emitting Facility Percent Production or Total Required Non-Emitting Percent Controller target, as applicable. The following are each an acceptable means of ensuring compliance with Section III. following transfer through which owners or operators shall satisfy their obligations under Section III.C.4.c.(v) or Section III.C.4.d.(v), as applicable:

Example 1: Operator A has a Total Historic Non-Emitting Facility Percent Production of 61%. Operator A is required to achieve an additional 5% of non-emitting facility percent production by May 1, 2022, and an additional 10% by May 1, 2023, with a Total Required Non-Emitting Facility Percent Production target of 76%. Operator A achieves the additional 5% of non-emitting facility percent production by May 1, 2022. In 2023, prior to May 1, Operator A transfer’s ownership to Operator B of two well production facilities that Operator A had intended to retrofit with non-emitting controllers or plug and abandon in order to achieve its Total Required Non-Emitting Facility Percent Production. Retrofitting or plugging and abandoning those two

facilities would have comprised half of the additional production required by May 1, 2023 (*i.e.*, 5% of Total Required Non-Emitting Facility Percent Production).

Scenario 1: Notwithstanding the transfer, Operator A may find an alternative 5% of Total Historic Production remaining in its Company-Wide Plan to achieve its Total Required Non-Emitting Facility Percent Production. In this case, Operator A does not need to submit an acknowledgement or certification upon transfer, but shall include this information in its next update to the Company-Wide Plan. This example would apply equally to transfers of assets subject to a Company-Wide Compressor Station Pneumatic Controller Compliance Plan.

Scenario 2: Operator A submits an acknowledgement, on a Division-approved form, that it will ensure the transferred asset is retrofit by May 1, 2023. Under this scenario, either Operator A or Operator B may undertake any necessary retrofitting (or plugging and abandonment) of the asset to allow Operator A to take credit for retrofit of the 5% of Total Historic Production, provided, however, that Operator A will remain responsible for retrofit of that asset to achieve its Total Required Non-Emitting Facility Percent Production. This means that if retrofit of the asset is not completed for whatever reason, Operator A would have to find an alternative 5% of Total Historic Production remaining in its Company-Wide Plan to achieve its Total Required Non- Emitting Facility Percent Production by May 1, 2023.

Scenario 3: Operator A submits an acknowledgement, on a Division-approved form, that it plans to use the transferred asset to achieve its Total Required Non-Emitting Facility Percent Production and Operator B certifies, on a Division-approved form, that it will retrofit the transferred asset by May 1, 2023. Upon certification by Operator B, Operator A shall receive credit for the retrofit of the 5% of Total Historic Production towards its applicable targets under Section III.C.4. The Division-approved form must include a statement that Operator B assumes Operator A’s Section III.C.4 obligations with respect to the transferred asset and is, therefore, subject to the Division’s enforcement authority in the event of noncompliance. Acquisition of the asset does not alter the calculation of Operator B’s compliance with the percentage thresholds specified in Table 1 or 2 for its own Company-Wide Plan, if applicable.

Example 2: Operator A has a Total Historic Non-Emitting Facility Percent Production of 61% and a Total Required Non-Emitting Facility Percent Production target of 76%. Operator B has a Total Historic Non-Emitting Facility Percent of 21% and a Total Required Non-Emitting Facility Percent Production target of 56%. Operator A and Operator B merge (or one entity acquires the other) in 2023, prior to May 1. Despite the merger, the resulting ownership of Operators A and B must continue to separately comply with the respective Company-Wide Plans and Total Required Non-Emitting Facility Percent Production targets of Operator A and Operator B that existed prior to merger.

Exemptions for Specific Controllers

The Commission has recognized that there are appropriate circumstances where even non-emitting facilities may need to use pneumatic controllers that emit natural gas to the atmosphere. Section III.C.4.e.(i)(A) authorizes use of pneumatic controllers necessary for a safety or process purpose that cannot otherwise be met without emitting natural gas. Starting May 1, 2021, new well production facilities or facilities where a well first begins production or is recompleted or refractured, and new compressor stations or stations that increase horsepower, must submit a justification for any safety or process exemption to the Division for approval 45 days prior to installation of the emitting device or retrofit of the facility. Owners or operators that intend to rely on this exemption to maintain emitting controllers at facilities that are retrofit under a company-wide plan must submit a justification to the Division 45 days prior to retrofit of the facility.

The Commission notes that the rule may not be effective 45 days prior to May 1, 2021. If so, for well production facilities and natural gas compressor stations commencing operation or taking actions described in Sections III.C.4.a.(ii) or (iii) on or after May 1, 2021 but prior to June 1, 2021, the owner or operator shall submit the justification required in Section III.C.4.e.(i)(A)(1) by May 1, 2021, and the justification shall be deemed approved unless denied prior to commencing operation or prior to the time the actions described in Sections III.C.4.a.(ii) or (iii) occur. Section III.C.4.e.(i)(A), the requirement to seek Division approval is not applicable for: (1) well production facilities that qualify as contributing to Historic Non-Emitting Facility Percent Production, as defined in Section III.C.4.c.(ii)(D)(1) to (2), or (2) compressor stations that commenced operation before May 1, 2021.

Section III.C.4.e.(i)(B) authorizes use of pneumatic controllers that emit natural gas for activities that occur prior to the end of flowback and well abandonment activities. In addition, Section III.C.4.e.(i)(C) allows owners or operators, upon notice to the Division, to use temporary and portable equipment with pneumatic controllers that emit natural gas for sixty days for purposes other than increasing the throughput of the facility. The Commission directs the Division to develop a streamlined mechanism for filing these notifications, including evaluating the potential for electronic notification. Owners or operators must request Division approval to extend the sixty-day timeframe and must do so at least fourteen days prior to the end of the exemption period. Owners or operators utilizing temporary or portable equipment with pneumatic controllers that emit natural gas must conduct AVO and AIMM inspections of those controllers on the same schedule as the

associated well production facility or compressor station under Section II.E., and must comply with the repair, recordkeeping, and reporting requirements of Sections II.E.6 through 9.

The requirement to use non-emitting pneumatic controllers at sites that commenced operations on or after May 1, 2021, or where one or more wells first begin production or are recompleted or refractured on or after May 1, 2021 does not apply in certain applications at some wellheads located away from the associated production facilities. Additionally, operators that have or retrofit well production facilities to be non-emitting pursuant to the company-wide plan may not be required to use non-emitting controllers in certain applications at some wellheads located away from the associated production facilities.

As set forth in Section III.C.4.e.(i)(D), operators may use natural gas actuated pneumatic controllers that emit to the atmosphere to control emergency shutdown devices or artificial lift control at a wellhead if the wellhead is located more than one quarter of a mile from the associated well production facility for well production facilities commencing operations on or after May 1, 2021, or for wellheads not located on the same surface disturbance for well production facilities commencing operations prior to May 1, 2021. Any other pneumatic controllers (e.g. those not used as emergency shutdown devices or for artificial lift control) located at the wellheads within the specified distance from the associated production facilities must be non-emitting, unless the operator submits a justification for use of an emitting controller to the Division for approval at least 45 days prior to installation of the emitting device or retrofit of the facility or by July 1, 2021 for well production facilities that commenced operations prior to May 1, 2021 and the operator intends to be reflected as non-emitting in the company-wide plan.

The Commission notes that the rule may not be effective 45 days prior to May 1, 2021. If so, for well production facilities commencing operation or taking actions described in Section III.C.4.a.(ii) on or after May 1, 2021 but prior to June 1, 2021, the owner or operator shall submit the justification required in Section III.C.4.e.(i)(D)(1) by May 1, 2021, and the justification shall be deemed approved unless denied prior to commencing operation or prior to the time the actions described in Section III.C.4.a.(ii) occur. The one quarter mile measurement associated with distance from the wellhead to the well production facility shall be measured from the wellhead to the closest equipment associated with the well production facility.

To qualify for the exemption in Section III.C.4.e.(i)(D), the operator must use an approved instrument monitoring method and AVO to detect leaks at the wellhead at the same frequency as the associated well production facility as set forth in Table 3 of Section II.E.4, which sets forth the frequency of component inspections, or no less than once per year, whichever is greater. For facilities that commenced operations prior to May 1, 2021, this monitoring requirement will begin on May 1, 2022, or the date the facility is converted to a site with only non-emitting controllers, whichever is later. The Commission recognizes that wellheads may sometimes be difficult to inspect due to land access issues or severe weather and has adopted provisions allowing operators to delay inspections until access is restored. Owners or operators also may utilize OGI camera-equipped aerial drones to perform these wellhead inspections to provide frequent leak detection and further promote the advancement of leak detection methodologies - both of which are foundational to Colorado’s find and fix approach to leak detection. At the same time, the Commission believes this application of OGI requires rethinking of the methodology generally used for land based OGI applications.

Thus, the provisions of Section III.C.4.e.(i)(D)(3) allowing for the use of OGI camera-equipped aerial drones to inspect wellhead equipment apply on a limited basis, as state-only provisions and do not by themselves authorize the use of drones to inspect other equipment or constitute approval of drones as alternative AIMM. Operators must develop their own methodology before using OGI camera-equipped aerial drones and make that methodology available to the Division upon request.

The methodology must include, at a minimum, procedures for: determining maximum wind speed during which the inspection can be performed; determining the maximum viewing distance from the equipment; how the operator will ensure an adequate thermal background is present to view potential leaks; how the operator will deal with adverse monitoring conditions, such as wind; and how the operator will deal with interferences. At a minimum, any drone inspection must ensure line of sight from the drone to all wellhead equipment and components and take place when the drone-mounted camera is close enough to the wellhead equipment and components to achieve sensitivity for detection of emissions similar to the sensitivity commonly achieved during OGI inspections carried out with hand-carried infrared cameras. Furthermore, the Commission directs the parties to this rulemaking that wish to participate to jointly recommend an OGI camera-equipped aerial drone usage methodology to the Division’s Alternative AIMM Team by May 2022, for further review and consideration.

Finally, operators may not use this exemption where equipment with natural gas emitting pneumatic controllers other than the wellhead, such as a separator, is located at the wellhead site. Under those circumstances, emitting pneumatic controllers used for emergency shut down control may still qualify for the safety and process exemption under Section III.C.4.e.(i)(A) where the necessary conditions and approvals for that exemption are met.

Tagging of Controllers

In order to assist in ease of identification of pneumatic controllers that are authorized to emit natural gas to the atmosphere, the Commission has required operators to tag pneumatic controllers that are authorized to emit natural gas to the atmosphere pursuant to the specified exemptions in Section III.C.4.e.(i) at wellhead production facilities which are non-emitting and at natural gas compressor stations that have one or more non-emitting controllers. Natural gas compressor station operators must differentiate between emitting pneumatic controllers that are exempt under Section III.C.4.e.(i) and those that are not identified as non-emitting controllers in the company-wide plan and are, thus, not required to retrofit. The requirement to tag pneumatic controllers that emit natural gas pursuant to Sections III.C.4.e.(i)(A) through (D) does not apply at well production facilities that are not required to be non-emitting or elected to be non-emitting pursuant to the company-wide plan requirements. In each instance where the regulation references a requirement to use non-emitting controllers, such reference is limited by the exemptions allowing the use of pneumatic controllers to emit natural gas to atmosphere as set forth in the regulation.

Recordkeeping

Operators of well production facilities or natural gas compressor stations must keep the following records for five years, and make them available to the Division upon request: (1) Records of the date a well production facility completes retrofit or all wells flowing to the well production facility are plugged and abandoned, or the date the natural gas compressor station pneumatic controllers were retrofit or it is taken out of service, (2) If claiming an exemption for an emitting pneumatic controller, records for each controller demonstrating the exemption applies, (3) Copies of the Company-Wide Well Production Facility Pneumatic Controller Compliance Plan and Company-Wide Compressor Station Pneumatic Controller Compliance Plans, (4) For any operator utilizing III.C.4.c.(iv), the records described in Section III.C.4.c.(iv) that demonstrate the owner or operator qualifies under that provision, and (5) For each pneumatic controller required to be tagged pursuant to Sections III.C.4.d.(iv), III.C.4.d.(vi)(B), III.C.4.e.(ii), or III.C.4.e.(iii), a list of each tagged pneumatic controller, equipment location, and its tag identification number.

In accordance with §§ 25-7-105.1 and 25-7-133(3), CRS, the Commission states the rules in Part D, Section II of Regulation Number 7 adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado’s SIP at this time, other than those revising definitions currently in the SIP.

These revisions do not exceed or differ from the federal act due to state flexibility in determining what control strategies to implement to reduce emissions. However,

where the proposal may differ from federal rules under the federal act, in accordance with § 25-7- 110.5(5)(b), CRS, the Commission determines:

(I) The revisions to Regulation Number 7 address equipment and operations in the oil and gas sector including natural gas-driven pneumatic controllers. NSPS OOOO and NSPS OOOOa may also apply to such oil and gas facilities and operations. The revisions to Regulation Number 7 apply on a broader basis to more natural gas-driven pneumatic controllers than the NSPS.

(II) The Federal rules discussed in (I) are primarily technology-based in that they largely prescribe the use of specific technologies or work practices to comply. EPA has provided some flexibility in NSPS OOOOa by allowing a company to apply to EPA for an alternative means of emission limitations.

(III) The revisions to Regulation Number 7 strengthen Colorado's state-only provisions. These revisions currently address emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry.

(IV) The revisions to Regulation Number 7, Part D establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources.

(V) Where necessary, the revisions to Regulation Number 7 include monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(VI) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable, such as the requirements for pneumatic controllers.

(VII) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will reduce emissions in a cost-effective manner.

(VIII) Alternative rules could also provide reductions in ozone, VOC, methane, and other hydrocarbons to address SB 19-181 and help to attain the NAAQS. SB 19- 181 specifically directs the Commission to "consider" revising its rules to adopt more stringent requirements related to pneumatic devices. The Commission determined that the alternate proposal was reasonable and cost-effective.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in CRS § 25-7-109(1)(b).

To the extent that CRS § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record support the finding that the rules shall result in a demonstrable reduction of methane, VOCs, and other hydrocarbons.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of the regulation in the most cost-effective manner.

W. July 16, 2021 (Part C, Section I., Part D, Section III., Part E, Section II.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-101, C.R.S., et. seq., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 Code Colo. Reg. §1001-1.

Basis

On December 26, 2019, the Environmental Protection Agency (EPA) reclassified the Denver Metro North Front Range (DMNFR) to Serious, after 2015-2017 ozone data failed to show attainment of the 2008 8-hour Ozone National Ambient Air Quality Standard (NAAQS). See 84 Fed. Reg. 247 (December 26, 2019). As a Serious area, the major source threshold lowers from 100 tons per year (tpy) of VOC or NOx to 50 tpy. Currently, the DMNFR is also designated as Marginal nonattainment for the 2015 ozone NAAQS of 70 ppb. To ensure progress towards attainment of the 2008 and 2015 ozone NAAQS, the Commission is adopting revisions to Regulation Number 7 to include reasonably available control requirements (RACT) for process heaters at major sources of NOx emissions and metal parts surface coating.

Statutory Authority

The State Air Act, specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant to include essentially any gas emitted into the atmosphere (and, as such, includes VOC, NOx, methane and other hydrocarbons) and provides the Commission broad authority to regulate air pollutants.

Section 105(1)(a)(I) directs the Commission to adopt a state implementation plan (SIP) to attain the NAAQS. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. §§ 25-7-109(1)(a) and (2) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources and emission control regulations pertaining to nitrogen oxides and hydrocarbons.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7, and includes the technological and scientific rationale for the adoption of the revisions. The Commission is revising Regulation Number 7 to

include provisions in the SIP that require the implementation of RACT for process heaters at major sources of NOx emissions and metal parts surface coating. The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

Metal parts coating

The Commission has previously adopted requirements for metal surface coating based on recommendations in EPA's Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VI: Surface Coating of Miscellaneous Metal Parts and Products (1978), including VOC content limits, work practices, and recordkeeping requirements. However, EPA published a subsequent metal coating CTG, Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings (Metal Coating CTG), in 2008 that recommends expanding the coatings VOC content limits from four to fifty, including work practices, application methods, and recordkeeping. Therefore, in response to EPA's concern with Colorado's existing metal parts coating requirements as based on EPA's 1978 CTG, the Commission revised the metal surface coating requirements to correspond to the recommendations in the 2008 Metal Coating CTG.

Pneumatic controllers

In February 2021, the Commission adopted a consensus alternate proposal to reduce emissions from existing pneumatic controllers at well production facilities and natural gas compressor stations, in addition to the proposed emission reductions from pneumatic controllers at new and modified facilities. The Commission now adopts a revision correcting an inadvertent incorrect citation.

Major source RACT

Due to the reclassification to Serious, Colorado must submit revisions to its SIP to address the Clean Air Act's (CAA) Serious ozone nonattainment area requirements, as set forth in CAA §§ 172 and 182(c) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (See 80 Fed. Reg. 12264 (March 6, 2015)). A Serious SIP revision must include provisions that require the implementation of RACT for major sources of VOC and/or NOx (i.e., sources that emit or have the potential to emit 50 tpy or more) and for each category of VOC sources covered by a Control Technique Guideline (CTG) for which Colorado has sources in the DMNFR. Therefore, the Commission adopted revisions to Regulation Number 7 to include RACT requirements in Colorado's ozone SIP for process heaters at major sources of NOx emissions, specifically NOx emission limits for natural gas-fired and refinery gas-fired process heaters with a heat input rate greater than or equal to 5 MMBtu/hr.

The Commission also adopted performance testing requirements, and associated recordkeeping, for natural gas-fired and refinery gas-fired process heaters greater than or equal to 100 MMBtu/hr and natural gas-fired process heaters greater than or equal to 50 MMBtu/hr but less than 100 MMBtu/hr. The owners or operators must comply with the applicable NOx emission limits by May 1, 2022, except where the process heater requires a permitting action or facility shut-down, in which case owners or operators must comply by May 31, 2023. The May 31, 2023, later compliance deadline for facility shut-downs is intended to provide additional time where a substantial shutdown is required to comply with the NOx limits in Table 2, even if the entire plant is not shut down. The owners or operators of subject process

heaters will continue to comply with the combustion process adjustment and associated recordkeeping requirements. The Commission also expanded these provisions to process heaters at sources that emit, or have the potential to emit, 25 tpy NOx, in anticipation of a reclassification to Severe nonattainment. While expanding these requirements to 25 tpy sources in advance of the reclassification differs from the past timing approaches for including RACT for major sources, this expansion is limited in scope (i.e., process heaters) and the Commission does not anticipate expanding SIP RACT requirements in advance of a reclassification to become a regular practice.

Incorporation by Reference

§ 24-4-103(12.5) of the State Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of §24-4-103(12.5) are met by including specific information and making the regulations available because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. To fully comply with these criteria, the Commission included reference dates to rules and reference methods incorporated in Regulation Number 7, Part E, Section II.

Additional Considerations

Colorado must revise Colorado's ozone SIP to address the ozone serious nonattainment area requirements. The CAA does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the ozone NAAQS and requires Colorado to develop a SIP adequate to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to satisfy Colorado's serious nonattainment area obligations. These revisions do not exceed or differ from the federal act due to state flexibility in determining what control strategies to implement to reduce emissions. However, where the proposal may differ from federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), CRS, the Commission determines:

(I) The revisions to Regulation Number 7 address process heaters operated by refineries and the oil and gas sector. NSPS J, NSPS Ja, NSPS XX, MACT CC, and MACT UUU may also apply to petroleum refinery equipment and operations. However, the revisions to Regulation Number 7 apply on a broader basis to more process heaters.

(II) The federal rules discussed in (I) are primarily technology-based in that they largely prescribe the use of specific technologies or work practices to comply.

(III) The CAA establishes the 2008 NAAQS and requires Colorado to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. Similarly, EPA develops NSPS or NESHAP considering national information and data, not Colorado specific issues or concerns. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's ozone nonattainment area RACT obligations. Instead, Colorado can adopt applicable provisions into its SIP directly, as the Commission has done here.

(IV) In addition to the 2008 NAAQS, Colorado must also comply with the lower 2015 ozone NAAQS. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as RACT analyses and efforts conducted to support the revisions adopted by the Commission may prevent or reduce the need to conduct additional RACT analyses for the more stringent NAAQS.

(V) EPA has established Colorado's SIP-RACT implementation deadlines. There is no timing issue that might justify changing the time frame for implementation of federal requirements.

(VI) The revisions to Regulation Number 7 strengthen Colorado's SIP. These sections currently address emissions from process heaters and metal parts coating in a cost-effective manner, allowing for continued growth of Colorado's industry.

(VII) The revisions to Regulation Number 7, Parts C and E establish reasonable equity for owners and operators subject to these rules by providing the same standards for similarly situated and sized sources.

(VIII) If EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. This outcome may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable, such as the requirements for metal parts coating. The revisions concerning major sources of NOx generally reflect current emission controls and work practices.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will reduce emissions in a cost-effective manner.

(XII) Alternative rules could also provide reductions in ozone, VOC, and NOx to help to attain the NAAQS. However, a no action alternative would very likely result in an unapprovable SIP.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in CRS § 25-7-109(1)(b).

Colorado must revise Colorado's ozone SIP to address the ozone nonattainment area requirements. However, to the extent that CRS § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of VOCs and NOx emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

X. December 17, 2021 (Revisions to Part D, Sections I., II., III., V., and VI.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5., C.R.S., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 Code Colo. Reg. §1001-1.

Basis

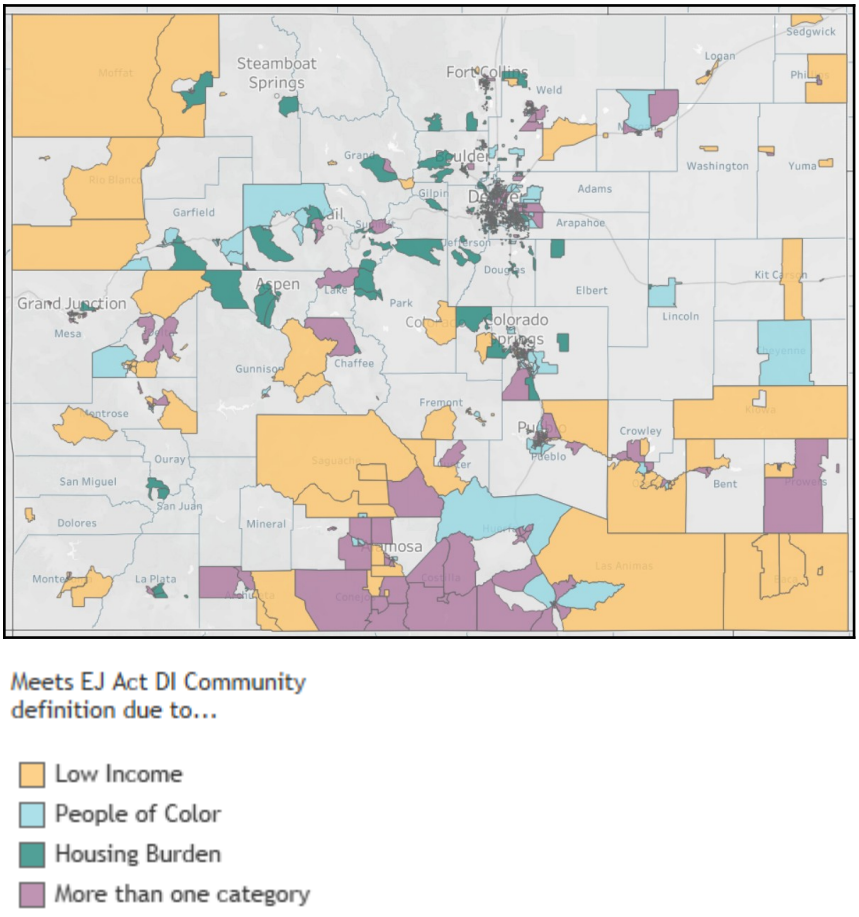
During the 2019 legislative session, Colorado's General Assembly adopted revisions to several Colorado Revised Statutes in Senate Bill 19-181 (SB 19-181) (Concerning additional public welfare protections regarding the conduct of oil and gas operations) that include directives for both the Oil and Gas Conservation Commission and the Air Quality Control Commission. Further, the General Assembly declared in House Bill 19-1261 (HB 19-1261) that "climate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life[,]" acknowledged that "Colorado is already experiencing harmful climate impacts[,]" and that "many of these impacts disproportionately affect" certain disadvantaged communities. Colorado's statewide greenhouse gas (GHG) reduction goals seek a 26% reduction of statewide GHG emissions by 2025; 50% reduction by 2030; and 90% reduction by 2050 as compared to 2005 levels.

In October 2020, the Commission established a target for the oil and gas sector of a 36% reduction from the 2005 baseline by 2025 and a 60% reduction from the 2005 baseline by 2030 (an estimated 13 million metric tons (MMT) CO2e by 2025 and 8 MMT CO2e by 2030). Commission targets for the sector including residential, commercial, and industrial combustion emissions (RCI Sector) seek a 20% reduction from 2005 numbers by 2030. House Bill 21-1266 (HB 21-1266), signed into law on July 2, 2021, memorializes percentage reductions in statute, and provides additional requirements for the rulemakings to achieve these goals. The GHG Pollution Reduction Roadmap (GHG Roadmap) developed by the Colorado Energy Office and CDPHE identifies the largest contributors to state GHG emissions and quantifies the baselines from which these reduction percentages are to be estimated. The oil and gas industry is a large source of GHG emissions, and the largest anthropogenic source of methane in Colorado. For the oil and gas industry, not all of its emissions are found in the "O&G Sector", also referred to as the "Oil & Gas Fugitive Emissions" category of the GHG Roadmap. Methane emissions from upstream and midstream activities, along with estimates of methane "leakage" from pipelines in the transmission & storage and distribution segments, are in the O&G Sector. In contrast, most of the emissions from fuel combustion at oil and gas sources in the upstream and midstream segments are actually found in the "RCI Sector" of the GHG Roadmap (specifically in the "industrial" category, which is the subject of new HB 21-1266).

In this rulemaking action, the Commission adopted requirements for upstream and midstream segment operations, to reduce GHG emissions from those operations, sufficient - when taken in combination with other regulatory and voluntary actions across the state - to achieve the GHG reduction requirements of HB 21-1266. The Commission did not adopt regulations applicable to the transmission and storage segment or the distribution segment. With regard to the transmission and storage segment, the Commission adopted a performance-based program for this segment in 2019 designed to materially reduce greenhouse gas emissions from transmission and storage operations; reporting of progress has not yet begun under that program and the Commission believes it reasonable to evaluate the progress of that program before modifying it. The Commission did not adopt regulations applicable to the

distribution segment because legislation passed in the 2021 session invests the Colorado Public Utility Commission (PUC) with authority over this segment of the oil and gas industry. SB 21-264 requires that gas distribution utilities will submit a comprehensive clean heat plan that demonstrates projected reductions in methane and carbon dioxide emissions that meet prescribed reduction targets. Each clean heat plan must outline the utility's proposal to reduce carbon dioxide and methane emission levels by 4% in 2025 and 22% in 2030. Gas distribution utilities, depending on their size, must submit clean heat plans to the PUC by August 1, 2023, and January 1, 2024. Thus, the Commission believes that the transmission & storage performance program and the clean heat plans are likely to achieve reductions of emissions necessary from these segments to achieve the goals of §25-7-105(1)(e)(XII).

In the 2021 legislative session, in HB 21-1266, the General Assembly determined that “state action to correct environmental injustice is imperative, and state policy can and should improve public health and the environment and improve the overall well-being of all communities… [and] efforts to right past wrongs and move toward environmental justice must focus on disproportionately impacted communities and the voices of their residents.” HB 21-1266 also requires the Commission to ensure that there are additional protections for, and reductions of co-pollutants in, disproportionately impacted communities. CDPHE developed a map of the disproportionately impacted communities that meet the definition of HB 21-1266. While this map is expected to change over time, the disproportionately impacted communities that have been identified at the time of this program’s adoption are as set forth in the following map:



Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-101, C.R.S., et seq. (the State Air Act or the Act), specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant to include essentially any gas emitted into the atmosphere and provides the Commission broad authority to regulate air pollutants. § 25-7-301 directs the

Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution.

§ 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. § 25-7-109(10) directs the Commission to adopt emission control regulations to minimize emissions of methane, other hydrocarbons, VOC, and NOx from oil and gas operations. Pursuant to HB 21-1266, the Commission must, by January 1, 2022, adopt regulations to ensure that the state meets its greenhouse gas reduction targets for the oil and gas sector (36% by 2025 and 60% by 2030). The Commission must also ensure that industrial sector emissions (including those from oil and gas fuel combustion equipment) are reduced by 20% from the 2015 baseline by 2030. These revisions to Regulation Number 7 will, taking into account other relevant laws and rules (including the revisions to Regulation Number 22 adopted as part of this rulemaking action), as well as voluntary actions taken by local communities and the private sector, achieve the state's GHG reduction goals through 2030 for the oil and gas industry. The revisions include protections for disproportionately impacted communities that ensure reductions of pollutants other than GHGs, additional requirements for monitoring and leak detection and repair, and improve the state's current emission inventory reporting program in Regulation Number 7, Part D.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7, Part D, and includes the technological and scientific rationale for the adoption of the revisions.

SIP revisions to address the Oil and Gas CTG: Section I.

As a moderate ozone nonattainment area, Colorado was required to revise its State Implementation Plan (SIP) to address Clean Air Act (CAA) moderate ozone nonattainment area requirements as forth in CAA § 182(b) and the final SIP Requirements Rule for the 2008 Ozone National Ambient Air Quality Standard (NAAQS) (See 80 Fed. Reg. 12264 (March 6, 2015)), including revising its SIP to include reasonably available control technology (RACT) requirements for each category of volatile organic compound (VOC) sources covered by a Control Technique Guideline (CTG) for which Colorado had sources in the Denver Metro North Front Range (DMNFR) ozone nonattainment area. EPA finalized the Oil and Gas Control Techniques Guidelines (Oil and Gas CTG) on October 27, 2016. In a 2017 rulemaking, the Commission carefully considered what recommended provisions to include in Colorado's SIP. The Commission considered its discretion in adopting recommendations in a CTG, and Colorado's already existing emission control requirements that addressed most of the same sources covered by EPA's Oil and Gas CTG but were not identical to the recommendations in the Oil and Gas CTG. The Commission submitted SIP revisions addressing the Oil and Gas CTG to EPA in May 2018.

In June 2021, EPA proposed to approve these SIP revisions (see 86 Fed. Reg. 32656). However, in September 2021, as a result of public comments received on the proposed approval, EPA requested that Colorado strengthen associated monitoring requirements for combustion devices controlling storage vessels and wet seal centrifugal compressors. In this action, the Commission adopted targeted revisions

to Section I. to further align with EPA's Oil and Gas CTG. Specifically, the Commission adopted performance testing, or demonstration of manufacturer testing, for combustion equipment used to control emissions from storage vessels, as defined in EPA's Oil and Gas CTG, and wet seal centrifugal compressors.

The Commission adopted language corresponding to the recommendations in the EPA's Oil and Gas CTG and provides the following clarifications as related to purpose, intent, and terminology. Concerning the purpose of the performance test, EPA's Oil and Gas CTG recommends the performance test to demonstrate compliance with the recommended level of control, which is a 95% reduction of VOC emissions from storage vessels and a 95% reduction of VOC emissions from centrifugal compressor wet seal fluid degassing systems. As EPA discusses in the Oil and Gas CTG, if an owner or operator complies with the recommended RACT by using a combustion device, initial and periodic performance testing of the device is recommended. The performance test will demonstrate that the combustion device reduces the mass content of VOC in the gases vented to the device by at least 95% by weight.

Concerning the terms "potential for VOC emissions" and "(controlled actual emissions)" in the storage vessel applicability provision, the Commission adopted language corresponding to the recommended applicability provision in EPA's Oil and Gas CTG, which is based on EPA's NSPS OOOO and OOOOa. The Commission included the phrase "(controlled actual emissions)" in recognition of more extensive storage tank control requirements in Section I., as related to the recommendations in EPA's Oil and Gas CTG for storage vessels, and not to allow and operator to use a different calculation methodology than that used to determine the storage vessel's potential for VOC emissions. The Commission intends for the Division to determine whether storage vessels are subject to the performance testing requirement adopted in this December 2021 rulemaking, in the same manner the Division currently determines whether a storage vessel is subject to NSPS OOOO, including averaging emissions across the number of storage vessels in the battery as included in EPA's NSPS.

Concerning "generally accepted model or calculation methodology," "30-day period of production," and "legally and practically enforceable limit," the Commission also intends these phrases to be applied as the Division already applies them for NSPS OOOO. The Commission recognizes that the Division provides guidance on acceptable calculation methods and has issued guidance, "Interpretation of "Practically Enforceable" Limits for Storage Vessels Addressed under NSPS OOOO" (Oct. 15, 2013), clarifying where operators may take credit for permit required controls. The Commission intends for the Division to apply the applicability provision in Section I.E.3.a., which is the CTG recommended applicability and based on EPA's NSPS OOOO and OOOOa, as the Division currently applies such applicability provisions under NSPS OOOO.

Definitions: Section II.A.

The Commission has adopted definitions for new terms to facilitate implementation of the new regulatory programs. Where these terms are also proposed for definition

in Regulation Number 22, these explanations are intended to address both regulations.

The Commission has revised the definition of Approved Instrument Monitoring Method (AIMM) to clarify that when the Division approves an alternative AIMM, the Division's approved AIMM may address both AIMM and AVO leak inspections.

The Commission intended to define "disproportionately impacted community" consistent with the definition in HB 21-1266. However, the statute does not specifically identify which communities are considered disproportionately impacted. CDPHE is developing a tool, called "enviroscreen" that will be utilized for members of the public and the regulated community to understand which communities in Colorado are disproportionately impacted. However, this tool was not ready at the time of this rulemaking. Therefore, the Commission has determined that the disproportionately impacted communities existing at the time of adoption of this program, and therefore the communities in which provisions of this program apply, are identified in the map. The Commission has included, in the definition of this term, a reference to the climate equity data map at which more detail can be seen of the boundaries of the disproportionately impacted communities addressed by this rulemaking. The Commission has also referenced a list of the census block groups by 12-digit FIPS code covered by the map incorporated into the definition, identifying what census blocks are disproportionately impacted communities as of the date of this rulemaking. The Commission intends that the Division will preserve a copy of the map and the accompanying list in place at the time of this rulemaking such that sources may use the map and list as a guide for understanding the applicability of requirements.

The Commission defined "midstream segment," "natural gas processing segment," "natural gas transmission and storage segment," and "oil and natural gas compression segment" in this regulation to be consistent with definitions in other regulations, including Regulation Number 7, Part D, Section IV. and Regulation Number 22, Part B, Sections III. and IV.

Air Pollution Control Equipment: Section II.B.

The Commission established updated maintenance and performance test requirements for air pollution control equipment in Section II.B. In Section II.B.2.f., the Commission set forth the weekly visual inspections required for all air pollution control equipment used to comply with Section II. In this context, the Commission intends “weekly” to mean every seven calendar days. These requirements - as they applied to air pollution control equipment controlling storage tanks - were previously located in Section II.C.1.d. of this regulation (in Section II.C.1. and II.C.3., the Commission repealed these provisions that moved to Section II.B.2.); however, to ensure requirements for air pollution control equipment were in one location, the Commission has repealed the provisions of Section II.C.1.d. that are now found in Section II.B.2.f. The Commission does not intend that there is any period of time where air pollution control equipment is not subject to either Section II.C.1.d. or II.B.2.f.

Section II.B.2.g. requires owners and operators to install and operate a flow meter at the inlet to enclosed combustion equipment (or a bank of enclosed combustion devices) used as air pollution control equipment covered by this section, with some exceptions. A flow meter is a device that measures the amount of gas entering the enclosed combustion device and can be used to help determine whether an enclosed combustion device is functioning properly. The Commission believes that flow meters are an important tool to help the Division ensure that air pollution control equipment achieves at least 95% control efficiency for hydrocarbons, comparing flow rates against the high end flow limitations of the enclosed combustion device used to ensure that the enclosed combustion device is being operated within the design parameters. In Section II.B.3.g.(iii)(C), the Commission recognizes that the use of flow meters may not always be feasible; for example, flow meters can be less effective where the control device is a “low flow” device - i.e. where the flow to the device is not consistent or high enough to achieve generally accurate readings from the meter. The Commission encourages operators to provide alternative mechanisms for tracking flow data (or other Division-approved parameter) to air pollution control equipment for those situations in which flow meters are less effective or accurate. Where an operator has submitted a plan for the use of an alternate parameter under Section II.B.2.g.(iii)(C), the Commission directs the Division to promptly review and approve or deny appropriate alternative monitoring mechanisms or parameters to ensure operators may meet the applicable deadlines in Section II.B.2. However, the burden remains on the operator to comply with the regulation or, where approved, the provisions of the alternative approval. The Commission intends that if the flow meter is not connected to automation to continuously record flow, it should be capable of storing at least two weeks of data.

In Section II.B.2.h., the Commission established performance testing requirements for enclosed combustion devices. Truly voluntary control equipment is not subject to these provisions. Historically, the Commission has assumed that enclosed combustion devices were achieving at least 95% control efficiency for hydrocarbons. However, the Commission determined that it was appropriate to

promulgate regulatory requirements that will additionally ensure that enclosed combustion devices in the state are, in fact, operating at and achieving 95% control efficiency for hydrocarbons emitted from equipment controlled in accordance with requirements in Regulation Number 7, Part D, Sections I.D., II.C.1., II.D., or II.F. (Note: this requirement is not intended to include performance testing for combustion of pilot light gas only.) In Section II.B.2.h.(i)(H), the Commission does not require retesting if an enclosed combustion device is replaced with a newly manufactured enclosed combustion device. However, the Commission intends that this apply only where the issue causing the failing test would be addressed by replacement of the device itself, and the failing test was not due to some other cause.

Section II.B.2.h.(ii)(A) contains a table that sets forth the schedule for the initial testing of enclosed combustion devices that commenced operation before December 31, 2021 (unless the Division approves an alternative testing schedule). The Commission prioritized the testing of enclosed combustion devices in disproportionately impacted communities and, after that, devices in the 8-hour Ozone Control Area/northern Weld County.

Some stakeholders wanted the Commission to formally adopt these requirements as part of expanding the nonattainment area boundary for the 2015 ozone NAAQS; however, at the time of the proposal for this regulation, the state was still waiting on final action from the U.S. EPA, and such a change must be accomplished in the SIP, not in Section II. of Regulation Number 7, Part D, which contains state-only requirements.

The Commission strongly encourages owners and operators to prioritize the testing of the enclosed combustion devices at the biggest sites and the oldest enclosed combustion devices. The Commission believes that underperforming, older enclosed combustion devices at large sites could be responsible for a larger portion of uncontrolled emissions and, therefore, such devices should be identified sooner rather than later in order to more effectively limit the amount of uncontrolled emissions. In addition, the Commission believes that, due to their age, older enclosed combustion devices are more likely to malfunction and, therefore, underperform than newer enclosed combustion devices. Thus, the Commission believes that a greater amount of uncontrolled emissions could be avoided by prioritizing the testing, and corresponding improvement in performance, of higher capacity or older enclosed combustion devices, especially those in disproportionately impacted communities. However, the Commission also recognizes that older enclosed combustion devices may not have been manufactured or installed with appropriate ports for traditional stack test methods, which will affect timing for performance testing where modifications to existing equipment must first be made. Such considerations should be included as operators develop schedules to perform required testing.

With regard to the testing schedule and other testing deadlines set forth in Section II.B.2.h.(ii) (see, for example, Section II.B.2.h.(ii)(C)), an enclosed combustion device that is relocated by an owner or operator to another facility that is also controlled by that same owner or operator may maintain the same testing schedule as if it had not been relocated.

Section II.B.2.h.(iii) provides that owners or operators of enclosed combustion devices subject to Section II.B.2.h.(ii) must submit a notification to the Division with certain specified information no later than July 31, 2022. Such notification must be submitted in writing and may be amended as long as the testing schedule set forth in Section II.B.2.h.(ii) is met. Section II.B.2.h.(iii)(A) identifies some of the specific information that must be included in the notification, including the location of the enclosed combustion device. When providing the location of the enclosed combustion device in a written notification, the owner or operator must also state whether or not the enclosed combustion device is located within a disproportionately impacted community and/or the 8-hour Ozone Control Area/northern Weld County.

The Commission has determined that performance tests must be conducted pursuant to a Division-approved protocol. The Commission intends that as an alternative to a site-specific protocol, operators may submit to the Division a company-specific protocol for approval for that company’s different types of site configurations, to which an operator would certify that it followed for each

performance test conducted pursuant to that protocol. The Commission also anticipates that the U.S. EPA will be releasing a protocol for an outlet-only testing method and directs the Division to consider publishing that protocol on its website as a pre-approved test protocol for enclosed combustion device performance testing, to which operators would certify they followed in conducting a performance test. The Division may also develop a statewide protocol that may be followed by any owner or operator. If utilizing the Division's statewide protocol, an owner or operator need only provide a notice prior to conducting testing pursuant to the protocol. The Commission also directs the Division to consider approving different protocols for different types of devices. For example, the Commission would support a different test protocol for devices operating at such low-flow that supplementing the gas stream to the device would be required for purposes of the test. Given the evolving and innovative work and study in this area to evaluate the performance of enclosed combustion devices, the Commission recognizes that protocols may be developed, subject to Division approval, that don't result in a strictly numeric destruction efficiency evaluation, such as a traditional stack test, and those may be approvable protocols, in which case, the protocol will identify the metric by which the testing will be considered passing or failing.

The Commission understands that development of performance testing protocols is important to meeting the performance testing deadlines and directs the Division to develop, by August 1, 2022, a standard protocol framework for performance testing to allow operators to meet the required testing timelines, and by October 31, 2022, an alternative protocol to a traditional stack test for low-flow ECDs where appropriate. The Commission further directs the Division to review proposed companywide performance testing protocols within six months of receipt of the proposal or, where approval or denial cannot be accomplished in that time frame and where the protocol was submitted with adequate time to implement testing after Division approval, to consider approving alternative testing schedules. However, the inability of the Division to develop standard protocols or to approve a performance test protocol within the time frames provided does not relieve the operator of the duty to comply with this regulation.

Performance testing requirements under Regulation Number 7 do not limit the division's authority to otherwise require performance tests under Common Provisions, Section II.C. including those required as the outcome of approving a construction permit.

Section II.B.2.h.(i)(D) sets forth requirements for flow meter installation for each enclosed combustion device subject to Section II.B.2.h. Flow meters are necessary for certain performance test methodologies, specifically for inlet and outlet testing protocols. Therefore, while permanent flow meters are required for individual or banks of enclosed combustion devices under Section II.B.2.g., a temporary or permanent flow meter must be installed for the time period of performance testing on each individual enclosed combustion device. Where the Division approves an alternate protocol or methodology that doesn't require a flow meter for accurate determination of control efficiency, owners or operators will not need to install a flow meter in accordance with this requirement.

In Section II.B.2.h.(i)(E), the Commission explained how operators should use the results of the performance test in calculating emissions for purposes of the annual emissions inventory reporting under Sections II.G and V. If a performance test is conducted on June 1, the enclosed combustion device fails the test, a retest is conducted on July 1, and the enclosed combustion device passes the retest, the operator should use the results of the failing performance test for emission calculations from January 1 through June 30, and may use the results of the passing performance test from July 1 through December 31 of that year.

In Sections II.B.2.i and II.B.2.j., the Commission established recordkeeping and reporting requirements. The Commission deferred most of the reporting to the annual emission reports in Section V, but did require some additional reporting. When an enclosed combustion device fails its performance test, the Commission believes it is critical that the Division be made aware as soon as possible, and so has required notification be provided within thirty (30) days of a failing test. The Commission intends that for reporting under Section II.B.2.j.(i), owners or operators will submit with the notice of the failing test the monthly emissions of methane and VOC and monthly throughput (production or throughput of either natural gas or oil to the equipment being controlled) back to the beginning of the calendar year of the failed test. The Commission intends that operators will still comply with the Division’s Compliance Test Protocol.

The Commission directs the Division to gather additional information about ECDs to better understand the life cycle of the devices. For example: the degradation of the devices over time, appropriate testing schedules, efficiency over time, and characteristics of the failure rate. The Commission also requests that the Division report back to the Commission with this information within 24 months.

Rod packing at natural gas processing plants: Section II.B.3.

In 2014, the Commission recognized that rod-packing replacement is an effective, and cost-effective, method for reducing emissions from this equipment - both VOC and other hydrocarbons. However, the Commission's 2014 action applied only to reciprocating compressors at compressor stations, and not gas plants. In 2017, the Commission adopted rod-packing replacement requirements for compressors at gas plants in the 8-hour Ozone Control Area. In this rulemaking, in Section II.B.3., the Commission expands rod packing replacement requirements to natural gas processing plants statewide except where the reciprocating compressor is subject to the rod packing requirements of New Source Performance Standard (NSPS) OOOO or NSPS OOOOa. Under these revisions, beginning upon the effective date, anticipated for February 14, 2022, operators will need to track hours of operation for purposes of compliance.

Owners or operators are required to change reciprocating compressor rod packing on or before 26,000 hours of operation. Owners or operators may elect to change the rod packing every 36 months instead of monitoring compressor operating hours. However, the owner or operator must begin measuring hours or months on February 14, 2022, and then change the rod packing on the applicable schedule of the parameter the owner or operator elects to measure. While this provision builds upon current reciprocating compressor rod packing requirements where this schedule was understood, the Commission now clarifies that owners or operators must utilize one measurement parameter per rod packing replacement cycle.

In Section II.B.3.c., the Commission clarified that the rod packing requirements adopted in 2014 did not apply where the compressor was subject to the reciprocating compressor requirements of NSPS OOOO. The revision to specifically identify the rod packing requirements was not a change to the meaning of the provision.

Leak Detection and Repair: Sections II.E. and II.I.

Section II.E. of Regulation Number 7 establishes additional requirements under the leak detection and repair (LDAR) program for well production facilities and natural gas compressor stations. In 2014, 2017, and 2019, the Commission established LDAR inspection frequencies to identify leaking components and require repairs in a timely fashion to eliminate excess emissions. LDAR inspection frequencies are typically based on the rolling twelve-month tons per year fugitive VOC emission rates of well production facilities and compressor stations and their location.

In 2019, the Commission adopted more stringent inspection and repair requirements for well production facilities in proximity to an occupied area. In this rulemaking action, the Commission increased the frequency of inspections at compressor stations and well production facilities statewide, in proximity to occupied areas, and in disproportionately impacted communities (see map for the specific communities in which these requirements apply). The Commission has determined that faster repair schedules and additional monitoring is required to protect public health and the environment within these disproportionately impacted communities.

In Section II.E.4.f., the Commission has set a static frequency of AIMM inspections for newly constructed well production facilities - regardless of emissions. That is, any newly constructed well production facility will have a monthly AIMM inspection frequency. The Commission also increased inspection frequencies for most well production facilities with emissions below 50 tpy (or below 20 tpy for tankless facilities) and created a new Table 5 which will inform required LDAR frequencies beginning January 1, 2023. The new table includes increased inspection frequencies at well production facilities in disproportionately impacted communities and within 1,000 feet of occupied areas.

The Commission does want to encourage the use of alternative design techniques and technologies, rather than just the traditional infrared (IR) camera. Technological advances in leak detection can outpace regulations. The Commission expects that many new technologies can be approved through the Division's existing alternative AIMM review process. The Commission does note, however, that some alternative AIMM may be appropriate for statewide inspection requirements, but not to supersede SIP inspection requirements (e.g., requirements of Regulation Number 7, Part D, Section I.L.). The Commission encourages the Division to consider, where appropriate, approving technologies as alternative AIMM for purposes of this Section II.E. even where the technology may not be approvable as alternative AIMM for Section I.L. The Commission also requests that the Division work with stakeholders and parties to this rule in 2022 to consider the opportunities to employ advanced screening and/or continuous monitoring as alternative AIMM.

The Commission has also recognized two scenarios where well production facilities need not conduct AIMM inspections in accordance with the newly increased frequencies. These scenarios include: 1) where the operator installs and uses systems to continuously monitor and adjust pressures in the storage tanks to prevent venting and to ensure lit pilot lights and 2) where the operator constructs a tankless well production facility (i.e., no hydrocarbon liquid storage tanks except for a maintenance or surge tank) with automation to provide operational feedback, non-emitting pneumatic devices, and without gas-fired engines for compression or primary power generation. For the first scenario, the Commission directs the Division to issue a protocol for the use of these automated systems, based on the Division's work in evaluating closed loop vapor control systems. In the second scenario, AIMM inspections must be completed on a semi-annual basis. For both scenarios, if an operator were to cease using any of these scenarios, the facility would immediately revert to a monthly AIMM schedule or schedule based upon Table 5, as applicable.

In Section II.I., the Commission determined that natural gas processing plants state-wide must now have LDAR programs consistent with NSPS OOOO or OOOOa, rather than just the gas plants in the 8-hour Ozone Control Area.

In Sections II.E.7.a.(iv) and II.I.1.b., the Commission considered requirements for leaking equipment and components that are placed on delay of repair and, specifically, required operators to mitigate emissions from leaking components on delay of repair and document the efforts. At natural gas processing plants, the Commission would like to encourage operators to consider drill and tap as a method of fixing component leaks while reducing equipment blowdowns, where feasible. The Commission also understands that low-e valves are cost effective and beneficial in reducing fugitive emissions from components and recommends that operators consider low-e valves as they replace and repair leaking equipment and construct new facilities.

Separator Control Requirements: Section II.F.

Section II.F. had previously required capture or control of hydrocarbon emissions from separation equipment for a well-constructed, fracked, or recompleted after

2014. In this revision, the Commission required the capture or control of hydrocarbon emissions from all separation equipment, regardless of construction date. This is consistent with the recent Colorado Oil and Gas Conservation Commission (COGCC) mission change rulemaking, which essentially requires capture and prohibits the venting or even flaring of gas from the separation equipment unless a variance is obtained from the COGCC. Where the COGCC determines that a variance for venting (as that term is defined by the COGCC) is appropriate, that operation is exempt from Section II.F.2. of the Commission's regulation (though not from Section II.F.1. or other applicable provisions, such as Regulation Number 3 reporting and permitting or Regulation Number 7, Part D, Section V. annual emission reporting).

Further, Section II.F. was revised to clarify that all control equipment controlling separators is subject to Section II.B.2. requirements (separators subject to Section II.F. were already subject to Section II.B.1.).

Well Maintenance Requirements: Section II.G.

Certain activities - such as well liquids unloading, well maintenance events, and well plugging - can result in emissions to the atmosphere. The Commission has long required that operators use best management practices to reduce the need to emit during these activities, and to reduce the amount of gas emitted during these activities. However, the Commission has determined that it is necessary to specify some of the practices that must be employed. Section II.G.1.c. therefore identifies several best management practices that operators must use to reduce the need for emissions from all these activities. For example, the Commission intends that in constructing a new well production facility, operators must consider how to reduce the need for well liquids unloading or well maintenance over the life of the well, and design accordingly. As another example, the use of an artificial lift, such as a plunger lift, can both reduce the need to emit during well liquids unloading and reduce the volume of gas emitted during a manual liquids unloading event.

The Commission also recognizes that well unloading occurs to remove liquid build-up to restore productivity. When attempting to relieve atmospheric pressure through emitting to the atmosphere to remove liquid buildup in these wells, particularly when the emissions occur multiple times each year over the life of a well, there can be significant hydrocarbon emissions. The Commission considers well swabbing to be a well liquids unloading event. Technology and practices have advanced such that it is possible to use equipment - including equipment more typically considered process equipment - to reduce the need to emit during well liquids unloading. The Commission has established thresholds at which well liquids unloading activities must be controlled. These capture or control requirements apply as of January 1, 2023; however, the Commission does not intend that the “counting” of unloads will begin on January 1, 2023. Instead, for determining whether control is required as of January 1, 2023, the operator must look back over the preceding 12 months - i.e. calendar year 2022 - to consider if any of the thresholds are met.

The regulation speaks to well production facilities that “have” wells with specified numbers of unloading events. The regulation includes all wells producing into that well production facility - the wellhead itself need not be physically located within the boundaries of the well production facility. Most of the thresholds speak to well production facilities where operators conduct a specified number of unloading events - unless explicitly otherwise stated, the Commission intends this to account for unloading events from all wells producing into that facility. For example, under Section II.G.1.d.(ii)(A), capture or control is required if the number of unloading events at the well production facility totals six or more; at a well production facility with 3 wells, this threshold is reached where each well is unloaded to the atmosphere twice in that six-month period.

The Commission’s existing regulation in Section II.G.2.b. requires operators to maintain, among other things, the date, time, and duration of unloading events resulting in emissions to the atmosphere. The Commission intends that the failure to keep required records leads to a presumption that control would have been required for such events.

The Commission understands that, infrequently, a nearby hydraulic fracturing event (i.e., an “offset frac”) can cause a well to fill up with water, necessitating the unloading of that well to remove the water. The Commission believes that such unloading events - so long as they are limited in scope and duration - should not be counted toward the applicability thresholds of this rule, which is directed at wells that can be expected to have routine or predictable unloading operations (with emissions to atmosphere). The timing of the notice of the offset frac in Section II.G.1.d.(iii) is intended to be consistent with the COGCC rule addressing the same notification. The Commission intends that if the Division later determines the claim of offset frac was not valid for a particular event or series of events, the operator bears the risk of not having employed capture or control techniques. Further, the Commission emphasizes that it expects this to be a "limited-use" exemption, subject to removal from the rule if overused.

For recordkeeping and reporting purposes, the Commission intends that operators directly measure the volume of gas emitted during liquids unloading events and report that information to the Division annually. The Commission included this measurement and reporting requirement due to the uncertainty regarding the reliability of estimated volumes reported to EPA under GHGRP and reported to the Division under Regulation Number 7 annual emission reporting. However, the Commission encourages the Division to work with operators on using direct measurement of volumes vented during unloading to, as appropriate, develop updated calculation methodologies or emission factors to use in reporting emissions from well liquids unloading.

Pigging and Blowdown Requirements: Section II.H.

The Commission was presented with data reported to EPA and to the Division that generally agrees that the largest sources of greenhouse gas emissions from the midstream segment is the fuel combustion equipment; however, these data sets also agree that emissions (particularly methane emissions) from operations and maintenance activities - such as pigging and blowdowns - are significant, and, the Commission has determined they are cost-effective to address.

The Commission recognizes that depressurizing pig launchers and receivers or blowing down compressors and other equipment in natural gas gathering operations can emit VOCs. Emissions associated with the removal of oxygen from equipment to place equipment into service after a blowdown are not subject to Section II.H. in order to safely operate the equipment. This gas released from pigging and blowdown activities is under the same pressure as the pipeline and contains methane, ethane, and VOCs including benzene, toluene, ethylbenzene, and xylene. Pig receivers can also contain collected condensate liquid that had accumulated in the pipeline.

The Commission mandated that owners or operators capture and recover gas from pigging and blowdown activities, and if not possible, to request Division approval to install and operate air pollution control equipment, such as vapor recovery, flare/combustors, or a Division-approved alternative to achieve a 95% reduction in hydrocarbon emissions. The Commission has a strong preference for capture and recovery established in this regulation, but does allow for control or use of a closed vent system. The Commission intends that the reference to closed vent system here is consistent with the requirements of Part D, Section I. and NSPS OOOOa, 40 CFR 60.481a.

The Commission adopted requirements to require capture or control of emissions from pigging operations in all cases where the pigging unit is attached to a pigging pipeline with an outside diameter of 12 inches or more and with a normal operating pressure greater than or equal to 500 psig. The Commission defined normal operating pressure by reference to the annual average operating pressure. However, if an operator makes an engineering adjustment to the pigging pipeline that lowers the operating pressure to below the 500 psig threshold (assuming that this engineering adjustment is not truly temporary in nature), the Commission does not intend that the operator has to wait a year for the annual average operating

pressure to drop before falling out of applicability. Additional requirements to capture or control are dependent on emission thresholds of both VOC and methane, and the thresholds are the most stringent in disproportionately impacted communities. The Commission included thresholds for both constituents because of the difference in gas composition between the front range and the rest of the state. The Commission is establishing the specific thresholds and performance standards on pigging units and blowdowns in the midstream sector based on specific operational and emissions data associated with the midstream segment in Colorado.

Further, the Commission is requiring capture or control of emissions from pigging operations that commence operation after the effective date of this rule, where the pigging unit is attached to a high-pressure pipeline (regardless of diameter) and at certain specified emission thresholds. In addition, to encourage innovative engineering of and practices at future natural gas compressor stations, natural gas processing plants, and standalone pigging stations, the Commission adopted Section II.H.1.d., which requires an operator to analyze and implement engineering technologies and capabilities and operational practices that maximize the capture and recovery of hydrocarbon emissions from pigging operations and other equipment and piping that are routinely blown down. The Commission intends that this analysis be undertaken at the time of initial facility design and development. Similarly, to minimize emissions associated with the equipment necessary to power the capture and control equipment, the Commission adopted Section II.H.3.e. This section provides that where a natural gas compressor station or natural gas processing plant is connected to the electrical grid, the operator should use that electric grid as the source of power for the equipment required for capture and recovery techniques, where technically and economically feasible.

The Commission intends that this analysis be undertaken at the time the pigging unit or piping and equipment must comply with Section II.H., whether by January 1, 2023, or sometime after that initial compliance date. For example, if an operator adds a pigging unit in 2024, and the operator intends to use gas recovery equipment to capture the emissions, the operator must conduct an evaluation of whether it is technically and economically feasible to power that gas recovery equipment through grid power. In order to demonstrate compliance with Sections II.H.1.d. and II.H.3.e., the operator must retain the record of that determination and the basis therefor. Under both these provisions, it is not the Commission’s intent that the Division second-guess the reasonable engineering, design, and business judgment of the operator. The Commission recognizes that these analyses may contain confidential business information.

In Sections II.H.1.a.(iii) and II.H.1.a.(iv), the Commission understands that capturing or controlling emissions from small blowdown events, either from compressors or other equipment, is often cost prohibitive (when looked at on a per-blowdown or per-equipment basis) and may result in more emissions from the capture and control efforts than what is reduced based upon the fuel source for the capture or recovery equipment. Therefore, the Commission has included that blowdown events from compressors or equipment, where between isolation valves the total volume is less than 50 cubic feet, do not need to be included in emission calculations toward the thresholds nor do they need to be captured or controlled. However, the Commission feels it is important to better understand the frequency and number of such events. If an owner or operator is found not to be keeping the required records relating to blowdown events greater than 1 cubic foot and under 50 cubic feet, the regulatory presumption is that capture or control was required for equipment blowdown events, and noncompliance is not a simple recordkeeping violation.

Further, in Sections II.H.1.c.(vii) and II.H.1.c.(viii), the Commission provided that when a source previously not subject to capture or control has emissions that meet

or exceed the applicability thresholds, that source will have sixty (60) days from the first day of the month after meeting/exceeding the thresholds to comply with the capture or control requirements. The Commission believes that operators should be tracking emissions such that they can generally predict when a source will exceed thresholds and should prepare accordingly. However, the Commission understands that sometimes unforeseeable events will cause an emissions increase. Under such circumstances, the Commission encourages operators to reach out to the Division prior to missing a compliance deadline, and directs the Division to work with those operators to ensure capture and recovery begins as soon as practicable, which may be more than 60 days.

The Commission also provided, in Sections II.H.3.e and II.H.3.f, that capture and recovery is not always required. Capture and recovery is only required during normal operations - i.e. not during malfunctions. And capture and recovery is not required during emergency shutdown systems testing, such as would be required under OSHA's Process Safety Management standard. Further, in Section II.H.3.g, the Commission provided that capture or recovery is not required on certain vessels; however, uncontrolled actual emissions from blowdowns of these vessels (if greater than 50 cf) must be included in the calculations for purposes of the general applicability of control requirements. Operators must look at uncontrolled actual emissions from blowdowns - if a piece of equipment is blown down and the emissions are controlled, the uncontrolled actual emissions from that blowdown event still count toward the applicability threshold. The Commission does not intend that its requirements for capture and control place operators in a situation to choose between compliance with this program and compliance with federal regulatory programs for leak detection. Thus, to the extent there are limited situations where an operator cannot reasonably capture or control the blowdown emissions necessary to fix a leak within the timelines required by federal programs, and under those same federal programs would be prohibited from placing that leak on delay of repair, operators must keep records of these events, and include information about these events on the annual emission reports submitted pursuant to Section V. Under these limited circumstances, compliance with the federal rules will generally not be deemed non-compliance with Section II.H. The Commission further directs the Division to consider whether future revisions to this program are necessary to address this type of conflict or others that may arise in the implementation.

The Commission, in addition to the capture and control requirements for pigging and blowdowns, also requires the use of certain best practices to reduce either the need or frequency of pigging and blowdown events or reduce the emissions from those activities. The Commission understands that not all best practices are viable for every location, however, and so in Section II.H.4.c., the Commission requires certain best practices to be used unless not feasible. For economic feasibility, operators bear the burden of demonstrating to the Division, upon request, that a particular decision not to use this best practice was not economically feasible, including providing specifics as to the costs used in the evaluation. Such costs do not appropriately include all indirect costs, such as internal overhead or administrative costs.

The Commission mandated recordkeeping and reporting requirements in Sections II.H.6. and V. applicable to pigging operations and blowdown activities to ensure compliance with and to track the efficacy of the established emission reduction measures. Emissions from pigging and blowdowns must be separately included in Regulation Number 7, Part D, Section V. annual reports. The records for pigging activities must include the total number of pigging events, even if not subject to capture or control.

The records must outline the location, date, time, and duration of the blowdown emissions, including records of the date, location, and equipment for which there

are blowdown events where the volume between isolation valves is less than 50 cubic feet (but greater than 1 cubic foot for piping and equipment). Where Section II.H.5.b.(i) requires recordkeeping of the pressure of the pigging unit before and after capture and recovery (if applicable) and immediately before emissions to the atmosphere, the Commission is seeking information regarding the volume of gas emitted. Therefore, where capture and recovery techniques are employed, the Commission is seeking the starting pressure of the pigging unit prior to capture and recovery and the pressure of the pigging unit after capture and recovery but before the emission of the residual gas. As an example, if the pigging unit is at 900 psig before sending the gas to a low-pressure line by jumper line and at 50 psig where the remaining residual volume of gas is emitted to atmosphere, the operator would report a starting pressure of 900 psig and an ending pressure of 50 psig. Then, the emissions from the release to atmosphere of the remaining 50 psig down to 0 psig would be recorded as actual emissions as required by Sections II.H.5.b.(ii) and V. Where no capture and recovery techniques are employed, the Commission understands that the ending pressure will always be 0 psig.

The Commission also updated Sections II.C.2.a. and III.C. to reflect that the “operate without venting” mandate, and associated recordkeeping, applies during pigging and blowdown activities where reductions are required. The venting from storage tanks resulting from these operations and maintenance activities at midstream operations are no longer automatically assumed to be appropriate or necessary.

Pneumatic Controller Revisions: Section III.

The Commission also expanded the applicability of natural gas-fired pneumatic controller requirements and inspection and enhanced response requirements state-wide to natural gas processing plants. The Commission’s proposal would require new gas plants to install, and existing gas plants to retrofit natural gas driven controllers with non-emitting pneumatic controllers, unless certain safety exemptions are met. The Commission’s proposal also requires that any remaining gas-driven controllers be subject to the find and fix program.

In Section III.C.3.a., the Commission clarified a revision made in February 2021. In February, the Commission revised this section to add an end-date of May 1, 2021, given the new requirements in III.C.4. However, the requirements of Section III.C.4. do not apply as widely as Section III.C.3.a., so the Commission here clarified that Section III.C.3.a. continues to apply unless a specific provision of Section III.C.4. is controlling (i.e., under the principle that the more specific controls over the general, in the event of a conflict between Section III.C.3.a. and III.C.4., Section III.C.4. would control).

In Section III.F., the Commission aligned the inspection schedules for natural gas-driven pneumatic controllers with the revised inspection schedules for components in Section II.E.

Annual Emissions Reporting: Section V.

The Commission made several updates to Section V., some for clarification and some to better ensure the accuracy and verifiability of the annual emissions reports.

In Sections V.B.1.e. through V.B.1.g., the Commission clarified that operators must use Division-approved calculation methods. The Commission considers this a clarification of the program adopted in 2019, which required operators to use the Division-approved form. The Commission adopted this clarification to ensure that operators are aware of the duty to recalculate and resubmit their annual emissions reports if the Division disapproves of a calculation methodology (if, for example, the methodology was not approved ahead of the report's submission).

In Section V.B.1.h., the Commission expressly required that operators who submit emissions information using a calculation methodology different from that used to submit the annual greenhouse gas reports to the U.S. EPA under the Greenhouse Gas Reporting Program also submit to the Division: 1) the emissions information using the same calculation method as used in the GHGRP program; and 2) a justification for the change in calculation methodology. The Commission recognizes that some equipment is reported to EPA in the aggregate, while reported individually to the Division. The Commission intends that the operator provide sufficient information to enable the Division and the public to understand the differences in an operator's calculation methods; the Commission does not hereby require that operators educate the Division or the public on the differences between the federal and state reporting programs. The Commission believes that flexibility in calculation methodology is an important tool to ensure more accuracy across operations; however, it is necessary to understand deviations from EPA's approved methodology to ensure appropriate comparisons and to provide transparency. The Commission has also recognized again the Division's authority to require recalculation of emissions data if the alternative calculation methodology is not deemed approvable by the Division.

In Section V.B.1.j., the Commission has required that operators using emission factors to calculate emissions must either use Division-approved emission factors or may use a site-specific emission factor. However, the Commission recognizes that gas composition may change over time, and therefore has determined to require periodic gas composition analysis to support the continued use of site-specific emission factors. The Commission expects that the Division will, as appropriate, update any default factors based upon collected gas composition data. The Commission directs the Division to work with operators to conduct representative sampling, where appropriate. The Commission has set the frequency for sampling at five years, which aligns with APEN update frequencies. The Commission does not intend that operators can wait five years to conduct their first gas composition analysis; in adopting a schedule that aligns with APEN updates, the Commission intends to generally align the sampling schedule with APEN updates.

In Section V.C.2., the Commission clarified the type of information that must be submitted. The requirements adopted in 2019 specified that operators must submit information including the emissions, emission factors, assumptions, and calculation methodology. And Section V.B.1.c. required submission of information about the activities and equipment covered by the report. The Commission now clarifies that other information the Division deems necessary to support the emissions reported

must be included, to avoid operator reluctance to share this information based upon the previous regulatory language.

In Section V.C.2.d., beginning with the June 2024 report for calendar year 2023, the Commission requires owners or operators to report emissions, along with other supporting information, resulting from blowdowns from facility equipment and piping where the physical volume of the piping between isolation valves is greater than or equal to 1 cubic foot. The Commission notes its interpretation that the 50 cubic foot exemption adopted in 2019 never applied to blowdowns of pipeline segments between facilities that were previously reported under Section V.C.2.s. (now Section V.C.2.t.). The Commission has also rearranged the requirement to report emissions and other supporting information for pigging operations such that it no longer falls under Section V.C.2.d. and now stands alone under Section V.C.2.s. The allowance to exclude blowdowns from facility equipment and piping as well as from pigging operations where the physical volume of the piping between isolation valves is less than or equal to 50 cubic feet continues through the June 2023 report for the 2022 calendar year. The Commission understands that accurate tracking of gas volumes from equipment and piping where the physical volume of the piping between isolation valves is greater than or equal to 1 cubic foot can be difficult. Therefore, the Commission directs the Division to accept appropriate actual and approximated reported volumes for this subcategory of blowdowns. For the revised exemption of blowdowns where the physical volume is less than 1 cubic foot, the Commission requires operators to maintain a list of the equipment and blowdown activities that have volumes less than 1 cubic foot so that the Division can maintain oversight of those blowdowns and revisit the availability of this more limited exemption as appropriate.

In Section V.C.2.k., the Commission specified that operators must report component counts and gas speciation data used to support fugitive emission calculations. The Commission acknowledges that component counts can be representative, and are not necessarily specific counts per facility. However, where operators are using representative component counts, that must be noted on the submittal.

The Commission made other clarifications and updates, and included the date of both reporting year and year of report submittal where necessary to ensure that operators have adequate time to capture any new information.

Annual Information Reporting: Section V.D.

In 2020, the Colorado Oil and Gas Conservation Commission adopted COGCC Rule 904(a), which was designed to facilitate information sharing between the COGCC and CDPHE. COGCC Rule 904(a) mandates an annual report by the COGCC Director to the COGCC, and expresses an intent that the COGCC Director collaborate with the Division to include certain specified information. Stakeholders requested that this Commission adopt a counterpart to that rule, to ensure that the information necessary to that COGCC Rule 904 report is timely provided. The Commission agrees and has adopted Section V.D. to facilitate that information sharing by the Division. The Commission has specified that several annual reports already required to be presented to this Commission will be provided thereafter to the COGCC,

including the annual ozone report and the annual GHG Roadmap progress report (and the more formal biennial GHG Roadmap inventory update and progress report).

The Commission encourages meaningful and frequent collaboration between the Division and the COGCC, to ensure that the state can meet its air quality goals, including reducing greenhouse gas emissions, striving towards ozone attainment, and reducing "cumulative impacts" of oil and gas development. The Commission anticipates the agencies sharing information regarding evolving or new innovative technologies or measures that may provide innovative methods to reduce emissions; identifying areas for further study; and annual reporting to both this Commission and the COGCC will ensure that collaboration is ongoing and effective.

Miscellaneous

In Section II.B.2. and II.B.3., the Commission updated the section regarding requirements for compressors (reciprocating and centrifugal) to reflect that compliance with either NSPS OOOO or NSPS OOOOa is sufficient. The revisions made to Regulation Number 7 also renumber tables and provisions to accommodate the new requirements, and correct typographical, grammatical, and formatting errors. The Commission directs the Division to consider extending the schedule for the company-wide non-emitting controller program, and to consider additional requirements to retrofit pneumatic controllers at sites not currently subject to retrofit pursuant to Section III.C.4.c.(iv), coincident with the oil and gas section rulemaking planned for the first half of 2023.

Incorporation by Reference

The Commission will update regulatory references as needed as opportunities arrive.

Additional Considerations

The following are additional findings of the Commission made in accordance with the Act:

As some of these revisions exceed and may differ from the federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

There are existing federal regulations that seek to identify and reduce methane emissions from the oil and gas industry, such as the Greenhouse Gas Reporting Program (Part 98) and NSPS KKK, OOOO, and OOOOa. The EPA will soon release additional proposals to address greenhouse gas emissions from oil and gas equipment, but EPA's proposal will not address the particular situations addressed by the Commission's revisions here. CAA Sections 172(c) and 182(b) require that Colorado submit a SIP that includes provisions requiring the implementation of RACT at sources covered by a CTG. The EPA issued the final Oil and Gas CTG in October 2016, leading to the revisions to

the Ozone SIP adopted by the Commission in 2017. The revisions adopted by the Commission in this rulemaking strengthen the previously adopted requirements and are comparable to the Oil and Gas CTG's recommendations.

Under Regulation Number 7, Part D, Section I.G., natural gas processing plants in the 8-hour Ozone Control Area must comply with the LDAR program in NSPS OOOO or NSPS OOOOa. Natural gas processing plants outside the 8-hour Ozone Control Area may also be subject to NSPS OOOO or NSPS OOOOa, depending on the date of construction. In these revisions, the Commission subjected gas plants statewide to requirements that had previously only applied within the 8-hour Ozone Control Area. EPA also has regulations and guidance for compressors (e.g., rod packing replacement) and pneumatic controllers. Colorado's requirements - both existing and as proposed herein - meet or exceed these federal requirements. For example, many federal requirements are applicable in ozone nonattainment areas, while Colorado's provisions apply statewide. Through Part D, as revised, the Commission builds upon established federal LDAR requirements and closes additional monitoring gaps by eliminating limits on NSPS OOOOa applicability by location for certain natural gas sources and to establish a more robust LDAR program throughout the state. EPA also asks states to consider environmental justice as part of their actions, though there are no specific federal regulatory requirements at this time. These revisions expand on environmental justice considerations by incorporating the definition of "disproportionately impacted communities" (DI Community), and seeking to prioritize reductions in DI communities.

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

The federal requirements addressing methane reductions from the oil and gas sector (though not applicable in this situation) as described are both performance-based and technology-based. Current federal requirements for methane reductions speak to achieving a control efficiency, with minimal flexibility. Some requirements also mandate the use of technology to detect methane emissions. However, EPA does provide some flexibility in the technology that can be used.

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

There are federal requirements that seek to reduce greenhouse gas from oil and gas operations, though none that are addressed to the specific goals of these revisions. The Commission's revisions address Colorado-specific requirements and needs, like those of HB 19-1261 and HB 21-1266, which were not considered in any federal process. The CAA establishes the 8-hour ozone NAAQS and requires Colorado to develop SIP revisions that will ensure

timely attainment of the NAAQS. Neither the ozone NAAQS nor EPA's Oil and Gas CTG addressed concerns unique to Colorado.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

The proposed midstream and upstream requirements ensure that the regulated community can achieve required GHG emissions reductions in cost-effective ways and reduce the need for costlier retrofits later. The SIP revisions build upon the existing regulatory programs being implemented by Colorado's oil and gas industry, which is more efficient and cost-effective than a wholesale adoption of EPA's recommendations in its Oil and Gas CTG as RACT.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements;

This is a state-specific rule that is not implementing federal requirements. Thus, no timing issue exists with respect to implementation of federal requirements. EPA is under a mandated deadline to act on Colorado's SIP revisions as related to EPA's Oil and Gas CTG and has requested that Colorado expeditiously adopt the SIP revisions included in this rulemaking in order to complete that approval action.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

The regulatory provisions allow a reasonable amount of time for affected entities to comply with the new revisions. As such, affected businesses or industrial sectors are afforded a reasonable margin for accommodation of uncertainty and future growth.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

The Commission's revisions establish and maintain reasonable equity because they subject similar sources statewide with similar emitting activities to similar requirements. Climate change is not a local problem, and these rules demonstrate that the sources everywhere must contribute to the solution.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

The Commission believes that the cost of inaction would be greater to industry and the public than the costs associated with the revisions to Regulation Number 7, Part D. Not only with respect to the social cost of climate change, but also more direct costs. These revisions are designed with

the maximum flexibility for the regulated community. Under HB 21-1266, if the state is not on track to achieve the emission reduction goals, the Commission must adopt further regulations to achieve those goals. Future efforts are likely to be not as cost-effective as the flexible programs in these revisions.

Further, if EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan, thus potentially determining RACT for Colorado's sources and subjecting others to increased costs.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;

Reporting requirements beyond those required under federal Part 98 are necessary to effectively quantify and measure Colorado's progress toward statewide GHG reductions and to achieve the public health, safety, and welfare goals set forth in § 25-7-102, C.R.S. Many of the reporting requirements associated with these programs are in existing Commission regulations, in Regulation Number 7, Part D. However, these revisions do require some additional reporting. Under these requirements, owners and operators of these sources will be required to compile and report directly to the Division information collected by or available to them for business or other regulatory purposes. While this may overlap with some other federal reporting requirements, it is expected there will be reporting beyond what is required federally.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

Demonstrated technology exists to enable compliance with the requirements of these revisions. The Commission has also embedded maximum flexibility to take advantage of future technological developments.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

These revisions will cost-effectively reduce statewide GHG emissions to meet the legislative directive of the State Air Act, as revised by SB 19-181, HB 19-1261, and HB 21-1266. As noted, the General Assembly has acknowledged that climate change impacts Colorado's economy and directed that GHG emissions should be reduced across the many sectors of our economy. Colorado has established specific GHG reduction goals within its statutes. Programs established in this rulemaking action - in both Regulation Numbers 7 and 22 - provide mechanisms for GHG reductions to occur cost-effectively across a specific, high-emitting sector of the state's economy.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

The new regulatory requirements and amendments are needed to achieve the statutorily mandated emission reductions. As noted, the State Air Act requires the Commission to implement GHG emission reduction strategies in order to secure reductions of pollution consistent with the statewide GHG emission reduction goals. Currently, emissions projections over the next decade demonstrate that a no-action alternative would fall short of achieving Colorado's reduction goals.

Additionally, no alternative combination of sector-specific regulations has been identified that is sufficient to meet the state's GHG emissions reductions goals. In addition, the CAA requires that Colorado's Ozone SIP must include RACT requirements for each category of VOC sources covered by a CTG. EPA requested that Colorado strengthen associated monitoring requirements for combustion devices controlling certain equipment to further align with EPA's Oil and Gas CTG. Based on conversations with EPA, the revisions further align Colorado's Ozone SIP RACT requirements with the recommendations in EPA's Oil and Gas CTG. Alternative rules may not align with the recommendations in the Oil and Gas CTG, thereby failing to qualify as necessary SIP RACT resulting in an unapprovable SIP. Because EPA has requested these changes be made expeditiously, a no-action alternative would likely result in an unapprovable SIP. The Commission determined that the Division's proposal was reasonable.

Findings of Fact

To the extent that § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of greenhouse gas and VOC emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective alternative to achieve the necessary reduction in air pollution and provide the regulated entity flexibility.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

Y. December 17, 2021 (Removed from Regulation Number 22 and placed in Regulation Number 7 April 20, 2023)

Revisions to Regulation Number 22, Part B, Sections III. and IV.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-101, C.R.S., et seq., the Colorado Air Pollution Prevention and Control Act, § 25-7-101, C.R.S., et seq., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 C.C.R. §1001-1.

Basis

During the 2019 legislative session, Colorado's General Assembly adopted revisions to several Colorado Revised Statutes in Senate Bill 19-181 (SB 19-181) (Concerning additional public welfare protections regarding the conduct of oil and gas operations) that include directives for both the Oil and Gas Conservation Commission (OGCC) and this Commission. In the same session, the General Assembly adopted House Bill 19-1261 (HB 19-1261), setting statewide greenhouse gas (GHG) reduction goals. The General Assembly declared in HB 19-1261 that "climate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life[,]" acknowledged that "Colorado is already experiencing harmful climate impacts[,]" and that "many of these impacts disproportionately affect" certain disadvantaged communities.

The goals set in HB 19-1261 seek a 26% reduction of statewide GHG emissions by 2025; 50% reduction by 2030; and 90% reduction by 2050 as compared to 2005 levels. The GHG Pollution Reduction Roadmap ("GHG Roadmap") developed by the Colorado Energy Office and CDPHE identifies the largest contributors to state GHG emissions and quantifies the baselines from which these reduction percentages are to be estimated.

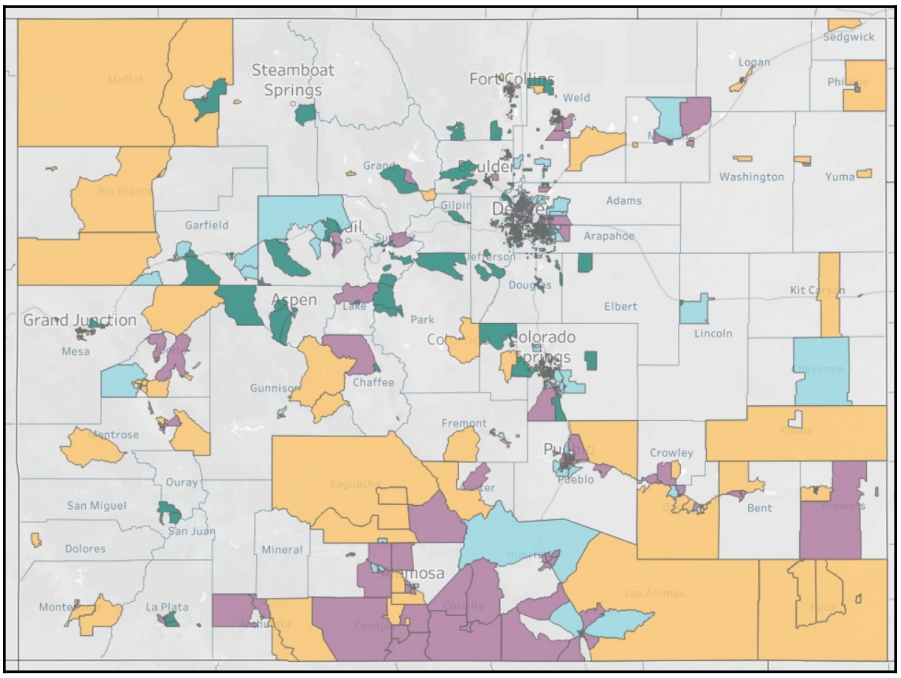
In October 2020, the Commission established a target for the O&G Sector of a 36% reduction from the 2005 baseline by 2025 and a 60% reduction from the 2005 baseline by 2030 (an estimated 13 million metric tons (MMT) CO2e by 2025 and 8 MMT CO2e by 2030). Commission targets for the sector including industrial combustion emissions (Industrial Sector) include a 20% reduction from 2015 numbers by 2030. House Bill 21-1266 (HB 21-1266), signed into law on July 2, 2021, memorializes these percentage reductions in statute, and provides additional requirements for the rulemakings to achieve these goals.

The oil and gas industry is a large source of GHG emissions, and the largest anthropogenic source of methane in Colorado. For the oil and gas industry, not all of its emissions are found in the "O&G Sector", also referred to as the "Oil & Gas Fugitive Emissions" category of the GHG Roadmap. Most methane emissions from upstream and midstream activities, along with estimates of methane "leakage" from pipelines in the transmission & storage and distribution segments, are in the O&G Sector. In contrast, the emissions from fuel combustion at oil and gas sources in the upstream and midstream segments are largely found in the "RCI Sector" of the GHG Roadmap (specifically in the "industrial" category, which is the subject of specific requirements in HB 21-1266).

In this rulemaking action, the Commission has adopted requirements for upstream and midstream segment operations, to reduce GHG emissions from those operations, sufficient - when taken in combination with other regulatory and voluntary actions across the state - to achieve the GHG reduction requirements of HB 21-1266. In this action, the Commission did not adopt regulations applicable to the transmission and storage segment or the distribution segment. With regard to the transmission and storage segment, the Commission adopted a performance-based program for this segment in 2019 designed to materially reduce greenhouse gas emissions from transmission and storage operations; reporting of progress has not yet begun under that program and the Commission believes it reasonable to evaluate the progress of that program before modifying it. The Commission did not adopt regulations applicable to the distribution segment because legislation passed in the 2021 session invests the Colorado Public Utility Commission (PUC) with authority over this segment of the oil and gas industry. Senate Bill 21-264 (SB 21-264) requires that gas distribution utilities will submit a comprehensive clean heat plan that demonstrates projected reductions in methane and carbon dioxide emissions that meet prescribed reduction targets. Each clean heat plan must outline the utility's proposal to reduce carbon dioxide and methane emission levels by 4% in 2025 and 22% in 2030. Gas distribution utilities, depending on their size, must submit clean heat plans to the PUC by August 1, 2023 and January 1, 2024. Thus, the Commission believes that the transmission & storage performance program and

the clean heat plans are likely to achieve reductions of emissions necessary from these segments to achieve the goals of § 25-7-105(1)(e)(XII).

In the 2021 legislative session, in HB 21-1266, the General Assembly also determined that "state action to correct environmental injustice is imperative, and state policy can and should improve public health and the environment and improve the overall well-being of all communities… [and] efforts to right past wrongs and move toward environmental justice must focus on disproportionately impacted communities and the voices of their residents." HB 21-1266 also requires the Commission to ensure additional protections for, and reductions of co-pollutants in, disproportionately impacted communities. CDPHE developed a map of the disproportionately impacted communities that meet the definition of HB 21-1266. While this map is expected to change over time, the disproportionately impacted communities that have been identified at the time of this program's adoption are as set forth in the following map:



Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-101, C.R.S., et seq. (the State Air Act or the Act), specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative

declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act provides the Commission broad authority to regulate air pollutants, including GHG and its constituent gasses (particularly carbon dioxide, methane, and nitrous oxide).

§ 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. § 25-7-109(10) directs the Commission to adopt emission control regulations to minimize emissions of methane, other hydrocarbons, VOC, and NOx from oil and gas operations.

Pursuant to HB 21-1266, the Commission must, by January 1, 2022, adopt regulations to ensure that the state meets its greenhouse gas reduction targets for the oil and gas sector in the GHG Roadmap (36% by 2025 and 60% by 2030). The Commission must also ensure that industrial sector emissions (including those from oil and gas fuel combustion equipment) are reduced by 20% from the 2015 baseline by 2030. These revisions ensure that the state meets its statutory goals. These revisions to Regulation Number 22 will, taking into account other relevant laws and rules (including the revisions to Regulation Number 7 adopted as part of this rulemaking action), as well as voluntary actions taken by local communities and the private sector, achieve the state's GHG reduction goals through 2030 for the oil and gas industry. The revisions include protections for disproportionately impacted communities that ensure reductions of pollutants other than GHGs, additional requirements for monitoring and leak detection and repair, and improve the state's current emission inventory reporting program in Regulation Number 7, Part D._

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 22, and includes the technological and scientific rationale for the adoption of the revisions. The Commission recognizes that a task force on Carbon Capture, Utilization, and Storage (CCUS) has been convened as part of the GHG Roadmap implementation, with a report to the Governor due in January 2022. The Roadmap recognizes CCUS may play an important role over a longer time horizon in meeting the HB 19-1261 targets, but that uncertainties make modeling CCUS contributions difficult at this time. The Commission encourages the Division to evaluate ways to incorporate GHG emission reductions generated from CCUS projects into existing or contemplated regulatory programs such as the fuel combustion program or the GHG intensity program discussed.

Definitions: Sections III.A. and IV.A.

In Sections III.A. and IV.A., the Commission included several defined terms from Regulation Number 7 and intends that the same terms have the same meaning in both regulations unless otherwise specified (i.e., unless the regulation states that a term is defined specifically for purposes of that regulation). The Commission intends that terms used in Sections III. or IV., even if only defined in one of those Sections, have the same meaning.

The Commission defined both the midstream segment and the upstream segment of the oil and gas industry. The upstream segment is not intended to necessarily be co-extensive with the use of the term "exploration and production operations" in Regulation Number 7. The Commission recognizes that there is some "compression" undertaken at well production facilities, and intends that those operations are part of the upstream segment, not the midstream segment (even if they would otherwise fall under the gathering and boosting segment as that term is used in the EPA's Greenhouse Gas Reporting Program). The Commission directs the Division to consider how centralized oil facilities, such as those receiving hydrocarbon liquids from tankless well production facilities, should be classified for purposes of these programs. The Commission has also defined the oil and natural gas compression

segment to reflect the above; to clarify, if equipment is operated by the upstream operator at a well production facility, the equipment is not part of the oil and natural gas compression segment. However, if an emission point is located at a well production facility but operated by a midstream operator, that emission point is part of the oil and natural gas compression segment.

The Commission has defined “disproportionately impacted community” consistent with the definition in HB 21-1266. However, the statute does not call out which communities are considered disproportionately impacted. CDPHE is developing a tool, called “enviroscreen”, that will be utilized for members of the public and the regulated community to understand which communities in Colorado are disproportionately impacted.

However, this tool was not ready at the time of this rulemaking. Therefore, the Commission has determined that the disproportionately impacted communities existing at the time of this program - and therefore the communities in which provisions of this program apply - are identified in the map. The Commission has included, in the definition of this term, a reference to the climate equity data map at which more detail can be seen of the boundaries of the disproportionately impacted communities addressed by this rulemaking. The Commission has also referenced a list of the census block groups by 12-digit FIPS code covered by the map incorporated into the definition, identifying what census blocks are disproportionately impacted communities as of the date of this rulemaking.

The Commission intends that the Division will preserve a copy of the map and the accompanying list in place at the time of this rulemaking such that sources may use the map and list as a guide for understanding the applicability of requirements. The Commission added the definition of natural gas processing segment, which is intended to mirror the applicability of sources reporting to EPA in the Greenhouse Gas Reporting Rule, 40 CFR Part 98, as the natural gas processing segment. The Commission added a definition of “preproduction emissions” and “production emissions”. It is the intent of the Commission that all emissions from the well, wellhead equipment (both permanent and temporary), the well production facility, and the piping between the wellhead and the well production facility – everything “upstream” of the midstream segment – are accounted for in one of these two definitions.

Midstream Steering Committee for Fuel Combustion Equipment: Part B, Section III.

The Commission recognizes that emissions from midstream fuel combustion equipment are a significant portion of the midstream segment’s greenhouse gas emissions. Emissions from fuel combustion equipment covered by this program include not only the carbon dioxide emissions, but also the methane and other greenhouse gases from that same equipment. For example, “methane slip” from engines, meaning the methane that is not combusted and that escapes unburnt into the atmosphere, is included in this program. The Commission also recognizes that reducing emissions from fuel combustion equipment, particularly as it involves electrification of large combustion equipment, will need to be carefully coordinated to ensure the continued reliability of Colorado’s power grid. As a result, the Commission established the Midstream Steering Committee to develop guidance for operators on how to develop each operator’s company-specific emission reduction plan, addressing the mechanisms and timetable for reducing greenhouse gas from fuel combustion equipment. The Commission adopted minimum requirements for participation on the steering committee. To the extent that more than one representative of a disproportionately impacted community participates on the steering committee, the Commission intends that more than one disproportionately impacted community would be represented. Recognizing that the Commission does not have the authority to require participation by the Colorado Energy Office or Public Utilities Commission staff but that their participation will be valuable, the Commission intends that the Division include them on the steering committee if they are willing.

The rules adopted by the Commission mandate that midstream segment owners and operators submit certain specified information to the steering committee by July 31, 2022. This information must include an identification of all fuel combustion equipment owned or operated by each midstream segment operator. There is no de minimis equipment that should not be identified, though not all equipment may end up in the operator's ERP or the segment ERP.

This information should also allow the steering committee to easily understand what equipment - and how much emissions - are located within disproportionately impacted communities. Owners and operators must all include an estimate of the total annual power demand required for use of all midstream combustion equipment owned or operated by each midstream segment operator. When reporting this estimate, the owners and operators should identify whether such equipment is required to run continuously or whether operation of certain equipment is intermittent or interruptible. Owners and operators are also required to seek an estimate of existing transmission and/or distribution capacity to serve the estimated electric load (i.e. total power demand) at the specific locations of the midstream segment fuel combustion equipment, and provide that information to the steering committee.

Transmission and/or distribution capacity should be obtained from the appropriate electric utility, transmission, or distribution service provider and reported to the steering committee when made available by the utility or utilities. Owners and operators should evaluate whether their midstream segment fuel combustion equipment operations require firm or non-firm transmission service. Should an owner or operator consider potential electrification, the Commission intends the owner or operator will continue to engage with the appropriate electric utility, transmission, or distribution service provider.

If the midstream steering committee determines that it needs additional information, it may request it from the midstream segment operators. The rules provide that such additional information should be requested by April 30, 2022; however, this does not limit the Division's authority to use existing statutes and regulatory authority to require the submittal of additional information to the Division. The Division must preserve trade secrets and other confidential business information, if provided to the Division, as required by the Colorado Open Records Act. The Commission intends that the midstream steering committee work with electric utilities as well as regulatory agencies that have the information in publically available files. To the extent the midstream steering committee seeks voluminous information available from the PUC, the Commission encourages the midstream steering committee to first seek to obtain such information from the PUC directly. The Commission intends the electric utilities work collaboratively with the midstream steering committee to assist the committee in locating and, if necessary, clarifying such information. The Commission does not intend that the Division will provide, or that the steering committee will seek confidential or trade secret information from utilities, such as pricing information. The Commission intends that the electric utilities will work collaboratively with the midstream steering committee to assist the steering committee in locating and, if necessary, clarifying requested information.

The Division will provide the steering committee with the 2015 baseline for industrial greenhouse gas emissions, from which the midstream segment needs to achieve a twenty-percent (20%) reduction by 2030. While the Commission intends that reductions should be achieved as quickly as possible, the Commission does not demand a linear reduction in emissions between 2025 and 2030. Further, the emissions reductions considered in this 20% reduction requirement include only emissions from the fuel combustion equipment in the Industrial Sector of the GHG Roadmap. Emissions from the power sector (generally referred to as "Scope 2 emissions") that could result from electrification of midstream fuel combustion equipment, are considered under another portion of the GHG Roadmap.

The midstream steering committee will prepare a guidance document (or series of documents) to help midstream segment owners and operators in preparing their own company-specific emission reduction plans. The guidance document is not intended to be an independent analysis of electric grid availability or a forecast of available resources; it is designed to assist operators in identifying the issues they must consider when preparing their company ERPs. The Commission has asked that utilities participate on the midstream steering committee to help inform the issues

that must be addressed in considering electrification as an emission reduction strategy, but this committee is not designed to perform independent analysis such as that performed by individual operators, utilities, or the PUC. The Commission intends that the guidance document will specify methods for calculating emissions from fuel combustion equipment, and that the Division must approve of the calculation methods before they can be included in the guidance.

Specifically, the Commission directs the Division to evaluate calculation methods used in the annual emission reports to the Division under Regulation Number 7, Part D, Section V., compare those with methods used to report to the U.S. EPA under the greenhouse gas reporting program and other available calculation methods, and determine the appropriate methods to be used by operators. The Commission expects consistency in the calculation and reporting methods used by operators, as much as practicable. The Commission directs the Division to ensure that midstream steering committee work product, like the guidance document, is translated into Spanish and made available with the draft guidance. The Commission also intends that the Division hold public meetings to receive feedback on the midstream steering committee work production (both the guidance and the midstream segment ERP), and that notice of these meetings be made at least thirty (30) days prior and that the notice and agenda be translated into Spanish.

Operators must submit company emission reduction plans to the steering committee in accordance with the requirements of Section III.D.4. and containing the information specified in the guidance and regulation. The Commission intends that the Division will prepare emission reduction requirements for any midstream owner or operator that does not timely submit its company ERP; however, if a company ERP is submitted late, the Division may nonetheless approve of inclusion of that company ERP into the segment ERP.

The Commission structured the rule such that the midstream steering committee submits a proposed regulatory package - with supporting analysis - to the Division instead of directly to the Commission. The Commission intends that the Division will review the steering committee's proposal, and use its independent judgment as to whether the proposal will ensure compliance with the requirements of § 25-7-105(1)(e)(XIII), C.R.S. - i.e. achieves a 20% reduction in CO2e from the 2015 baseline - for the midstream segment. The midstream segment emission reduction plan submitted by the Division to the Commission will therefore be based on the segment-wide emission reduction plan developed by the midstream steering committee, but will consider the public comments received and the Division's evaluation of whether the steering committee's emission reduction plan will achieve the state's goals for CO2 reductions from midstream segment fuel combustion equipment.

Upstream Greenhouse Gas Intensity: Part B, Section IV.

In these revisions, the Commission has set targets for greenhouse gas intensity that step-down over time to achieve the GHG reductions required of upstream segment operations to meet the requirements of HB 21-1266. There is currently no regulatory greenhouse gas intensity program in the United States of which the Commission is aware. However, there are a number of voluntary programs, including ONE Future, the Natural Gas Sustainability Initiative, etc. Multiple Colorado operators are already participating in voluntary methane intensity programs.

While this program is new from a regulatory standpoint, the Commission feels it is an important program to guarantee - as much as possible - the emissions reductions needed from oil and gas upstream operations to meet the requirements of HB 21-1266. The Commission has adopted many regulations specific to oil and gas operations since 2005, including several since 2019 that are still in the process of being implemented. The regulations already adopted, in conjunction with other laws and regulations and the new direct regulations being adopted in this same rulemaking process in Regulation Number 7, Part D, will all provide the necessary emissions reductions. If existing and new measures are still not enough to ensure the emission reduction targets are met, this intensity program will require additional enforceable emission reduction actions from operators above their intensity targets. The Commission believes that the direct regulations adopted as part of this rulemaking along with those adopted and still being fully implemented will achieve or very nearly achieve the emission reductions required, and this intensity program will create an enforceable mechanism to ensure that any remaining required reductions are realized.

Notwithstanding the foregoing, in the event that the annual emissions inventories or other data collected by the Division reveals that the intensity program is not achieving the reductions necessary to achieve either the state's 2025 or 2030 greenhouse gas goals for these sectors, the Commission directs the Division to - consistently with the requirements of § 25-7-105(1)(e)(VII), C.R.S. - propose requirements that include additional direct regulation. The Commission intends that the same operator that accounts, in the intensity program, for the production under Section IV.D. and the emissions in the intensity calculation, is the operator that accounts for the emissions under Regulation Number 7 reporting requirements. For the purposes of this intensity program, this operator is referred to as the “Intensity operator,” as defined in Regulation Number 22, Section IV.A.12.

Calculating Intensity

The Commission, for consistency across Colorado operations, determined that in converting natural gas production to barrels of oil equivalent, owners and operators should use the conversion factor of 5800 standard cubic feet of natural gas per barrel of oil equivalent. To clarify the calculation for intensity, which requires use of oil and natural gas production in thousand barrels of oil equivalent (kBOE), as well as the common units used for reporting natural gas production of million standard cubic feet (MMscf), operators should divide natural gas production reported in MMscf by 5.8 MMscf/kBOE.

The equation for calculating total production in kBOE is:

TP (kBOE) = [NGP (MMscf)/5.8 (MMscf/kBOE)] + [OP (bbl)/1000 (bbl/kBOE)]

Where:

TP (kBOE) = total annual production of natural gas and oil in the units of kBOE

NGP(MMscf) = annual natural gas production in the units of million standard cubic feet

OP (bbl) = annual oil production in the units of barrels of oil

The Commission set greenhouse gas intensity targets to cover all preproduction emissions and production emissions from upstream oil and gas operations. The intensity program covers emissions in both the “Industrial” sector and the “Oil and Gas” sector in the GHG Roadmap. The Commission recognizes that these sectors have different statutory targets for GHG reductions; the “Industrial” sector must meet a 20% reduction from the 2015 baseline by 2030, and the “Oil and Gas” sector must meet a 36% reduction from the 2005 baseline by 2025 and a 60% reduction from the 2005 baseline by 2030. The Commission adopted the projected throughput from the GHG Roadmap inventory work for purposes of setting these targets. However, the Commission understands that some stakeholders may sponsor a study of production forecasts to further inform and refine the established intensity targets. The Commission is willing to consider the results of such a study, and directs that the Division consider the results of any such study in the 2023 verification rulemaking (as discussed) and propose updating targets as appropriate. The Commission determined that it was appropriate to set more stringent intensity targets for the larger producers in the state (i.e., “majority producers”), than for the smaller producers (i.e., “minority producers”). The threshold set by the Commission for determining majority producers was based on accounting for the operators representing at least 80% of the state’s oil and natural gas production. The Commission recognizes that the smaller producers - that largely operate wells with declining production - have less opportunity to reduce intensity than the larger operators. However, the Commission does not intend that older facilities with declining production should just be permitted to operate with ever-increasing intensities, and directs the Division to study a potential facility-specific maximum

allowable intensity and propose it as part of the 2023 verification rulemaking, if appropriate.

Acquisitions

The Commission adopted provisions providing how to adjust operator-specific reduction requirements upon the occurrence of asset transfer or other business realities. The Commission does not intend that operators may meet their greenhouse gas intensity targets simply by selling low-performing facilities, and the provisions for sales and acquisitions are designed to ensure both statewide emission reductions and greenhouse gas intensity targets are achieved. Generally, if an owner or operator sells its interest in a well or facility at some point during a calendar year, the owner or operator will report the production and emissions for the time period of its ownership, and the purchasing entity will report the production and emissions for the time period of its ownership, triggered by the closing date of the transaction. However, because majority and minority operators have different targets, the Commission clarifies how those situations should be addressed.

First, if a majority operator acquires assets from a minority operator, the majority operator would have some time before the acquired assets would be subject to the majority operator intensity targets. During the year of the acquisition, the majority operator need only demonstrate that the emissions and production from the acquired assets meet the minority operator targets – for the time period subsequent to the date of closing of the transaction.

However, in the calendar year after the acquisition, the majority operator would include the emissions and production from the acquired assets in its company-wide intensity calculation and need to meet the majority operator targets. Second, if a minority operator acquires assets from a majority operator, for the year of and the year following the acquisition, those assets need to meet the minority operator target for the acquired assets and would be included in the company-wide intensity calculation subject to the minority operator target. Under these situations, the Commission recognizes that there may be limited reasons why some additional time could be necessary. The Commission encourages operators to timely reach out to the Division if more time is required, and for the Division to work with operators that demonstrate equivalent or better emission reductions would be achieved. However, the timing of the acquisition itself, or the failure to conduct environmental due diligence prior to the acquisition, are not such limited reasons that the Commission intends the Division use its discretion to accept.

If, at any point, a minority operator has production over 10,000 kBOE, or if a minority operator increases its production by 2,500 kBOE over the prior calendar year production - then in the calendar year after the acquisition, the minority operator would become a majority operator and be subject to those targets (and other rules applicable to majority operators). Otherwise, if a minority operator acquires assets (or merges with) a minority operator, the minority targets must be met in the year of the acquisition for all assets, including the acquired assets. If a majority operator sells assets, the majority operator targets must still be met, even if that operator’s production falls below 10,000 kBOE. If a new to market operator

acquires the assets of a minority operator, the new to market operator becomes a minority operator and the minority operator targets apply; similarly, if a new to market operator acquires the assets of a majority operator, the majority operator targets apply.

New Facility Intensity

The Commission also determined that it was necessary to set a “new facility intensity” target, to recognize that operators of new well production facilities must continue to improve their performance, and reduce GHG emissions associated with new production. The Commission relied upon studies of intensity at oil and gas operations to determine that a new facility GHG intensity should be approximately 78.5% of the majority operator greenhouse gas intensity target. These new facility targets are in addition to the majority operator/minority operator targets in Section IV.B. So, a majority operator who constructs a new well production facility in 2027 must meet: (1) the greenhouse gas intensity target in Section IV.B.3.a. for all its upstream segment operations including the newly constructed well production facility (and subsequent majority operator targets in Section IV.B.); (2) the new facility intensity target in Section IV.C.3. for calendar year 2027 for the newly constructed well production facility; and (3) the new facility intensity target in Section IV.C.4. for calendar year 2028 for the newly constructed well production facility.

Greenhouse Gas Intensity Plans

In Section IV.E, the Commission requires that owners or operators submit greenhouse gas intensity plans. The primary purpose of these plans is for owners or operators to demonstrate to the Division how they intend to meet the 2025, 2027, and 2030 greenhouse gas intensity targets in Sections IV.B.2. through IV.B.4. The Commission determined to require submittal of site-specific plans that identify at which sites emission reductions will be achieved to ensure that the greenhouse gas intensity targets are met, all the way through the 2030 targets. The Commission intends that operators be permitted to update their plans after submittal, but the greenhouse gas intensity plan in effect must always demonstrate that the targets will be achieved.

The Commission is also requiring annual verifications identifying what actions were taken, consistent with the plans. In addition to annual verifications to the intensity plans, the Commission has required submittal of asset transfer plan updates specific to any assets a company purchases. These assets transfer plans are to ensure that operators do not purchase high-intensity sites from another operator without making any improvements to those sites that would have been made if the sites had not been transferred. The Commission adopted this requirement to protect the integrity of the program and ensure emission reductions are realized as expected.

Verification

In Section IV.F., the Commission directs the Division to develop a mechanism to track progress towards meeting the state's GHG reduction goals and to evaluate compliance with the greenhouse gas intensity targets and new facility intensity targets in Sections IV.B. and IV.C. The Commission determined that it was advisable to give the Division time in 2021 and 2022 (1) to evaluate the annual emission reports submitted in 2021 and 2022, (2) to evaluate different calculation and emission quantification methodologies for different emitting activities and equipment, and (3) to consider the impact and results of the aerial and ground-based survey work being conducted by the Division (and contractors) in 2021 (because this data will not be fully available until the spring of 2022) as well as other relevant surveys. In 2023, the Commission expects that the Division will propose a verification plan after considering the current status of oil and gas GHG emissions, based on Regulation Number 7 reporting and top-down monitoring results, production increases or decreases based on data reported to the OGCC, the aerial and ground-based survey work, and other important considerations, such as the availability, reliability, and cost-effectiveness of direct measurement techniques as appropriate. This 2023 rulemaking may also address other aspects of the intensity program, including evaluating progress towards the reduction targets for oil and gas in § 25-7-105(1)(e)(XII).

Disproportionately Impacted Communities

The Commission recognizes the critical need for emission reductions - and in particular emission reductions of GHG co-pollutants - within disproportionately impacted communities. The Commission also included the definitions of "co-benefits" and "harmful air pollutants." These terms are used in Sections III. and IV. to ensure that the midstream segment emission reduction plan and operators' greenhouse gas intensity plans achieve and prioritize reductions of co-pollutants in disproportionately impacted communities. In Section III., the Commission has included a requirement that operators prioritize and quantify reductions of co-pollutants within disproportionately impacted communities in their ERPs. In Section IV, the Commission required that greenhouse gas intensity plans identify the facilities in disproportionately impacted communities and demonstrate how co-pollutant emission reductions will be prioritized therein. The Commission is further requiring that annual verifications to intensity plans demonstrate that emission reductions were prioritized in disproportionately impacted communities, and must quantify the reductions of harmful air pollutants. The Commission intends that where the same or similar technological and economic considerations apply to

reductions that can be achieved in a disproportionately impacted community or elsewhere, as it pertains to determining at which facilities or which activities to reduce emission, reductions within disproportionately impacted communities must be prioritized over other GHG reduction options. The 2023 verification rulemaking may also include regulatory provisions addressing how the Division will evaluate compliance with the requirement to prioritize reductions in disproportionately impacted communities.

The Commission also directs the Division to work with the Environmental Justice Unit at CDPHE to ensure access to GHG Intensity Plan information – and the impact of GHG Intensity Plans on DI Communities – by the residents of those communities. The Commission has also included, in related revisions to Regulation Number 7, Part D, Section VI., a direction that the Division report out on these issues to the Commission on an annual basis.

Incorporation by Reference

The Commission will update regulatory references as needed as opportunities arrive.

Additional Considerations

The following are additional findings of the Commission made in accordance with the Act:

§ 25-7-110.5(5)(b), C.R.S.

As these revisions exceed and may differ from the federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

There are no federal regulations applicable to the situations covered by the provisions of Part B, Sections III and IV. However, there are existing federal regulations that seek to identify and reduce methane emissions from the oil and gas industry, such as the Greenhouse Gas Reporting Program (40 CFR Part 98) and New Source Performance Standards (30 CFR Part 60) Subparts KKK, OOOO, and OOOOa. Part B, Sections III and IV do not conflict with any applicable current federal regulations. The EPA will soon release proposals to address greenhouse gas emissions from oil and gas equipment, but EPA's proposal does not address the particular situations addressed by the Commission's revisions here. EPA also asks states to consider environmental justice as part of their actions, though there are no specific regulatory requirements at this time. In this revision, Part B, Sections III and IV expand on environmental justice considerations by incorporating the definition of "disproportionately impacted communities" (DI Community), and seeking to prioritize reductions in DI communities.

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

The federal requirements addressing methane reductions from the oil and gas sector (though not applicable in this situation) as described are both performance-based and technology-based. Current federal requirements for methane reductions speak to achieving a control efficiency, with minimal flexibility. Some requirements also mandate the use of technology to detect methane emissions. However, EPA does provide some flexibility in the technology that can be used.

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

There are federal requirements that seek to reduce greenhouse gas from oil and gas operations, though none that are addressed to the specific goals of Part B, Sections III and IV. The Commission's revisions address Colorado-specific requirements and needs, like those of HB 19-1261 and HB 21-1266, which were not considered in any federal process.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

The proposed midstream and upstream programs will ensure that the regulated community can achieve required GHG emissions reductions in cost-effective ways by giving covered entities options to reduce emissions through direct regulation and development of company-specific plans to ensure compliance with state targets.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements;

This is a state-specific rule that is not implementing federal requirements. Thus, no timing issue exists.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

The regulatory provisions allow a reasonable amount of time for affected entities to comply with the new revisions. As such, affected businesses or industrial sectors are afforded a reasonable margin for accommodation of uncertainty and future growth. The rules adopted by the Commission establish a new midstream steering committee to assist in analyzing the technical feasibility and economic reasonability of future means of reducing emissions in this segment. The midstream steering committee will prepare a guidance document (or series of documents) to help midstream segment owners and operators in preparing their own company-specific emission reduction plans, thus allowing for additional time to achieve compliance. The upstream intensity program also accommodates uncertainty, by allowing for an additional year (at least) to consider and develop a verification program.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

With respect to any sources already operating within the upstream segment, the rule establishes reasonable equity because it takes into account the size of the operator, the percentage of ownership each operator claims, and the location of the facility. With respect to any new well production facilities subject to the upstream statewide intensity program requirements, the rule establishes reasonable equity as requirements are the same for each source type based on age of the production well. This is also demonstrated for the midstream segment with the establishment of the midstream steering committee to ensure equity across operators based on location and utility provider.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

The Commission believes that the cost of inaction would be greater to industry and the public than the costs associated with the revisions to Part B, Sections III. and IV. Not only with respect to the social cost of climate change, but also more direct costs. These revisions are designed with the maximum flexibility for the regulated community. Under HB 21-1266, if the state is not

on track to achieve the emission reduction goals, the Commission must adopt further regulations to achieve those goals. Future efforts are likely to be not as cost-effective as the flexible programs in these revisions.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;

Reporting requirements beyond those required under federal Part 98 are necessary to effectively quantify and measure Colorado's progress toward statewide GHG reductions and to achieve the public health, safety, and welfare goals set forth in § 25-7-102, C.R.S.

Many of the reporting requirements associated with these programs are in existing Commission regulations, in Regulation Number 7, Part D. However, these revisions do require some additional reporting. Under these requirements, owners and operators of these sources will be required to compile and report directly to the Division information collected by or available to them for business or other regulatory purposes. While this may overlap with some other federal reporting requirements, it is expected there will be reporting beyond what is required federally.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

Demonstrated technology exists to enable compliance with the requirements of these revisions.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

These revisions will cost-effectively reduce statewide GHG emissions to meet the legislative directive of the State Air Act, as revised by SB 19-181, HB 19-1261, and HB 21-1266. As noted, the General Assembly has acknowledged that climate change impacts Colorado's economy and directed that GHG emissions should be reduced across the many sectors of our economy. Colorado has established specific GHG reduction goals within its statutes. Programs established in this rulemaking action - in both Regulation Numbers 7 and 22 - provide mechanisms for GHG reductions to occur cost-effectively across a specific, high-emitting sector of the state's economy.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

The new regulatory requirements and amendments are needed to achieve the statutorily mandated emission reductions. As noted, the State Air Act requires the Commission to implement GHG emission reduction strategies in order to secure reductions of pollution consistent with the statewide GHG emission reduction goals. Currently emissions projections over the next

decade demonstrate that a no-action alternative would fall short of achieving Colorado's reduction goals. Additionally, no alternative combination of sector-specific regulations has been identified that is sufficient to meet the state's GHG emissions reductions goals.

Findings of Fact

To the extent that § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of greenhouse gas and VOC emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective alternative to achieve the necessary reduction in air pollution and provide the regulated entity flexibility.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

Z. December 15, 2022 (Revisions to Part A, Sections I., II., and Appendix A; Part B, Sections IV. and VI.; Part C, Sections I., II., III., and IV.; Part D, Sections I., II., and III.; and Part E, Sections I., II., III., IV., VI., VII., and VIII.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5., C.R.S., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 Code Colo. Reg. §1001-1.

Basis

On October 7, 2022, EPA reclassified the Denver Metro/North Front Range (DM/NFR) to severe for the 2008 8-hour Ozone National Ambient Air Quality Standard of 75 parts per billion (ppb) (2008 NAAQS), after 2019-2021 ozone data failed to show attainment. See Fed. Reg. 60926. Separately, EPA has also designated the DM/NFR as marginal nonattainment for the 2015 ozone NAAQS of 70 ppb, effective August 3, 2018 (83 Fed. Reg. 25776 (June 4, 2018)). On November 30, 2021, EPA expanded the boundary of the 2015 ozone nonattainment area to include all of Weld County, effective December 30, 2021 (86 Fed. Reg. 67864). On October 7, 2022, EPA reclassified the DM/NFR and northern Weld County to moderate, after 2019-2021 ozone data failed to show attainment. See Fed. Reg. 60897. To ensure progress towards attainment of the 2008 and 2015 ozone NAAQS, the Commission adopted

revisions to Regulation Number 7 to include reasonably available control requirements (RACT) for major sources of volatile organic compounds (VOC) or nitrogen oxides (NOx) in the nonattainment areas, specifically for combustion equipment, wood coating, solvent use, bakery operations, digital printing, poultry waste processing, oil stabilization facilities, class II injection well facilities, and industrial waste; to include state only provisions in the SIP concerning specific oil and gas sector engines, pneumatic controllers, and liquids loadout as SIP strengthening measures; to clarify the applicability of requirements to newly classified ozone nonattainment areas; to include provisions corresponding to recommendations in EPA's Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings (Miscellaneous Metal CTG) concerning motor vehicle materials; and to include provisions establishing VOC content limits on automotive coatings. The Commission also adopted revisions to expand gasoline tank truck testing requirements.

Statutory Authority

The State Air Act, specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant to include essentially any gas emitted into the atmosphere (and, as such, includes VOC, NOx, methane and other hydrocarbons) and provides the Commission broad authority to regulate air pollutants. Section 105(1)(a)(I) directs the Commission to adopt a state implementation plan (SIP) to attain the NAAQS. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. §§ 25-7-109(1)(a) and (2) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources and emission control regulations pertaining to nitrogen oxides and hydrocarbons.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7, and includes the technological and scientific rationale for the adoption of the revisions. The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

Major Source RACT

Due to the reclassifications to severe and moderate, Colorado must submit revisions to its SIP to address the Clean Air Act's (CAA) ozone nonattainment area requirements, as set forth in CAA §§ 172, 182(b), 182(d), and the final SIP Requirements Rules. Severe and Moderate SIPs must include provisions that require the implementation of RACT for major sources of VOC and/or NOx (i.e., sources in a severe nonattainment area that emit or have the potential to emit 25 tpy or more and sources in a moderate nonattainment area that emit or have the potential to emit 100 tpy or more) and for each category of VOC sources covered by a Control Technique Guideline (CTG) for which Colorado has sources in the nonattainment area.

Therefore, to address the severe nonattainment area requirements under CAA § 182(d), the Commission adopted revisions to Regulation Number 7 to include RACT requirements in Colorado's ozone SIP for 25 tpy major sources of VOC and/or NOx including expanding the combustion equipment requirements; expanding wood coating requirements; expanding solvent use requirements; incorporating requirements in the SIP for oil stabilization and class II injection well facilities; and developing new categorical rules for bakery operations, digital printing, poultry waste, and industrial waste. To address the moderate nonattainment area requirements under CAA § 182(b), the Commission adopted revisions to Regulation Number 7 to include RACT requirements in Colorado's ozone SIP for 100 tpy major sources of VOC and/or NOx in northern Weld County including clarifying the applicability of SIP provisions to any ozone nonattainment area, in contrast to the specified 8-hour ozone control area; expanding the combustion equipment requirements; and expanding requirements for oil and gas operations and equipment. The Commission also adopted revised requirements for glass melt furnaces.

Boilers

In 2019, the Commission expanded the combustion equipment requirements adopted in 2016 and 2018 for the 100 tpy major sources to the 50 tpy major sources. The Commission now further expands the categorical RACT requirements to boilers at 25 tpy major sources in the 8-hour ozone control area and at 100 tpy major sources in northern Weld County. The Commission also adopted an emission limit for wood fired boilers at 25 tpy major sources. The owners or operators of these boilers will comply with the combustion process adjustment, periodic performance testing, and recordkeeping requirements.

Engines

In 2019, the Commission expanded the NOx emission limit requirements for compression ignition reciprocating internal combustion engines (RICE) and combustion process adjustment requirements for stationary RICE. The Commission now further expands the categorical RACT requirements for engines at 25 tpy major sources in the 8-hour ozone control area and at 100 tpy major sources in northern Weld County. The owners or operators of these engines will continue to comply with the specified NOx emission limit or applicable NSPS NOx limit, combustion process adjustment, periodic performance testing, and recordkeeping requirements.

Turbines

In 2019, the Commission adopted provisions requiring turbines constructed before February 18, 2005, to comply with NSPS GG and turbines construction after February 18, 2005, to comply with NSPS KKKK. In 2020, the Commission adopted revisions to require all turbines to comply with emission limits in NSPS KKKK. The Commission now further expands the categorical RACT requirements to turbines at 25 tpy major sources in the 8-hour ozone control area and at 100 tpy major sources in northern Weld County. As with the previous adoption of the NSPS KKKK limits, the Commission intends the limits to apply as EPA has written in the rule. The Commission also adopted specific requirements for one facility based on the permitted emission limits and monitoring requirements. All turbines will continue to comply with good air practices for minimizing emissions, combustion process adjustment, and recordkeeping requirements.

Process heaters

In 2021, the Commission adopted revisions to Regulation Number 7 to include RACT requirements in Colorado's ozone SIP for process heaters at major sources of NOx emissions, specifically NOx emission limits for natural gas-fired and refinery gas-fired process heaters with a heat input rate greater than or equal to 5 MMBtu/hr. The Commission also expanded these provisions on a state-only basis to process heaters at sources that emit, or have the potential to emit, 25 tpy NOx, in anticipation of a reclassification to severe nonattainment. The Commission now removes the state-only designation to include these requirements in the SIP. The Commission also expanded the categorical RACT requirements to process heaters at 100 tpy major sources in northern Weld County.

Glass melt furnaces

In 2018, the Commission adopted requirements for glass melt furnaces at 100 tpy major sources in the 8-hour ozone control area. In this rulemaking, the Commission revised those requirements to address concerns expressed by EPA about start-up and shut-down operations that were excluded from the NOx emission limit, as adopted based on applicable federal requirements. The revised limit now applies during all periods except for initial startup where the owner or operator must account for startup emissions by calculating emissions from fuel consumption.

Wood coating

In 2020, the Commission adopted requirements for wood surface coating based on recommendations in EPA's Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations CTG (Wood Furniture CTG) (1996) and EPA's A Guide to the Wood Furniture CTG and NESHAP (1997). The Commission now expands the wood surface coating requirements to the surface coating of other wood products 25 tpy major sources in the 8-hour ozone control area.

Solvent use

In 2019, the Commission adopted a new categorical rule regarding general solvent use operations. The Commission now expands the solvent use requirements to operations at 25 tpy major sources in the 8-hour ozone control area.

Bakery operations

The Commission adopted a new categorical rule for bakery ovens and bakery scrap recycling at 25 tpy major sources in the 8-hour ozone control area. The primary VOC associated with baking is ethanol, produced when yeast reacts with sugars in bread dough. VOC emissions also result from the drying of bakery scrap product. The new requirements reduce VOC emissions through the use of work practices and by routing bakery oven emissions to a control device. One potentially subject facility is newly installing such control device and the adopted requirements provide an appropriate implementation time period for such installation. The applicable work practices and recordkeeping requirements will continue to apply.

Digital printing

The Commission adopted a new categorical rule for digital printing operations at 25 tpy major sources in the 8-hour ozone control area. The adopted work practice and recordkeeping requirements are similar to those adopted in other ozone nonattainment areas and will reduce fugitive VOC emissions from printing.

Poultry waste processing

The Commission adopted a new categorical rule for poultry waste dryers at 25 tpy major sources in the 8-hour ozone control area. The adopted work practices will reduce VOC emissions from the drying of poultry waste (i.e., manure and spent hens).

Solid waste facilities

The Commission adopted a new categorical rule for solid waste disposal at 25 tpy major sources in the 8-hour ozone control area. The adopted work practices and recordkeeping requirements will reduce VOC emissions from facilities that dispose of oil and gas wastes. The Commission does not intend at this time for these provisions to apply to municipal solid waste landfills, produced water disposal facilities, or oil and gas operations that generate oil and gas waste.

Oil and gas sources

The Commission expanded the applicability of specific existing oil and gas SIP provisions in Part D, Section I. to oil stabilization facilities and class II injection well facilities at 25 tpy major sources in the 8-hour ozone control area. The expanded requirements are currently applicable on a state-only or permit basis but may require additional recordkeeping. The Commission notes that the definition of centralized oil stabilization facility currently only applies to one facility and is not intended to apply to facilities that receive combined produced water and condensate/crude oil that flows from a wellhead to a production or centralized tank battery.

Automotive

Automotive materials

In 2021, the Commission revised the metal surface coating requirements in Regulation Number 7 to update the provisions based on EPA's 1978 CTG and correspond to the recommendations in EPA's 2008 Metal Coating CTG. The Commission did not, at that time, propose to incorporate the VOC content limits for certain motor vehicle materials used at facilities that are not automobile or light-duty truck assembly coating facilities due to the overlap with EPA's national rule, National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings (40 CFR Part 59 Subpart B).

EPA has since raised concerns about the differing definitions concerning motor vehicle materials, and thus potential applicability, between EPA's Metal Coating CTG and EPA's National Automobile Rule. Therefore, the Commission now incorporates the motor vehicle materials VOC content limits and associated work practices into Regulation Number 7.

Automotive coatings

The Commission adopted VOC content limits, and associated work practices and recordkeeping, as contingency measures for the Moderate SIP. The California Air Resources Board (CARB) developed a Suggested Control Measure for Automotive Coatings (SCM) that achieves additional reductions of VOCs from automotive coatings beyond EPA's national automobile refinish rule. The adopted requirements will apply to anyone who sells, supplies, offers for sale, or manufacturers specified automotive coatings and any person who applies or solicits the application of specified automotive coatings should Colorado fail to attain the 2015 ozone NAAQS by the applicable moderate attainment date.

NAA applicability

The Commission adopted revisions to Regulation Number 7 to clarify the applicability of Regulation Number 7 to "an ozone nonattainment" area. Regulation Number 7, Part A, Sections I.B.2.d. and II.C.1.d.(iii) require existing sources in any ozone nonattainment area to comply with applicable requirements in Regulation Number 7, whereas the other applicability provisions in Regulation Number 7 apply to sources in the 8-hour ozone control area. The 8-hour ozone control area, as defined, does not include the northern portion of Weld County recently included by EPA in the 2015 ozone NAAQS nonattainment area. These provisions in Part A, Sections I. and II. were adopted in 2008 on a state-only basis during the expansion of Regulation Number 7 requirements to sources outside of the historic 1-hour ozone nonattainment area (i.e., the remaining portion of the 8-hour ozone control area under the 75 ppb standard). However, the implementation timeframes in Sections I.B.2.b. and II.C.1.d.(iii) conflict, particularly in relation to the description from the adoption of the provisions that "existing sources that have not been modified are allowed three years from the date of ozone non-attainment designation to implement general RACT requirements."

Therefore, the Commission aligned and clarified the timelines for implementation of applicable requirements in Regulation Number 7 to existing sources in the northern portion of Weld County. Specifically, the Commission adopted revisions to clarify that, broadly, existing sources in northern Weld County must comply with applicable requirements within three years from the date of nonattainment designation (i.e., December 31, 2024), and, more specifically, that existing oil and gas sources must comply beginning February 14, 2023, (i.e., the effective date of adoption) to recognize that many oil and gas operations were already subject to state-only requirements that are the same and/or similar to the SIP requirements. The Commission recognizes that Weld County has challenged EPA's expansion of the 2015 ozone nonattainment area boundary and directs the Division to evaluate the use of the term "northern Weld County" as related to the ozone nonattainment area

following the conclusion of the litigation, as necessary. The Commission does not use the term “northern Weld County” to indicate any particular culpability of Weld County as related to the ozone nonattainment classification but selected that term for consistency, clarity for potentially impacted sources, and necessary alignment of implementation timeframes, as discussed above. The Commission also updated the maps and chronology in Appendix A.

Inclusion of state-only provisions in the SIP

As SIP-strengthening measures, the Commission adopted state-only requirements into the SIP. Specifically, the Commission adopted requirements for specific 1,000 hp engines (requirements adopted in 2020), requirements for new well production facilities and natural gas compressor stations to use non-emitting pneumatic controllers (requirements adopted in 2021), and requirements to control emissions from the loadout of hydrocarbon liquids from storage tanks to transport vehicles (requirements adopted in 2019). The engine tables A and B in Part E, Section I.D.4.c were built based on operator engine reporting that began in 2021.

As part of that reporting, operators identified engines fleet-wide that could achieve emission reductions through permitted emissions reductions, installation of additional controls, and engine replacement. The listing of specific engines in Table A does not preclude operators the ability to replace an engine in accordance with an authorized Alternative Operating Scenario (AOS) contained in a permit provided that the replacement engine meets or exceeds the applicable emission standard of the engine being replaced, in accordance with Sections I.D.5.b.(vi)(A) or I.D.5.b.(vi)(B). These requirements for pneumatic controllers, loadout, and specific engines now apply in the SIP for subject owners or operators in the ozone nonattainment area. In providing different compliance schedules for the provisions as included in the SIP as compared to the compliance schedules adopted with as state-only, the Commission does not intend to provide a gap in compliance for owners or operators already complying with the state-only provisions but includes compliance dates for SIP applicability purposes.

Gasoline tank truck testing

The Commission expanded the gasoline tank truck testing provisions to encourage the use of emission controls and support year-round testing. The testing provisions, based on EPA's CTGs, in particular the Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (1978), limited testing to October through April. Neither EPA's CTGs nor the required Method 27 limit the calendar time during which testing must occur but both direct that gasoline vapors be purged from the gasoline tank truck before conducting the leak-tightness test to avoid residual gasoline vapors causing testing inconsistencies. Because these provisions are in Colorado's SIP, Colorado must demonstrate that revising the provisions will not cause an interference with Colorado's ability to attain or maintain the NAAQS. See CAA 110(l). The estimated uncontrolled emissions from the testing of 1,800 gasoline tank trucks (tests in 2021) are 80 tpy.

Currently, there are four testing facilities located in the DM/NFR, four located outside the DM/NFR, and two remote testing facilities. Controlling the purged vapors that occur as part of the testing procedure would result in an emissions reduction of 76 tpy, if all testing facilities chose the proposed testing schedule option. To use this year-round testing schedule option, testing facility operators must also control vapor purge emissions that occur for other reasons, such as gasoline tank truck repair, which would result in additional controlled emissions reductions. The Commission also adopted combustion device inspection and monitoring requirements to maintain equipment, improve performance, and reduce emissions. As with a similar provision adopted in 2019, the Commission does not intend that owners or operators should shut-in the combustor for the sole purpose of performing the inspection of the burner tray. Further, owner or operators need only inspect those portions of the burner trays that are visible without shutting-in the combustor. Therefore, the option allowing year-round testing so long as the testing facility operator controls all vapor purge emissions from testing or other purging will reduce emissions and will not interfere with attainment or maintenance of the NAAQS.

Clean-up

The Commission adopted revisions to reflect the intended reporting time frame in Part E, Section I.D.5., correcting the reporting start year from 2022 to 2023. The reporting requirement in Part E Section I.D.5.g.(iii) is for monitoring that did not begin until 2022. Operators are supposed to report monitoring information from the "previous calendar year."

The Commission corrected typographical errors in Part D, Section II.H., specifically in Section II.H.3.c. to correct numbering, in Section II.H.2.f.(i) to correct a citation, and in Section II.H.1.c.(vii) to correct applicability, and in Section II.H.5.c. to correct a numbering error.

Incorporation by Reference

§ 24-4-103(12.5) of the State Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of §24-4-103(12.5) are met by including specific information and making the regulations available because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. To fully comply with these criteria, the Commission included reference dates to rules and reference methods incorporated in Regulation Number 7.

Supplemental Information

Improving air quality in Disproportionately Impacted (DI) Communities is critical and the Commission is committed to advancing Environmental Justice. Though these SIP revisions may not have strategies that limit emissions in DI Communities specifically, the Commission is committed to doing so in future hearings. The ozone reductions garnered by these SIP revisions will improve the health of DI and other communities.

The Commission intends to continue to reduce ozone precursors that are so often emitted in or near DI Communities. These precursors and the ozone they form and other pollutants can have serious health impacts. It is anticipated that EPA will have Environmental Justice Guidance soon and the Commission encourages the Division to use this guidance and the CDPHE’s Environmental Justice Action Task Force recommendations, and to continue the work it is doing and to prepare regulations that will improve Air Quality and health in DI Communities. Consistent with its mandates to expeditiously attain the ozone NAAQS, reduce greenhouse gases, and protect disproportionately impacted communities, the Commission expects the Division to work with the Regional Air Quality Council to commence stakeholder processes in 2023 to evaluate ozone reduction strategies, and their benefits and impacts on the Division’s other air quality and equity goals, and propose to the Commission for rulemaking those beneficial and cost-effective strategies needed to achieve attainment of the 2008 and 2015 ozone standards.

The stakeholder process should evaluate ozone reduction strategies across a broad range of ozone precursor sources, which should include, at a minimum:

- Prohibitions on gasoline-powered lawn and garden equipment sales, and further incentives for the conversion of gas-powered equipment to electric;
- Additional non-road equipment reduction strategies;
- Building and appliance efficiency standards;
- Residential auto maintenance incentives;
- Commercial diesel best practices initiatives;
- Advanced Clean Cars II standards;
- Strengthening the vehicle inspection and maintenance program;
- Mobile source credits as part of nonattainment new source review;
- Additional/permanent funding for VMT reducing strategies such as zero-fare transit, increased transit services, and bicycle and walking infrastructure;
- Emission reduction approaches for indirect sources;

- Additional industrial source emission reduction requirements, such as flaring minimization requirements at applicable sources, episodic and seasonal restrictions on industrial and commercial activities, oil and gas pre-production activities, rules to reduce emissions from gas-fired reciprocating internal combustion engines (RICE) in the oil and gas sector, requiring emission offsets or aggregation of wellhead and production facility equipment when permitting oil and gas sector minor sources, and zero-emitting retrofits for all existing pneumatic devices;
- and any other measures that the Division determines would assist in attainment of the ozone NAAQS.

In the case of the Colorado Clean Cars rule, the Commission expects that the Division will make a proposal consistent with the State's 2023 Electric Vehicle Plan. Per its 2019 resolution, the Commission expects the Division to report on the impacts and benefits of proposed ozone reduction strategies on achieving the state's nitrogen deposition reduction goals in Rocky Mountain National Park as part of future ozone reduction rulemakings.

Additional Considerations

Colorado must revise Colorado's ozone SIP to address the severe and moderate ozone nonattainment area requirements. The CAA does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the ozone NAAQS and requires Colorado to develop a SIP adequate to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to satisfy Colorado's nonattainment area obligations. These revisions do not exceed or differ from the federal act due to state flexibility in determining what control strategies to implement to reduce emissions. However, where the proposal may differ from federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), CRS, the Commission determines:

(I) The revisions to Regulation Number 7 address process heaters, boilers, turbines, engines, ceramic kilns, dryers, furnaces, wood coating, solvent use, industrial waste, bakery operations, poultry waste operations, digital printing, gasoline tank trucks, automotive materials, and the oil and gas sector. NSPS OOOO, NSPS OOOOa, NSPS Kb, NSPS KKK, NSPS IIII, NSPS JJJJ, NSPS GG, MACT KK, MACT DDDDD, MACT JJJJJJ, MACT BBBBBBB, MACT CCCCCC, MACT ZZZZ, MACT YYYY, MACT HH, MACT HHH, and 40 CFR Part 59 Subpart B may also apply to and the above listed equipment and operations. However, the revisions to Regulation Number 7 apply on a broader basis.

(II) The federal rules discussed in (I) are primarily technology-based in that they largely prescribe the use of specific technologies or work practices to comply.

(III) The CAA establishes the 2008 and 2015 NAAQS and requires Colorado to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. Similarly, EPA develops NSPS or NESHAP considering national information and data, not Colorado specific issues or concerns. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's ozone nonattainment area RACT obligations. Instead, Colorado can adopt applicable provisions into its SIP directly, as the Commission has done here.

(IV) In addition to the 2008 NAAQS, Colorado must also comply with the lower 2015 ozone NAAQS. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as RACT analyses and efforts conducted to support the revisions adopted by the Commission may prevent or reduce the need to conduct additional RACT analyses for the more stringent NAAQS.

(V) EPA has established Colorado's SIP-RACT implementation deadlines. There is no timing issue that might justify changing the time frame for implementation of federal requirements.

(VI) The revisions to Regulation Number 7 strengthen Colorado's SIP. These sections currently address emissions from combustion equipment, wood coating, solvent use, industrial waste, bakery operations, poultry waste operations, digital printing, gasoline tank trucks, automotive materials, and the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's industry.

(VII) The revisions to Regulation Number 7 establish reasonable equity for owners and operators subject to these rules by providing the same standards for similarly situated and sized sources.

(VIII) If EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. This outcome may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable. The revisions concerning major sources of NOx generally reflect current emission controls and work practices.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will reduce emissions in a cost-effective manner.

(XII) Alternative rules could also provide reductions in ozone, VOC, and NOx to help to attain the NAAQS. However, a no action alternative would very likely result in an unapprovable SIP.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in CRS § 25-7-109(1)(b).

Colorado must revise Colorado's ozone SIP to address the ozone nonattainment area requirements. However, to the extent that CRS § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of VOCs and NOx emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

AA. April 20, 2023

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-101, C.R.S., et seq., the Colorado Air Pollution Prevention and Control Act, § 25-7-101, C.R.S., et seq., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 C.C.R. §1001-1.

Basis

To improve the readability and usability of Regulation Number 7 and Regulation Number 22, the Commission adopted revisions restructuring and reorganizing the parts and sections.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-101, C.R.S., et seq. (the State Air Act or the Act), specifically § 25-7-103.3, directs rule-making agencies, such as the Commission, to review their rules and consider whether the rule is necessary; whether the rule overlaps or duplicates other rules of the agency or with other federal, state, or local government rules; whether the rule is written in plain language and is easy to understand; whether the rule has achieved the desired intent and whether more or less regulation is necessary; whether the rule can be amended to give more flexibility, reduce regulatory burdens, or reduce unnecessary paperwork or steps while maintaining its benefits; whether the rule is implemented in an efficient and effective manner, including the requirements for the issuance of permits and licenses; whether a cost-benefit analysis was performed by the applicable rule-making agency; and whether the rule is adequate for the protection of the safety, health, and welfare of the state or its residents. Based on this review, the rule-making agency will determine whether the existing rules should be continued in their current form, amended, or repealed.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7. The Commission reorganized Regulation Number 7 into four regulations: Part B became Regulation Number 24; Part C became Regulation Number 25; Part D remained in Regulation Number 7; and Part E became Regulation Number 26. The upstream oil and gas intensity and midstream combustion program provisions currently in Regulation Number 22 moved to Regulation Number 7. The manufacturing sector greenhouse gas provisions in Regulation Number 22 became a new Regulation Number 27.

To assist in tracking the history of the regulatory revisions, associated statements of basis and purpose, and restructured location, the Commission provides the following tracking table.

Year of rule adoption	**Date of rule adoption**	**Summary of rule(s) adopted**	**Regulation Number 7 Section (pre-2019 numbering)**	**Regulation Number 7 Section (numbering as of 12.2022)**	**Rule & Section (as of 4.2023)**
1995	Dec. 21	Clarify substances that are negligibly reactive VOCs.	Section II.B.	Part A, Section II.B.	Regulations 7 and 24-26, Part A
1996	Mar. 21	Revisions related to the maintenance demonstration.	Sections I.A.1. through I.A.4.; II.D.; II.E.	Part A, Sections I.A.1. through I.A.4.; II.D.; II.E.	Regulations 7 and 24-26, Part A
1996	Nov. 21	Updated NRVOC list. Removed control of VOC emissions from dry cleaning facilities using perchloroethylene.	Section XII.	NA	NA
1998	Oct. 15	Revisions specific to Gates Rubber	Section II.F.	NA	Regulation 24-

Year of rule adoption	Date of rule adoption	Summary of rule(s) adopted	Regulation Number 7 Section (pre-2019 numbering)	Regulation Number 7 Section (numbering as of 12.2022)	Rule & Section (as of 4.2023)
		Company.			25, Part A
2001	Jan. 11	Correct discrepancies in posted versus adopted provisions.	Sections III.C.; IX.L.2.c.(1); X.D.2. through XI.A.3.	Part B, Section I.; Part C, Section I.; Part C, Sections II. through III.	Regulation 24, Part B; Regulation 25, Part B (fkna Part C)
2003	Nov. 20	Repealed provisions establishing a procedure for granting exemptions for de minimis sources and for approving alternative compliance plans.	Sections I.A.2. through I.A.4.; II.D.; II.E.	Part A, Sections I.A.1. through I.A.4.; II.D.; II.E.	Regulations 7 and 24-26, Part A
2004	Mar. 12	Revisions adopted in conjunction with the early action compact ozone action plan – control of emissions from condensate operation at oil and gas facilities, emissions from internal combustion engines, emissions from gas processing plants, and emissions from oil and gas operations dehydrators.	Sections I.A.; I.B.; XII.; XVI.	Part A, Section I.A.; Part A, Section I.B.; Part D, Section I.; Part E, Section I.	Regulations 7 and 24-26, Part A
2004	Dec. 16	Revisions adopted in response to EPA comments (re practical enforceability) on the ozone action plan adopted 3/2004.	Sections I.A.; II.A.; XII.; XVI.;	Part A, Section I.A.; Part A, Section II.A.; Part D, Section I.; Part E, Section I.	Regulations 7 and 24-26, Part A
2006	Dec. 17	Expanding oil and gas condensate tank emission controls.	Section XII.	Part D, Section I.	Regulation Number 7, Part B (fkna Part D)
2006	Dec. 17	Reduce emissions from oil and gas operations and natural gas fired engines.	Sections I.A.1.b.; XVII.	Part A, Section I.A.; Part D., Section II. & Part E. Section I. (for engines)	Regulation Number 7, Part A and Part B (fkna Part D); Regulation 26, Part A and Part B (fkna Part E)
2008	Dec. 12	Expand VOC RACT requirements for 100 tpy sources and clarify how RACT requirements in Regulation Numbers 3 and 7 interact in the ozone nonattainment area. Make typographical and formatting changes. Revise oil and gas condensate tank and pneumatic controller requirements.	Title; Sections I.; II.; VI. through XIII.; XVII.; XVIII.; and Appendices A through F	Part A, Section I.; Part A, Section II.; Part B, Sections IV. through VI. & Part C, Sections I. through IV. & Part D, Section I.; Part D, Section II. and Part E, Section I. (for	Regulation 24, Part B; Regulation 25, Part B (fkna Part C); Regulation Number 7, Part B (fkna Part D); Regulation 26, Part B (fkna Part E)

Year of rule adoption	Date of rule adoption	Summary of rule(s) adopted	Regulation Number 7 Section (pre-2019 numbering)	Regulation Number 7 Section (numbering as of 12.2022)	Rule & Section (as of 4.2023)
				engines); Part D, Section III.; Part A, Appendix A. & Part B, Appendices B and C & Part C, Appendices D and E (formerly Appendix F)	
2011	Jan. 7	Include engine requirements in the Regional Haze SIP.	Outline; Sections I.; XVII.	Part A, Section I.; Part E, Section I.	Regulation 26, Part B (fkna Part E)
2012	Dec. 20	Address EPA comments on the June 2009 submittal. Revise state-only requirements for consistency.	Sections II.; XII.; XVII.	Part A, Section II.; Part D, Section I.; Part D, Section II.	Regulation Number 7, Part B (fkna Part D)
2014	Feb. 23	Adopt additional oil and gas emission reduction requirements – auto-igniters, expand condensate tank controls, limit storage tank venting, expand dehydrator control, establish leak detection and repair program, limit venting during well maintenance and liquids unloading, expand pneumatic controller requirements.	Sections II.; XVII.; XVIII.	Part A, Section II.; Part D, Section II.; Part D, Section III.	Regulation Number 7, Part B (fkna Part D)
2016	Nov. 17	Adopt RACT requirements for industrial cleaning solvents, lithographic and letterpress printing, and specific major sources. Including existing combustion device auto-igniter and storage tank inspection requirements in the SIP. Adopting major source combustion equipment combustion process adjustment requirements and incorporate by reference NSPS and NESHAP for specific major sources.	Sections I.; X.; XII.; XIII.; XVI.; XIX.	Part A, Section I.; Part C, Section II.; Part D, Section I.; Part C, Section IV.; Part C, Section V.; Part E, Section III.	Regulation 25, Part B (fkna Part C); Regulation Number 7, Part B (fkna Part D); Regulation 26, Part B (fkna Part E)
2017	Nov. 16	Adopt provisions based on recommendations in EPA's Oil and Gas Control Techniques Guideline. Revise state-only requirements for consistency.	Sections II.; XII.; XVII.; XVIII.	Part A, Section II.; Part D, Section I.; Part D, Section II.; Part D, Section III.	Regulation Number 7, Part B (fkna Part D)
2018	July 19	Adopt requirements for existing major source boilers, turbines, lightweight aggregate kilns, glass melting furnaces, engines.	Sections XVI.; XIX.	Part E, Section II., Part E, Section III.	Regulation 26, Part B (fkna Part E)
2018	Nov. 15	Adopt requirements for major source breweries and wood furniture manufacturing. Address EPA concerns with requirements for industrial cleaning solvents, metal furniture	Sections I.; II.; VI.; VIII.; IX.; X.; XII.; XIII.; XVI.; XVII.; XIX.; XX.; XXI.	Part A, Section I.; Part A, Section II.; Part B, Section IV; Part B,	Regulation 24, Part B; Regulation 25, Part B (fkna Part C);

Year of rule adoption	Date of rule adoption	Summary of rule(s) adopted	Regulation Number 7 Section (pre-2019 numbering)	Regulation Number 7 Section (numbering as of 12.2022)	Rule & Section (as of 4.2023)
		surface coating, and miscellaneous metal surface coating. Updated incorporation by reference dates.		Section VI.; Part C, Section I.; Part C, Section X.; Part D, Section I.; Part C, Section IV.; Part C, Section V.; Part D, Section II.; Part E, Section III.; Part E, Section IV. Part F	Regulation Number 7, Part B (fkna Part D); Regulation 26, Part B (fkna Part E); Regulation 23 (fkna Part F)
2019	Dec. 19	Reorganized into Parts A through F. Replaced the SIP system-wide condensate tank control program with a fixed threshold storage tank control program. Increased state-only, state-wide storage tank controls. Adopted oil and gas storage tank measurement system, hydrocarbon liquids loadout, leak detection and repair, well plugging, and pneumatic controller requirements. Adopted an oil and gas transmission and storage segment methane intensity program. Adopted an annual oil and gas inventory program. Expanded SIP requirements to 50 tpy sources. Aligned gasoline tank truck testing requirements with federal requirements as SIP clean-up.	Sections I. through XX. and Appendices A through F	(see reorganization cross walk)	
2020	Sept. 23	Adopted requirements for natural gas fired 1,000 horsepower engines. Adopted flowback vessel control requirements and pre- and early-production monitoring requirements. Expanded hydrocarbon liquids loadout requirements to class II disposal well facilities.		Part D, Sections II.; IV.; V.; VI.; Part E, Section I.	Regulation Number 7, Part B (fkna Part D); Regulation 26, Part B (fkna Part E)
2020	Dec. 18	Adopted requirements for major source foam manufacturing, boilers, turbines, landfill and biogas fired engines, and wood surface coating.		Part D, Section II.; Part E, Sections II.; IV.; V.	Regulation Number 7, Part B (fkna Part D); Regulation 26, Part B (fkna Part E)
2021	Feb. 18	Adopted non-emitting pneumatic controller requirements for new facilities and existing pneumatic controller retrofit requirements for existing facilities.		Part D, Section III.	Regulation Number 7, Part B (fkna Part D)
2021	July 16	Adopted requirements for metal parts surface coating and major source		Part C, Section I.; Part D,	Regulation 25, Part B (fkna

Year of rule adoption	Date of rule adoption	Summary of rule(s) adopted	Regulation Number 7 Section (pre-2019 numbering)	Regulation Number 7 Section (numbering as of 12.2022)	Rule & Section (as of 4.2023)
		process heaters.		Section III.; Part E, Section II.	Part C); Regulation Number 7, Part B (fkna Part D); Regulation 26, Part B (fkna Part E)
2021	Dec. 17	Adopted SIP revisions to address EPA concerns with the EPA Oil and Gas CTG. Adopted oil and gas combustion device performance testing requirements. Expanded reciprocating compressor rod packing, leak detection and repair, and pneumatic controller requirements at natural gas processing plants. Expanded leak detection and repair, separator, and well maintenance requirements. Adopted pigging and blowdown requirements.		Part D, Sections I., II., III., V., VI.	Regulation Number 7, Part B (fkna Part D)
2022	Dec. 15	Adopted requirements for major source combustion equipment, wood coating, solvent use, bakery operation, digital printing, poultry waste processing, oil stabilization facilities, class II injection well facilities, and industrial waste; included state only provisions as SIP strengthening measures; clarified the applicability of requirements to newly classified ozone nonattainment areas; included requirements for motor vehicle materials and automotive coatings; expanded gasoline tank truck testing requirements.		Part E, Sections I., II., III., VI., VII., and VIII., Part C., Sections I., II., and IV., and Part D, Section II.; Part D, Sections II., ; Part A, Sections I. and II.; Part C, Section I.; and Part B, Section IV.	Regulation 24, Part B (fkna Part B); Regulation 25, Part B (fkna Part C); Regulation Number 7, Part B (fkna Part D); Regulation 26, Part B (fkna Part E)

The Commission also made typographical, grammatical, and formatting corrections throughout the regulations.

Incorporation by Reference

The Commission will update regulatory references as needed as opportunities arrive.

Additional Considerations

These revisions are administrative in nature and, therefore, do not exceed or differ from the requirement of the federal act or rules. Therefore, § 25-7-110.5(5)(a) does not apply.

Findings of Fact

To the extent that § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of greenhouse gas and VOC emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective alternative to achieve the necessary reduction in air pollution and provide the regulated entity flexibility.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

BB. July 20, 2023 (Part B Sections II, V, and VIII)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-101, C.R.S., et seq., the Colorado Air Pollution Prevention and Control Act, § 25-7-101, C.R.S., et seq., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 C.C.R. §1001-1.

Basis

During the 2019 legislative session, Colorado's General Assembly adopted House Bill 19-1261 (HB 19-1261), setting statewide greenhouse gas (GHG) reduction goals. The General Assembly declared in HB 19-1261 that "climate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life[,]" acknowledged that "Colorado is already experiencing harmful climate impacts[,]" and that "many of these impacts disproportionately affect" certain disadvantaged communities. The goals set in HB 19-1261 seek a 26% reduction of statewide GHG emissions by 2025; 50% reduction by 2030; and 90% reduction by 2050 as compared to 2005 levels. The GHG Pollution Reduction Roadmap ("GHG Roadmap") developed by the Colorado Energy Office and CDPHE identifies the largest contributors to state GHG emissions and quantifies the baselines from which these reduction percentages are to be estimated.

In December 2021, the Commission adopted a revision to this regulation that established greenhouse gas intensity requirements for upstream operators and required owners or operators of well production facilities to submit greenhouse gas intensity plans. The primary purpose of these plans is for owners or operators to demonstrate to the Division how they intend to meet the 2025, 2027, and 2030 greenhouse gas intensity targets in Sections VIII.B.2. through VIII.B.4. In Section

VIII.F., the Commission directed the Division to develop a mechanism to track progress towards meeting the state's GHG reduction goals and to evaluate compliance with the greenhouse gas intensity targets and new facility intensity targets in Sections VIII.B. and VIII.C. The Commission determined that it was advisable to give the Division time in 2021 and 2022 (1) to evaluate the annual emission reports submitted in 2021 and 2022, (2) to evaluate different calculation and emission quantification methodologies for different emitting activities and equipment, and (3) to consider the impact and results of the aerial and ground-based survey work being conducted by the Division (and contractors) in 2021 (because this data was not fully available until the spring of 2022) as well as other relevant surveys.

The Commission directed the Division to, by 2023, propose a verification plan after considering the current status of oil and gas GHG emissions, based on Regulation Number 7 reporting and top-down monitoring results, production increases or decreases based on data reported to the OGCC, the aerial and ground-based survey work, and other important considerations, such as the availability, reliability, and cost-effectiveness of monitoring techniques as appropriate. In this rulemaking action, the Commission has adopted a comprehensive GHG intensity verification program for upstream operators that allows for operator flexibility and the ability to adapt to new technologies as they emerge.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-101, C.R.S., et seq. (the State Air Act or the Act), specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act provides the Commission broad authority to regulate air pollutants, including GHG and its constituent gases (particularly carbon dioxide, methane, and nitrous oxide).

§ 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. § 25-7-109(10) directs the Commission to adopt emission control regulations to minimize emissions of methane, other hydrocarbons, VOC, and NOx from oil and gas operations.

Pursuant to HB 21-1266, the Commission must adopt regulations to ensure that the state meets its greenhouse gas reduction targets for the oil and gas sector in the GHG Roadmap (36% by 2025 and 60% by 2030). § 25-7-105(1)(e)(XII), C.R.S. The Commission must also ensure that industrial sector emissions (including those from oil and gas fuel combustion equipment) are reduced by 20% from the 2015 baseline by 2030. These revisions ensure that the state meets its statutory goals. These revisions to Regulation Number 22 will, taking into account other relevant laws and rules (including the revisions to Regulation Number 7 adopted as part of this rulemaking action), as well as voluntary actions taken by local communities and the private sector, achieve the state’s GHG reduction goals through 2030 for the oil and gas industry.

Purpose

The following section sets forth the Commission’s purpose in adopting the revisions to Regulation Number 7, and includes the technological and scientific rationale for the adoption of the revisions.

Section II, Pressure Actuator System

The Commission adopted an acceptable alternative to flow meters, a pressure actuator system, for monitoring enclosed combustion devices to confirm that the enclosed combustion device is being operated appropriately. A pressure actuator system monitors pressure and provides an operator more control of their vapor control system to ensure it is operating within design parameters. This system was discussed as an alternative in 2021, but the concept was not clearly understood by the Division or operators at that time. The Division has since approved several proposals that use pressure actuator systems as an alternative to flow meters (as allowed by II.B.2.g.(iii)(C)). The Commission intends that those approvals remain valid; however, to comply with Section II.B.2.g. an owner or operator may choose to notify the Division that it rescinds its approved proposal and that it instead will adhere to the pressure actuator system requirements of II.B.2.g.

Section V, Oil and Natural Gas Annual Emission Inventory Report (ONGAEIR)

The Commission has adopted revisions to the annual reporting requirement for oil and gas owners and operators in Section V to support GHG intensity verification and reporting. The Commission has also adopted a revised requirement for the owners or operators of oil and natural gas operations and equipment at or upstream of a natural gas processing plant and class II disposal well facilities that are not subject to reporting under Section IV. Such owners and operators are now required to submit their annual emission reporting (ONGAEIR) with emissions identified by month beginning with calendar year 2024 reporting, which will be due by June 30, 2025.

Section VIII.A, Definitions

The Commission adopted new definitions in Section VIII.A for “Certified third-party auditor,” “Measurement informed inventory,” “Direct measurement,” “Oil and Natural Gas Annual Emissions Inventory Report (ONGAEIR)”, “Parametric measurement”, “Measurement strategy” and “State default intensity verification factor” to clarify the terms as used in Section VIII.F.

Section VIII.F. and VIII.G., GHG Intensity Verification

In December of 2021, the Commission adopted language in Section VIII.F.1. that directed the Division to develop a mechanism by 2023 to track progress towards meeting the state’s GHG reduction goals and to evaluate compliance with the greenhouse gas intensity targets and new facility intensity targets in Sections VIII.B. and VIII.C. In this action, the Commission repealed Section VIII.F.1. and replaced that section with the new Sections VIII.F.2 – 5 and VIII.G. The new Sections VIII.F.2- 5 and VIII.G. achieve the directives given in the December 2021 rulemaking.

In Section VIII.F.2 - 3., the Commission adopted requirements for methodologies and strategies for operators to demonstrate compliance or verify their company-wide and new facility GHG intensity. Subject owners and operators must use a measurement-informed inventory relying upon the Oil and Natural Gas Annual Emission Inventory Reports (ONGAEIR) required in Section V to demonstrate that the targets in Sections VIII.B and C are being met. The inventory must also take into account quantification of emissions from regional, local, or point source monitoring (emission or parametric measurement monitoring). The Commission intends that monitoring be used to quantify methane in the creation of a measurement-informed inventory.

For calendar years 2023 and 2024, operators of new facilities will use their ONGAEIR alone to calculate intensity to compare against new facility intensity standards. For subsequent calendar years, operators of new facilities will be required to determine intensity in accordance with the methods to create a measurement-informed inventory.

To create a measurement-informed inventory, operators will either:

- apply a state default intensity verification factor to their ONGAEIR methane emissions, or

- follow an operator-specific program, subject to Division approval.

Section VIII.F.3.a., State Default Intensity Verification Factor

The state default intensity verification factor must be developed by the Division annually, and made available to operators by December 31 of the previous calendar year to which the state default intensity verification factor will be applied. The Commission directs the Division to include aerial and ground based emission monitoring, as well as other appropriate monitoring, to create the state default intensity verification factor. The state default intensity verification factor may be statewide, regional, basin-wide, or site specific, and the methodology may change year to year with appropriate review and public comment. The Commission intends for the Division to strive for general consistency in developing this factor, while still keeping up with, and making necessary changes in response to, the evolving technology landscape for emissions detection and measurement. The Commission also directs the Division to make all data and materials used to create the state default intensity verification factor publicly available, and include a summary report of the methodology and calculations annually. To the extent possible, emissions measurements should be compared against emission reporting for the same time period, and any assumptions about longevity, scaling, and emission distribution must be clearly identified in the report.

Section VIII.F.3.b., Company-wide GHG Intensity Verification Program

The minimum requirements of the operator-specific program are laid out in Section VIII.F.3.b. The operator-specific program includes two important elements to verify that the company's GHG emission reporting meet the requirements for a measurement-informed inventory: 1) a measurement strategy and 2) a third-party audit.

1) Measurement Strategy

The measurement strategy may be developed by the Division or, beginning in 2027, by the intensity operator. The Commission intends that the measurement strategy addresses emissions from all types of facilities, of various sizes, of various frequencies, and across the day and year. The measurement strategy must explain the considerations and reasoning for the operator's selections. To fully inform emissions calculations from all facilities, the number of facilities monitored must be sufficient to represent that company's portfolio of well production facility types. Well production facilities can be characterized by size, stages of separation, storage tank type, age, and other distinguishing factors. Further, emissions vary in both size and frequency. Some emissions are very small but consistent, while others are large and intermittent or infrequent. The measurement strategy must account for these varying conditions. Finally, the measurement strategy must consider opportunities for data collection at different times of day and during different seasons. The measurement strategy must include direct measurement and may also include parametric measurement. The measurement strategy should be supported by other inputs, if needed, and the measurement strategy (in conjunction with ONGAEIR) should demonstrate with sufficient precision that the operator is accurately calculating its required intensity. Such other inputs could include parametric

measurement, statistical analysis of direct measurements to extrapolate the results of sampled measurements, and reconciliation between inventory-based emissions and measured emissions.

Direct Measurement

The Commission intends that a variety of previously validated monitoring equipment and methodologies may be used for the measurement strategy, but all measurement strategies must utilize direct measurement at the site-level. By “site-level,” the Commission means that direct methane emission measurements must be able to be attributed to a specific site, stationary source, or facility. Technologies that are designed to measure methane emissions from various emission points at a site or technologies that are designed to measure the overall site-wide methane emissions from a site are acceptable.

To ensure that the direct measurement technologies and methodologies are “fit for purpose, capture a sufficient portion of expected emissions, and be validated with appropriate testing”, the Division or the operator must consider the uncertainty of the method, the minimum detection level at a probability of detection of at least 90%, the rigorousness of the testing, and the frequency of the monitoring.

Parametric Measurement

Where parametric measurement is utilized, the measurement strategy must detail how the parametric data informs emission calculations. For example, if a pressure actuator and temperature sensor is used to monitor an enclosed combustion device, the measurement strategy must outline how the readings will impact the emissions calculations for control efficiency or downtime.

The Commission has indicated in Section VIII.F.3.b.(i)(B) that the Division may consider other reasonable and necessary monitoring considerations in the development of a measurement strategy. The Commission intends that any such additional monitoring considerations (i) be necessary to ensure development of a measurement-informed inventory, (ii) consider the commercial viability and availability of the proposed monitoring technology or consideration, and (iii) be reasonably tied to the purposes set forth by this Commission in adopting these rules.

The Commission understands that at this time, there is no single or group of monitoring technologies that will accurately quantify or detect all emissions all of the time. The Commission intends that the measurement strategy utilize currently available technologies to inform emissions, be reviewed annually, and be updated as new and validated technologies and methodologies arise and where the operator determines measurement strategy changes will result in more accurate and comprehensive understanding of greenhouse gas emissions.

The Commission intends for the Division to complete, for each year from 2026 through 2031, a comprehensive review of operators’ measurement strategy and implementation of the measurement strategy for the preceding calendar year. The comprehensive review will aid the Division in assessing prior assumptions about

available technology, deployment of that technology, methods of reconciliation, and other aspects of the measurement strategy and implementation, and determining whether these aspects should continue to be utilized or should be modified. The Commission intends for the Division to update the GHG Intensity Verification Protocol document as necessary in response to the findings of the Division's comprehensive review.

2) Third-Party Audit

The Commission intends for operators to have a certified third party auditor complete a review of the operator's ONGAEIR reporting. The certified third-party auditor must have no financial incentive to that operator, must have expertise in emission calculation and developing emission inventories, and have stringent processes in place to retain integrity, transparency, and trust.

In Section VIII.F.3.b.(iii), the Commission intends that the Division have the option to require an operator to revise their operator-specific program or deny the operator-specific program and require the operator to utilize the state default intensity verification factor. The Commission expects that this would only apply to an operator who has significantly failed to comply with the operator-specific program (the measurement strategy, the audit or both) such that they have not developed a measurement-informed inventory that can be relied upon to determine compliance with the intensity standard. Less significant errors or corrections can be addressed through the Division's existing authorities.

Section VIII.F.4., GHG Intensity Verification Protocol

In Section VIII.F.2.c., the Commission adopted provisions that direct the Division to create and maintain a protocol for intensity verification. This Intensity Verification Protocol will detail how the Division will update the state default intensity verification factor(s) and how operators must develop their operator-specific programs.

The Intensity Verification Protocol must include the measurement strategies developed by the Division, the methodology to calculate the state default intensity verification factor, guidance to operators in developing their own measurement strategies (for calendar year 2027 through 2030), a list of expectations for certified third party auditors, and guidance on reporting requirements as designated in Section VIII.G. During the development of the protocol and any modifications to it, the Commission intends for the Division to collaborate with all stakeholders, including local governments, regarding the methodologies used to calculate default intensity verification factor(s).

The Commission is aware of several Measurement, Reporting, Verification (MRV) frameworks that would support a measurement-informed inventory for methane, including the United Nations Environment Programme Oil and Gas Methane Partnership 2.0 (OGMP 2.0); MiQ, GTI Veritas; CleanConnect ProveZero; Project Canary/Trustwell; Quantification, Monitoring, Reporting and Verification (QMRV); and others. The Commission intends for the division to evaluate these and other newly developed programs to identify how they will support the requirements of the operator-specific intensity verification program.

The Commission expects that a final Version 1.0 of the Intensity Verification Protocol will be completed by December 31, 2023, but no later than June 30, 2024. The Commission intends for the Division to continue engagement with stakeholders in the development and finalization of Version 1.0 of the Intensity Verification Protocol.

Beginning in 2025, the Commission intends for the Division to review the protocol annually and identify revisions, if needed. Any future revisions to the protocol must include public review and comment, and should be published by June 30 of the calendar year preceding the effectiveness of the protocol (e.g. by June 30, 2025 for reporting year 2026).

Section VIII.G., Reporting

The Commission adopted new reporting requirements and consolidated existing annual verifications into Section VIII.G. The Commission requires that intensity operators intending to follow an operator-specific program provide a summary of their measurement strategy to the Division three months before the start of the calendar year for which they intend to use the strategy. This summary should include the information outlined in the Intensity Verification Protocol developed by the Division, such as the types of technologies being used, the key specifications for those technologies (i.e., the minimum detection level at 90% probability of detection), the anticipated frequency of monitoring, and a description of how the results from the measurements conducted under the strategy will be incorporated into ONGAEIR.

The Commission also expanded on the annual verification requirement to include reporting of the company-wide and new facility greenhouse gas intensity and whether an intensity operator elected to use the state default intensity verification factor or used an operator-specific program to create a measurement-informed inventory. The Commission also clarified that the annual verifications due in 2024 and 2025 only need to include the relevant information for new facilities subject to new facility intensity requirements in 2023 and 2024.

The Commission created a new requirement that where an intensity operator does not meet the required intensity standard, the intensity operator must either revise or supplement the most recently submitted greenhouse gas intensity plan from Section VIII.E. and submit the updated plan to the Division. The intensity operator must include planning on how they will bring the intensity down to the required standard in the following year and how they will make up the difference in emissions that should have been reduced had they met the intensity standard in the previous year.

The Commission finally created new reporting requirements for those intensity operators following operator-specific programs to attain a measurement-informed inventory. The intensity operators following operator-specific programs will be required to submit their complete measurement strategy and an evaluation of the implementation of the strategy by June 30 of the year following the calendar year in which the measurement strategy was implemented. Further, intensity operators will be required to submit the reports from the certified third-party auditor as well as a summary of any changes the intensity operator made to ONGAEIR as a result of the audit.

GHG Roadmap Progress

The Commission intends for the Division to publish the methodology the Division will use to evaluate total greenhouse gas emissions relative to the applicable baseline and progress towards statewide greenhouse gas emission reduction goals for oil and gas emissions. This methodology must include statewide, regional, or local measurement and quantification of methane emissions. The Commission intends for the Division to engage with stakeholders prior to publishing this methodology.

Evaluation of Rule Implementation

The Commission recognizes that, in future years, after the state has had time to assess the implementation of the verification program it may be appropriate to revise the regulatory requirements of Regulation Number 7, Part B, Sections V, VIII.F., and VIII.G. Along with other elements the Division typically reviews during rule implementation, beginning in 2025, the Division should review the timing of reporting and auditing requirements to ensure that the learning cycle built into the rule is sufficiently informing the program. If the Division's ongoing evaluation indicates that a rulemaking is warranted to ensure that the verification program sufficiently informs compliance with the intensity standards, the Division should return to the Commission with a revised rule proposal for consideration at that time. The Commission expects that, leading up to 2025 and beyond, the Division will continue to evaluate and improve the state's data management and processing systems.

Additional Considerations

The following are additional findings of the Commission made in accordance with the Act:

§ 25-7-110.5(5)(b), C.R.S.

As these revisions exceed and may differ from the federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

There are federal requirements that seek to reduce greenhouse gas from oil and gas operations, though those requirements are separate and distinct from the requirements set forth in Part B, Sections II, V, and VIII, which were addressed in this rulemaking. The Commission's revisions address Colorado-

specific requirements and needs, like those of HB 19-1261 and HB 21-1266, which were not considered in any federal process.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

The proposed upstream programs will ensure that the regulated community can achieve required GHG emissions reductions in cost-effective ways by giving covered entities options to reduce emissions and develop a measurement-informed inventory to ensure compliance with state targets.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements;

This is a state-specific rule that is not implementing federal requirements. Thus, no timing issue exists.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

The regulatory provisions allow a reasonable amount of time for affected entities to comply with the new revisions. As such, affected businesses or industrial sectors are afforded a reasonable margin for accommodation of uncertainty and future growth.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

The regulatory provisions offer flexibility to operators in their choice of compliance mechanisms, thus maintaining reasonable equity.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

These revisions are designed with the maximum flexibility for the regulated community. Under HB 21-1266, if the state is not on track to achieve the emission reduction goals, the Commission must adopt further regulations to achieve those goals. Future efforts are likely to be not as cost-effective as the flexible programs in these revisions.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the “compelling reason” is for different procedural, reporting, or monitoring requirements;

Reporting requirements beyond those required under federal Part 98 are necessary to effectively quantify and measure Colorado’s progress toward statewide GHG reductions and to achieve the public health, safety, and welfare goals set forth in § 25-7-102, C.R.S. Under these requirements, owners and operators of these sources will be required to compile and report directly to the Division information collected by or available to them for business or other regulatory purposes. While this may overlap with some other federal reporting requirements, it is expected there will be reporting beyond what is required federally.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

Demonstrated technology exists to enable compliance with the requirements of these revisions.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

These revisions are part of a regulatory program that will cost-effectively reduce statewide GHG emissions to meet the legislative directive of the State Air Act, as revised by SB 19-181, HB 19-1261, and HB 21-1266. As noted, the General Assembly has acknowledged that climate change impacts Colorado's economy and directed that GHG emissions should be reduced across the many sectors of our economy. Colorado has established specific GHG reduction goals within its statutes. Programs established in this rulemaking action provide mechanisms for GHG reductions to occur cost-effectively across a specific, high-emitting sector of the state's economy.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

The new regulatory requirements and amendments are needed to verify the statutorily mandated emission reductions. As noted, the State Air Act requires the Commission to implement GHG emission reduction strategies in order to secure reductions of pollution consistent with the statewide GHG emission reduction goals. Currently emissions projections over the next decade demonstrate that a no-action alternative would fall short of achieving Colorado's reduction goals. Additionally, no alternative combination of sector-specific regulations has been identified that is sufficient to meet the state's GHG emissions reductions goals.

Findings of Fact

To the extent that § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of greenhouse gas and VOC emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective alternative to achieve the necessary reduction in air pollution and provide the regulated entity flexibility.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

CC. December 15, 2023 (Revisions to Part A, Sections I.A.1.c. and II.C. and Part B, Sections I.F.3.c., I.J.1.l., I.L.7., II.E.9., and VI.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5.,

C.R.S., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 Code Colo. Reg. §1001-1.

Basis

On October 7, 2022, EPA reclassified the Denver Metro/North Front Range (DM/NFR) to severe for the 2008 8-hour Ozone National Ambient Air Quality Standard of 75 parts per billion (ppb) (2008 NAAQS), after 2019-2021 ozone data failed to show attainment. See 86 Fed. Reg. 60926. Separately, EPA has also designated the DM/NFR as marginal nonattainment for the 2015 ozone NAAQS of 70 ppb, effective August 3, 2018 (83 Fed. Reg. 25776 (June 4, 2018)).

On November 30, 2021, EPA expanded the boundary of the 2015 ozone nonattainment area to include all of Weld County, effective December 30, 2021 (86 Fed. Reg. 67864). On October 7, 2022, EPA reclassified the DM/NFR and northern Weld County to moderate, after 2019-2021 ozone data failed to show attainment. See 86 Fed. Reg. 60897.

Further, in a March 2023 letter Governor Jared Polis directed the Colorado Department of Public Health and Environment (CDPHE) and the Energy and Carbon Management Commission (ECMC) (fka COGCC) to adopt rules to reduce nitrogen oxides (NOx) emissions from upstream oil and gas operations by 30% in 2025 and 50% by 2050, relative to a 2017 baseline.

To ensure progress towards attainment of the 2008 and 2015 ozone NAAQS and comply with the Governor's directive, the Commission adopted revisions to Regulation Number 7 to reduce the impact from the use and operation of fossil fuel-fired equipment at oil and gas well drilling and completion operations in the nonattainment area between May 1 and September 30 starting in 2024. Specifically, operations occurring in cumulatively impacted communities must be completed using grid power or non-fossil fueled fired equipment and/or established practices. Operations not occurring in cumulatively impacted communities must comply with NOx intensity targets and/or established practices. While not required by the rule, the Commission encourages operators to electrify equipment or schedule operations outside the May through September months, particularly in cumulatively impacted communities. The use and operation restrictions adopted by the Commission will aid in progressing only towards attainment of the ozone NAAQS but also towards achieving the Governor's directive.

Statutory Authority

The State Air Act, specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant to include essentially any gas emitted into the atmosphere (and, as such, includes VOC, NOx, methane and other hydrocarbons) and provides the Commission broad authority to regulate air pollutants. Section 105(1)(a)(I) directs the Commission to adopt a state implementation plan (SIP) to attain the NAAQS. Section 105(1)(b) directs the Commission to adopt emission control regulations in conformity with § 25-7-109. §

25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. §§ 25-7-109(1)(a) directs the Commission to adopt emission control requirements that require the use of effective practical air pollution controls for (I) each significant source or category of significant sources of air pollutants and (II) each type of facility, process, or activity which products or might product significant emissions of air pollutants. Section defines emission control regulation to mean a regulation that is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollution emitted and a regulation that adopts any design, equipment, work practice, or operational standard. § 25-7-109(2) allows emission control regulations pertaining to, among other pollutants, nitrogen oxides and hydrocarbons.

Purpose

The following section sets forth the Commission’s purpose in adopting the revisions to Regulation Number 7, and includes the technological and scientific rationale for the adoption of the revisions.

Oil and gas pre-production operations

The Commission adopted rules to reduce the impact of the use and operation of fossil fuel-fired equipment at oil and gas drilling, hydraulic fracturing, and hydraulic refracturing operations. As adopted, the regulations on the use and operation of fossil fuel-fired equipment will have a positive impact on ensuring compliance with the Governor's directive to secure a 30% reduction in upstream oil and gas NOx emissions by 2025, advance environmental justice in Colorado, and move the area towards attainment with federal ozone standards. The Commission adopted these revisions recognizing they are one step in continuing to reduce emissions from the upstream oil and gas sector and directs the Division to continue efforts to collaborate with the ECMC in establishing a NOx reduction steering committee to continue the work of identifying innovative, cost effective, and efficient means of reducing NOx emissions to meet the Governor's directive of achieving a 50% reduction in NOx emissions from the upstream oil and gas sector by 2030. The NOx reduction steering committee may, if appropriate, evaluate the 2026 NOx intensity target and use practices. In achieving NOx reduction targets, the commission urges the steering committee to consider methods of providing protections for all categories of disproportionately impacted communities, and requirements for or methods of encouraging electrification of pre-production engines and stationary engines, including engines under 100 horsepower.

In furtherance of environmental justice and equity (see e.g., HB 21-1266 "…state policy can and should improve public health and the environment and improve the overall well-being of all communities"), the Commission adopted revisions to implement in-use restrictions on oil and gas operators that will result in reduction of NOx and other emissions when drilling and hydraulic fracturing in a cumulatively impacted community. The Commission also adopted provisions requiring operators to meet an upstream NOx intensity for drilling, hydraulic fracturing, hydraulic refracturing, and production operations. Under these requirements, operators will have flexibility to select appropriate and effective equipment and operational methods. As adopted, these revisions offer multiple, cost-effective pathways to compliance that expand the adoption of innovative technology and practices to reduce emissions from drilling, completion, and production operations. Options include the adoption of electric equipment, which the Commission encourages wherever technically and economically practicable, the use of high performing and low emitting equipment, and the use of supplemental technologies and practices such as battery assists and smart engine systems to further reduce emissions. These in-use practice options apply to engines or turbines use to drill or hydraulically fracture or refracture a well, i.e., engines or turbines used to turn the drill bit or power the hydraulic fracturing or refracturing pumps. The general maintenance and operation practices apply to both these engines and turbines as well as other associated equipment used during drilling or hydraulic fracturing or refracturing. The Commission urges the Colorado Department of Public Health and Environment's energy liaison to recommend grid-powered and low-emission engines

as best management practices when consulting on proposed oil and gas development plans in the nonattainment area located within all categories of disproportionately impacted communities.

The Commission expects the Division to evaluate compliance with the NOx intensity considering the projected production rate used to determine the NOx intensity but also the actual production rate for the year of compliance. The Commission adopted reporting requirements for operators to submit an interim report of NOx emissions and production for the Division to use to evaluate progress toward the NOx intensity targets, i.e., five months of NOx emissions from May through September over 5/12ths of twelve months of production. The use of interim values recognizes that operators will complete their annual reporting by every June, following any necessary operator quality assurance processes, which would delay the determination of progress. Should the upstream operators not achieve the adopted NOx intensity, after also considering the actual production rate, the Commission directs the Division to evaluate what additional actions may need to be taken to achieve reductions in pre-production and/or production emissions to ensure achievement of the applicable upstream NOx reduction target. Potential actions may include reevaluation of the sector intensity targets, establishment of additional reduction measures, or corrective action from individual operators.

The Commission encourages the Division to prioritize the timely creation of the interim reporting mechanisms (described in VI.E.4). The Commission directs the Division to make available usable information obtained from the November 30 interim report on the Division's website, in a format that provides totals for the nonattainment area, for review by the NOx Reduction Steering Committee and other state agencies and interested parties no later than February 1st.

The Commission intends for the Division to approve “other technologies and operational optimization methods” that align with the achievement of the state’s emissions reduction and environmental justice goals but recognizes that cases may exist where, due to the emerging nature of technologies to be used, technologies may not perform as expected or performance is prevented or delayed by an event(s) arising from causes which are not reasonably foreseeable, are beyond the owner or operator’s control, and cannot be overcome by due diligence (e.g., a force majeure). In such cases where due diligence was completed yet expected performance is not achieved, the Commission anticipates the Division will engage with the owner or operator to identify appropriate next steps. The Commission further intends for the Division to continue collaboration with ECMC when ‘identifying and approving other technologies and operational optimization methods’.

Recognizing the importance of expanding the technical and economic feasibility of electrification to meeting the State’s air quality, greenhouse gas, and environmental justice goals, the Commission directs the Division, in complimentary and parallel effort to the NOx reduction steering committee, to continue collaborating with other state agencies, utility providers, and impacted parties in identifying steps forward to expand adoption of electrification. The Commission requests the Division brief the Commission in 2025 on the status and effectiveness of the NOx Intensity Program and discuss, if needed, any recommendations for changes.

Clean-up

The Commission clarified reporting requirements in Part B, Section I.L.7. to identify the additional facility category subject to this reporting requirement, for which the Commission adopted as an expansion to applicability in December 2022. This proposed revision does not expand any existing requirements but merely clarifies the reporting provisions. The Commission also adopted revisions to Part B, Section II.E.9.b. to reflect that the provisions referenced in Section II.E.4.d. have been superseded by the inspection frequencies in Table 5 and, therefore, are no longer necessary to be specifically identified in this reporting requirement as they will be identified in reporting due to the inspection frequencies and source identification in Table 5.

Further, these revisions will include any typographical, grammatical and formatting errors throughout the regulation.

Incorporation by Reference

§ 24-4-103(12.5) of the State Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of §24-4-103(12.5) are met by including specific information and making the regulations available because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. To fully comply with these criteria, the Commission included reference dates to rules and reference methods incorporated in Regulation Number 7.

Additional Considerations

Colorado must revise Colorado's ozone SIP to address the severe ozone nonattainment area requirements. The CAA does not expressly address all of the provisions adopted by the Commission. Rather, federal law establishes the ozone NAAQS and requires Colorado to develop a SIP adequate to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to further achieve reductions of ozone precursor emissions. These revisions do not exceed or differ from the federal act due to state flexibility in determining what control strategies to implement to reduce emissions. However, where the proposal may differ from federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), CRS, the Commission determines

(I) The revisions to Regulation Number 7 address state only requirements for drilling and completion operations in the oil and gas sector. NSPS OOOO, NSPS OOOOa, NSPS IIII, NSPS JJJJ, and MACT ZZZZ may also apply to the above listed operations and equipment. However, the revisions to Regulation Number 7 apply on a broader basis.

(II) The federal rules discussed in (I) are primarily technology-based in that they largely prescribe the use of specific technologies or work practices to comply. The proposed state only requirements are technology- and performance-based that allow for maximum flexibility for demonstrating compliance.

(III) The CAA establishes the 2008 and 2015 ozone NAAQS and requires Colorado to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. Similarly, EPA develops NSPS or NESHAP considering national information and data, not Colorado specific issues or concerns. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's obligation to attain the ozone NAAQS. Instead, Colorado can adopt applicable provisions to reduce emissions of ozone precursors, as the Commission has done here.

(IV) In addition to the 2008 ozone NAAQS, Colorado must also comply with the lower 2015 ozone NAAQS. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as efforts conducted to support the revisions adopted by the Commission may prevent or reduce the need to implement

additional, more burdensome requirements to meet the more stringent NAAQS.

(V) The proposed revisions are state-only and are not impacted by federal timelines. However, the implementation of the requirements for drilling, pre-production, and production operations in 2024 and beyond will aid in the attainment of the 2008 ozone NAAQS by the federally established 2026 attainment date.

(VI) The revisions to Regulation Number 7 establish a flexible framework for compliance and allow for continued growth of Colorado's industry.

(VII) The revisions to Regulation Number 7 establish reasonable equity for owners and operators subject to these rules by providing the same standards for similarly situated and sized sources.

(VIII) If Colorado does not attain the ozone NAAQS, EPA will reclassify the ozone control area and northern Weld County to a more stringent nonattainment area. This outcome would result in more stringent federal requirements for the region and may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will reduce emissions in a cost-effective manner.

Alternative rules could also provide reductions in ozone, VOC, and NOx to help to attain the NAAQS. However, a no action alternative would very likely result in failure to attain the ozone NAAQS. As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in CRS § 25-7-109(1)(b).

To the extent that CRS § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of VOCs and NOx emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

DD. December 20, 2024 (Revisions to Part A, Section I.A. and Part B, Sections III.C.4., V.C, and VII.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5., C.R.S., and the Air Quality Control Commission’s (Commission) Procedural Rules, 5 Code Colo. Reg. §1001-1.

Basis

In 2021, the Commission adopted requirements for upstream and midstream segment oil and gas operations, to reduce greenhouse gas (GHG) emissions from those operations to achieve the GHG reduction requirements of House Bill 21-1266 (HB 21-1266). Specifically for the midstream segment, the Commission adopted requirements for owners or operators to submit fuel combustion equipment company emission reduction plans to a midstream steering committee by July 31, 2022; for the midstream steering committee to develop recommendations for a midstream segment emission reduction plan (SERP) and submit the recommendations to the Division by March 31, 2024; and for the Division to submit a regulatory proposal to the Commission by August 31, 2024, and request a rulemaking hearing for no later than December 31, 2024. The process and work of the midstream steering committee was detailed in the Midstream Segment Emission

Reduction Plan for Greenhouse Gas Emission Reductions from Colorado Oil and Natural Gas Midstream Segment Fuel Combustion Equipment recommendations presented by the Midstream Steering Committee to the Colorado Air Pollution Control Division on March 31, 2024. The Commission has now adopted a SERP that will achieve a 20% reduction in CO2e from the 2015 baseline, as required by § 25-7-140(2)(a)(II).

The Commission also adopted revisions in response to EPA actions on Colorado's state implementation plan (SIP) submissions. Specifically, a disapproval of contingency measures for the serious SIP under the 2008 ozone National Ambient Air Quality Standard (NAAQS), see 88 Fed. Reg. 76676 (Nov. 7, 2023).

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-101, C.R.S., et seq. (the State Air Act or the Act), specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act provides the Commission broad authority to regulate air pollutants, including GHG and its constituent gasses (particularly carbon dioxide, methane, and nitrous oxide). § 105(1)(a)(I) directs the Commission to adopt a state implementation plan (SIP) to attain the NAAQS. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. §§ 109(1)(a), (2), and (3), C.R.S., authorize the Commission to promulgate regulations requiring effective practical air pollution controls for significant sources and categories of sources and emission control regulations pertaining to nitrogen oxides and hydrocarbons. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. § 25-7-109(10) directs the Commission to adopt emission control regulations to minimize emissions of methane, other hydrocarbons, VOC, and NOx from oil and gas operations.

Purpose

The following section sets forth the Commission’s purpose in adopting the revisions to Regulation Number 7, and includes the technological and scientific rationale for the adoption of the revisions.

Midstream segment emission reduction program

In adopting the midstream segment emission reduction program in a new Section VII.F., the Commission repealed provisions no longer relevant to the program. Specifically, the Commission repealed the definitions of 8-hour ozone control area in Section VII.A.1., Co-benefits in Section VII.A.2., Company emission reduction plan in Section VII.A.3., Midstream segment emission reduction plan in Section VII.A.8. (renumbered as Section VII.A.14.), Midstream segment steering committee in Section VII.A.9. (renumbered as Section VII.A.15.), and Northern Weld County in Section VII.A.12 (renumbered as Section VII.A.19.). The Commission repealed Sections VII.C. through VII.E., which concerned the creation of the midstream steering committee and initial information collection; midstream steering committee duties, guidance, company ERPs, and segment ERPs, and recordkeeping and reporting related to the requirements in Sections VII.C. and VII.D.

The Commission also revised the definition of Disproportionately impacted community in Section VII.A.4. (renumbered as Section VII.A.7.) to reflect the revised statutory definition and citation. The revised definition, and as reflected in EnviroScreen Version 1, was used to update the facility locations in the company emission reduction plans and as evaluated by the Midstream Steering Committee.

The Commission did not, at this time, adopt a location assessment requirement related to future versions of the EnviroScreen mapping tool in recognition of the challenges and complexity of planning for and implementing emission reduction measures at midstream segment operations.

Facilities were identified as being within a disproportionately impacted community in 2024, based on the definition at 24-4-109(2)(b)(II)(A)-(D) and (F), C.R.S. (2023) and as reflected in Colorado EnviroScreen Version 1. The Commission recognizes that, over time, census block groups may undergo changes in the factors that determine whether they are classified as “disproportionately impacted” under the statutory definition and thus may change classification after the date of this rulemaking. However, as noted above, the Commission recognizes the need for midstream operators to have certainty in understanding where they must achieve reductions due to the potentially long lead times to implement some reduction projects prior to 2030. This setting of disproportionately impacted classification does not revise any requirements a company may have under Regulation Number 3 related to the permitting of a new or modified facility or equipment, which may include evaluations under future versions of Colorado EnviroScreen.

However, the Commission incorporated the use of EnviroScreen Version 2.0 for purposes of the FRPA reductions and prioritization of reductions in disproportionately impacted communities, discussed further below, in order to also include potential onsite reductions in communities identified as disproportionately impacted communities in Version 2.0. After extensive information gathering and conversations with stakeholders over two-and-a-half years, the Division determined that the most appropriate method to achieve the required greenhouse gas reductions includes a performance-based cap approach set on a company-wide basis. This approach maximizes the chances for success of the program, helps to preserve gas and electric grid reliability, reduces costs, allows for technological innovations, allows for cost-sharing, and allows the midstream operator to execute projects that best suit physical and operational constraints. Caps are set on a company-wide basis, rather than by individual facilities, because there were over 270 midstream facilities in 2021 with widely varying levels of reduction feasibility. Setting caps on a company level allows the operator to incorporate their individual circumstances and operations into their chosen strategy.

In evaluating segment emissions, the Division incorporated crankcase venting from natural gas engines of over 130 horsepower into its historical GHG inventories including the 2015 baseline year for the program. These emissions were not historically included as EPA only published revisions to Part 98 of EPA’s Mandatory Greenhouse Gas Reporting program including new reporting requirements and calculation methods for, among other things, crankcase venting on May 14, 2024 (89 Fed. Reg. 42062). Crankcase venting occurs in all reciprocating engines when cylinder gases (containing methane and other pollutants) escape around piston rings and into the crankcase, where they must be vented to avoid an explosion hazard. In contrast, methane slip occurs where methane passes through the engine’s combustion chamber and stack uncombusted, and operators report methane slip in ONGAEIR as engine combustion emissions. Therefore, using EPA’s

calculation methodologies, the Division estimated the increase in CO2e from crankcase venting in 2015 to be approximately 14,330 mt CO2e. Engine crankcase venting emissions was also incorporated into the 2021 data used to establish emissions caps and inform other elements of the program. In support of this, the Commission adopted revisions to include crankcase venting from natural gas engines of over 130 horsepower to the Regulation No. 7 Part B, Section V. requirements for annual reporting through ONGAEIR, starting for reporting year 2025.

The Commission adopted two caps: one “segment cap” that pertains to all midstream fuel combustion equipment in Colorado and one “company cap” that pertains to each company’s midstream fuel combustion equipment. The sum of all company caps achieves the segment’s 2030 target (i.e., 20% below the 2015 baseline). The company cap is allocated to each company based on their 2021 emissions levels, the proportion of their emissions that occur in disproportionately impacted community locations, and recognition of electrification projects completed between January 1, 2016, and summer 2022. Recognizing that larger midstream operators (the top 3 emitted 68.6% of the segment’s total in 2021, and the top 10 emitted 90.9% of the segment’s 2021 total) have more facilities and MFCE and thus are more likely to have more feasible reduction options available to them, the larger operators are allocated a relatively lower (i.e., more stringent) company cap. All midstream operators are allocated a company cap, but smaller operators (fewer than 25,000 mt CO2e emissions from MFCE in 2021) are assigned a company cap equal to their 2021 (or if more representative, a more recent year’s) emissions.

The company cap is initially set for each company in the 2024 rulemaking, but must be adjusted if facility ownership is transferred. In their annual reporting, midstream companies are required to identify facilities that were transferred in the previous calendar year and the associated changes to the caps of the buying and selling parties. The Division, in its annual summary report, will publish an updated list of company emission caps, including changes due to asset transfers or company cessation of operations. The Division may consider the reevaluation of company caps should significant new information arise pertaining to global warming potentials, MFCE calculation methods, etc., and any changes made will be in coordination with other Division programs such as the GHG Inventory Unit. Such potential changes to company caps will be proposed to the Commission for consideration. The Division will hold at least one public engagement outreach meeting following the publication of the 2025 annual to inform interested persons and communities about the benefits and expectations of midstream segment emissions reductions projects.

In fulfillment of the statutory requirement to prioritize CO2e reductions with co-benefits in disproportionately impacted communities, and the program goal to ensure that a minimum amount of CO2e reductions will occur on-site in locations in and near populated areas and disproportionately impacted communities, the program includes restrictions on access to the credit trading market for larger midstream companies that operate in nine Front Range counties (defined as FRPA). These counties also constitute Colorado’s ozone nonattainment area, with the

exception of a portion of Larimer County. The FRPA counties are home to 68% of Colorado's population, and are where the majority (59.4%) of 2021 MFCE GHG emissions occurred. It is also understood that electrification projects are likely to be more feasible and lower-cost in the FRPA versus other regions in the state. Importantly, CO2e reductions from MFCE will typically be accompanied by reductions in harmful air pollutants. Ensuring a minimum level of on-site reductions at midstream operations in disproportionately impacted communities or in the FRPA, before FRPA-restricted companies can purchase credits to meet their company caps, ensures that reductions (and associated co-benefits) are more likely to take place near more densely-populated areas, addresses some electrification feasibility challenges, focuses on the largest companies with more options for reductions, promotes NOx and VOC reductions within the ozone nonattainment area, and limits the administrative burden to the Division as there are currently six FRPA-restricted companies. The Commission expects midstream companies to prioritize reductions at operations located in disproportionately impacted communities, where possible. This expectation applies to all midstream companies and not just current FRPA-restricted companies. These FRPA-company reduction obligations are also initially set for each company in the 2024 rulemaking but may also be adjusted if facility ownership is transferred. The regulation includes provisions for FRPA-restricted companies to demonstrate technical and/or economic infeasibility of the required onsite reductions. The Commission intends that midstream companies can transfer FRPA reduction obligation in connection with an asset transfer, including achieved and not yet achieved FRPA reduction obligation.

In general, this program does not restrict the modification, construction, and/or relocation of MFCE, so long as company emissions caps are met, and other applicable regulations are complied with. This means that, in order to achieve its emissions caps, a company can add new MFCE sources but any increase in MFCE CO2e must be balanced by reductions elsewhere in the company's operations. Midstream companies must calculate MFCE GHG emissions in accordance with Division-approved calculation methodologies, and must be consistent with the calculation methodologies used for calculating and reporting emissions for the ONGAEIR annual reporting.

Concerning new entrants, the Commission recognizes the challenge of electrification and that it is not the Commission's intent to discourage new entrants and is trying to create pathways for compliance. The Commission's intent is that new entrants be fully electric as soon as possible, and for those companies with a zero cap, the Commission anticipates the Division will work with those companies under available mechanisms in this rule to recognize the challenges that the companies are facing. This rule does not treat new entrants differently than existing company expansions.

The Commission also established a GHG credit system where a midstream company achieving MFCE CO2e emissions at or below their company cap, beginning 2028 for emissions reporting year 2027, would generate GHG credits equal to the difference between the midstream company' annual direct GHG emissions and the midstream company's overall cap. These credits could be used or sold to another regulated

entity in the market. The GHG credit system as developed for the midstream segment will provide additional flexibilities for midstream companies, incentive early reductions, and cause additional reductions to be achieved. In order for a midstream company to generate credits for a particular vintage year, the company must report their annual emissions to the Division by March of the reporting year. If a credit generating midstream company does not report their annual emissions by the March deadline of the reporting year in which they want to participate, the company will be unable to generate credits for that vintage year. The Commission did not revise the reporting deadlines in Section V. but expects the Division to make the annual reporting portal available at a time sufficient for such early reporting.

The Commission directs the Division to evaluate the developing credit market, and by December 2028, evaluate whether the market will be sufficient to support the needed emissions reductions. Further, the Division should consider the interplay of the market between midstream and GEMM operators. Should an adjustment need to be made to the credit markets in either Regulation Number 7 or Number 27, the Commission directs the Division to bring such a proposal to the Commission. The Commission also directs the Division to include the midstream sector when it evaluates the use of the state-managed fund, developed pursuant to Commission direction under the GEMM rulemakings, to receive and allocate monies to finance projects to reduce GHG emissions from the midstream segment.

Ozone state implementation plan contingency measures

The Commission adopted revisions to Regulation Number 7 to include contingency measures for the Serious SIP under the 2008 Ozone NAAQS, in response to EPA's disapproval. See 88 Fed. Reg. 76676 (Nov. 7, 2023). Under CAA § 172(c)(9), nonattainment area SIPs must provide for the implementation of specific measures, termed contingency measures, if an area fails to attain the NAAQS or to demonstrate RFP by the required deadline. The Commission had adopted contingency measure for the Serious SIP in 2020 with anticipated future year emission reductions in VOC and NOx from on-road mobile sources. However, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision in January 2021 interpreting the CAA requirements for contingency measures to require such measures be prospective and conditional, in contrast to previous EPA interpretation and corresponding state implementation. See 88 Fed. Reg. at 54978 discussing Sierra Club v EPA. Therefore, EPA disapproved Colorado's Serious SIP contingency measures, finding the measures did not satisfy the CAA requirements as interpreted by the DC Circuit. Therefore, the Commission now included the pneumatic controller retrofit and replacement requirements applicable to well production facilities in the ozone nonattainment area in the SIP as contingency measures for the Serious SIP. These provisions required existing well production facilities to replace or retrofit specified percentages of natural gas-driven pneumatic controllers with non-emitting pneumatic controllers by May 2022 and May 2023, thus being implemented and achieving emissions reductions after the Serious attainment date of July 2021. This provision regarding pneumatics sunsets no later than June 7, 2025, if EPA has taken action prior to that date that stops the running of the sanctions clock regarding the November 2023 disapproval of contingency measures. Until June 7, 2025, the Commission directs that these revisions not be submitted by CDPHE to EPA as a SIP revision. If EPA does not take this action by June 7, 2025, the revisions shall not sunset and shall promptly be submitted to EPA as a contingency measure SIP revision.

Further, these revisions will include any typographical, grammatical and formatting errors throughout the regulation.

Incorporation by Reference

Section 24-4-103(12.5) of the State Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of §24-4-

103(12.5) are met by including specific information and making the regulations available because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. To fully comply with these criteria, the Commission includes, where necessary, reference dates to rules and reference methods incorporated in Regulation Number 7.

Additional Considerations

The following are additional findings of the Commission made in accordance with the Act: § 25-7-110.5(5)(b), C.R.S.

As these revisions exceed and may differ from the federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

There are no federal regulations applicable to the situations covered by the provisions of Part B, Section VII. However, there are existing federal regulations that seek to identify and reduce methane emissions from the oil and gas industry, such as the Greenhouse Gas Reporting Program (40 CFR Part 98) and New Source Performance Standards (40 CFR Part 60) Subparts KKK, OOOO, and OOOOa. Part B, Section VII. does not conflict with any applicable current federal regulations. The EPA has published NSPS Subpart OOOOb and Emission Guideline Subpart OOOOc to address greenhouse gas emissions from oil and gas equipment, but EPA’s proposal does not address the particular situations addressed by the Commission’s revisions here.

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

The federal requirements addressing methane reductions from the oil and gas sector (though not applicable in this situation) as described are both performance-based and technology-based. Current federal requirements for methane reductions speak to achieving a control efficiency, with minimal flexibility. Some requirements also mandate the use of technology to detect methane emissions. However, EPA does provide some flexibility in the technology that can be used.

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

There are federal requirements that seek to reduce greenhouse gas from oil and gas operations, though none that are addressed to the specific goals of Part B, Section VII. The Commission’s revisions address Colorado-specific requirements and needs, like those of HB 19-1261 and HB 21-1266, which were not considered in any federal process.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

The proposed midstream emission reduction program will ensure that the regulated community can achieve required GHG emissions reductions in cost-effective ways by giving covered entities options to reduce emissions to ensure compliance with state targets.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements;

This is a state-specific rule that is not implementing federal requirements. Thus, no timing issue exists.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

The regulatory provisions allow a reasonable amount of time for affected entities to comply with the new revisions. As such, affected businesses or industrial sectors are afforded a reasonable margin for accommodation of uncertainty and future growth. The rules adopted by the Commission establish a midstream segment emission reduction program, providing a technically feasible and economically reasonable means of reducing emissions in this segment.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

With respect to any sources operating within the midstream segment, the rule establishes reasonable equity because it takes into account the size of the operator, the percentage of ownership each operator claims, and the location of the facility. This ensures equity across operators based on location and utility provider.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

The Commission believes that the cost of inaction would be greater to industry and the public than the costs associated with the revisions to Part B, Section VII. Not only with respect to the social cost of climate change, but also more direct costs. These revisions are designed with the maximum flexibility for the regulated community. Under HB 21-1266, if the state is not on track to achieve the emission reduction goals, the Commission must adopt further regulations to achieve those goals. Future efforts are likely to be not as cost-effective as the flexible program in these revisions.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal

requirements and, if so, why and what the “compelling reason” is for different procedural, reporting, or monitoring requirements;

Reporting requirements beyond those required under federal Part 98 are necessary to effectively quantify and measure Colorado’s progress toward statewide GHG reductions and to achieve the public health, safety, and welfare goals set forth in § 25-7-102, C.R.S.

Many of the reporting requirements associated with these programs are in existing Commission regulations, in Regulation Number 7, Part B. However, these revisions do require some additional reporting. Under these requirements, owners and operators of these sources will be required to compile and report directly to the Division information collected by or available to them for business or other regulatory purposes. While this may overlap with some other federal reporting requirements, it is expected there will be reporting beyond what is required federally.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

Demonstrated technology exists to enable compliance with the requirements of these revisions.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

These revisions will cost-effectively reduce statewide GHG emissions to meet the legislative directive of the State Air Act, as revised by SB 19-181, HB 19-1261, and HB 21-1266. As noted, the General Assembly has acknowledged that climate change impacts Colorado’s economy and directed that GHG emissions should be reduced across the many sectors of our economy. Colorado has established specific GHG reduction goals within its statutes. The program established in this rulemaking action provides mechanisms for GHG reductions to occur cost-effectively across a specific, high-emitting sector of the state’s economy.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

The new regulatory requirements and amendments are needed to achieve the statutorily mandated emission reductions. As noted, the State Air Act requires the Commission to implement GHG emission reduction strategies in order to secure reductions of pollution consistent with the statewide GHG emission reduction goals. Currently, emissions projections over the next decade demonstrate that a no-action alternative would fall short of achieving Colorado's reduction goals. Additionally, no alternative combination of midstream segment-specific regulations has been identified that is sufficient to meet the state's GHG emissions reductions goals.

Findings of Fact

To the extent that § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of greenhouse gas, VOC, and NOx emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective alternative to achieve the necessary reduction in air pollution and provide the regulated entity flexibility.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

DD. February 19-21, 2025 (Revisions to Part B)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5., C.R.S., and the Air Quality Control Commission's (Commission) Procedural Rules, 5 Code Colo. Reg. §1001-1.

Basis

In March 2024, EPA finalized 40 C.F.R. Part 60, Subpart OOOOc, Emission Guidelines for Greenhouse Gas Emissions From Existing Crude Oil and Natural Gas Facilities (EG OOOOc), which triggered the requirement for states to develop plans that include standards of performance for all designated facilities addressed in EG OOOOc. EG OOOOc includes presumptive standards for storage vessels, process controllers (aka pneumatic controllers), pumps (aka pneumatic pumps), fugitive emissions, gas well

liquids unloading, well associated gas, centrifugal compressors, and reciprocating compressors. Regulation Number 7 includes requirements for all of these designated facilities, some of which differ from the presumptive standards in EG OOOOc. Therefore, the Commission adopted revisions to the requirements for pneumatic controllers and pneumatic pumps, to align more closely with the presumptive standards in EG OOOOc. Revisions related to the other designated facilities will be considered in future rulemakings, before March 9, 2026.

In December 2021, the Commission adopted requirements in Regulation Number 7 and Regulation Number 22 (the requirements in Regulation Number 22 have since been moved to Regulation Number 7) to address several state goals, including the directives in House Bill 21-1266 (Environmental Justice Disproportionate Impacted Community). In House Bill 21-1266 the General Assembly determined that "state action to correct environmental injustice is imperative, and state policy can and should improve public health and the environment and improve the overall well-being of all communities… [and] efforts to right past wrongs and move toward environmental justice must focus on disproportionately impacted communities and the voices of their residents." Therefore, the Commission adopted, among other things, more stringent requirements for sources located in or near disproportionately impacted communities, referencing the 2021 version of 24-4-109(2)(b)(II), C.R.S., which included the previous definition of "disproportionately impacted community". However, in House Bill 23-1233 (Electric Vehicle Charging and Parking Requirements), signed into law May 23, 2023, the Colorado General Assembly revised the definition of "disproportionately impacted community" in 24-4-109(2)(b)(II), C.R.S. The Commission revised the definition of "disproportionately impacted community" to align with the revised statutory definition.

In September 2020, the Commission adopted requirements in Regulation Number 7 to address the directives in SB 19-181 (concerning additional public welfare protections regarding the conduct of oil and gas operations) to consider adopting continuous monitors at oil and gas operations. In 2023, the Energy and Carbon Management Commission (ECMC) funded an evaluation of the monitoring program and submitted monitoring plans and reports, published in August 2024. The report recommended potential standardizations to achieve consistent monitoring programs and data. In response, the Commission adopted revisions to standardize monitoring equipment calibration and testing procedures, response thresholds, response actions, monitoring sampling and data reporting intervals, and monitoring plan and reporting formats for air quality monitoring at pre-production and early-production oil and gas operations.

Further, the Commissions adopted revisions to address typographical, grammatical, and formatting errors found throughout the regulation.

Statutory Authority

The State Air Act, specifically 25-7-105(1), C.R.S., directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102, and that are necessary for the proper implementation and administration of Article 7. The Act broadly defines "air

pollutant" to include essentially any gas emitted into the atmosphere (and, as such, includes VOC, NOx, methane and other hydrocarbons) and provides the Commission broad authority to regulate air pollutants. See § 25-7-103(1.5). § 25-7-105(1)(a)(I), directs the Commission to adopt a state implementation plan (SIP) to attain the NAAQS. Section 25-7-105(1)(b), directs the Commission to adopt emission control regulations in conformity with § 25-7-109. § 25-7-106, provides the Commission maximum flexibility in developing an effective air quality program and promulgating any such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106(1)(c), also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6), further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. § 25-7-109(1)(a), directs the Commission to adopt emission control requirements that require the use of effective practical air pollution controls for: (1) each significant source or category of significant sources of air pollutants; and (2) each type of facility, process, or activity which products or might product significant emissions of air pollutants. § 25-7-103, defines "emission control regulation" to mean a regulation that is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollution emitted and a regulation that adopts any design, equipment, work practice, or operational standard. § 25-7-109(2), allows emission control regulations pertaining to, among other pollutants, nitrogen oxides and hydrocarbons.

In addition, § 24-4-109(2)(a)(I)(A), asserts that all statewide agencies shall use the definition of disproportionately impacted community as set forth in the statute. § 24-4-109(2)(a)(I)(B), provides that a statewide agency may "prioritize or target" certain subsets of communities that meet the definition of disproportionately impacted community if the prioritization is warranted and reasonably tailored to the statewide action being taken. If the statewide agency making the determination to prioritize or target retains rulemaking authority, the agency must make this determination by rule. See § 24-4-109(2)(a)(I)(B). § 24-4-109(2)(b)(IV), defines "statewide agency" to include any commission, thus, the Commission is authorized to prioritize or target certain subsets of the definition of disproportionately impacted community so long as that prioritization is warranted and reasonably tailored to the Commission's action.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7, and includes the technological and scientific rationale for the adoption of the revisions.

Disproportionately impacted community definition

In December 2021, the Commission adopted requirements in Regulation Number 7 and Regulation Number 22, since moved to Regulation Number 7, to address several state goals, including the directives in Senate Bill 19-181 (Concerning additional public welfare protections regarding the conduct of oil and gas operations), House Bill 19-1261 (Climate Action Plan To Reduce Pollution), and

House Bill 21-1266 (Environmental Justice Disproportionate Impacted Community). The Commission adopted, among other things, more stringent requirements for sources located in disproportionately impacted communities.

However, in House Bill 23-1233 (Electric Vehicle Charging and Parking Requirements), the General Assembly revised the definition of disproportionately impacted communities and directed statewide agencies to apply the most recent version of the Colorado EnviroScreen tool available at the time the agency determines whether a community is a disproportionately impacted community. Therefore, the Commission adopted in this rulemaking revisions to the definitions in Regulation Number 7 to align with the more recent statutory definition. The Commission also clarified implementation of requirements as related to any changes resulting from the revised definition.

The Commission incorporated the statutory definition for “disproportionately impacted community” as in 24-4-109(2)(b)(II)(A)-(D) and (F)-(G), C.R.S. (2023). Additionally, the Commission revised in the definition the data tool that must be used to identify disproportionately impacted communities. Previously, the Commission directed the use of Colorado EnviroScreen as the tool used to identify disproportionately impacted communities. Now, the Commission directs the use of the Colorado Disproportionately Impacted Community Map (November 2024) to identify disproportionately impacted communities. The areas in Colorado that meet criteria in the definition are displayed on the Colorado Disproportionately Impacted Community Map. For uses of this regulation, users must select the statutory criteria from 24-4-109(2)(b)(II)(A)-(D) and (F), C.R.S. (2023). Those criteria are labeled as: “Mobile home communities”, “Low-income population above 40%”, “People of color population above 40%”, “Housing cost-burdened population above 50%”, “Linguistically isolated population above 20%”, and “Colorado EnviroScreen percentile score above 80”. In contrast to this Map, Colorado EnviroScreen does not itself define disproportionately impacted communities, except, as directed by HB 23-1233. This Map also shows areas with a Colorado EnviroScreen score above the 80th percentile, which should presumptively be considered to meet the cumulative impacts prong of the statutory definition. While updating the mapping tools, CDPHE also updated the census data used for the Colorado Disproportionately Impacted Community Map from the American community survey (5 year) 2015-2019 dataset to the American community survey (5 year) 2018-2022 dataset. CDPHE is committed to continuous improvement of these mapping tools and will continue to update the Colorado Disproportionately Impacted Community Map to reflect the most recent data and meet the needs of the people and organizations it is intended to benefit. Additionally, along with the definition update, the Commission adopted requirements for owners or operators to assess the location of their facilities in relation to a disproportionately impacted community using the most recent version of the Colorado Disproportionately Impacted Community Map.

House Bill 23-1233 also authorized agencies to prioritize or target certain criteria of the definition of disproportionately impacted community or certain subsets of communities that meet the definition in a rulemaking process (*see* § 24-4-109(2)(a)(I)(B)), which the Commission did in the February 2025 Regulation Number 7

rulemaking. Specifically, the Commission chose to prioritize applying the rule in a subset of communities that met the definition of disproportionately impacted community based on demographic factors and cumulative impacts. It chose not to prioritize or target regulatory requirements in other categories of places that met the definition under the federal Justice 40 definition, Tribal lands, and historically marginalized communities. Specifically, the federal Justice40 definition is intended for use in federal funding efforts, not state regulatory efforts. Further, the Commission lacks jurisdiction to regulate sources of pollution on Tribal lands. Finally, the historically marginalized community component of the definition is an “opt-in” system, and no communities opted in to that definition during the Regulation Number 7 rulemaking.

EG OOOOc

In March 2024, EPA finalized EG OOOOc, which triggered the requirement for states to develop plans that include standards of performance for all designated facilities addressed in EG OOOOc. With these revisions, the Commission adopted additional requirements for pneumatic controllers and pneumatic pumps to align more closely with the presumptive standards in EG OOOOc.

EG OOOOc - pneumatic devices

Colorado has required owners or operators to reduce emissions from pneumatic controllers for decades, starting with low-bleed standards for continuous-bleed pneumatic controllers, later requiring periodic inspections of all natural gas-driven pneumatic controllers for proper operation, adopting non-emitting pneumatic controller standards for new facilities and natural gas processing plants, and finally adopting a retrofit or replacement program for pneumatic controllers at existing well production facilities and natural gas compressor stations, requiring compliance by May 1, 2023. However, the presumptive standard in EPA’s EG OOOOc is for all natural gas-driven pneumatic controllers (EPA redefined as process controllers), except such pneumatic controllers that are emergency safety devices, to comply with a zero methane emissions to atmosphere standard, achieved by using a pneumatic controller not powered by natural gas, by capturing emissions from the natural gas-driven pneumatic controller and routing the emissions to a process, or by using self-contained natural gas-driven pneumatic controllers. Therefore, the Commission expanded the non-emitting pneumatic controller requirements to achieve emissions reductions from facilities that have not yet replaced or retrofit natural gas-driven pneumatic controllers as well as natural gas-driven pneumatic controllers operating for safety or process purposes that are not also emergency safety devices to align with EG OOOOc.

The new provisions require applicable oil and gas operators to eliminate emissions from pneumatic controllers in accordance with a phased-in compliance schedule. Because of the large number of controllers located in Colorado that must be addressed, the schedule reflects supply chain concerns and other resource needs while still achieving full compliance by EPA’s deadline of March 9, 2029. However, because of the large cumulative amount of emissions produced by pneumatic controllers at oil and gas operations and the need for emission reductions of ozone

precursors in the ozone nonattainment area, the Commission adopted a faster compliance phase-in for those facilities located in the 8-hour Ozone Control Area or northern Weld County. To comply with the new pneumatic controller requirements, owners or operators of applicable facilities have options including, but not limited to, retrofitting existing natural gas-driven pneumatic controllers to route to a process or be self-contained, replacing natural gas-driven pneumatic controllers with non-natural gas-driven pneumatic controllers, replacing pneumatic controllers with non-pneumatic controllers, or shutting down facilities. Section III.C.5.b.(ii) clarifies that for each owner or operator, compliance is demonstrated separately for facilities located in the 8-hour Ozone Control Area or northern Weld County and facilities located in the rest of the state.

The Commission adopted three new sections of reporting requirements for the pneumatic controller provisions: a one-time initial report (Section III.C.5.b.(iii)), interim annual compliance reports (Section III.C.5.b.(iv)), and ongoing annual compliance reports (Section III.C.5.c.(vi)). For the initial report in Section III.C.5.b.(iii) and for each of the interim annual compliance reports in Section III.C.5.b.(iv), owners or operators are required to provide “total facility counts” that identify the facilities subject to Section III.C.5.b and where they are located. The interim annual compliance reporting requirement in Section III.C.5.b.(iv) ceases in 2027 for facilities subject to Section III.C.5.b.(ii)(A) and 2029 for facilities subject to Section III.C.5.b.(ii)(B), after which point all facilities must be in compliance with Section III.C.5.b. For facilities that did not comply with Part B, Section III.C.5.b. as of May 1, 2023, the ongoing annual compliance reports in Section III.C.5.c.(vi) apply to facilities beginning after they are counted towards compliance with Section III.C.5.b. Reporting from that point on will reflect only facilities with natural gas-driven pneumatic controllers that are self-contained or from which emissions are routed to a process through a closed vent system and will include applicable compliance information such as equipment inspection information, deviations from regulatory requirements, closed vent system bypass device information, and changes in methods of compliance. For facilities that use natural gas-driven pneumatic controllers that comply with Section III.C.5.b. as of May 1, 2023, the requirements for the ongoing use of natural gas-driven pneumatic controllers (i.e., self-contained or routed to process) in Section III.C.5.c. apply starting May 1, 2027. The Commission clarifies that while owners or operators must demonstrate compliance with Section III.C.5.b. separately for their facilities located within and outside the 8-hour Ozone Control Area or Northern Weld County, owners or operators need only submit one report for all facilities in both areas. In the reports, owners or operators will indicate in which area their facilities are located.

Each owner or operator will produce total facility counts that identify the number of facilities subject to Section III.C.5.b., in order to measure compliance with the required compliance percentages in each year. For the initial report in Section III.C.5.b.(iii), the total facility count equals all of the owner’s or operator’s facilities that used natural gas-driven pneumatic controllers that did not comply with Section III.C.5.b.(i) as of May 1, 2023, which is the final compliance date of the pneumatic controller requirements in Section III.C.4. Section III.C.5. gives credit to owners or operators who retrofitted or converted their facilities to eliminate emissions from

natural gas-driven pneumatic controllers after May 1, 2023. For purposes of compliance with Sections III.C.5.b.(ii)(A) and III.C.5.b.(ii)(B), as demonstrated in the compliance demonstrations in Section III.C.5.b.(iv)(A)(3), relevant owners or operators may include these facilities in their total facility count and count them in the compliance demonstrations. The Commission clarifies that owners or operators would only account for facilities owned or operated as of December 1, 2025, the date the initial report is due. This ensures owners or operators are not accounting for facilities that were owned or operated as of May 1, 2023, but have since been divested; and are accounting for facilities that were not owned or operated as of May 1, 2023, but have since been acquired. The initial total facility count serves as the initial baseline for the number of facilities that an owner or operator will need to make comply to meet the compliance percentages in each year. The total facility count will be revised each year to account for asset transfers that affect an owner's or operators' total facility count.

In each annual compliance report pursuant to Section III.C.5.b.(iv), an owner or operator will demonstrate compliance with the applicable compliance percentage by dividing the number of the owner's or operator's facilities made to comply with Section III.C.5.b.(i) after May 1, 2023, (numerator) by the owner's or operator's revised total facility count (denominator). How an asset transfer affects an owner's or operator's compliance demonstration depends on whether a compliant or non-compliant facility was acquired or divested within the previous compliance year and how many facilities are already compliant. If a non-compliant facility is acquired or divested, the owner's or operator's total facility count increases or decreases accordingly and the number of compliant facilities does not change. If a compliant facility is acquired or divested, the owner's or operator's total facility count increases or decreases accordingly and the number of compliant facilities increases or decreases accordingly. Owners or operators who transfer ownership or operation of a facility to another owner and/or operator are required to revise their total facility counts under Section III.C.5.c.(iv). Only the owner or operator of a facility is entitled to count that facility for compliance purposes. An owner or operator who transfers a compliant facility will no longer be entitled to count the transferred facility towards a compliance percentage at the next deadline in Section III.C.5., Tables 3 or 4. The Commission clarifies that the transfer of facilities (which would impact both the seller and buyer's total facility count and may affect the count of compliant facilities) does not result in noncompliance with prior deadlines for compliance percentage requirements in Tables 3 or 4, as demonstrated by the compliance report for the applicable year. Compliance demonstrations with the required compliance percentages are assessed in each year's respective compliance report.

For purposes of Section III.C.5. only, in determining total facility counts and demonstrating compliance with the required compliance percentages in each year, an owner or operator may elect to combine facilities with the facilities of other owners or operators that are owned or operated by the same parent company. If facilities are being combined under a parent company, the applicable parent company must fulfill the reporting and compliance demonstration requirements for all facilities being accounted for.

To comply with Section III.C.5.b., owners or operators have the option of shutting down facilities. The Commission notes that owners or operators shut facilities down for a variety of reasons, which may not include for purposes of complying with Section III.C.5.b. In the interim annual compliance reports, an owner or operator does not need to report a shutdown facility as compliant with Section III.C.5.b. if the purpose of the shutdown was not for compliance with Section III.C.5.b. A facility becomes subject to the requirements of Section III.C.5.c., the additional requirements for the ongoing use of self-contained natural gas-driven pneumatic controllers and natural gas-driven pneumatic controllers for which emissions are routed to a process, upon identifying the facility for compliance with Section III.C.5.b.

The Commission recognizes that pneumatic controllers at some facilities may have been retrofitted to be self-contained or to have emissions routed to a process through a closed vent system for compliance with Section III.C.4., and that these facilities may just require a design analysis to ensure the systems comply with Section III.C.5. In order to address such facilities, which should not require additional major retrofits, the Commission adopted Section III.C.5.b.(v), which effectively removes these facilities from being included in the total facility counts in Sections III.C.5.b.(iii) and III.C.5.b.(iv), and ensures that they are appropriately compliant by May 1, 2027.

To achieve greater emission reductions sooner from pneumatic controllers at facilities located outside the 8-hour Ozone Control Area or Northern Weld County, the Commission adopted Section III.C.5.b.(vi), which prioritizes compliance for well production facilities with the highest production first. Owners or operators of well production facilities are required to ensure compliance at the highest 50% of well production facilities based on that list by the May 1, 2027, compliance deadline, based on total barrels of hydrocarbon liquids and water produced in calendar year 2023. These facilities count towards the total facility counts and compliance demonstrations, so owners and operators must ensure that by May 1, 2027, the highest 50% of well production facilities plus additional facilities as necessary add up to 50% of an owner or operator’s total facility count.

Similar to pneumatic controllers, Colorado has required owners or operators of natural gas-driven diaphragm pneumatic pumps located in the ozone nonattainment area to comply with an emissions rate of zero if located at a natural gas processing plant and a 95% control requirement if located at a well production facility. However, EPA’s EG OOOOc requires natural gas-driven diaphragm and piston pumps located at well sites, compressor stations, and natural gas processing plants to comply with a zero methane emissions to atmosphere standard. Therefore, the Commission expanded pneumatic pump requirements statewide, to compressor stations, and to piston pumps to align with EG OOOOc. The new provisions require applicable oil and gas operators to eliminate or reduce emissions from pneumatic pumps beginning March 1, 2026. In contrast to the compliance schedule for pneumatic controllers, there is no phase-in compliance schedule for pneumatic pumps as there are far fewer pneumatic pumps used in Colorado than pneumatic controllers. The emission control requirements for pneumatic pumps fall into two

categories, based on facility conditions: (1) facilities that have access to electrical power or that do not have access to electrical power but have at least three natural gas-driven pumps; and (2) facilities that do not have access to electrical power and have less than three natural gas-driven pumps. Also, similarly to pneumatic controllers, operators that continue to use natural gas-driven pneumatic pumps must periodically inspect the pneumatic controllers to ensure that the pumps do not emit to the atmosphere.

Emissions during a leak detection and repair inspection constitute a deviation of the non-emitting standard for purposes of reporting deviations, but may not constitute a violation of the regulation so long as the operator completes the required repair, monitoring, recordkeeping, and reporting for leaks.

As an alternative to the new pneumatic controller or pneumatic pump emission control, inspection, repair, and recordkeeping provisions, the Commission also adopted a provision that owners or operators may comply with the natural gas-driven pneumatic controller or pneumatic pump emissions control, monitoring, recordkeeping, and reporting requirements within 40 CFR Part 60, Subpart OOOOb - Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced after December 6, 2022 (March 8, 2024).

The Commission included in the pneumatic controllers and pneumatic pumps sections, language designating the provisions as “State Only” or “Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities”. The provisions designated as “State Only” are those that the Commission does not intend on including in Colorado’s 111(d) plan, or Colorado’s SIP. The provisions designated as “Colorado 111(d) Plan for Crude Oil and Natural Gas Facilities” are those that the Commission intends to include in the 111(d) plan, but not in the SIP. While so designated, the provisions included in Colorado’s 111(d) Plan are not federally enforceable until approved by EPA, which will be a date after the Plan is submitted in March 2026.

Natural gas processing plant leak detection and repair

Colorado has required all natural gas processing plants located in the ozone nonattainment area to comply with leak detection and repair (LDAR) requirements in an NSPS since 2005 and statewide since 2023. The early LDAR requirements were to comply with NSPS KKK, which incorporates LDAR requirements from NSPS VV. These requirements for natural gas processing plants were updated in 2017 to require compliance with NSPS OOOO or NSPS OOOOa, which incorporate LDAR requirements from NSPS VVa, and were expanded statewide in 2022. However, EPA updated both NSPS OOOO and OOOOa in 2024 to reference a new NSPS, Subpart OOOOb. Sections 60.5365 and 60.5365a require affected facilities to comply with the requirements in NSPS OOOO and OOOOa, respectively, until the facility is subject to NSPS OOOOb, after which the facility must comply with NSPS OOOOb. Therefore, the Commission updated the incorporation by reference dates of NSPS OOOO and OOOOa as related to the natural gas plant LDAR requirements. Where subject, owners or operators must adhere to the requirements of NSPS OOOOb, instead of NSPS OOOO or OOOOa. The submittal of reports to CEDRI to satisfy the

reporting requirements of NSPS Subparts OOOO, OOOOa, or OOOOb will satisfy the gas plant LDAR reporting obligations for purposes of Regulation Number 7.

Pre- and early-production air quality monitoring

In September 2020, the Commission adopted requirements in Regulation Number 7 to address the directives in SB 19-181 (Concerning additional public welfare protections regarding the conduct of oil and gas operations) to consider adopting continuous monitors at oil and gas operations. As stated in 2020, the purpose of the program was multi-faceted and anticipated expectations for the program were to gather information about evolving monitoring technologies, to gather data about potential emissions during monitored operations, and to inform future monitoring efforts. In 2023, the Energy and Carbon Management Commission (ECMC) funded an evaluation of the monitoring program and submitted monitoring plans and reports, which was published in August 2024. The report recommended potential standardizations to achieve consistent monitoring programs and data. Therefore, the Commission adopted revisions to standardize monitoring equipment calibration and testing procedures, monitoring sampling and data reporting intervals, and monitoring plan and reporting formats.

These standardizations do not revise the original objective of the program to "detect, evaluate, and reduce" emissions but are intended to improve the quality of the monitoring data, the comparability of the data, and the comparability of the data across monitoring plans. These standardizations also do not remove the flexibility of the program, as emphasized in 2020, for operators to submit air monitoring plans specific to their operations and the monitoring objective(s). While standardizing aspects of the program such as number of monitors, monitor siting, and response levels in order to improve the comparability of data across monitoring plans is an important goal of these revisions, operators will continue to be able to submit in their air quality monitoring plans site, technology, and operator specific elements. To preserve and assist this flexibility, the Division will publish guidance outlining parameters for monitor siting, response levels and procedures, whole air sample collection, monitoring equipment quality assurance procedures, and parameters for the Division to evaluate and approve alternative monitoring plan elements. In recognition of the continuing potential for innovation, the Commission intends for the Division to work with operators to approve alternative program elements, where appropriate, that fulfill the program objectives. The approval of alternative program elements may also reflect a short term need to provide additional time for service providers to upgrade or reprogram monitoring equipment (e.g., auto triggering whole air samplers on a rolling average). In addition, the approval of alternative program elements may be needed to minimize conflicting or redundant local government monitoring requirements, which will be evaluated as needed. The Division will continue to review each plan submitted to ensure the plan meets the objectives of this monitoring program.

In addition to standardizing the number of monitors, minimum sampling frequency, and minimum data recovery, the Commission adopted a requirement for automatically triggered whole air sampling at specific locations and for a collection period of no more than one-hour, to be used to characterize and evaluate emissions

events. The Commission recognizes that this one-hour data may not be appropriate for comparison with current health-based standards and caution should be exercised, at this time, with utilizing this data for health-based analyses (e.g., attempting to align with the Agency for Toxic Substances and Disease Registry's (ATSDR) Minimal Risk Level (MRL) acute duration of 1-14 days). While this is an adopted standardization, the Commission's revisions allow operators to request in their submitted monitoring plan alternatives to this standardization that will also support the monitoring objective (e.g., "evaluate" emissions). The Commission also adopted a standardized monthly bump test and calibration schedule. The purpose of standardizing sensor maintenance procedures is to address sensor drift and, thus, collect more consistent sensor readings. Sensor drift can result from changes in environmental conditions, aging of sensor components, and variations in manufacturing tolerances. Periodic bump tests and calibration align the sensor outputs to match the intended measurement values. Similar to other adopted standardizations, the Commission's revisions retain the flexibility for operators to request alternative equipment maintenance and calibration procedures in their submitted monitoring plan.

- Recognizing that these standardizations represent a second step in understanding both pre-production emissions and the evolving technologies that may be used to monitor them, the Commission directs the Division to continue to evaluate future revisions to this program including if needed the purpose and duration of monitoring, after sufficient additional data has been reported. The Commission requests that the Division provide periodic status updates on this monitoring program, including one before January 31, 2027.

Clean-up

The Commission adopted clean-up and clarification revisions to include select reporting dates and refine the definition of infra-red camera to reflect current implementation.

Further, these revisions will include any typographical, grammatical, and formatting errors throughout the regulation.

Incorporation by Reference

Section 24-4-103(12.5) of the State Administrative Procedure Act allows the Commission to incorporate by reference federal regulations. The criteria of § 24-4-103(12.5) are met by including specific information and making the regulations available because repeating the full text of each of the federal regulations incorporated would be unduly cumbersome and inexpedient. To fully comply with these criteria, the Commission included reference dates to rules and reference methods incorporated in Regulation Number 7.

Additional Considerations

The Clean Air Act does not expressly address all of the provisions adopted by the Commission. Rather, federal law requires Colorado to develop a plan that include

standards of performance for all designated facilities address in an Emission Guideline and to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to reduce GHG and ozone precursor emissions in Colorado.

These revisions do not exceed or differ from the federal act due to state flexibility in determining what control strategies to implement to reduce emissions. However, where the proposal may differ from federal rules under the federal act, in accordance with Section 25-7-110.5(5)(b), C.R.S., the Commission determines

(I) The revisions to Regulation Number 7 address equipment and operations in the oil and gas sector. NSPS KKK, NSPS OOOO, NSPS OOOOa, and NSPS OOOOb may also apply to the above listed operations and equipment. However, the revisions to Regulation Number 7 apply on a broader basis.

(II) The federal rules discussed in (I) are primarily technology-based in that they largely prescribe the use of specific technologies or work practices to comply. The proposed state only requirements are technology- and performance-based that allow for maximum flexibility for demonstrating compliance.

(III) The CAA requires Colorado to develop a state plan that includes standards of performance for designated facilities in an Emission Guideline. EG OOOOc was not determined taking into account concerns unique to Colorado. EPA develops NSPS, Emission Guidelines, and NESHAP considering national information and data, not Colorado specific issues or concerns.

(IV) Colorado must develop a plan that include standards of performance for all designated facilities address in an Emission Guideline. These current revisions may improve the ability of the regulated community to comply with new requirements insofar as the revisions adopted by the Commission align, where possible, with existing requirements and may prevent or reduce the need to implement additional, more burdensome requirements.

(V) Colorado must submit a complete state plan to EPA by March 2026 and require implementation of standards of performance no later than March 2029. Further, Colorado must attain the 2008 ozone NAAQS by July 20, 2027, and the 2015 ozone NAAQS by August 3, 2027, or risk being reclassified. There is no timing issue that might justify changing the time frame for submitting a state plan related to the EG OOOOc designated facilities.

(VI) The revisions to Regulation Number 7 establish a flexible framework for compliance and allow for continued growth of Colorado’s industry.

(VII) The revisions to Regulation Number 7 establish reasonable equity for owners and operators subject to these rules by providing the same standards for similarly situated and sized sources.

(VIII) If Colorado does not submit a state plan that includes performance standards for the designated facilities in the EG OOOOc, Colorado would be subject to a federal plan implemented by EPA. If Colorado does not attain the ozone NAAQS, EPA will reclassify the ozone nonattainment areas to more stringent

nonattainment areas. These outcomes could result in more stringent federal requirements and may subject others to increased costs.

(IX) Where necessary, the revisions to Regulation Number 7 include monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will reduce emissions in a cost-effective manner.

(XII) Alternative rules could also provide reductions in greenhouse gases, ozone, VOC, or NOx to address the Emission Guideline and help to attain the NAAQS. The Commission determined that the Division's proposal was reasonable and cost-effective. However, a no action alternative would very likely result in the need for much more stringent requirements to reduce ozone and subject the state to a federal plan implementing the model rule requirements in the Emission Guideline.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in CRS § 25-7-109(1)(b).

To the extent that CRS § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of VOCs and GHG emissions.

(III) Evidence in the record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00582

Opinion of the Attorney General rendered in connection with the rules adopted by the

Air Quality Control Commission

on 02/21/2025

5 CCR 1001-9

REGULATION NUMBER 7 CONTROL OF EMISSIONS FROM OIL AND GAS EMISSIONS OPERATIONS

The above-referenced rules were submitted to this office on 02/26/2025 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.

March 13, 2025 08:27:20

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Division of Environmental Health and Sustainability

CCR number

6 CCR 1010-4

Rule title

6 CCR 1010-4 COLORADO MILK AND DAIRY PRODUCTS REGULATIONS 1 - eff 04/14/2025

Effective date

04/14/2025

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Division of Environmental Health and Sustainability

6 CCR 1010-4

COLORADO MILK AND DAIRY PRODUCTS REGULATIONS

Adopted by the Board of Health on February 19, 2025; **effective, April 14, 2025**

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* * *

[indicates omission of unaffected rules]

[Publication Instructions: Replace current existing text from Section 4.2 B. with the following new text from Section 4.2 B.]

4.2 Scope and Purpose

A. This regulation shall govern:

1. Dairy sanitation, the processing, packaging, transportation and sale of Grade "A" milk and milk products, and represents the state and federal standard for Grade "A" milk sanitation;

2. Sanitary production of milk for manufacturing purposes including its transportation, grading, use, processing, and the packaging, labeling and storage of dairy products made there from;

3. Licensure and inspection of dairy farms and dairy plants for the production and sale of milk or dairy products for manufacturing purposes;

4. Retention of appropriate documentation and records by plants licensed hereunder;

5. Licensure of qualified milk or dairy product samplers and testers.

B. Section 4.7 of this regulation incorporates by reference the *Grade "A" Pasteurized Milk Ordinance* 2023 *Revision ("PMO")*, including supplements, provisions, administrative procedures and appendices, *Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, including the Constitution and Bylaws, 2023 Revision* ("Procedures"), and *Methods of Making Sanitation Ratings of Milk Shippers and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufacturers, 2023 Revision* ("Methods") in effect as of this date.

* * *

[indicates omission of unaffected rules]

[Publication Instructions: Replace current existing text from Section 4.7 A. through C. with the following new text from Section 4.7 A. through C.]

4.7 Incorporation by Reference

A. Throughout these regulations, standards and requirements of outside organizations have been adopted and incorporated by reference. The material incorporated by reference cited herein includes only those versions that were in effect as of December 2024, and not later amendments or editions of to the incorporated materials. These rules incorporate by reference:

1. U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration, and the National Conference On Interstate Milk Shipments *Grade "A" Pasteurized Milk Ordinance, 2023 Revision ("PMO")*, including supplements, administrative procedures, appendices, and coded Food and Drug Administration Interpretative Memoranda;

2. U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration and the National Conference On Interstate Milk Shipments, *Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, including the Constitution and Bylaws, 2023 Revision* ("Procedures"); and

3. U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration, and the National Conference On Interstate Milk Shipments, *Methods of Making Sanitation Ratings of Milk Shippers and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufacturers, 2023 Revision* ("Methods").

B. The Division of Environmental Health and Sustainability shall maintain certified copies of the complete text of the incorporated materials, which shall be available for public inspection at the address below during regular business hours, and shall provide certified copies of the materials at cost upon request. For information regarding how the incorporated materials may be obtained or examined, contact:

Division Director
Division of Environmental Health and Sustainability
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

C. The incorporated materials are also available for public inspection electronically at:

https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/ucm2007966.htm

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00633

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Environmental Health and Sustainability

on 02/19/2025

6 CCR 1010-4

COLORADO MILK AND DAIRY PRODUCTS REGULATIONS

The above-referenced rules were submitted to this office on 02/28/2025 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.

March 10, 2025 12:54:05

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Division of Environmental Health and Sustainability

CCR number

6 CCR 1010-7

Rule title

6 CCR 1010-7 HEALTH AND SANITATION OF CHILD CARE FACILITIES IN THE STATE OF COLORADO 1 - eff 04/14/2025

Effective date

04/14/2025

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Division of Environmental Health and Sustainability

HEALTH AND SANITATION OF CHILD CARE FACILITIES IN THE STATE OF COLORADO

6 CCR 1010-7

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

Adopted by the Board of Health on February 19, 2025

7.1 Authority

These regulations are promulgated pursuant to Sections 25-1.5-101(1)(a), (h), (k), and (l), 25- 1.5-102(1)(a) and (d), and 25-1-108(1)(c)(I), C.R.S.

7.2 Scope and Purpose

A. This regulation shall govern minimum health and sanitation requirements for the operation and maintenance of child care facilities in order to protect the health of children and staff in these facilities.

B. This regulation does not apply to:

1. Family child care homes as defined in Section 26.5-5-303(7), C.R.S.;

2. Foster care homes, kinship foster care homes, medical foster care, therapeutic foster care, and treatment foster care as defined in Section 26-6-903(10), (16), (20), (35), and (36) C.R.S.; and,

3. Neighborhood youth organizations as defined in Section 26.5-5-303(17), C.R.S.

7.3 Applicability

A. These regulations shall apply to all child care facilities as defined in Sections 26-6-903 (8)(a)(I), (13), (29), (31), (32), (34), C.R.S, and, 26.5-5-303 (3), (5), (10), (22), C.R.S. and definition 7.4(A)(4) of this regulation.

1. Child care facilities in operation prior to the effective date of these regulations, which would require capital expenditures to fully meet all design, construction and equipment requirements of the regulations, shall be deemed acceptable if in good repair and capable of being maintained in a sanitary condition and pose no hazard to the health of the facility occupants.

2. Any child care facility operator shall have the right to seek a variance to any section of these regulations, except those requirements from the Colorado Revised Statutes or a referenced regulation or code, which, in their opinion, presents an undue hardship on the person, facility, or the community so long as minimum health and sanitation requirements are met. All variance requests shall be submitted to the Colorado Department of Public Health and Environment in writing, stating the section for which the variance is being

requested, documentation of the hardship and any explanation for the request.

B. The Department may require detailed plans and specifications of a child care facility proposed to be newly constructed, and/or the affected areas of any existing child care facility proposed to be extensively remodeled. Each child care provider, person intending to become a child care provider or designee shall be responsible for submitting the requested plans and specifications. Approval of requested plans and specifications is necessary before construction begins. Any revision of plans shall be submitted to the Department for review and modification or approval. Plans shall include: a plan view scale drawing of the facility; the location of all equipment, plumbing fixtures and connections, ventilation systems, and other pertinent information.

7.4 Definitions

A. The following definitions shall apply in the interpretations and the enforcement of these regulations unless the context clearly states otherwise:

1. Approved means acceptable to the Colorado Department of Public Health and Environment or its authorized agents or employees based upon determination of conformance with these and other appropriate standards and good public health practice.

2. Asbestos Containing Material means material containing more than 1% asbestos. Building materials of any age may contain asbestos.

3. Bacteria means organisms with a cell wall that can survive inside and outside of the body.

4. Child Care Facility means, for the purposes of this regulation, any facility defined as such in Sections 26-6-903 (8)(a)(I), (13), (29), (31), (32), (34), C.R.S, and 26.5-5-303 (3), (5), (10), (22), C.R.S., and,

a. “Child care center” means a facility, by whatever name known, that is maintained for the whole or part of a day for the care of five or more children, unless otherwise specified in this subsection (a), who are 18 years of age or younger and who are not related to the owner, operator, or manager thereof, whether the facility is operated with or without compensation for such care and with or without stated educational purposes. This term includes, but is not limited to, facilities commonly known as child care centers, school-age child care centers, before and after school programs, nursery schools, kindergartens, preschools, day camps, and summer camps, and includes those facilities for children under the age of six years with stated educational purposes operated in conjunction with a public, private, or parochial college or a private or parochial school; except that the term shall not apply to any kindergarten maintained in connection with a public, private, or parochial elementary school system of at least six grades.

b. “Children's resident camp” means a facility operating for three or more consecutive 24-hour days during one or more seasons of the year that offers group living experiences or seasonal outdoor

adventure day camp programs for five or more children. The purpose of the facility is to offer an outdoor experience for youth development through multiple educational and recreational activities in an outdoor, nature-based environment. The recreational experiences may occur at the permanent camp premises or on trips off the premises.

c. "Day treatment center" means a facility that provides less than 24-hour care for groups of five or more children who are:

(1) Three years of age or older, but less than 21 years of age; and,

(2) Provides a structured program of various types of psycho-social and behavioral treatment to prevent or reduce the need for placement of the child out of the home or community.

d. "Guest child care facility" means a facility operated by a ski area, as that term is defined in Section 33-44-103(6), C.R.S., where children are cared for:

(1) While parents or persons in charge of such child are patronizing the ski area;

(2) Fewer than 10 total hours per day;

(3) Fewer than 10 consecutive days per year; and,

(4) Fewer than 45 days in a calendar year, with 30 or fewer of such 45 days occurring in either the winter or summer months.

e. "Homeless youth shelter" means a facility that, in addition to other services it may provide, provides services and mass temporary shelter for a period of three days or more to youths who are at least 11 years of age, or older, and who otherwise are homeless youth as that term is defined in Section 26-5.7-102(2), C.R.S.

f. "Mobile Outdoor Preschool" means a program with a mobile classroom that uses no permanent building on a regular basis, for children three to seven years of age, with no more than eight children at any given time. Each classroom period must not exceed five hours.

g. "Public services short-term child care facility" means a facility that is operated by or for a county department of social services or a court and that provides care for a child:

(1) While the child's parent or the person in charge of the child is conducting business with the county department of social services or participating in court proceedings;

(2) Fewer than 10 total hours per day;

(3) Fewer than 15 consecutive days per year; and,

(4) Fewer than 45 days in a calendar year.

h. "Residential child care facility" means a facility licensed by the Colorado Department of Human Services to provide 24-hour group care and treatment for five or more children operated under private, public, or nonprofit sponsorship. "Residential child care facility" includes community-based residential child care facilities; qualified residential treatment programs, as defined in section 26-5.4-102 (2); shelter facilities; and psychiatric residential treatment facilities as defined in 25.5-4-103 (19.5).

i. "Respite Child Care Center" means a facility for the purpose of providing temporary 24-hour group care for three or more children or youth who are placed in certified foster care homes or approved noncertified kinship care homes, and children or youth with open cases through a regional accountable entity. A respite child care center is not a treatment facility, but rather its primary purpose is providing recreational activities, peer engagement, and skill development to the children and youth in its care. A respite child care center serves children and youth from five years of age to 21 years of age. A respite child care center may offer care for only part of the day. Respite child care means an alternative form of care to enable caregivers to be temporarily relieved of caregiving duties.

j. "Secure residential treatment center" means a facility operated under private ownership that is licensed by the Colorado Department of Human Services to provide twenty-four-hour group care and treatment in a secure setting for five or more children or persons up to the age of 21 years over whom the juvenile court retains jurisdiction pursuant to Section 19-2.5-103 (6), C.R.S., who are committed by a court pursuant to an adjudication of delinquency or pursuant to a determination of guilt of a delinquent act or having been convicted as an adult and sentenced for an act that would be a crime if committed in Colorado, or in the committing jurisdiction, to be placed in a secure facility.

k. "Specialized group facility" means a facility sponsored and supervised by a county department or a licensed child placement agency for the purpose of providing 24-hour care for three or more children, but fewer than 12 children, whose special needs can best be met through the medium of a small group. A child who is admitted to a specialized group facility must be:

(1) At least seven years of age or older but less than 18 years of age; or,

(2) Less than 21 years of age and who are placed by court order or voluntary placement; or

(3) Accompanied by a parent or legal guardian if less than seven years of age.

5. Child Care Health Consultant means a medical professional who assists the program in meeting and exceeding basic health and safety standards. A

child care health consultant must meet one of the following qualifications: a Licensed Registered Nurse with knowledge and experience in maternal and child health; a Pediatric Nurse Practitioner; a Family Nurse Practitioner; or, a Physician with knowledge and experience in pediatrics or maternal and child health.

6. Child Occupied Facility means a building or portion of a building that:

   a. Was constructed prior to 1978;

   b. Is visited regularly by the same child who is under seven years of age;

   c. Is visited by the same child on two or more days within any week, with each such visit totaling three or more hours; and

   d. Is visited by the same child a total of at least 60 hours in one year.

   e. A child occupied facility includes, but is not limited to, day-care centers, preschools, or kindergarten classrooms constructed prior to 1978.

7. Clean means to be free of dust and debris or to remove dirt and debris by vacuuming or scrubbing and washing with soap and water.

8. Common Towel means a non-disposable towel that is used by more than one individual or is used more than one time by the same individual.

9. Communicable Disease means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (e.g., louse, mosquito) or environmental object (e.g., table surface).

10. Contamination means the presence of infectious microorganisms or chemicals at levels toxic to human health in or on the body, environmental surfaces, articles of clothing, and/or in food or water.

11. Critical Violation means any violation of the provisions of these regulations which is more likely than other violations to contribute to illness.

12. Department means Colorado Department of Public Health and Environment or its authorized agents or employees.

13. Disinfect means to eliminate most or all pathogenic microorganisms, with the exception of bacterial spores by using effective bactericidal heat or concentration of chemicals which are registered with the U.S. Environmental Protection Agency. This is generally accomplished in a child care setting by the use of liquid chemical solutions such as a mixture of bleach (a solution containing sodium hypochlorite) and water.

14. Drinking Water means water that meets criteria as specified in 5 CCR 1002-11, *Colorado Primary Drinking Water Regulations*. Drinking water is traditionally known as “potable water”. Drinking water includes the term “water” except where the term used connotes that the water is not potable, such as “boiler water,” “mop water,” “rainwater,” “reclaimed water,”

"wastewater," and "nondrinking water".

15. Easily Cleanable means materials or surfaces that are smooth, durable, non-absorbent, such that the soil, filth, and/or unseen contamination can be effectively removed by normal cleaning methods.

16. Extensive Remodeling means any remodeling that normally would require a building permit from local government or that affects the building or area of operation of the child care facility, or a change in operation that requires a license change by the Department Of Human Services. Routine maintenance, repairs, cosmetic changes, or license changes that increase allowable capacity of the current license shall not be defined as extensive remodeling, unless a change in capacity requires an increase in the number of fixtures. Structural modifications required due to extensive remodeling shall pertain directly to the portions of the facility or building being remodeled.

17. Food Preparation Sink means a sink designated for food preparation activities including preparing bottles, washing produce, thawing foods, and rapid cooling of foods. Food preparation sinks are not handwashing sinks unless a multi-use sink operational plan is approved by the Department.

18. Furnishings means equipment such as high chairs, cribs, beds, crawling mats, chairs, sofas, eating tables, art/water/play tables, other equipment, desks, workstations, dressers, interior play areas (jungle gyms), and toy chests.

19. Gloves means those that are non-porous, disposable, and single-use.

20. High Hazard Body Fluid means urine, feces, vomitus, blood, and other body fluids with blood present.

21. Highly Susceptible Population means persons who are more likely than other people in the general population to experience foodborne disease because they are immunocompromised, children under five years of age, or older adults; and they obtain food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

22. Hygiene means protective measures, including practices of cleanliness, taken by individuals to promote health and limit the spread of infectious diseases.

23. Imminent Health Hazard means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness or injury based on the nature, severity, and duration of the anticipated illness or injury.

24. Infant means a child between birth and the age of 18 months and is cared for in an infant program.

25. Infection means a condition caused by the multiplication of an infectious

agent in the body.

26. Infectious means capable of causing an infection.

27. Infestation means the presence of unwanted pests such as insects, rodents, bats, birds, or parasites at levels considered to pose either an economic or health threat.

28. Inspection means an evaluation by the Department of the child care facility during its normal hours of operation, with program staff in attendance, to determine conformance with these regulations.

29. Kindergarten means a program for children the year before they enter the first grade.

30. Lead-based Paint, as defined in Section 25-7-1102, C.R.S., means any paint containing more than six one-hundredths of one per cent by wet weight of lead metal, more than five-tenths of one percent by dry weight of lead metal, or more than one milligram per square centimeter of lead metal.

31. Low Hazard Body Fluid means body fluids without blood such as saliva, nasal discharge, eye discharge, sweat, tears, and human milk.

32. New Child Care Facility means a facility, which is newly constructed or an existing structure that is converted for use as a child care facility as defined in Section 7.4(A)(6) that begins operation after the effective date of these rules.

33. Outbreak means an increase in disease symptoms or illness regardless of a clinical diagnosis or laboratory testing in staff/children at more than expected levels. As few as two individuals (children or staff) in the same group with similar symptoms may constitute an outbreak.

34. Parasite means an organism that lives on or in another living organism (e.g., giardia, ticks, lice, and mites).

35. Poisonous or Toxic Materials means substances capable of causing injury, illness or, death when ingested, inhaled or absorbed.

36. Preschool means a child care program for five or more children between the ages of two and one half and seven years.

37. Privy means a toilet without running water.

38. Psittacine Birds, also called “Hookbills” because the upper beak is turned downward, means all birds commonly known as Parrots, Amazons, Mexican Double-Heads, African Greys, Cockatoos, Macaws, Parakeets, Lovebirds, Lories, Lorikeets, and other birds of the order Psittaciforme.

39. Ready-To-Eat Food means food that is edible without further washing, cooking, or additional preparation and that is reasonably expected to be consumed in that form.

40. Refuse means any garbage, trash, or other forms of solid waste.

41. Sanitization means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals, registered with the U.S. Environmental Protection Agency, for sufficient time to reduce the bacterial count, including pathogens, to a safe level.

42. School- Age Child means a child five years of age and older, unless otherwise approved by the licensing agency, attending a program licensed for school age children.

43. Single-Service Articles means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers designed and constructed for one-time, one-person use after which they are intended for discard.

44. Staff Member or staff means any person working or volunteering to perform duties in a child care facility, including caregivers.

45. Time/Temperature Control for Safety Food (TCS) (formally "potentially hazardous food") means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation. Potentially hazardous foods (time/temperature control for safety food) includes a food of animal origin that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation.

46. Toddler means a child between the ages of 12 months and 36 months and is cared for in a toddler program.

47. Virus means a microscopic organism smaller than a bacterium that may cause disease. Viruses can grow or reproduce only in living cells.

48. Wading Pool means any artificial pool of water equal to or less than 18 inches in depth and intended for wading purposes.

7.5 Incorporation by Reference

These regulations incorporate by reference (as indicated within) materials originally published elsewhere. Such incorporation does not include later amendments to or editions of the referenced material. Pursuant to Section 24-4-103 (12.5)(a), C.R.S., the Department maintains certified copies of the complete text of any material incorporated by reference for public inspection during regular business hours and shall provide certified copies of the incorporated material at cost upon request. Information regarding how to obtain or examine the incorporated material is available from the Division Director, Division of Environmental Health & Sustainability, Colorado Department of Public Health & Environment, 4300 Cherry Creek Drive South, Denver, CO 80246-1530.

7.6 Premises

7.6.1 Grounds

A. The grounds and premise shall be well drained and free of refuse, litter, animal

droppings, insect and rodent harborages, weed overgrowth, open or accessible wells, grease interceptor, cisterns, cesspools, septic tanks, and unused equipment. This provision shall not be construed to limit outdoor educational or recreational programs.

1. The ground surface (i.e., sand, soil, wood chips, and other resilient surfaces) in play areas shall not contain hazardous levels of any toxic chemical or substances.

2. Outdoor play equipment accessible to children shall not be coated or treated with, nor shall it contain, toxic materials in hazardous amounts.

3. Items capable of collecting water present in outdoor play areas shall be self-draining or emptied at the end of each day to prevent a breeding ground for mosquitos and other pests unless otherwise approved by the Department.

B. Sand boxes shall be maintained in a sanitary condition and comply with the following requirements:

1. Sandboxes shall be covered with a completely removable lid or other covering at the end of each day;

2. Sandboxes shall be kept free from cat and other animal excrement, litter, and debris;

3. Sand shall be replaced as often as necessary to keep the sand visibly clean and free of extraneous materials; and,

4. These requirements only apply to designated sand boxes and do not include sand used as a resilient material or other ground covering.

7.6.2 Solid Waste

A. Interior refuse, recycling, and compost containers shall be easily cleanable and shall be emptied whenever full or at least at the end of each operating day.

B. Exterior refuse, recycling and compost containers shall be easily cleanable, covered, insect and rodent resistant, and well maintained. Garbage storage areas shall be clean, well maintained and inaccessible to children. Refuse shall be removed on a regular basis in a manner, which would prevent creation of a nuisance or unsanitary condition.

C. Stored refuse shall be inaccessible to insects, rodents and other pests.

7.6.3 Pools, Hot Tubs, and Natural Swim Areas

A. Swimming pools, therapy pools, permanent wading pools, hot tubs, and swim areas shall be constructed, operated, and maintained in accordance with the Colorado Department of Public Health and Environment *Swimming Pool and Mineral Bath Regulations*, 5 CCR 1003-5, and Title 15, United States Code (USC), Section 8001, *et seq*. When local health or building departments have adopted codes equivalent to or more stringent than the above, those codes shall apply.

B. Use of hot tubs, therapy pools, swimming pools and portable or permanent wading pools by children who are not toilet trained shall be prohibited.

1. Portable wading pools shall be emptied and disinfected after use by each group of children, emptied and disinfected at the end of each day, and placed in storage when not in use.

2. A portable wading pool contaminated by any human or animal feces, urine, vomitus, blood, or chemicals shall be emptied, cleaned and disinfected.

C. All swimming and recreational water-based activities shall be prohibited if a suspected outbreak of gastrointestinal illness is occurring at the facility. These activities shall not resume until the Department provides approval.

7.7 Facility

7.7.1 Building

A. The building or buildings wherein a child care facility is operated shall be maintained in good repair and shall not pose a health hazard to children enrolled. Buildings shall be maintained in a clean and sanitary condition and be free of insects, rodents, and their harborages.

1. Disturbances to painted finishes shall not present hazards associated with lead.

2. Painted finishes shall be free from peeling or chipping paint. If repairs are necessary to address peeling or chipping paint, and the child care facility was built prior to 1978, repairs shall be done in a manner that prevents hazards associated with lead.

3. Construction, remodeling, or alterations of child care facilities shall be done in a manner that does not create a health hazard, including but not limited to those hazards related to disturbances of asbestos-containing materials or lead-based paint.

4. Room finishes, cabinets, shelves, and counters shall be easily cleanable, maintained in good repair, and kept clean.

5. Hand contact and splash areas of doors, walls, cabinets, and shelves shall be smooth, non-absorbent, and easily cleanable.

6. Floors shall be smooth, dry, cleanable, and free of cracks, splinters, and utility outlets.

7. Carpeting in approved areas shall be tightly woven and in good repair.

8. Carpeting shall not be permitted in kitchens, restrooms, utility rooms, mechanical rooms, under and around sinks and diaper changing areas or in laundry areas.

9. Except as specified in Section 7.7.1(A)(8), wall carpeting used for acoustical or educational purposes may be permissible in classrooms, provided it is tightly woven, in good repair, and is able to be easily cleaned, and

disinfected, or removed and replaced.

10. Floor wall junctures in all areas not carpeted shall be tightly coved with approved concave coving.

B. All openings to the outside shall be effectively protected against the entrance of insects and rodents by means of closed, tight fitting doors, screening of openable windows, and/or other effective means.

C. Ventilation, mechanical or natural, shall be maintained to minimize health hazards including excessive drafts, odors, extreme temperatures, humidity and temperature fluctuations.

1. Heating facilities shall maintain a draft-free temperature of at least 68°F at floor level in occupied infant and toddler rooms. The temperature shall be monitored with a mercury-free thermometer placed at floor level.

D. The source of noxious odors shall be removed to the extent possible by removing the source of the noxious odor or by dissipating odors through cleaning and ventilation. The use of the following shall be prohibited throughout the child care facility:

1. Incense;

2. Moth crystals or moth balls;

3. Toilet/urinal deodorizer blocks;

4. Chemical air fresheners; and,

5. Scent enhanced products (e.g., candles, essential oils, and spray and plug-in air fresheners, etc.).

E. All areas of the facility shall be adequately lighted.

1. A minimum of 30 foot candles (323 lux) of light shall be provided upon work and play surfaces.

2. A minimum of 20 foot candles (215 lux) of light shall be provided in restrooms.

3. A minimum of 10 foot candles (108 lux) of light shall be provided in hallways, stairways, and the remainder of the facility.

7.7.2 Detached Structures and Modular Classrooms

A. Detached structures and modular classrooms not provided with plumbing shall meet all of the following stipulations:

1. Only school-age children are cared for within the structure;

2. Restrooms shall be within 200 feet of the structures or modular classrooms and accessible during all hours of operation.

7.8 Sanitary Facilities and Controls

7.8.1 Water Supply

A. An adequate supply of drinking water for the needs of the child care facility shall be provided in the building housing the establishment and shall be from a source constructed and operated in compliance with 5 CCR 1002-11, *Colorado Primary Drinking Water Regulations* and regulations adopted pursuant to Section 25-1.5-203, C.R.S.; or,

1. If the child care facility does not meet the definition of a public water system pursuant to 5 CCR 1002-11, *Colorado Primary Drinking Water Regulations*, the child care facility shall provide:

   a. Adequate treatment on a continuous basis. Manual or pellet feed systems are not permitted;

   b. Bacteriological samples at a minimum of once per quarter or at a frequency determined by the Department;

   c. An N, N diethyl-p-phenylenediamine (DPD) colorimetric drinking water test kit capable of testing free chlorine at an accuracy of 0.1 milligrams per liter (mg/Liter);

   d. Free chlorine shall range from 0.2 to 4 mg/Liter (0.2 to 1.2 mg/Liter recommended) at any fixture; and,

   e. The previous twelve months of water sample reports shall be retained on file at the child care facility and shall be available for review by the Department when requested; and the child care facility shall immediately report positive bacteriological results to Department.

2. Child care facilities with water supplies determined to be surface water or under the influence of surface water shall be required to filter their water to 1μm (micron) absolute using National Sanitation Foundation approved equipment and maintain a residual disinfectant concentration pursuant to Section 7.8.1(A)(1)(d) to ensure inactivation and/or removal of *Giardia* and other parasitic cysts and viruses.

3. Water under pressure of at least 15 pounds per square inch (psi) (1.05 kilograms per square centimeter) at the required temperature shall be provided to all fixtures and equipment that use water.

B. Bottled and packaged drinking water shall be obtained from a source that is approved by the Department and shall be handled and stored in a way that protects the water from contamination.

C. Drinking water shall be readily accessible to children whenever the facility is operating including offsite activities and when away from a basecamp.

1. Drinking fountains shall be equipped with angled jets and orifice guards located above the rim of the fountain. The pressure shall be regulated so that the water stream does not come in contact with the orifice guard or

splash onto the floor.

2. Drinking fountains on designated restroom handwashing sinks shall be prohibited. Drinking fountains on sinks used for toxic art or science materials shall be prohibited.

3. Separate angle jet drinking fountain, when installed shall be at an appropriate height for use by the children in the facility or be equipped with a step platform to make the sink available to children. If a platform is used, it shall be stable and easily cleanable.

4. Individual single-service drinking cups shall be dispensed by the staff or through an approved cup dispenser. Children may not share single-service drinking cups.

5. Individual water bottles, bulk multiuse thermoses, and other bulk water containers provided by the child care facility shall be in good repair and kept clean. Containers shall be washed, rinsed, and sanitized daily after use. Containers shall be stored clean and dry, and in a manner that protects them from contamination.

D. Surface water utilized during backcountry excursions shall be treated and safe for drinking.

1. Water shall be boiled for a minimum of one minute at elevations below 6,500 feet and for three minutes at elevations above 6,500 feet; or,

2. First, water filter kits shall be utilized to filter water to 1µm (micron) absolute to control parasites. Second, the water shall be chemically disinfected using chlorine, iodine, or other approved means such as Ultra Violet light to control bacteria and viruses.

E. Hot water shall be provided at all times during operation of a building-based facility. The water heating system shall be of adequate size to supply 85°F to restroom, diaper changing, custodial and classroom sinks, 110°F water to warewashing sinks, 120°F water to commercial low temperature dish machines, and:

1. Each handwashing and classroom sink shall be provided with hot and cold water through a mixing valve or combination faucet. Hot water at sinks accessible to children shall be at least 85°F and shall not exceed a temperature of 120°F.

2. Hot water delivered to bathing facilities shall be at least 85°F and shall not exceed a temperature of 120°F.

7.8.2 Sewage

All sewage, including liquid waste, shall be discharged to a sanitary sewer or to a sewage system constructed, operated and maintained according to law.

7.8.3 Plumbing

A. All plumbing fixtures shall be sized, installed and maintained in accordance with applicable state and local plumbing codes, ordinances, regulations and standards.

1. There shall be no cross connections between the drinking water supply and any non- drinking water supply, or any source of contamination.

2. Plumbing shall be designed and constructed according to the building department having jurisdiction over the child care facility.

B. The drinking water system shall be installed and maintained to preclude the possibility of backflow or back siphonage.

1. Where chemical dispensing towers without integral air gaps or breaks to prevent back siphonage are installed, an approved backflow prevention device shall be installed between the chemical tower and the water supply line.

C. The piping of any non-drinking water system such as air conditioning and fire protection systems shall be labeled and identified so as to be readily distinguished from piping that carries drinking water.

7.8.4 Toilet Facilities

A. Only flush toilet facilities shall be installed and used in the establishment. They shall be accessible to children and shall be properly maintained in a clean and sanitary condition. Non-flushing toilets (i.e., potty chairs and composting toilets) are prohibited.

B. Toilet room walls shall be constructed of easily cleanable, non-absorbent materials. Floors shall have an impervious surface. Floor wall junctures shall be tightly coved with approved concave coving.

C. Toilet fixtures shall be of an easily cleanable design. Fixtures shall be of appropriate size and height for the children in the facility or be equipped with a step platform to make the fixture available to children. If a platform is used, it shall be stable and easily cleanable.

D. The use of privies and portable chemical toilets in child care facilities is prohibited, except that the use of privies and portable chemical toilets located in remote wilderness areas may be allowed only after obtaining the approval of the Department and meeting applicable standards and local ordinances. These remote wilderness programs shall have adequate toilet facilities available for use.

1. Privies and portable chemical toilets shall be separated from sleeping, activity, food preparation and storage rooms by a minimum of fifty (50) feet. Privies shall be properly screened and provided with self-closing doors to prevent the entry of flies. Handwashing facilities approved by the Department shall be provided where privies and portable chemical toilets are located.

E. During backcountry excursions where toilet facilities are not accessible, human waste shall be handled and disposed of in a manner that does not create a hazard and is approved by the Department and/or the governmental agency that oversees the usage of the land in which backcountry excursions take place.

1. Waste shall be collected and packed out for proper disposal in an approved

sewage system. Waste shall be collected in durable waste bags or waste tubes designed for such collection, and shall be transported in hard sided, air tight secondary containers; or,

2. Where allowed, human waste shall be deposited in cat holes dug 6-8 inches deep and 4- 6 inches wide in organic soil so as to facilitate decomposition and sited a minimum of 200 feet away from water, trails, and campsites. Cat holes shall be filled in and covered after use. Toilet paper and feminine hygiene products shall be collected and packed out with other trash.

F. An adequate supply of toilet paper shall be available from a dispenser located adjacent to each toilet.

G. Toilet seat inserts, when used, shall be constructed of durable, easily cleanable materials, maintained in a clean and sanitary manner and disinfected after each use as described in Section 7.10.6.

H. All toilet, bath, and shower rooms in facilities shall have adequate mechanical ventilation to the outside. Exhaust ventilation must be operational during the hours the child care facility operates.

7.8.5 Handwashing/Bathing Facilities

A. Handwashing and bathing facilities shall be permanently installed, functioning properly, and maintained in a clean, sanitary condition.

1. Handwashing facilities shall be located in or immediately adjacent to toilet rooms, diaper changing areas, within food preparation areas, and other areas where activities require frequent handwashing.

2. Handwashing sinks used in conjunction with toileting or diaper changing shall only be used for handwashing.

3. A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

4. In all facilities providing care to infants, toddlers, or preschoolers, a handwashing sink shall be accessible allowing the caregiver to supervise the children during handwashing activities. Children's handwashing sinks shall be at an appropriate height for the children in the facility or be equipped with a step platform to make the sink available to children. If a platform is used, it shall be stable and easily cleanable.

5. Bathtubs or showers, when used, shall be located within the facility or within a building approved by the Department.

6. Soap and single-service towels or clean cloth towels laundered after each use shall be provided at each handwashing sink, at a height for those children in the facility utilizing the handwashing sinks and supplies. Mechanical air drying devices may be used in lieu of disposable or cloth towels.

7. Except as allowed in Section 7.8.5(A)(6), if cloth towels are used to dry hands they shall be immediately placed in a container and laundered after each use.

8. The use of common towels or washcloths is prohibited.

9. An adequate supply of bath towels and washcloths shall be available for each child who uses a shower or bath. Bath towels and washcloths shall be laundered at least once a week and shall not be shared or intermingled among children.

10. Adequate space or accommodations such as a bench, hooks, storage shelves, or dressing counter shall be provided in bathing areas for the storage of clean towels and clothing while children bathe.

B. Bathing facility walls and ceilings shall be constructed of easily cleanable, non-absorbent materials. Floors shall have an impervious surface. Floor wall junctures shall be tightly coved with approved concave coving.

7.8.6 Custodial Areas

A. Laundry facilities, where provided, shall be maintained clean and in good repair. Except when life skills training is provided, laundry facilities shall be inaccessible to children.

1. In buildings where laundry facilities are provided, properly vented gas or electric dryers shall be installed.

2. Soiled linens and clothing shall be stored in non-absorbent or washable laundry bags or baskets until removed for laundering, shall be stored separate from clean linens and clothing, and shall be inaccessible to children. This provision does not prohibit life skills training in facilities providing more than 24-hour care.

3. Laundry facilities shall be physically separated from food preparation, food storage, and restroom areas.

4. Laundry shall be washed using the highest water temperature and dried using the highest heat setting. A laundry sanitizer shall be used when items are contaminated with high hazard body fluids.

5. Soiled linens, slipcovers, and clothing contaminated with high hazard body fluid shall be stored and laundered separately.

6. Clean linens and clothing shall be stored in a clean place and protected from contamination until used.

7. When items are laundered offsite, it shall be in compliance with Section 7.8.6(A)(4) and returned to the facility in a clean container.

B. At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools, and for the disposal of mop water and similar liquid waste.

C. Adequate space shall be provided for custodial and maintenance supplies and equipment. Storage areas shall be kept clean, sanitary, and inaccessible to children.

7.9 Interior Design

7.9.1 Personal Belongings

A. Separate identified storage areas shall be provided for each child's personal effects, clothing, and bed linens.

1. Individual cubicles, lockers, coat hooks, drawers, or closet space shall be provided for storage of coats, hats, and other personal articles.

2. Staff members' personal effects and clothing shall be stored separately and be inaccessible to children.

7.9.2 Play Equipment

A. Toys and art supplies shall be made of safe, non-toxic, durable, and cleanable materials.

1. Soft, cloth toys shall be machine washable.

2. Instructional supplies, toys, clean linens, clean clothing, and other play equipment shall not be stored in restrooms unless stored in a closed secondary non-absorbent container or closed cabinet.

B. Potentially toxic materials shall be used only as required by Section 7.14.3(A).

7.9.3 Napping, Sleeping Areas and Equipment

A. All sleeping and napping supplies such as cots, beds, cribs, mats, linens, and pillows shall be maintained in a sanitary manner.

1. Mats and cots shall be constructed of impervious, easily cleanable materials and maintained in good repair.

2. Mattresses not constructed of impervious materials shall be covered with an impervious (water proof) easily cleanable cover.

3. Individual cribs, mats, cots, linens and pillows shall be marked with identifying information unless cleaned and sanitized or laundered between users.

4. Linens shall be laundered at a minimum of once per week or anytime the surface becomes visibly soiled in accordance with Section 7.8.6(A). When linens are left on mats or cots, they shall be stored so that there is no contact between individual mats, cots, or bedding.

5. Mattresses or mattress covers, mats, and cots shall be thoroughly cleaned and sanitized prior to use by another child and whenever soiled, as required in Section 7.10.5.

6. Mattresses or mattress covers, mats, and cots shall be thoroughly cleaned and disinfected when contaminated with high hazard body fluids, as required in Section 7.10.6.

7. Pillows, mats, and cots shall not be stored in restrooms.

7.9.4 Toys, Furnishings and Equipment

A. Toys, furniture, indoor play equipment and other furnishings shall be maintained clean and in good repair.

1. Dress-up clothing, hats, and all other headwear shall be washable and shall be maintained in a clean condition.

2. Sensory tables and other play tables shall be maintained in a clean and sanitary manner.

a. Sensory tables, when filled with water, or wet materials, shall be emptied, cleaned, and sanitized after use by each group of children and at least emptied, cleaned, and sanitized daily.

b. Sensory tables when filled with dry materials shall be cleaned and sanitized at least weekly.

c. If food items (i.e. beans, pasta, rice, or materials made with food) are used in sensory tables, the materials may be used for a maximum of one week and then the materials shall be discarded.

d. Any item such as, but not limited to, sand, cardboard, paper, or similar shall be discarded whenever it is visibly soiled, contaminated with either high or low hazard body fluids, or in poor repair.

e. Toys shall be cleaned and sanitized as required by Section 7.9.4(A)(5-7) or laundered as required by Section 7.9.4(A)(8).

f. The use of sensory tables is prohibited if a suspected or confirmed outbreak is occurring at the facility. These activities shall not resume until the Department provides approval or upon outbreak closure.

3. Equipment, furnishings, toys, and play materials for infants and toddlers shall have smooth, nonporous surfaces or washable fabric surfaces that are easily cleanable.

a. Coverings shall be laundered any time the surface becomes visibly soiled. In use cloth toys such as stuffed animals, dolls, and hand puppets shall be laundered at a minimum of once per week, pursuant to Section 7.8.6(A), and immediately removed for laundering after being mouthed or any time they become visibly soiled. Laundering of coverings shall be in accordance with Section 7.8.6(A).

b. Surfaces contaminated with high hazard body fluids shall be cleaned and disinfected, pursuant to Section 7.10.6, and when provided, coverings shall be removed for laundering.

4. Children that are toilet trained may have furnishings without impervious covers similar to a domestic setting as long as they are maintained clean and in good repair.

a. Absorbent toys and surfaces shall be cleaned, laundered, or removed from use at a frequency to prevent the accumulation of visible soil.

b. In the event of contamination with high hazard body fluid the furnishing shall be immediately cleaned and disinfected in accordance with Section 7.10.6, or shall be removed from use.

5. Toys used by preschool and older children shall be washed, rinsed, and sanitized in accordance with Section 7.10.5 at least once per week and whenever visibly soiled.

6. Toys used by infants and toddlers shall be washed, rinsed, and sanitized in accordance with Section 7.10.5 at least daily and whenever visibly soiled.

7. Toys that are placed in children's mouths or are otherwise contaminated by low hazard body fluids shall be washed, rinsed, and sanitized in accordance with Section 7.10.5 prior to use by another child.

8. Soft toys used by all age groups shall be washed in accordance with Section 7.8.6(A) weekly or whenever visibly soiled or placed in a child's mouth.

7.9.5 Ill / Injured Child Area

A. Each facility shall include an area designated for the care of any ill or injured child who is being cared for by a designated staff member or is awaiting the arrival of a parent or guardian.

1. Resident camps and 24-hour child care facilities require a designated area for the care of ill or injured children.

2. In all other child care facilities, the designated area may be located within a classroom or area normally used for child care. At least three feet of separation is recommended from all other children to help minimize exposure of staff and children not previously in close contact with the child.

3. The area shall be well ventilated and heated.

4. The area shall have available a bed, cot, or mat and a sheet and blanket. In resident camps and 24-hour facilities there shall be one bed, cot, or mat for every 50 children the facility is licensed for.

5. Children in the area shall have access to toilet and lavatory facilities where health and sanitation measures can be carried out without interruption by other children and staff activities.

6. The area shall be located so as to allow staff supervision of the ill or injured child at all times.

7. All equipment, bedding, and toys utilized by the child with symptoms of illness shall be cleaned and sanitized or disinfected as required in Sections 7.8.6, 7.10.5, and 7.10.6, prior to use of another child.

7.10 Disease Prevention

7.10.1 Personal Health

A. Staff shall be in good health and be free from communicable disease while caring for children, preparing food or employed in any capacity where there is a likelihood of transmitting disease to others at the facility.

B. Unless otherwise exempt, child care facilities shall comply with 6 CCR 1009-2, *Rules Pertaining to the Infant Immunization Program and the Immunization of Students Attending School*.

C. Disease outbreaks shall immediately be reported to the Department and shall not be delayed due to lack of diagnostic testing. Cases and outbreaks of reportable communicable disease shall be reported to the Department in the time frame stipulated by 6 CCR 1009-1, *Epidemic and Communicable Disease Control*.

1. Child care facilities shall manage and control disease transmission through consultation with their child care health consultant and the Department.

2. A written policy shall be implemented for staff and children regarding symptoms of illness and conditions that require exclusion from the child care facility.

3. Each child shall be observed for common signs of illness at arrival and throughout the day. A child who is ill upon arrival at the facility shall not be admitted pursuant to the exclusion or illness policy, pursuant to Section 7.10.1(C)(3).

4. A thermometer capable of measuring human temperatures shall be available. Glass and mercury thermometers are prohibited. The thermometer shall be protected with a single- use cover or sanitized pursuant to Section 7.10.5 after each use.

5. A child who becomes ill or develops symptoms that require exclusion after arrival, shall be separated from other children until the parent or guardian can pick up the child.

6. In resident camps and 24-hour child care facilities, when an ill child is unable to be picked up by a parent or guardian within a reasonable time or when a child lives at the facility, the child must be isolated pursuant to the exclusion or illness policy, Section 7.10.1(C)(3).

7. Child care staff shall wear gloves when in contact with blood, feces, and other high hazard body fluids.

8. Child care facilities shall have written procedures for staff to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the child care facility. The procedures shall address the specific actions staff must take to minimize the spread of contamination and the exposure of staff, children, food, food contact surfaces, and other surfaces to vomitus or fecal matter.

9. Logs shall be kept to record symptoms of illnesses occurring among children attending the child care facility. Logs shall be maintained at the facility for two months and provided to the Department upon request. The logs shall include, at minimum, the following information:

a. Child’s name or other identifying information;

b. Child's assigned classroom or group;

c. Date and time of symptoms of illness;

d. Symptoms;

e. Actions taken; and,

f. Date and time child was returned to group setting.

7.10.2 Demonstration of Knowledge

A. Upon request, the person or persons performing a specific task shall demonstrate to the regulatory authority knowledge of communicable disease prevention as it relates to the specific task. This will be determined by staff's ability to show knowledge of the following:

1. When, where, and how handwashing is required;

2. When to prohibit staff members from caring for children;

3. When to prohibit handling and preparation of food;

4. Proper diapering procedure;

5. Proper sanitization and disinfection of surfaces and toys; and,

6. When to exclude or isolate children with symptoms of communicable illness.

7.10.3 Handwashing and Hygienic Practices

A. Staff members and children shall wash their hands using the following procedures:

1. Moisten hands with warm running water;

2. Apply soap;

3. Rub hands vigorously until a soapy lather appears;

4. Continue washing for at least 20 seconds outside of the water, rubbing areas between fingers, around nail beds, under fingernails, under jewelry and the backs of hands;

5. Rinse hands under warm running water until they are free of soap and dirt; and,

6. Dry hands with a disposable towel, a clean cloth towel laundered after use, or a mechanical drying device.

B. Staff members and children toddler-aged and older shall wash their hands at the

following times:

1. Upon arrival for the day and after breaks;

2. When caregivers move from caring for one group/classroom of children to another;

3. Before and after:

    a. Preparing food or beverages;

    b. Eating, handling food, or feeding a child;

    c. Giving medication, applying a medical ointment or cream or administering first aid; and,

    d. Setup or use of a sensory table.

4. After:

    a. Using the toilet or assisting a child with toileting;

    b. Diapering each child;

    c. Handling body fluids;

    d. Handling animals or cleaning up animal waste;

    e. Coming in from outdoors;

    f. Cleaning or handling garbage; and,

    g. At any other time that hands become soiled.

C. Infants shall have their hands washed with:

1. Soap and running water; or,

2. A clean cloth that contains soap and is laundered after each use; or,

3. The use of soap and warm water solution dispensed from a clean spray bottle, followed by a rinse before drying with a clean cloth or disposable towel:

    a. Before and after meals and snacks;

    b. After:

        (1) Having their diaper changed;

        (2) Coming in from outdoors; and,

        (3) Whenever their hands become soiled.

D. The use of hand sanitizers or wipes in lieu of handwashing is not approved for use

within the facility. Hand sanitizers or wipes containing at least 60% ethyl or isopropyl alcohol may be used for staff and children three years of age and older and only at times and in areas where handwashing facilities are not available, such as while out of doors in remote locations. Hand sanitizers and wipes shall be stored out of reach of children.

E. Staff shall supervise children's handwashing to assure adequacy of the procedure.

F. All staff members shall practice good personal hygiene in order to reduce the potential for disease transmission.

G. All staff members shall wear clean outer garments. Staff members involved in both child care and food preparation shall wear a clean smock whenever they are involved with kitchen food preparation.

H. Personal articles, such as combs, toothbrushes, razors, pacifiers, washcloths, water bottles, etc., shall be individually identified and shall be stored in a sanitary manner so as not to contaminate or come into contact with the personal hygiene articles of another child. Personal articles shall not be shared between children.

I. Towels used for recreational water activities shall be individually identified, stored in a sanitary manner, laundered at least weekly, and not to be shared or intermingled among children.

7.10.4 Medications and First Aid

A. Medication shall be inaccessible to children and shall be stored in the original container in a controlled area separated from food, cleaning compounds and other toxic substances. If refrigeration is required, the medication shall be stored:

1. In a separate refrigerator maintained for that purpose only;

2. In an impervious secondary container in a designated area of a food storage refrigerator, separated from food and inaccessible to children;

3. Using equipment and methods approved by the Department when mechanical refrigeration is not available.

B. Medications acquired by the facility or abandoned by parents or guardians shall be disposed of in accordance with 6 CCR 1007-2, Part 1, *Regulations Pertaining to Solid Waste Sites and Facilities* and 6 CCR 1007-3, Parts 260-268, and Parts 99 and 100.

C. Medical oxygen shall not be used by children or staff in areas with open flames. Signage shall be posted in the child care facility that oxygen is in use.

D. Basic first aid medical supplies, including gauze pads, rolled gauze, adhesive tape, cold pack, plastic bags, disposable gloves, bandages, mechanism for cleaning hands in a remote location, and scissors, shall be provided and kept in clean storage, conveniently located and available to staff for emergency use and inaccessible to children.

1. For non-life threatening emergencies, the poison control center shall be consulted for guidance about any exposure to toxic substances or any potential poisoning emergency.

2. First aid supplies and equipment with an expiration date shall be discarded and replaced once that date has passed.

7.10.5 Sanitizers

A. Acceptance of sanitizers shall be determined by the following requirements:

1. The chemical shall have a U.S. Environmental Protection Agency registration number and designation as a food contact surface sanitizer, be registered with the Colorado Department of Agriculture, and used in accordance with labeled instructions and 40 CFR 180.940, including:

a. Concentration;

b. Contact time;

c. Method of application;

d. Surfaces; and,

e. Does not require a final rinse step.

2. Bleach used shall be free of compounds to enhance the scent, viscosity, or other compounds that may adversely affect its use as a sanitizer.

B. Sanitizers are to be used on surfaces that commonly come into contact with food, hands, the mouth, eyes, nose, and exposed skin of children and staff. These surfaces include, but are not limited to, kitchen surfaces, infant food preparation areas, pacifiers, drinking fountains, table tops, keyboards, toys, sleeping mats, cribs, high chairs, head phones, tumbling mats, and furniture.

1. Sanitizers are not to be used in place of soaps, detergents or other cleaning compounds that are intended and utilized to remove soil from surfaces, unless specifically formulated as a cleaner sanitizer.

2. Sanitizing solutions shall be available to caregivers and staff during all hours of operation.

3. The frequency of sanitizer use for food contact surfaces shall be in accordance with the requirements of Section 7.11.

C. Sanitizers shall be mixed and used according to the label instructions, including concentration and contact time.

1. Bleach shall be prepared and used at concentrations between 50 – 200 ppm chlorine when used as a sanitizer.

2. Test kits shall be provided and used to verify the required concentration for sanitizers requiring mixing. Solutions shall be tested upon mixing and daily if kept longer than 24 hours.

3. Test kits are not required for sanitizers obtained as ready-to-use (i.e., not requiring mixing) solutions provided they are used in accordance with the

manufacturer’s labeled instructions.

D. Bulk and working containers of sanitizers shall be stored inaccessible to children. Working containers of sanitizers shall be easily accessible for use by caregivers.

1. Working containers of sanitizers shall be labeled as to their content and their intended use (i.e., sanitizer/toys and tables).

E. Nothing in this Section shall prohibit the use of a dish washing machine, pursuant to Section 7.11.2(A)(5), clothes washing machine, or clothes dryer, pursuant to Section 7.8.6(A), for sanitization of toys or other classroom materials.

F. Common touch surfaces may be disinfected per Section 7.10.6 rather than sanitized at the discretion of the staff in children’s resident camps and 24-hour facilities serving school age children provided manufacturer instructions are followed.

7.10.6 Disinfectants

A. Acceptance of disinfectants shall be determined by the following requirements:

1. The chemical shall have a U.S. Environmental Protection Agency registration number and designation as a hospital grade disinfectant effective against norovirus or an equivalent surrogate, and be registered with the Colorado Department of Agriculture. The chemical shall be used in accordance with the labeled instructions, including:

a. Concentration;

b. Contact time;

c. Method of application; and,

d. Surfaces.

B. Disinfectants are to be used on surfaces that are commonly contaminated with high hazard body fluids, such as but not limited to toilet seat inserts, diaper changing areas and tables, diaper pails and surfaces that have been in contact with high hazard body fluids.

1. Disinfectants are not to be used in place of soaps, detergents or other cleaning compounds that are intended and utilized to remove soil from surfaces, unless specifically formulated as a cleaner disinfectant.

2. Toys, food contact surfaces, or body contact surfaces that become

contaminated with high hazard body fluids shall be disinfected and then rinsed, unless otherwise instructed by the manufacturer's labeled instructions, before returned to use.

3. Carpeting, rugs, mops, soft toys, and upholstery that have been contaminated by high hazard body fluids shall be cleaned by removing all visible debris with absorbent materials and laundered per Section 7.8.6(A)(4), treated through the use of a chemical designated for this purpose, or steam.

4. A disinfectant shall be available during all hours of operation in facilities where children are in diapers or require bladder or bowel hygiene assistance. In all other facilities, a disinfectant shall be available as needed.

C. The frequency of disinfectant use shall be in accordance with the requirements of Section 7.12.4 or immediately upon clean up of or contact with high hazard body fluids.

D. Disinfectants, including bleach, must be mixed and used according to the manufacturer's labeled instructions, including concentration and contact time.

1. Bleach used shall be free of compounds to enhance the scent, viscosity, or other compounds that may adversely affect its use as a disinfectant.

2. The concentration of disinfectants mixed at the facility shall be verified at least weekly, or in cases where verification is not possible, the solution shall be kept for no longer than seven days, unless otherwise specified by the manufacturer.

3. Test kits are not required for disinfectants obtained as ready-to-use (i.e., not requiring mixing) solutions provided they are used in accordance with the manufacturer's labeled instructions.

E. Bulk and working containers of disinfectants shall be stored inaccessible to children. Working containers of disinfectants necessary for diaper changing and bladder and bowel hygiene shall be easily accessible for use by caregivers.

1. Working containers of disinfectants shall be labeled as to their content and their intended use (i.e., disinfectant/restrooms).

7.11 Food Service

Child care facilities providing meals or snacks that do not hold a retail food establishment license shall have adequate food service facilities to accommodate the safe preparation and service of foods currently being provided and shall meet the requirements of 6 CCR 1010-2, *Colorado Retail Food Establishment Regulations*, unless otherwise stated in Section 7.11:

7.11.1 Exceptions

A. A certified food protection manager is not required provided that the facility does not hold a retail food establishment license.

B. Sanitizing solutions shall meet the requirements specified in Section 7.10.5.

C. Employee restrooms shall be determined by the licensing agencies, either the Department of Human Services or the Department of Early Childhood.

D. Animals may be allowed on the premises as specified in Section 7.13.

E. Children may use the same room for eating and sleeping.

F. The written procedure for handling the clean up of a vomiting or diarrheal incident shall be in accordance with Section 7.10.1(C)(8).

7.11.2 Plumbing

A. Minimum plumbing requirements for food service areas:

1. Each sink shall be designated for one purpose unless otherwise approved by the Department through a written multi-use sink operational plan that is available on site for review.

2. Facilities for handwashing shall be adequate for staff preparing food and for staff and children prior to eating snacks and meals.

   a. At least one dedicated handwashing sink for food handlers is required in all food service areas where food handling occurs. This sink is to be used only for handwashing, unless a multi-use sink operational plan has been approved in accordance with Section 7.11.2(A)(1).

3. Facilities preparing meals or snacks shall have an approved method for food preparation, including washing produce. The following methods are acceptable:

   a. A dedicated food preparation sink, indirectly plumbed to the sewer;

   b. The dual use of one compartment of a two- or three- compartment sink that is also used for dishwashing is permitted provided:

      (1) The compartment is washed, rinsed and sanitized prior to use for food preparation;

      (2) Soiled dishes are not staged or washed at the same time food is being washed or prepared in the sink;

      (3) The sink shall be indirectly plumbed to the sewer unless otherwise approved by the Department; and,

      (4) An operational plan in accordance with Section 7.11.2(A)(1) approved by the Department demonstrates all of the above criteria is in place and is protective of public health.

4. Facilities serving only pre-packaged meals or snacks including commercially prewashed and pre-packaged produce are exempt from the requirements of Section 7.11.2(A)(3).

5. Facilities using multi-use tableware, serving utensils, or cookware shall have an approved method to wash dishes. In the absence of a commercial dishwashing machine, the following methods are acceptable:

   a. Domestic dishwashing machine:

      (1) Domestic dishwashing machines are approved provided manufacturer instructions are followed and meet one of the following conditions:

         (a) The dishwashing machine is National Sanitation Foundation (NSF) certified; or,

         (b) Equipped with and utilize a functioning heat sanitizing cycle; or,

         (c) Equipped with and utilize a functioning heated dry option.

   b. Manual Warewashing:

      (1) In the absence of a dishwashing machine, a dedicated three-compartment sink shall be used for dishwashing provided it is indirectly plumbed to the sewer; or,

      (2) In facilities where limited dishwashing is needed, a two compartment sink may be used for dishwashing provided it is indirectly plumbed to the sewer. Department approval is required to use a two compartment sink for dishwashing.

6. Where structural changes pose a true economic hardship or are too difficult to implement due to space constraints, conflicts with the plumbing code, or building ownership, direct plumbing to the sewer system may be approved by the Department provided public health is protected. Documentation of approval shall be maintained on site.

7.11.3 Ventilation

A. Commercial ventilation shall be installed and used when required by the local building or fire codes.

7.11.4 Operational Requirements

A. Time/temperature control for safety foods supplied by the facility for offsite activities, such as field trips, shall be maintained at required temperatures prior to leaving the facility pursuant to Section 7.11 and if temperatures are not maintained after leaving the facility the food shall be consumed within four hours.

   1. Coolers can be used for storage and transport for offsite activities if they are easily cleanable, maintained in good repair, and kept clean.

B. In child care facilities where individual meals are furnished by the parents or

guardians, the food shall be restricted to their own child and the food shall be labeled with the child's name.

1. When parents or guardians furnish snacks for children other than their own child, the snack shall consist only of foods that are prepackaged and prepared from commercial sources. Such foods shall be non time/temperature control for safety food or shelf stable, and received sealed.

2. Uncut produce may be provided if the facility has the capacity to wash and prepare it in accordance with 7.11.2(A)(3).

C. In child care facilities without adequate refrigeration or hot holding equipment to maintain food temperatures:

1. Foods shall be obtained from approved licensed or commercial sources; and,

2. Food service shall be limited only to non time/temperature control for safety food; or,

3. Foods supplied by outside sources must be: received at the appropriate temperature, served within two hours, and remaining time/temperature control for safety foods shall be discarded.

D. In child care facilities without adequate fixtures to wash, rinse, and sanitize dishes and utensils, single-service articles shall be used for dispensing, serving, and eating food.

E. Family style meal service is permitted under the following conditions:

1. Children are supervised;

2. Utensils are used to dispense food;

3. Soiled tableware and serving dishes are not returned to the kitchen for refilling; and,

4. Food that becomes contaminated is discarded.

F. Raw, uncut produce, including those grown on site, shall be permitted provided gardens and greenhouses conform to U.S. Department of Agriculture Good Agricultural Practices.

G. Prohibited Activities:

1. Staff shall not be involved in the care of children and food preparation concurrently if there is a risk for contamination of food by body fluids.

2. Staff members assigned to a specific group of children and involved in changing diapers shall be prohibited from preparing meals and snacks for children not in their group.

3. Children shall not be involved in the preparation and handling of raw animal products.

4. Children shall not handle, with bare hands, ready-to-eat foods for children other than themselves.

5. This section does not prohibit teaching cooking projects if good hygienic practices are followed.

6. This section does not prohibit life skills training in facilities providing 24-hour care.

7.12 Infant and Toddler Programs and as Applicable to Older Children

7.12.1 Personal Items and Bedding

A. Adequate supplies of diapers, clean clothing, and linens shall be available for the needs of each infant and toddler. Clothing and linens shall be changed when soiled with high hazard body fluids.

B. Adequate storage space shall be provided for the personal items of each infant and toddler.

C. Soiled cloths contaminated with high hazard body fluids shall be returned to the parent or guardian in a non-absorbent container or laundered as required in Section 7.8.6(A)(4).

D. Cloth bibs used shall be washed between uses of different children or when soiled and stored as required in Section 7.8.6(A)(2).

E. Bibs made from silicone or other non-cloth materials shall be washed, rinsed, and sanitized as required in Section 7.11.

7.12.2 Clothing for Infant Care

A. Clothing worn by staff members to and from work shall be covered or replaced by clean non- irritating washable smocks or similar clothing. Staff shall change or replace their smocks when smocks become soiled.

B. Shoes worn outside of an infant classroom shall be covered or removed when entering an infant classroom.

7.12.3 Infant Feeding

A. Staff members shall wash their hands before preparing bottles and foods and just prior to feeding infants, as well as when required by Section 7.10.3

1. Staff members with cuts or open wounds on their hands shall not be involved with infant feeding unless the wound is covered with an impermeable cover and a single-use glove is worn over the impermeable cover.

B. A designated sink shall be used to fill, warm, and dump infant bottles. In the absence of a designated sink, a written multi-use sink operational plan may be approved by the Department pursuant to Section 7.11.2(A)(1).

1. If infant bottles are to be reused, they shall be washed, rinsed and sanitized in

approved warewashing sinks after each use, as required by Section 7.11.2(A)(5) or returned to the parent or guardian at the end of the day for washing. Bottle sanitizing devices may be used provided manufacturer's instructions are followed.

2. Frozen human milk or infant formula shall be thawed under cold running water, in a slow cooker/warming device, or in a refrigerator.

3. Bottles of human milk or infant formula shall never be warmed in a microwave oven.

4. The use of a slow cooker or other warming device to thaw and/or warm human milk or infant formula can be utilized, if:

   a. The human milk or infant formula is thawed and warmed for immediate consumption; and,

   b. The warming container is emptied, cleaned, sanitized, and refilled daily with fresh water.

5. Accidental feeding of human milk to another mother's child shall be handled in accordance with Standard 4.3.1.4, *Feeding Human Milk to Another Mother's Child, Caring for Our Children*, 2020, hereby incorporated by reference.

6. Beverages dispensed into a bottle by the facility staff shall be:

   a. From an approved source;

   b. Dispensed from the original container; and,

   c. Dispensed into a clean and sanitized bottle.

C. Human milk or prepared infant formula in bottles or other storage containers shall be:

1. Labeled with the infant's name;

2. The date received; and,

3. Stored at 41°F or below.

4. Human milk or prepared infant formula that is unopened and not used the day it was prepared or received from the parent or guardian shall be returned to the parent or guardian at the end of the day. This shall not apply to frozen human milk.

5. All human milk and infant formula shall only be used for the intended child. Bottles of human milk shall be differentiated by colored labels or another method approved by the Department.

D. Freshly expressed human milk may be stored at room temperature for up to four hours or refrigerated.

1. Previously frozen human milk shall be used the same day it was thawed or returned to the parent or guardian at the end of the day.

2. Human milk that has been warmed or leftover from a feeding (child did not finish the bottle) may be stored at room temperature for up to two hours. Any contents remaining after two hours shall be discarded.

E. Infant formula shall be stored in its original container, be mixed in accordance with the manufacturer's labeled instructions. Expired formula shall not be used.

1. Prepared infant formula shall be stored and labeled as required by Section 7.12.3(C).

2. Portions of prepared formula leftover from a feeding (child did not finish the bottle) may be stored at room temperature for up to one hour. Any contents remaining after one hour shall be discarded.

F. Bottles shall never be returned to the refrigerator after being heated or after a feeding.

G. Infant food provided by the parent or guardian shall be labeled with the infant's name and kept covered when not in use.

H. The service of honey to infants is prohibited.

I. Commercially processed baby food dispensed directly from the container to a child shall be limited to one infant, with unconsumed portions discarded at the end of each feeding.

1. Containers of baby food dispensed onto separate dishware and served individually from those dishes may be returned to the refrigerator for storage for the remainder of the day. Unconsumed portions from the dishware shall be discarded.

2. No more than one infant shall be fed from the same container of food or the same utensil. Utensils, including dishware, shall be washed, rinsed, and sanitized between uses by an approved method as described in Section 7.11.1(A)(5).

7.12.4 Diapering and Toileting Assistance

A. Diapers shall be checked for wetness or feces at least every two hours, or whenever the child indicates discomfort or exhibits behavior that suggests a soiled or wet diaper. The child shall be changed when found to be wet or soiled.

B. A diaper changing station or changing area shall be provided and located separate from any food or bottle preparation, storage or serving area.

1. Equipment and surfaces shall be of sturdy construction with smooth, durable, non- absorbent, and easily cleanable surfaces.

2. A handwashing sink shall meet the requirements of Section 7.8.5.

3. Soiled diapers, wipes, and gloves shall be disposed of in a washable, covered container lined with a plastic bag, located adjacent to the changing table or changing area, and inaccessible to children.

4. Items unrelated to diaper changing shall not be placed on changing tables or wall hung changing stations.

5. Changing tables, stations, or mats shall be kept clean and in good repair and shall be cleaned and disinfected after each use with a disposable towel as indicated in Section 7.10.6.

C. The following procedure shall be conducted each time a diaper is changed:

1. All supplies needed for diaper changing shall be placed at the diaper changing area before the child is brought to the changing area.

2. Individuals changing diapers shall place a new pair of gloves on hands prior to changing the child's diaper.

3. The child shall be placed on a clean, disinfected, and dry changing table or mat. If the child is standing, the area must be a nonporous and an easily cleanable surface.

4. The child shall be cleaned on the body wherever necessary.

5. Soiled clothes shall be placed in a plastic bag for parents or guardians to take home. Soiled diapers shall be placed in a covered, impervious plastic lined receptacle.

6. If topical ointments are applied, clean gloves shall be donned. Gloves shall be removed before handling clean clothing and diapers.

7. An infant's hands shall be washed as outlined in Section 7.10.3(C). A toddler or older child's hands shall be washed as outlined in Section 7.10.3(A).

8. The child then may be returned to a clean crib or to play.

9. The staff member shall then clean to remove visible soils and disinfect the following:

a. The diapering area;

(1) For stand up diapering procedures, the floor/mat must be cleaned and disinfected if visibly soiled;

b. The equipment or supplies touched during diapering; and,

c. Any other surfaces or furnishings contaminated with urine or feces.

10. The staff member shall then thoroughly wash their hands in accordance with Section 7.10.3(A).

D. Soiled cloth diapers and clothing shall be immediately placed in a waterproof bag after being removed from the child and shall be stored in a covered diaper pail for return to the parents, guardians or diaper service or until laundered offsite. Soiled cloth diapers or clothing shall not be rinsed.

7.13 Care Of Animals

No more than three adult animals for every 25 children may be cared for at a child care facility unless the animals are utilized as part of a developed educational program or therapy program with a written plan that outlines the intended goal and need for the animals. Nothing in this section shall prohibit the properly located, stabled, and corralled livestock, such as horses associated with equestrian programs at children's camps or fish in bowls or aquariums.

7.13.1 Prohibited Animals

A. The following animals are prohibited in child care facilities:

1. Psittacine birds, ferrets, and primates;

2. Poisonous and venomous animals inclusive of spiders, insects, reptiles including snakes, and amphibians;

3. Stray or wild animals; and,

4. Aggressive animals.

B. Live poultry including adult birds, chicks, and ducklings, reptiles, and amphibians shall be prohibited from:

1. The premises of facilities caring only for children under the age of five.

2. Classrooms with children kindergarten age or younger or communal areas that these children use in facilities that also care for children over the age of five.

a. Because infections from these animals spread via fecal-oral transmission (hand to mouth behaviors), use of these animals in other classrooms where older children engage in frequent hand to mouth behaviors is prohibited.

C. Animals other than non-aggressive fish are prohibited in infant programs.

7.13.2 Animal Bite Control

A. All dogs and cats shall have current rabies vaccinations administered by a licensed veterinarian. Record of rabies vaccinations shall be available at the child care facility whenever the dog or cat is on site.

1. All animal bites involving species that are known reservoirs of rabies, including but not limited to dogs, bats, cats, ferrets, raccoons, skunks and foxes, shall be immediately reported to the Department in accordance with 6 CCR 1009-1, *Epidemic and Communicable Disease Control Regulations*.

7.13.3 Enclosures

A. Enclosures for small animals, such as hamsters, gerbils, guinea pigs, rabbits and the like, shall be constructed to be non-absorbent and easily cleanable and shall be cleaned as needed so as not to create nuisance conditions. Animal waste, used bedding and other waste material shall be removed from the premise and not left to accumulate.

B. Enclosures for larger animals and poultry shall be cleaned daily to remove animal waste, soiled bedding and other debris. Run off from enclosures, barns, corrals, and manure storage areas shall be managed in an approved manner so as not to pollute wells and waterways. Adequate fly and mosquito control measures shall be utilized as needed.

C. All animal waste on outdoor play areas shall be promptly removed and placed in a closed disposal container.

D. Animal enclosures and supplies may not be washed in food preparation or food storage areas.

7.13.4 Child Participation

A. Children's contact with animals, enclosures and waste products shall be supervised. Children under the age of five years shall not be involved with the cleaning of animal enclosures or the removal and handling of animal waste products.

1. Children and individuals involved with the care, feeding or handling of animals shall thoroughly wash their hands in accordance with 7.10.3(B)(4)(d) immediately after any contact with animals, animal enclosures, animal feed/treats, or animal waste products.

7.13.5 Designated Animal Areas

A. Specific areas shall be designated for animals. Live animals shall be prohibited from the following areas:

1. Food preparation, food storage, and dining areas; and,

2. Areas where children routinely play (e.g., sandboxes, playgrounds).

B. Animal feed and bedding shall be stored separate from human food, food supplies, and food preparation areas.

1. Animal feed shall not be located in food preparation areas or on eating surfaces.

2. Animal feed that requires refrigeration may be stored in an impervious secondary container to separate it from human food and make it inaccessible to children.

C. Location and/or presence of animals shall be determined based on the protection of the health of children and caregivers with allergies.

7.14 Toxic Materials Management

7.14.1 Insect and Rodent Control

A. Pests shall be managed with integrated strategies for long-term pest suppression, using the most cost-effective means with the least possible hazard to people, property, and the environment.

B. The use of poisonous compounds to control weeds, rodents, insects, and other pests shall be implemented only after other means have been used for control, such as the elimination of harborages, removing access to food, and sealing of points of entry. These compounds shall be used according to labeled instructions.

C. All food, food utensils, and equipment, bedding, toys, sleeping mats, and other equipment, materials and items that will come into contact with food or children shall be protected during the time pesticide application is conducted. Pesticides shall be applied in a manner as to prevent skin contact and other exposure to children or staff. Application of pesticides shall not be conducted when children are present.

D. Only approved, U.S. Environmental Protection Agency registered insecticides, rodenticides, and herbicides may be used. Application must strictly follow all label instructions and must be authorized by the director. Rodenticides shall be dispensed in tamper proof boxes, shall have a distinctive color so as not to be mistaken for food, and shall be in cake or pellet form.

E. Restricted pesticides shall be applied only by a certified pest control applicator or under the direct supervision of a certified pest control applicator.

7.14.2 Poisonous or Toxic Materials

A. There shall be present in child care facilities only those poisonous or toxic materials necessary for general maintenance of the building, grounds, and equipment. These compounds shall be used according to labeled instructions.

B. Pre-school age children shall be appropriately supervised around any poisonous plants either in the child care facility or outdoor areas. Toxic plants are prohibited in areas designated for infants and toddlers.

C. Containers of poisonous or toxic materials shall be prominently and distinctly labeled for easy identification of contents. Poisonous or toxic materials shall not be transferred into food or drink containers.

D. Poisonous or toxic materials shall not be stored or used in a way that could contaminate food, food utensils and equipment, bedding, sleeping mats, toys, and other equipment, materials and items that will come into contact with food or children.

    1. Cleaning materials, sanitizers, disinfectants, detergents, flammables, and other toxics shall be properly labeled, and stored inaccessible to children.

E. Cleaning compounds used on food contact surfaces, toys and body contact surfaces shall be used in a way that does not leave a toxic residue on such surfaces. If used on these surfaces, they shall be rinsed, unless otherwise instructed by the manufacturer’s labeled instructions before returned to use.

F. Prior to beginning any renovation or demolition activity of a child care facility, all requirements pursuant to 5 CCR 1001-10, Colorado Air Quality Control Commission, Regulation Number 8 Part B, including inspection for asbestos containing materials by a Colorado certified asbestos building inspector and notification, must be met.

G. For child-occupied child care facilities built before 1978, all painted surfaces of building components shall be considered lead-based paint unless a lead-based paint determination deems otherwise.

1. Sections 7.14.2(G) does not apply if a lead-based paint determination shows that all painted surfaces of building components which will be disturbed during the renovation activities are not considered lead-based paint. A lead-based paint determination must be made either by a certified inspector or risk assessor pursuant to 5 CCR 1001-23, Colorado Air Quality Control Commission, Regulation Number 19 Part A, or by a certified renovator pursuant to the U.S. Environmental Protection Agency Lead Renovation, Repair and Painting Program regulations found at 40 CFR Part 745, Subpart E. The results of these determinations shall be on file at each child care facility and available for review.

2. Renovation activities that will disturb painted surfaces either deemed to contain lead or not tested in child care facilities built before 1978 (including certain repairs and maintenance, and painting preparation activities) shall be conducted pursuant to the U.S. Environmental Protection Agency Lead Renovation, Repair and Painting Program regulations found at 40 CFR Part 745, Subpart E.

3. Renovation activities pursuant to 5 CCR 1001-23, Colorado Air Quality Control Commission, Regulation Number 19 Part B, that will disturb painted surfaces either deemed to contain lead or not tested in child-occupied facilities built before 1978 must conduct pre-renovation education and recordkeeping activities as required by Sections III and IV of the regulation.

H. Child care facilities shall be tested for radon within six months of occupancy by an individual meeting the requirements outlined in 4 CCR 754-1, *Radon Professionals Rules and Regulations*. Radon tests completed prior to July 1, 2022 are acceptable.

1. The Department shall be notified when child care facilities are remodeled in order to assess the need for any additional radon testing.

2. Child care facilities operating in schools may test following the timelines in 6 CCR 1010-6, *Rules and Regulations Governing Schools in the State of Colorado.*

3. The results of these tests shall be on file at each facility and available for review.

4. This section shall not apply to non-building based programs such as mobile child care programs or children’s resident camps.

I. The use of urea formaldehyde foam insulation is prohibited.

7.14.3 Art and Science Materials

A. Art and science materials shall be used in a way so as not to constitute a hazard

to the children or staff. Children using potentially toxic materials shall be directly supervised by staff. (For example, shaving cream can be hazardous to asthmatic children.) Nontoxic, water-based materials should be used whenever possible.

B. The use or storage of concentrated or strong acids and bases; carcinogenic materials; toxic organic solvents; materials that produce toxic dusts, and materials with heavy metals such as lead, mercury, or cadmium are prohibited.

C. Bulk art and science materials shall be stored in original containers, clearly labeled, and stored in accordance with manufacturer's instructions. All art and science materials transferred into a secondary storage container shall be clearly labeled.

D. If food items are used as art and science materials they shall be labeled for the intended use (e.g., "not for consumption" or equivalent language).

7.15 Mobile Part-Day Preschool Programs

Child care facilities operating as a mobile part-day preschool program are subject to all requirements in this regulation unless otherwise stated in Section 7.15.

A. At least one handwashing sink shall be installed within the mobile vehicle and be provided with hot and cold water per Section 7.8.1(E)(1).

B. Mobile preschools with toilets and/or sinks installed on the mobile vehicle shall meet the following requirements.

1. The fresh water tank shall be sufficiently sized to meet the water demands of the entire day in operation.

2. The gray and/or black water tanks shall be sized to meet the waste demands of the entire day in operation.

3. Sewage and other liquid wastes shall be removed from the mobile vehicle at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

4. All gray and black water shall be disposed of per Section 7.15(B)(3) when full and at least once weekly.

5. All tanks must have a device with sensors to monitor the fullness and these shall be monitored daily.

6. The fresh water tank shall be filled with a food grade hose and may not be used for drinking water. Hoses for fresh water shall be stored separately than hoses to dump and flush the tanks.

7. There shall be a distinct differentiation for all hoses uses to fill, dump, and flush the tanks.

8. Tanks shall be protected from freezing.

9. A written procedure is required for the dumping, monitoring, and maintenance of the black and/or gray water tanks.

    a. The procedure shall include the location or name of the servicing area or sewage transport company;

b. Be located on the mobile vehicle; and,

c. The responsible staff shall be knowledgeable of the procedure.

C. The use of a non-flushing toilet is prohibited.

D. In the absence of a toilet on the mobile vehicle, a toilet meeting the requirements of Section 7.8.4(A) shall be located within 200 feet of where the vehicle is parked during hours of operation. An adjacent handwashing sink meeting the requirements in Sections 7.8.5 shall be accessible for uninterrupted use.

E. Diaper changing activities shall meet the requirements in Section 7.12.4.

F. Access to a service sink meeting the requirements in Section 7.8.6(B) shall be provided unless otherwise approved by the Department.

7.16 Compliance Procedures

A. Prior to recommending approval of a license, the Department shall inspect the proposed child care facility to determine compliance with these regulations.

1. The Department shall recommend approving a license if its inspection establishes that the proposed child care facility complies with the requirements of these regulations.

2. Items deemed not in compliance with the requirements of these regulations shall be corrected prior to the Department recommending approval of the license. A written plan of correction or timetable for correction may be accepted as temporary compliance.

B. The Department may, upon inspection, make a recommendation to the Department of Human Services to submit adverse action against a child care facility's license for any violation of these regulations or as otherwise provided by law.

1. A copy of the non-compliance inspection report(s) of the child care facility shall be forwarded to the appropriate licensing agency, either the Department of Human Services or the Department of Early Childhood for review.

C. Acting under Section 25-1.5-101(1)(a) and 25-1.5-102(1)(a), C.R.S., the Department shall have the power and duty to close a child care facility and forbid the gathering of people therein to protect the public health from the cause of epidemic and communicable diseases. Immediate closure shall be used only when the situation imperatively requires emergency action or the operator has been guilty of deliberate and willful violation that poses an imminent health hazard.

D. When serious or repeated violations of these regulations have been found, the Department may abate the nuisance by seeking injunctive relief through judicial means, as provided under Sections 16-13-308, 16-13-309, and 25-1.5-102, *et seq*., C.R.S.

E. Guest Child Care and Public Services Short-term Child Care Facilities shall be inspected prior to its opening and annually per 26.5-5-307, C.R.S. An inspection of all other child care facilities shall be performed prior to its opening and at least once every two years thereafter or more often as determined by risk.

F. The Department, after proper identification, shall be permitted to enter any child care facility, whether announced or unannounced prior to the visit, during business hours and at other times during which activity is evident to determine compliance with these regulations. The agents shall be permitted to examine documents or true copies of documents that pertain directly to the operation of the child care facility as it applies to compliance with these regulations.

G. Whenever an inspection of a child care facility is made, the findings shall be recorded on an inspection report form. Inspection remarks shall describe any violations that exists.

1. Once the inspection report form is finalized, a copy of the completed inspection report form shall be furnished to the facility.

2. The completed inspection report form is a public document that shall be made available for public disclosure, according to law, to any person who requests it.

3. The inspection report form shall specify a reasonable period of time for the correction of the violations found and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

a. If an imminent health hazard exists, such as but not limited to an inability to maintain the integrity of time/temperature control for safety foods, sewage backup into the facility, lack of drinking water, or an interruption of water service to the facility for more than two hours, the facility shall immediately cease operations unless dismissal of the children would be detrimental to their well being or unless an alternative plan for operation has been approved by the Department. Operations shall not be resumed until authorized by the Department.

b. All critical violations are to be corrected as soon as possible, but in any event, by the date and time specified by the Department.

c. All other violations shall be corrected by the date and time agreed to or specified by the Department but no later than 90 calendar days after the inspection.

d. The Department may approve a compliance schedule that extends beyond the time limits specified if a written schedule of compliance is submitted by the operator and no health hazard exists or will result from allowing an extended schedule for compliance.

4. The inspection report shall state that failure to comply with any time limits may result in the initiation of administrative or legal regulatory action and/or a recommendation of adverse action of licensure to the appropriate

licensing agency, either the Department of Human Services or the Department of Early Childhood. An opportunity for appeal of the inspection findings and time limitation will be provided if a written request for an administrative hearing is filed with the Department within five days following the date of receipt of inspection. If the request for a hearing is received, a hearing shall be held no sooner than 20 days after the operator is notified of the hearing.

5. Whenever a child care facility is required, under the provisions of these regulations to cease operations, it shall not resume operations until a re-inspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for re inspection shall be offered within a reasonable time frame.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00632

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Environmental Health and Sustainability

on 02/19/2025

6 CCR 1010-7

HEALTH AND SANITATION OF CHILD CARE FACILITIES IN THE STATE OF COLORADO

The above-referenced rules were submitted to this office on 02/28/2025 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.

March 10, 2025 12:52:36

Philip J. Weiser
Attorney General
by Russell D. Johnson
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 04/14/2025

Effective date

04/14/2025

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Prevention Services Division

STATE-DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREA DESIGNATION

6 CCR 1015-6

Adopted by the Board of Health on February 19, 2025.

[Publication Instructions: Replaces current exiting text in Section 1.3, (10) (a) and (b).]

****

1.3 Definitions

****

10) "Oral Health Provider," means the following health care professionals as defined in Section 25-1.5-502(5), C.R.S., who provide primary oral health care services within their scope of practice:

a) a Doctor of Dental Surgery (DDS) or Doctor of Medicine in Dentistry (DMD) who is practicing in general dentistry and/or pediatric dentistry; or

b) a licensed dental hygienist (DH).

****

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00634

Opinion of the Attorney General rendered in connection with the rules adopted by the

Prevention Services Division (1009, 1015, 1016 Series)

on 02/19/2025

6 CCR 1015-6

STATE-DESIGNATED HEALTH PROFESSIONAL SHORTAGE AREA DESIGNATION

The above-referenced rules were submitted to this office on 02/25/2025 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.

March 10, 2025 12:55:02

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 1 - eff 04/14/2025

Effective date

04/14/2025

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Remove Obsolete Section 8.212
Rule Number: MSB 24-10-15-A
Division / Contact / Phone:Health Programs / Russ Zigler / 303-866-5927

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 24-10-15-A, Revision to the Medical Assistance Act Rule concerning Remove Obsolete Section 8.212

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s)8.212, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Remove the language at 8.212 beginning at 8.212 through the end of 8.212.1.B.1. This rule is effective April 14, 2025.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Remove Obsolete Section 8.212
Rule Number: MSB 24-10-15-A
Division / Contact / Phone: Health Programs / Russ Zigler / 303-866-5927

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The Community Behavioral Health Services Program (CBHSP) was discontinued in 2022 and the associated Section 8.212 was removed from Department rule, in rule MSB 21-10-19-B, at that time. Shortly thereafter, Section 8.212 was reinserted into Department rule as part of a technical edit in rule MSB 22-02-10-A. Those technical edits are no longer relevant because the CBHSP is no longer active. This rulemaking once again removes obsolete Section 8.212.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2024);

Initial Review	**01/10/25**	Final Adoption	**02/14/25**
Proposed Effective Date	**04/14/25**	Emergency Adoption	

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Remove Obsolete Section 8.212
Rule Number: MSB 24-10-15-A
Division / Contact / Phone: Health Programs / Russ Zigler / 303-866-5927

REGULATORY ANALYSIS

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

   Section 8.212 is obsolete and its removal does not affect members, providers, or other stakeholders.

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

   Section 8.212 is obsolete and its removal has no quantitative or qualitative impacts, economic or otherwise.

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

   Section 8.212 is obsolete and its removal has no probable costs to the Department or any other agency or impact on state revenues.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   Section 8.212 is obsolete and its removal has no costs or benefits other than removing obsolete language from Department rule.

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

   There are no less costly methods or less intrusive methos to remove obsolete language from Department rule.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There are no alternative methods for removing obsolete language from Department rule.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning the Wellness Education Benefit Section 8.7556.
Rule Number: MSB 24-06-25-B
Division / Contact / Phone: Office of Community Living/ Rachel MacLeish / 4416

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 23-07-17-A, Revision to the Medical Assistance Act Rule concerning the Wellness Education Benefit Section 8.7556.

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.7556, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)?
   No, this action does not involve any temporary or emergency rules.

   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.7556 with the proposed text beginning at 8.7556 through the end of 8.7556.G.5.c. This rule is effective April 14, 2025.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning the Wellness Education Benefit Section 8.7556.
Rule Number: MSB 24-06-25-B
Division / Contact / Phone: Office of Community Living/ Rachel MacLeish / 4416

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The Wellness Education Benefit is a service that seeks to prevent hospitalization or movement into an institutional setting by assisting Home and Community-Based (HCBS) waiver members and their families in obtaining, processing, and understanding information that assists with managing health-related issues, promoting community living, and achieving goals identified in their Person-Centered Support Plans. This rule amendment expands eligibility for the benefit to all HCBS waiver members, removes the option to request an additional mailed unit due to returned mail, and updates language surrounding the use of the Person-Centered Support Plan for the Wellness Education Benefit.

   An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain: Not applicable.

2. Federal authority for the Rule, if any:

   The Department submitted Waiver amendments to CMS for the Colorado HCBS Wellness Education Benefit in September 2024. CMS approved the 1915(c) waivers with the Wellness Education Benefit, effective January 1, 2025. The WEB will be serving members enrolled on all of Colorado's 1915(c) Home and Community-Based Services (HCBS) waivers which will include the Children's Home and Community Based Services (CHCBS) waiver along with the following HCBS waivers: Brain Injury (BI), Children's Extensive Supports (CES), Children's Habilitation Residential Program (CHRP), Children with Life Limiting Illness (CLLI), Complementary and Integrative Health (CIH), Community Mental Health Supports (CMHS), Developmental Disabilities (DD), Elderly, Blind, and Disabled (EBD), and Supported Living Services (SLS).

3. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2024);
   Senate Bill 23-214; FY 2024-25, HCPF, BA-07 Community-Based Access to Services

Initial Review **01/10/25** Final Adoption **02/14/25**
Proposed Effective Date **04/14/25** Emergency Adoption

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning the Wellness Education Benefit Section 8.7556.
Rule Number: MSB 24-06-25-B
Division / Contact / Phone: Office of Community Living/ Rachel MacLeish / 4416

REGULATORY ANALYSIS

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

The Wellness Education Benefit will affect Home and Community Based Services (HCBS) Waiver members and HCBS case managers. All HCBS waiver members will now have access to this service, which assists members in obtaining, processing, and understanding information that assists with managing health-related issues, promoting community living, and achieving goals identified in their Person-Centered Support Plans. Case managers will be expected to discuss the Wellness Education Benefit with members and add or remove the service from the member's Person-Centered Support Plan as requested by the member. Additionally, HCBS case managers will be expected to ensure member addresses are current and accurate to ensure the successful delivery of the Wellness Education Benefit.

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

The Department anticipates that the Wellness Education Benefit will serve 61,562 HCBS members in the 2025-2026 fiscal year. The Joint Budget Committee approved funds for this estimated number of service users. The Department does not anticipate any negative impacts on members from this proposed rule as the Department is expanding the benefit to all HCBS waiver members. Currently, the Wellness Education Benefit is only available on the Children's Home and Community Based Services (CHCBS) Waiver and has been successfully delivered to 2,037 members. With this proposed rule, all HCBS waiver members can experience the benefits from the availability of this service, such as an increased awareness around their personal health and wellness goals and assistance in maintaining waiver eligibility.

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

The Department has received budgetary approval from the Joint Budget Committee for the anticipated cost of this proposed rule. The Department anticipates service expenditures will begin in July of 2025 when the benefit is active and available to members.

DO NOT PUBLISH THIS PAGE

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Expanding the Wellness Education Benefit to all waivers will ensure continued access to essential services for Medicaid members, as several waiver services are set to transition to Community First Choice (CFC) in July 2025. Many HCBS waiver members will need to maintain their waiver eligibility in order to access CFC. Expanding the Wellness Education Benefit to all waivers will provide a reliable option for those members to meet the monthly service requirement in the event all of their waiver services transition to CFC. This benefit will now help prevent any unintended loss of Medicaid coverage for all HCBS waiver members, just as it did with the CHCBS waiver population.

There are 2,037 Children's Home and Community Based Services Waiver members who are voluntarily receiving the Wellness Education Benefit. The Wellness Education Benefit is assisting roughly 577 of those waiver members in maintaining their waiver eligibility. The Department does not anticipate any negative costs because of this benefit. The cost of inaction would be significant, as many HCBS waiver members would be at risk of losing their waiver eligibility when CFC goes live.

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

The Wellness Education Benefit is the lowest cost option that provides both wellness and community education to members while helping them maintain waiver eligibility. The Wellness Education Benefit does not include a direct, hands-on care provider and is therefore minimally intrusive to members.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   The Department explored benefits utilized by other states that provide education resources to members. No other alternative methods for achieving this purpose were viable for the Department. Other benefits were estimated to be more costly and not provide the educational benefits of the Wellness Education Benefit.

8.7556 Wellness Education Benefit

8.7556.A Wellness Education Benefit Eligibility

1. Wellness Education Benefit is a covered benefit available to Members enrolled in one of the following HCBS waivers:

    a) Brain Injury Waiver

    b) Children's Extensive Support Waiver

    c) Children's Habilitation Residential Program Waiver

    d) Children's Home and Community Based Services Waiver

    e) Children with Life Limiting Illness Waiver

    f) Community Mental Health Supports Waiver

    g) Complementary and Integrative Health Waiver

    h) Developmental Disabilities Waiver

    i) Elderly, Blind and Disabled Waiver

    j) Supported Living Services Waiver

8.7556.B Wellness Education Benefit Definitions

1. Article means a written document that contains text related to health or wellness topics that a Member receives.

2. Article Topic means a health and wellness topic that relates to helping a Member manage health-related issues, achieve goals on their Person-Centered Support Plan, and address topics of community living.

3. Mail means the mechanism by which the benefit is sent to the Member through the United States Postal Service.

4. Plain language means friendly and clear, with a direct, conversational tone and active voice. The information is organized in logical order for the reader. Paragraphs are one-topic and brief, and sentences are simple and short. Plain language includes using common, everyday vocabulary consistently across correspondence, with few multi-syllable words and few technical or bureaucratic words.

5. Service rendered means the Provider Agency has sent the Wellness Education Benefit.

6. Provider Agency means the entity contracted with the Department to distribute the Wellness Education Benefit.

7. Verified Address means an address that mail can be sent to and received by a Member.

8. Wellness Education Benefit is individualized educational materials designed to reduce the need for a higher level of care by offering educational materials that provide members and their families

with actionable tools that can be used to prevent the progression of a disability, increase community engagement, combat isolation, and improve awareness of Medicaid services. The Wellness Education Benefit helps Members and their unpaid caregivers to obtain, process, and understand information that assists with managing health-related issues, promoting community living, and achieving goals identified in their Person-Centered Support Plans. Wellness Education Benefit services include varied topics such as engaging in community activities, nutrition, adaptive exercise, balance training and fall prevention, money management, and developing social networks.

8.7556.C Wellness Education Benefit Inclusions

1. The Wellness Education Benefit shall be delivered to the Member's mailing address in a printed format.

2. Article topics can provide the information needed to: Navigate the Medicaid/medical system to achieve better health outcomes, successfully manage chronic conditions in order to decrease risk of nursing facility placement, effectively communicate health and wellness goals, effectively communicate with medical and social service professionals, provide unpaid caregivers with relevant information regarding best practices around support and care of the Member, achieve community living goals identified in the Person-Centered Support Plan by providing simple, actionable suggestions to help support the health and welfare of waiver Members.

3. Article topics shall be written in plain language.

4. The Wellness Education Benefit is delivered no less than once every month, with a maximum of 12 unique education materials per certification period.

5. Wellness Education Benefit shall be provided in a format that is accessible to the Member at the request of the Member and their support team including, but not limited to, preferred written language. For Members who cannot read standard print and would benefit from an alternative format, educational materials will be sent to Members in the requested accessible format, which may include larger print or braille.

8.7556.D Wellness Education Benefit Restrictions and Exclusions

1. Additional wellness reading materials, software, or subscriptions are excluded from the Wellness Education Benefit.

2. Article topics that do not address community living, Medicaid navigation, health-related issues, health care needs, mental health-related issues, or Person-Centered Support Plan goals shall be excluded from this benefit.

3. The Wellness Education Benefit does not duplicate services found in Early and Periodic Screening, Diagnostic, and Treatment.

8.7556.E Wellness Education Benefit Provider Requirements

1. Provider Agencies must be contracted with the Department to distribute the Wellness Education Benefit.

2. Wellness Education Benefit Provider Agency shall be responsible for the following tasks:

    a. Receive and manage member data in compliance with all applicable Health Insurance Portability and Accountability Act (HIPAA) regulations and ensure client confidentiality and privacy.

b. Translate materials into select languages, as directed by the Department.

c. Both the Department and Wellness Benefit Provider Agency shall ensure that professionally certified translators and reviewers complete article translations and that translations are linguistically accurate and consistent with the formatting and technical specifications of the original document. Translations will be reviewed for cultural appropriateness before delivery.

d. Ensure that materials are Person-Centered and are formatted in an accessible format, which may include Braille, large print, or high contrast formats.

e. Maintain records of articles sent to Members to prevent duplication of materials.

f. Conduct Member outreach to gather information on how the benefit has helped Members thrive in the community and meet the health and wellness goals.

g. Utilize information on the Member's Person-Centered Support Plan and updated health conditions to guide the subject matter of the educational materials.

h. Identify any undeliverable Member addresses prior to each monthly mailing and manage any returned mail by sending the Department electronic, custom-formatted relevant address information. The Department will coordinate with Case Managers to update the Member's address and send updated address to the Provider Agency.

i. Verify Member addresses data files through the United States Postal Service "National Change of Address" database and identify any addresses that are undeliverable by USPS.

i. The Department will be informed by the Wellness Education Benefit Provider Agency of the educational materials that are undeliverable or returned to sender. An attempt to deliver the following month's service will take place using the following procedure:

1) The Department will notify the Members' Case Management Agencies of any returned or undeliverable mail.

2) Case Management Agencies shall update addresses in accordance with Department guidance.

8.7556.F Wellness Education Benefit Provider Reimbursement Requirements

1. The Wellness Education Benefit is reimbursed based on the number of units of service provided, with one unit equal to one Article.

2. The Wellness Education Benefit will be delivered once every month, for twelve (12) units total in a certification period.

a. The Case Manager may authorize up to 12 additional units per support plan year for the following:

i.

ii. A Member has requested reasonable accommodation for an alternative format, such as braille.

iii. A Member requests that their representative receive a copy of the benefit to help them better utilize information provided in the benefit. Department approval required.

3. The annual total units that may be authorized for the Wellness Education Benefit shall not exceed 24 units per plan year.

8.7556.G Wellness Education Benefit Case Management Agency Responsibilities

1. Wellness Education Benefit Introduction and Education:

   a. The Case Manager shall provide Member information on the benefits of the Wellness Education Benefit, the types of articles included, and the frequency of delivery.

   b. Through the person-centered planning process, the Case Manager will determine a format that is accessible to the Member including, but not limited to, preferred written language.

2. Case Management Agencies shall update addresses in accordance with Department guidance.

3. The Case Manager will work with the Member to update their Person-Centered Support Plan. Goals within a Member's Person-Centered Support Plan may be utilized to determine specific Wellness Education Benefit materials that will support the member to meet those goals.

4. The Case Manager may work with the Provider Agency to ensure the educational materials are being targeted to meet any new needs the Member may have.

5. Disenrollment

   a. If a Member wishes to opt out of the service, the Case Manager shall inform the Member of the possible implications of disenrollment. If a Member disenrolls, the Case Manager must revise the Prior Authorization Request to end-date the Wellness Education Benefit.

   b. The Wellness Education Benefit is recognized as an HCBS service as it relates to CCR 8.7101.35 and may be utilized to maintain waiver eligibility.

   c. If services are decreased without the Member's agreement, the Case Manager shall notify the Member of the adverse action and of appeal rights, according to Long-Term Care Waiver Program Notice of Action (LTC-803) regulations at Section 8.7206.18.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Eligibility Rules

Concerning Return of Buy-in Monthly Premiums Collection, Section 8.100.6

Rule Number: MSB 24-10-28-A

Division / Contact / Phone: Eligibility Policy Section / Nancy Brenes / 303-866-2897Error: Reference source not found

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 24-10-28-A, Revision to the Medical Assistance Eligibility Rules
Concerning return of Buy-in monthly premiums collection

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.100.6.Q.1.f.vii and 8.100.6.P.1.f.vi, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.100.6.P with the language beginning at 8.100.6.P.1.f.vi through the end of 8.100.6.P.1.f.vi. Replace the current text at 8.100.6.Q with the proposed language beginning at 8.100.6.Q.1.f.vii through the end of 8.100.6.Q.1.f.vii. This rule is effective April 14, 2025.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Eligibility Rules

Concerning Return of Buy-in Monthly Premiums Collection, Section 8.100.6

Rule Number: MSB 24-10-28-A

Division / Contact / Phone: Eligibility Policy Section / Nancy Brenes / 303-866-2897Error: Reference source not found

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

The proposed rule change will amend 10 CCR 2505-10 8.100.6.Q.1.f.vii. and 8.100.6.P.1.f.vi to incorporate changes to the collection of premiums for the Working Adults with Disabilities (WAwD) and the Children's Buy-In with Disabilities (CBwD) programs. Currently, it is stated that the Department will continue to waive premiums past the end of the COVID - 19 Public Health Emergency and until further notice from the Department. The rule must be updated to reflect resuming the collection of monthly premiums starting May 2025.

The Department will be updating the Colorado Benefits Management System (CBMS) to reflect these changes. Preliminary advocate engagement has been initiated in an effort to inform all members of this upcoming change. Further efforts will also be made by mail and direct contact, to ensure we provide as much notice and information as possible. A new operational memo geared towards eligibility sites, explaining the premium return timelines, will also be published.

2. An emergency rule-making is imperatively necessary

☐ to comply with state or federal law or federal regulation and/or
☐ for the preservation of public health, safety and welfare.

Explain: N/A

3. Federal authority for the Rule, if any:

N/A

Initial Review	**[date]**	Final Adoption	**[date]**
Proposed Effective Date	**[date]**	Emergency Adoption	

[date]

DOCUMENT #

4. State Authority for the Rule:

   Sections 25.5-1-301-303, 25.5-6-1405(1), C.R.S. (2024);

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Eligibility Rules

Concerning Return of Buy-in Monthly Premiums Collection, Section 8.100.6

Rule Number: MSB 24-10-28-A

Division / Contact / Phone: Eligibility Policy Section / Nancy Brenes / 303-866-2897Error: Reference source not found

REGULATORY ANALYSIS

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

   With the proposed rule, applicants and/or members of the Working Adults with Disabilities (WAwD) and the Children's Buy-In with Disabilities (CBwD) programs will have their monthly premiums reinstated. This change represents a return to normal operations after the end of the COVID-19 Public Health Emergency.

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

   The proposed rule will reinstate the requirement that applicants and/or recipients of the Working Adults with Disabilities (WAwD) and the Children's Buy-In with Disabilities (CBwD) programs will have to pay a monthly premium.

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

   The probable costs to the Department and any other agency of the implementation and enforcement of the proposed rule are minimal because premiums were suspended by federal regulation during the COVID-19 pandemic-ensuing Public Health Emergency. The proposed rule reinstates premiums for the Medicaid Buy-In program for children with disabilities and working adults with disabilities. The proposed rule is anticipated to have a positive revenue impact on the Department. The Department estimates the revenue collected from premiums to be approximately $6.7 million in FY2025-26.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The cost of inaction is estimated to be approximately $6.7 million, which is the estimated revenue to be collected from premiums as a result of this rule change.

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

   There are no less costly methods or less intrusive methods for achieving the purpose of the proposed rule, because the rule must be in place in order to collect premiums.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There were no alternative methods considered for the proposed rule.

8.100 MEDICAL ASSISTANCE ELIGIBILITY

8.100.6 Aged, Blind, and Disabled Medical Assistance Eligibility

8.100.6.P. Medicaid Buy-In Program for Working Adults with Disabilities.

1. To be eligible for the Medicaid Buy-In Program for Working Adults with Disabilities:

    a. Applicants must be at least age 16.

    b. Income must be less than or equal to 450% of FPL after income allocations and disregards. See 8.100.5.F for Income Requirements and 8.100.5.H for Income allocations and disregards. Only the applicant's income will be considered.

    c. Resources are not counted in determining eligibility.

    d. Individuals must have a disability as defined by Social Security Administration medical listing or a limited disability as determined by a state contractor.

    e. Individuals must be employed. Please see Verification Requirements at 8.100.5.B.1.c.

        i) Due to the federal COVID-19 Public Health Emergency, and required by the Federal CARES Act for the Maintenance of Effort (MOE), members who had a loss of employment will remain in the Buy-In program until the end of the federal Public Health Emergency. At the end of the federal Public Health Emergency effective May 11, 2023, members will be redetermined based on their current employment status and be required to be employed to be eligible for the program. New applicants enrolled will still need to meet the work requirement.

    f. Individuals will be required to pay monthly premiums on a sliding scale based on income.

        i) The amount of premiums cannot exceed 7.5% of the individual's income.

        ii) Premiums are charged beginning the month after determination of eligibility. Any premiums for the months prior to the determination of eligibility will be waived.

        iii) Premium amounts are as follows:

            1) There is no monthly premium for individuals with income at or below 40% FPL.

            2) A monthly premium of $25 is applied to individuals with income above 40% of FPL but at or below 133% of FPL.

            3) A monthly premium of $90 is applied to individuals with income above 133% of FPL but at or below 200% of FPL.

4) A monthly premium of $130 is applied to individuals with income above 200% of FPL but at or below 300% of FPL.

5) A monthly premium of $200 is applied to individuals with income above 300% of FPL but at or below 450% of FPL.

iv) The premium amounts will be updated at the beginning of each State fiscal year based on the annually revised FPL if the revised FPL would cause the premium amount (based on percentage of income) to increase by $10 or more.

v) A change in a member's net income may impact the monthly premium amount due. Failure to pay premium payments in full within 60 days from the premium due date will result in the member's assistance being terminated prospectively. The effective date of the termination will be the last day of the month following the 60 days from the date on which the premium became past due. The Department will waive premiums for the Medicaid Buy-In for Working Adults with Disability Program for member's who are within their 12 months postpartum period.

2. Retroactive coverage is available according to 8.100.3.E, however is not available prior to program implementation

3. Individuals have the option to request to be disenrolled if they have been enrolled into the Medicaid Buy-In Program for Working Adults with Disabilities. This is also called "opt out."

8.100.6.Q. Medicaid Buy-In Program for Children with Disabilities

1. To be eligible for the Medicaid Buy-In Program for Children with Disabilities:

a. Applicants must be age 18 or younger.

b. Household income will be considered and must be less than or equal to 300% of FPL after income disregards. The following rules apply:

i) 8.100.4.E - MAGI Household Requirements

ii) 8.100.5.F - Income Requirements

iii) 8.100.5.F.6 - Income Exemptions

iv) An earned income of $90 shall be disregarded from the gross wages of each individual who is employed

v) A disregard of a 33% (.3333) reduction will be applied to the household's net income.

c. Resources are not counted in determining eligibility.

d. Individuals must have a disability as defined by Social Security Administration medical listing.

e. Children age 16 through 18 cannot be employed. If employed, children age 16 through 18 shall be determined for eligibility through the Medicaid Buy-In Program for Working Adults with Disabilities.

f. Families will be required to pay monthly premiums on a sliding scale based on household size and income.

i) For families whose income does not exceed 200% of FPL, the amount of premiums and cost-sharing charges cannot exceed 5% of the family's adjusted gross income. For families whose income exceeds 200% of FPL but does not exceed 300% of FPL, the amount of premiums and cost-sharing charges cannot exceed 7.5% of the family's adjusted gross income.

ii) Premiums are charged beginning the month after determination of eligibility. Any premiums for the months prior to the determination of eligibility will be waived.

iii) For households with two or more children eligible for the Medicaid Buy-In Program for Children with Disabilities, the total premium shall be the amount due for one eligible child.

iv) Premium amounts are as follows:

1) There is no monthly premium for households with income at or below 133% of FPL.

2) A monthly premium of $70 is applied to households with income above 133% of FPL but at or below 185% of FPL.

3) A monthly premium of $90 is applied to individuals with income above 185% of FPL but at or below 250% of FPL.

4) A monthly premium of $120 is applied to individuals with income above 250% of FPL but at or below 300% of FPL.

v) The premium amounts will be updated at the beginning of each State fiscal year based on the annually revised FPL if the revised FPL would cause the premium amount (based on percentage of income) to increase by $10 or more.

vi) A change in household net income may impact the monthly premium amount due. Failure to pay premium payments in full within 60 days from the premium due date will result in a member's assistance being terminated prospectively. The effective date of the termination will be the last day of the month following the 60 days from the date on which the premium became past due. The Department will waive premiums for the Children with Disabilities Program members who are within their 12 months postpartum period.

2. Retroactive coverage is available according to 8.100.3.E, however is not available prior to program implementation.

3. Verification requirements will follow the MAGI Category Verification Requirements found at 8.100.4.B.

4, Individuals have the option to request to be disenrolled if they have been enrolled into the Medicaid Buy-In Program for Children with Disabilities. This is also called "opt out."

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2024-00648

Opinion of the Attorney General rendered in connection with the rules adopted by the

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 02/14/2025

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY

The above-referenced rules were submitted to this office on 02/14/2025 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.

March 06, 2025 11:04:53

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Permanent Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 1 - eff 04/14/2025

Effective date

04/14/2025

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act concerning QRTP Reporting Requirements
Rule Number: MSB 23-12-14-A
Division / Contact / Email: Health Policy Office/ Rachel Larson / rachel.larson@state.co.us

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 23-12-14-A, Revision to the Medical Assistance Act Rule concerning Qualified Residential Treatment Program (QRTP) Reporting Requirements

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

Sections(s) 8.765.14, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 C.C.R. 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No.
If yes, state effective date:
Is rule to be made permanent? (If yes, please attach notice of hearing). Yes.

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.765.14 with the proposed text beginning at 8.765.14.C through the end of 8.765.14.G. This rule is effective April 14, 2025.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act concerning QRTP Reporting Requirements
Rule Number: MSB 23-12-14-A
Division / Contact / Email: Health Policy Office/ Rachel Larson / rachel.larson@state.co.us

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

This rule revision adds a Provider Responsibilities section to incorporate reporting requirements from the Colorado Department of Human Services (CDHS) Rule 12 C.C.R. 2509-8: 7.701.52 to the Qualified Residential Treatment Program (QRTP).

An emergency rule-making is imperatively necessary

☐ to comply with state or federal law or federal regulation and/or
☐ for the preservation of public health, safety and welfare.

Explain: N/A

2. Federal authority for the Rule, if any:

3. State Authority for the Rule:

Sections 25.5-5-801, 25.5-1-301 to 25.5-1-303 C.R.S. (2024)

Initial Review **01/10/25** Final Adoption **02/14/25**
Proposed Effective Date **04/14/25** Emergency Adoption

DOCUMENT #

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act concerning QRTP Reporting Requirements
Rule Number: MSB 23-12-14-A
Division / Contact / Email: Health Policy Office/ Rachel Larson / rachel.larson@state.co.us

REGULATORY ANALYSIS

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

   Medicaid Members receiving treatment at Qualified Residential Treatment Programs (QRTP) will benefit from the proposed rule as oversight of member safety and quality of care will increase. The Department will bear the cost of the proposed rule. QRTP providers will also be affected by the requirement, as it is an additional administrative responsibility.

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

   Medicaid Members in QRTPs will experience increased safety and quality of care because this proposed rule would increase provider oversight. Because providers must already follow the reporting requirements within the CDHS rule and the proposed rule is simply aligning the requirements for the Department to obtain the same information, the main impact to providers is submitting the information to both CDHS and the Department. There will be some increase in workload as a result for providers.

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

   Budget reviewed the proposed rule and has estimated the annual cost to be $0.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The probable cost of the proposed rule is provided in the response to question #3 above. The benefit of the proposed rule is to increase provider oversight surrounding critical incident reporting within QRTP facilities. There is no benefit to inaction.

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

There are no less costly methods to increasing provider oversight for critical incident reporting in QRTP facilities.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   The Department and CDHS collaborated to discuss sharing information to reduce provider burden; however, access to the Trails system by the Department was not feasible due to privacy issues. Christina Winship will continue to collaborate with Salesforce to ensure the online portal the Department constructs to obtain the information from providers is as user friendly and efficient as possible.

8.765.14 QUALIFIED RESIDENTIAL TREATMENT PROGRAM (QRTP)

8.765.14.A CLIENT ELIGIBILITY

1. Children up to age eighteen (18) years old and for those persons up to twenty-one (21) years old who consent to the placement or are placed by court order, for whom an Independent Assessment determines that the child's needs cannot be met in a less restrictive, family- based setting because of their serious emotional or behavioral disorders or disturbances.

2. Managed Care Entities must use the Independent Assessment to inform medical necessity determinations.

3. For children in the custody of a county department of human/social services or Division of Youth Services and for those children receiving mental health services in a Qualified Residential Treatment Program (QRTP) through the Child and Youth Mental Health Treatment Act, the Independent Assessment will determine mental health medical necessity.

8.765.14.B QRTP AND PROVIDER ELIGIBILITY

1. Beginning October 1, 2021, to be eligible for Colorado Medicaid reimbursement, a QRTP must:

    a. Be enrolled with Colorado Medicaid;

    b. Be licensed by the Colorado Department of Human Services (CDHS), Provider Services Unit (PSU), as a Child Care Facility with QRTP indicated as the Service Type in accordance with CDHS regulations;

    c. Be accredited by:

        i. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO),

        ii. The Commission on Accreditation of Rehabilitation Facilities (CARF),

        iii. The Council on Accreditation of Services for Families and Children, or

        iv. Any other independent, not-for-profit accrediting organization approved by the Secretary of Health and Human Services.

    d. Submit an attestation form to the Department with the facility's Colorado Medicaid enrollment application with Colorado Medicaid that attests:

        i. The facility has no more than sixteen (16) beds, including all beds at a single address or on adjoining properties regardless of program or facility type;

        ii. The facility does not share a campus with a Psychiatric Residential Treatment Facility (PRTF);

iii. For facilities more than one (1) mile but less than ten (10) miles apart by road from another overnight facility controlled by the same ownership or governing body, the other overnight facility meets the following criteria:

1. The facility maintains its own license;

2. The facility has dedicated staff that ensures a stable treatment environment;

3. Residents do not move between the facility and another during the episode of care

iv. For facilities less than one (1) mile apart, but not on the same campus or adjoining properties, the QRTP is in a home-like structure (cottage, house, apartment) located farther than 750 feet from another overnight facility within a community setting that includes publicly used infrastructure (roads, parks, shared spaces, etc.).

2. Provider Qualifications.

a. The rendering provider for the following services must be an enrolled Licensed Mental Health Professional in a QRTP:

i. Individual therapy,

ii. Group therapy, and

iii. Family therapy.

8.765.14.C PROVIDER RESPONSIBILITIES

1 All critical incidents, as defined in the Colorado Department of Human Services (CDHS) rule at 12 C.C.R. 2509-8: 7.701.2, must be reported to the Department of Health Care Policy and Financing (Department) for Medicaid members only, with non-member information being anonymized.

2. Providers must follow all critical incident reporting and timing requirements as described in CDHS rule at 12 C.C.R. 2509-8: 7.701.52 when reporting to the Department.

8.765.14.D COVERED SERVICES

1. Medically necessary services pursuant to Section 8.076.1.8 that are not excluded in Section 8.765.14.D and are:

a. Included in the member's stabilization plan created by the QRTP in accordance Colorado Department of Human Services (CDHS) regulations.

b. Included in the member's individual child and family plan created by the QRTP in accordance with CDHS regulations.

c. Included in the member's discharge and aftercare plan created by the QRTP in accordance with CDHS regulations.

2. All EPSDT services not specified in Sections 8.765.14.D.1 are covered under Section 8.280.

8.765.14.E NON-COVERED SERVICES

1. The following services are not covered for members in a QRTP:

   a. Room and board;

   b. Educational, vocational, and job training services;

   c. Recreational or social activities; and

   d. Services provided to inmates of public institutions or residents of Institutions of Mental Disease (IMD).

8.765.14.F PRIOR AUTHORIZATION REQUIREMENTS

1. Prior authorization may be required for this benefit.

8.765.14.G REIMBURSEMENT.

1. QRTPs are reimbursed a per diem rate, as determined by the Department, if the following conditions are fulfilled:

   a. Rendered services are documented in the treatment record at the frequencies specified in the member's care plan(s);

   b. A care plan(s) is on record for the time period reported in the reimbursement claim; and

   c. The care meets professionally recognized standards for care in a QRTP.

2. QRTPs must enroll as a Colorado Medicaid provider to act as a billing entity for Licensed Mental Health Professionals rendering mental health services in the QRTP.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act PRTF Reporting Requirements
Rule Number: MSB 23-12-19-A
Division / Contact / Email: Health Policy Office / Rachel Larson / rachel.larson@state.co.us

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 23-12-19-A, Revision to the Medical Assistance Act Psychiatric Residential Treatment Facility (PRTF) Reporting Requirements

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.765.2, 8.765.3, 8.765.4, 8.765.5, 8.765.6, 8.765.7. Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 C.C.R. 2505-10).

5. Does this action involve any temporary or emergency rule(s)?
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing).

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.765 with the proposed text beginning at 8.765 through the end of 8.765.13.A. This rule is effective April 14, 2025.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act PRTF Reporting Requirements
Rule Number: MSB 23-12-19-A
Division / Contact / Email: Health Policy Office / Rachel Larson / rachel.larson@state.co.us

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

The proposed rule aligns existing critical incident reporting requirements with Colorado Department of Human Services (CDHS) 7.701.52 (12 C.C.R. 2509-8; 7.701.52) Reports and further clarifies federal reporting requirements of 42 C.F.R. § 483.374.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety, and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   42 C.F.R. § 441 Subpart D; 42 C.F.R. § 483.374

4. State Authority for the Rule:

   C.R.S. 25.5-1-301-303, 2024

Initial Review	**01/10/25**	Final Adoption	**02/14/25**
Proposed Effective Date	**04/14/25**	Emergency Adoption	
		DOCUMENT #	

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REGULATORY ANALYSIS

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

The persons that will be affected by the proposed rule will be those members within Psychiatric Residential Treatment Facilities (PRTFs) who will benefit from increased oversight and safety because of critical incident reporting requirements. The Department will bear the minimal cost of policy implementation. There does appear to be some increased workload for providers to submit information to the Department given the categories listed for the CDHS rule that are broader than the serious occurrence reporting already required under 42 C.F.R. § 483.374.

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

   Members within PRTFs will experience increased safety and quality of care as provider oversight increases. Providers must already follow the reporting requirements within the CDHS rule to report to CDHS and the proposed rule is simply aligning those requirements for reporting to the Department. Therefore, there should minimal impact on providers other than having to submit the information to the Department separate from the Trails system for CDHS.

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

   Budget reviewed the proposed rule and has estimated the annual cost to be $0.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The probable cost of the proposed rule is provided in the response to question #3 above. The benefit of the proposed rule is to increase oversight via critical incident reporting within PRTFs and to align reporting requirements with CDHS. There is no benefit to inaction.

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

There are no less costly methods to increasing provider oversight via critical incident reporting as this is largely already a federal reporting requirement for serious occurrences.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There are no alternative methods for increasing provider oversight. The Department and CDHS collaborated to determine whether they could share information to avoid providers having to submit the information twice; however, due to privacy concerns with accessing the Trails System, that was not a feasible approach.

8.765 SERVICES FOR MEMBERS IN RESIDENTIAL CHILD CARE FACILITIES AS DEFINED BELOW

8.765.1 DEFINITIONS

Assessment means the process of continuously collecting and evaluating information to develop a member's profile on which to base a Plan of Care, service planning, and referral.

Clinical Staff means medical staff that are at a minimum licensed at the level of registered nurse, performing within the authority of the applicable practice acts.

Colorado Member Assessment Record (CCAR) means a clinical instrument designed to assess the behavior/mental health status of a medically eligible member. The CCAR is used to identify current diagnosis and clinical issues facing the member, to measure progress during treatment and to determine mental health medical necessity. This instrument is used for children in the custody of a county department of human/social services or Division of youth corrections and for those children receiving mental health services in an RCCF through the Child Mental Health Treatment Act.

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is the Colorado Medicaid program's benefit under Section 8.280 for children and adolescents that provides a comprehensive array of prevention, diagnostic, and treatment services for low-income infants, children and adolescents under age 21.

Emergency Safety Intervention means the use of Restraint and Seclusion as an immediate response to an Emergency Safety Situation.

Emergency Safety Situation means unanticipated behavior of the member that places the member or others at serious threat of violence or injury if no intervention occurs and that calls for Emergency Safety Intervention.

Emergency Services means emergency medical and crisis management services.

Independent Assessment means a process to assess the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool. The assessment determines whether treatment in a Qualified Residential Treatment Program (QRTP) provides the most effective and appropriate level of care for the child in the least restrictive environment, in accordance with Colorado Department of Human Services regulations.

Independent Team means a team certifying the need for Psychiatric Residential Treatment Facility (PRTF) services that is independent of the Referral Agency and includes a physician who has competence in the diagnosis and treatment of mental illness and knowledge of the member's condition.

Interdisciplinary Team means staff in a PRTF comprised of a physician, and a Licensed Mental Health Professional, registered nurse or occupational therapist responsible for the treatment of the member.

Licensed Mental Health Professional means a psychologist licensed pursuant to part 3 of article 43 of title 12, C.R.S., a psychiatrist licensed pursuant to part 1 of article 36 of title 12, C.R.S., a clinical social worker licensed pursuant to part 4 of article 43 of title 12, C.R.S., a marriage and family therapist licensed pursuant to part 5 of article 43 of title 12, C.R.S., a professional counselor licensed pursuant to part 6 of

article 43 of title 12, C.R.S., or a social worker licensed pursuant to part 4 of article 43 or title 12, C.R.S., that is supervised by a licensed clinical social worker.

Medication Management Services means review of medication by a physician at intervals consistent with generally accepted medical practice and documentation of informed consent for treatment.

Multidisciplinary Team means staff in a Residential Child Care Facility (RCCF) providing mental health services comprised of at least one Licensed Mental Health Professional and other staff responsible for the treatment of the member and may include a staff member from the Referral Agency.

Plan of Care means a treatment plan designed for each member and family, developed by an Interdisciplinary or Multidisciplinary Team.

Prone Position means a member lying in a face down or front down position.

Psychiatric Residential Treatment Facility (PRTF) means a facility that is not a hospital and provides inpatient psychiatric services for individuals under age 21 under the direction of a physician, licensed pursuant to part 1 of article 36 of title 12, C.R.S.

Qualified Residential Treatment Programs (QRTP) means a facility that provides residential trauma-informed treatment that is designed to address the needs, including clinical needs, of children with serious emotional or behavioral disorders or disturbances.

Referral Agency means the Division of Youth Corrections, County Departments of Human/Social Services who have legal custody of a member, Behavioral Healthcare Organization or Community Mental Health Center that refers the member to a PRTF or RCCF for the purpose of placement through the Child Mental Health Treatment Act.

Restraint includes Drug Used as a Restraint, Mechanical Restraint and Personal Restraint.

Drug Used as a Restraint means any drug that is administered to manage a member's behavior in a way that reduces the safety risk to the member or to others; has the temporary effect of restricting the member's freedom of movement and is not a standard treatment for the member's medical or psychiatric condition.

Mechanical Restraint means any device attached or adjacent to the member's body that the member cannot easily remove that restricts freedom of movement or normal access to the member's body.

Personal Restraint means personal application of physical force without the use of any device, for the purpose of restraining the free movement of the member's body. This does not include briefly holding a member without undue force in order to calm or comfort, or holding a member's hand to safely escort the member from one area to another. This does not include the act of getting the member under control and into the required position for Restraint.

Residential Child Care Facility (RCCF) means any facility that provides out-of-home, 24-hour care, protection and supervision for children in accordance with 12 C.C.R. 2509-8, Section 7.705.91.A.

Seclusion means the involuntary confinement of a member alone in a room or an area from which the member is physically prohibited from leaving.

8.765.2 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES (PRTF) COVERED SERVICES

8.765.2.A. PRTF benefit shall include services as identified in the Plan of Care as well as other services necessary for the care of the member in the facility. These services include, but are not limited to:

1. Individual therapy.

2. Group therapy.

3. Family, or conjoint, therapy conducted with the member present, unless member contact with family members is contraindicated.

4. Emergency services.

5. Medication Management Services.

6. Room and Board.

8.765.3 PRTF NON-COVERED SERVICES

8.765.3.A. The following are not a benefit in a PRTF:

1. The day of discharge.

2. Leave days.

3. Days when the member is in detention.

8.765.4 PRTF MEMBER ELIGIBILITY

8.765.4.A. To receive benefits in a PRTF, the member shall:

1. Be between the ages of three and twenty-one.

2. Be certified to need PRTF level of care by an Independent Team. The Team shall certify that:

   a. Ambulatory care resources available in the community do not meet the treatment needs of the member.

   b. Proper treatment of the member's mental illness condition requires services on an inpatient basis under the direction of a physician.

   c. The services can reasonably be expected to improve the member's mental health or prevent further regression so that the services shall no longer be needed.

3. Be certified to have a diagnosis of a psychiatric disorder classified as a Diagnostic Statistical Manual (DSM) IV Text Revision, Fourth Edition, diagnosis that is the primary reason for placement from one of the following diagnostic categories:

   295 Schizophrenic disorders

   296 Affective psychoses

   297 Paranoid states

   298 Other nonorganic psychoses

300 Neurotic disorders

301 Personality disorders

307 Eating Disorders, Tic Disorders and Sleep Disorders

308 Acute reaction to stress

309 Adjustment reaction

311 Depressive disorder, not elsewhere classified

312 Disturbance of conduct, not elsewhere classified

313 Disturbance of emotions specific to childhood and adolescence

314 Hyperkinetic syndrome of childhood

4. Be certified to have a DSM Axis 5 GAF score of 40 or less.

5. Be assessed using a current valid Colorado Client Assessment Record (CCAR) that supports medical necessity.

8.765.4.B. The member shall not be eligible to receive services when:

1. The member is no longer able to benefit from the service or is no longer progressing towards goals.

2. The member is absent without leave in excess of 24 consecutive hours or has been removed from the facility and placed in non-PRTF services.

3. The Interdisciplinary Team determines that the member has attained treatment goals.

4. Admission of minors not in the custody of a County Department of Human/Social Services or DHS as a result of commitment to the Division of Youth Corrections shall be subject to the requirements set forth at Section 27-65-103, C.R.S (2024) which is incorporated herein by reference. No amendments or later editions are incorporated. Copies are available for inspection from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 303 E. 17TH Avenue, Suite 1100, Denver, CO 80203. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library.

8.765.5 PRTF PROVIDER ELIGIBILITY

8.765.5.A. All PRTF Providers shall have an Interdisciplinary Team.

1. The Interdisciplinary Team shall include either a board-certified psychiatrist, or a clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy, and one of the following:

a. A licensed clinical social worker, licensed marriage and family therapist or licensed professional counselor.

b. A registered nurse with specialized training or one year's experience in treating mentally ill individuals.

c. A certified occupational therapist with specialized training or one year's experience in treating mentally ill individuals; or

d. A licensed psychologist.

2. The Interdisciplinary team shall:

a. Assess the member's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities.

b. Assess the potential resources of the member and member's family.

c. Develop and implement a comprehensive, individualized written Plan of Care.

d. Set treatment objectives.

e. Prescribe therapeutic modalities to achieve the objectives of the Plan of Care.

8.765.5.B. All PRTF providers shall implement a Plan of Care.

8.765.5.C. An initial Plan of Care shall be developed within 72 hours of the member's admission and shall address the immediate and emergency needs of the member.

8.765.5.D. A comprehensive Plan of Care shall:

1. Be completed within 14 days of admission.

2. Be signed and dated by the member, the Referral Agency and the Licensed Mental Health Professional.

3. Address clinical and other needs including the member's presenting problems, physical health, emotional status, behavior, support system in the community, available resources and discharge plan.

4. Include specific goals and measurable objectives, expected dates of achievement and specific discharge criteria to be met for termination of treatment. Criteria for discharge shall include provisions for follow-up services.

5. Specify the type, frequency and duration of all PRTF services necessary to meet the needs of the member and to treat the member's current diagnosis.

6. Identify the provision of or the referral for services other than PRTF Services.

7. Be readily identifiable and be maintained in the member's record.

8. Document any court-ordered treatment including identifying the agency responsible for providing the court-ordered treatment.

9. Include revisions to the Plan of Care at least monthly, or sooner if appropriate.

8.765.5.E. The PRTF shall designate a Licensed Mental Health Professional to act as a case manager for each member to oversee the formulation, implementation, review and revision to the Plan of Care.

8.765.5.F. The Licensed Mental Health Professional shall sign and date the Plan of Care.

8.765.5.G. The PRTF shall ensure the member and/or legal guardian participate in the formulation, review and revision of the Plan of Care. If the member or legal guardian is unable to participate or when his or her participation is clinically contraindicated, the PRTF shall document the reasons in the member's record. Any decision to not involve the family or guardian shall be approved by the Referral Agency. In addition, other persons selected by the member, the family or guardian, the Referral Agency or the Licensed Mental Health Professional may be included in the formulation, review and revision of the Plan of Care.

8.765.5.H Except in cases of emergency, all PRTF services in the Plan of Care shall be provided.

8.765.5.I. The PRTF shall ensure that physician prescribed information is used for the component of the Plan of Care requiring Medication Management Services.

8.765.5.J. The PRTF shall ensure all members and/or guardians are aware of the complaint and grievance procedures.

8.765.5.K. The PRTF shall ensure all members and/or guardians are aware of the PRTFs policies regarding Restraint and Seclusion as required in 42 C.F.R. §§ 483.350-376 (2024), which is incorporated herein by reference. No amendments or later editions are incorporated. Copies are available for inspection from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 303 E. 17th Avenue, Suite 1100,Denver, Colorado 80203.. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library.

8.765.5.L. The PRTF shall facilitate access to necessary medical care and shall be responsible for coordinating mental health treatment with medical treatment.

8.765.5.M. Member Transfers:

1. A member shall be transferred only to the care of another PRTF or placement facility when adequate arrangements for care have been made by the Referral Agency.

2. The member and the legal guardian shall be given a minimum of 24 hours notice before the member is transferred unless this notice is waived by the Referral Agency or legal guardian in writing or if an emergency condition exists.

3. Transfers shall be documented in the clinical record.

8.765.5.N. PRTF Licensure and Certification Requirements.

1. The PRTF shall:

a. Be certified by the Department of Human Services (DHS), to provide mental health services as a PRTF.

b. Be licensed by DHS, Division of Child Care Licensing, as a Residential Child Care Facility and a PRTF.

c. Be certified as a qualified residential provider by the Department of Public Health and Environment.

d. Be accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children.

e. Provide an attestation to the Department that the PRTF is in compliance with the condition of participation for Restraint and Seclusion as described in Section 8.765.6.F and in federal law.

2. A PRTF located in another state shall meet the requirements as set forth in Section 8.765.5.N.1.d. and e. and shall meet all other license and certification requirements for a PRTF in the state in which it is located.

3. A PRTF that has more than one physical address shall have a separate Medicaid provider number for each facility.

8.765.6 PRTF PROVIDER RESPONSIBILITIES

8.765.6.A. A PRTF shall complete a CCAR and maintain an organized, legible, chronological, current treatment record for each member. Treatment records shall include:

1. Admission information such as the member's personal information and demographic data, source of referral, most current Diagnostic Statistical Manual diagnosis and substance abuse history.

2. Documentation of the member's legal status, including but not limited to guardianship, conservatorship, court orders, custody, certifications, advisement and consent.

3. Copies of all CCARs.

4. All Plans of Care and revisions.

5. Documentation of member's attendance at, participation in and outcomes of PRTF Services.

6. Documentation that the member and/or the legal guardian was provided with a copy of the Plan of Care.

7. Correspondence to and from agencies and individuals involved in the member's treatment.

8. An explanation whenever any member of the Interdisciplinary Team, member, parent or guardian, when appropriate, does not sign a Plan of Care.

9. The name of the Licensed Mental Health Professional responsible for the formulation, implementation, review and revision of the member's Plan of Care.

10. A discharge report, within 30 consecutive days of the discharge from the PRTF, summarizing treatment received and outcomes.

11. For transfers between facilities, documentation of appropriate clinical information and coordination of services between the two facilities.

12. Documentation of any unplanned discharges without advance notice and any discharges against the Licensed Mental Health Professional's advice.

13. Information regarding any serious injury sustained while in the PRTF to the member or by the member and details describing the circumstances by which the injury occurred.

14. Information regarding a member's death and details of the circumstances by which the death occurred.

15. Dates, times and circumstances of unauthorized leave.

16. Documentation of detention dates.

17. Treatment entries that are signed and dated by the person providing treatment, including title or position of the person providing treatment.

8.765.6.B. All members of the Clinical Staff shall be trained annually in the development and review of Plans of Care and the details of this training shall be documented.

8.765.6.C. Records shall be kept in a secure location at the PRTF.

8.765.6.D. Data, including claims data, shall be retained for six years unless there is a written statutory requirement or regulation available from a county, state or federal agency requiring a longer retention period.

8.765.6.E. Clinical records shall be retained for six years after the member's 21st birthday.

8.765.6.F. The PRTF shall comply with the following requirements for the use of Restraint and Seclusion:

1. Personal, Mechanical and Drugs Used as Restraint shall be ordered only by a physician, physician's assistant or nurse practitioner.

2. An order for Restraint or Seclusion shall not be written as a standing order or on an as-needed basis.

3. Restraint and Seclusion shall not result in harm or injury to the member and shall be used only to ensure the safety of the member or others during an Emergency Safety Situation and only until the Emergency Safety Situation has ceased.

4. Restraint and Seclusion shall not be used simultaneously.

5. A Personal Restraint when a member is in a Prone Position is prohibited.

6. If the order for Restraint or Seclusion is verbal, it shall be received by a registered nurse, licensed practical nurse or physician's assistant.

7. The Restraint or Seclusion shall be carried out by Clinical Staff who are trained in the use of emergency safety intervention.

8. Only a physician, registered nurse, licensed practical nurse or physician's assistant shall administer a Drug Used as a Restraint.

9. Clinical Staff trained in the use of emergency safety interventions that are physically present during the Restraint or Seclusion shall monitor the member during the Restraint or Seclusion period.

10. Each order for Restraint or Seclusion shall never:

a. Exceed the duration of the emergency safety situation; and

b. Exceed four hours in length for youth ages 18 to 21; two hours in length for members ages nine to 17; or one hour in length for members under age of nine.

11. Within one hour of the initiation of the Emergency Safety Intervention a physician, registered nurse or physician's assistant shall conduct a face-to-face assessment of the physical and psychological well being of the member. A psychologist may conduct the face-to-face assessment if done in conjunction with a physician, registered nurse or physician's assistant.

12. The PRTF shall notify the parent(s) or legal guardian(s) of a member who has been restrained or secluded as soon as possible, but not to exceed 24 hours, after the initiation of each emergency safety intervention and shall document the date and time of this notification in the member's record.

13. Within 24 hours of the use of Restraint or Seclusion, staff involved in an Emergency Safety Intervention and the member shall have a face-to-face discussion. This discussion shall include all staff involved in the intervention except when the presence of a particular staff person may jeopardize the well-being of the member. Other staff and the member's parent or guardian may participate in the discussion, if appropriate.

14. Within 24 hours after the use of Restraint or Seclusion, all staff involved in the Emergency Safety Intervention, and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes, at a minimum, a review and discussion of:

a. The situation that required the intervention, including a discussion of the precipitating factors that led up to the intervention.

b. Alternative techniques that may have prevented the use of the Restraint or Seclusion.

c. New procedures implemented to mitigate any recurrence of the use of Restraint or Seclusion.

d. The outcome of the intervention, including any injuries that may have resulted from the use of Restraint or Seclusion.

8.765.6.G CRITICAL INCIDENT & SERIOUS OCCURRENCE REPORTING

1. CRITICAL INCIDENT REPORTING

a. All critical incidents, as defined in the Colorado Department of Human Services (CDHS) rule at 12 CCR 2509-8: 7.701.2, must be reported to the Department of Health Care Policy and Financing for Medicaid members only, with non-member information being anonymized.

b. Providers must follow all critical incident reporting and timing requirements as set forth at 12 CCR 2509-8: 7.701.52.

c. In the event of a conflict between the federal and state timing requirement for reporting, the earlier timeframe controls.

2. SERIOUS OCCURRENCE REPORTING

a. All serious occurrences, as defined under 42 C.F.R. § 483.374, must be reported to the Department of Health Care Policy and Financing regardless of the individual's Medicaid status.

b. Providers must also follow all serious occurrence reporting and timing requirements under 42 C.F.R. § 483.374, as well as all other reporting and timing requirements that may be applicable regarding restraint and seclusion under Colorado and federal law.

c. In the event of a conflict between the federal and state timing requirements for reporting, the earlier timeframe controls.

8.765.7 REIMBURSEMENT FOR PRTFs

8.765.7.A. A PRTF shall be reimbursed a per diem rate as determined by DHS and approved by the Department.

8.765.7.B. The Department shall recover the per diem reimbursement when:

1. Each service is not documented in the treatment record at the frequency specified in the Plan of Care.

2. There is no Plan of Care in the record, for the period of time claims were paid.

3. Records are requested but not provided with 21 calendar days.

8.765.7.C. A PRTF may appeal the Department's recovery actions within 30 calendar days from the date on the notice. The appeal shall be submitted in accordance with Section 8.050.

8.765.8 MENTAL HEALTH BENEFITS FOR MEMBERS IN AN RCCF

8.765.8.A. Family therapy shall not exceed maximum of one service unit per day.

1. Family therapy without the member present may be provided at a maximum of one service unit per week if treatment is documented in the Plan of Care that member contact with family members is contraindicated. Family Therapy without the member present shall be for the specific benefit of the member.

8.765.8.B. Individual therapy shall not exceed two service units per day.

8.765.8.C. Group therapy shall not exceed eight service units per day.

8.765.8.D. A Licensed Mental Health Professional may authorize family, individual and group therapy in excess of maximum service units per day if the following is documented in the Plan of Care:

1. The reason for the additional therapy.

2. How many additional units are necessary.

3. How long the additional therapy is necessary.

8.765.8.E. The Licensed Mental Health Professional shall re-authorize therapy in excess of the maximum service units per day in the Plan of Care at least every 30 days.

8.765.8.F. Beginning July 1, 2022, only services rendered under Early and Periodic Screening, Diagnosis and Treatment in accordance with Section 8.280 are a covered RCCF benefit.

8.765.9 NON-COVERED BENEFITS FOR MEMBERS IN AN RCCF

8.765.9.A. The following benefits are not covered for members in an RCCF:

1. Court-ordered treatment that is not otherwise medically indicated;

2. Room and board services;

3. Educational, vocation and job training services;

4. Recreational or social activities;

5. Habilitative care for children who are developmentally disabled or mentally retarded; and

6. Services provided by public institutions or institutions for mental diseases.

8.765.10 MEMBER ELIGIBILITY FOR MENTAL HEALTH SERVICES IN AN RCCF

8.765.10.A. To be eligible for mental health services delivered in an RCCF the member shall:

1. Be between the ages of three and 21 years of age.

2. Have a diagnosis of a psychiatric disorder classified by a Diagnostic and Statistical Manual of Mental Disorders (DSM).

3. Have a current, and valid CCAR assessment completed by a Licensed Mental Health Professional that supports medical necessity for mental health services, and demonstrates which services the member would benefit from.

8.765.11 ELIGIBILITY FOR PROVIDERS DELIVERING SERVICES IN AN RCCF

8.765.11.A Individual, group and family therapy provided in an RCCF shall be provided by a Licensed Mental Health Professional or a provisionally-licensed Mental Health Professional supervised by a Licensed Mental Health Professional, employed by or contracted with an RCCF that is licensed by the Colorado Department of Human Services.

8.765.11.B. Licensed Mental Health Professionals providing mental health services to members in an TRCCF are exempt from the direct physician supervision requirement in Section 8.200.2.A through E.

8.765.11.C. Licensed Mental Health Professionals providing mental health services to members in the RCCF enroll as Medicaid rendering providers.

8.765.12 RCCF RESPONSIBLITIES

8.765.12.A. The RCCF shall include the following in the member's record:

1. Results from the Multidisciplinary Team's Assessment;

2. Member's Medicaid Eligibility Determination Form; and

3. Member's diagnoses, characteristics and presenting problem.

8.765.12.B. The RCCF shall transmit the items listed in Section 8.765.12.A. to the Referral Agency.

8.765.12.C. The RCCF shall designate a Licensed Mental Health Professional to act as a case manager for mental health services for each member.

8.765.12.D. The Licensed Mental Health Professional shall maintain an organized, legible, chronological, current record on each member.

8.765.12.E. The member's Plan of Treatment for mental health services shall be integrated into the agency's comprehensive Plan of Care reviewed by the Multidisciplinary Team. The Plan of Care shall:

1. Be signed and dated by the member, the Referral Agency and the Licensed Mental Health Professional and the parent/guardian.

2. Include an initial plan developed prior to the onset of mental health services that needs of the member.

3. Address mental health and other needs including the member's presenting problems, physical health, emotional status, behavior, support system in the community, available resources and discharge plan.

4. Include specific goals and measurable objectives, expected dates of achievement and specific discharge criteria to be met for termination of treatment. Criteria for discharge shall include provisions for follow-up services.

5. Specify all mental health services necessary to meet the needs of the member and to treat the member's current diagnosis while the member is in the RCCF.

6. Identify the provision of or the referral for services other than mental health services.

7. Be readily identifiable and be maintained in the member's record.

8. Document any court-ordered mental health services including identifying the agency responsible for providing the court-ordered treatment.

9. Be reviewed by the Multidisciplinary Team monthly and revised as needed.

8.765.12.F. Except in cases of emergency, all mental health services indicated in the Plan of Care shall be provided.

8.765.13 REIMBURSEMENT FOR MENTAL HEALTH SERVICES IN A RCCF

8.765.13.A. Reimbursement for Mental Health Services in a RCCF shall be the lower of billed charges or the maximum unit rate of reimbursement. Beginning July 1, 2022, RCCF services will not be reimbursable unless provided under Early and Periodic Screening, Diagnosis and Treatment in accordance with Section 8.280.

8.765.13.B. The RCCF shall enroll as a Medicaid provider for the purposes of acting as a billing entity for Licensed Mental Health Professionals providing mental health services in the RCCF.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2025-00052

Opinion of the Attorney General rendered in connection with the rules adopted by the

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 02/14/2025

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY

The above-referenced rules were submitted to this office on February 14, 2025, 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, except as follows: (1) The incorporations of rules issued by the Colorado Department of Human Services in Rules 8.765.14.C and 8.765.6.G.1 do not satisfy the requirements set forth in 24-4-103(12.5), C.R.S., and (2) limiting language in Rule 8.765.4.B regarding the incorporation of a statutory provision by reference is inconsistent with the agency's role in admini

March 06, 2025 12:46:42

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

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3 CCR 702-4 Series 4-2 LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General) 1 - eff 02/14/2025

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 25-E-01

CONCERNING COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLANS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-109, and 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish rules for the required bronze, silver, and gold Standardized plans to be offered by all carriers offering individual and small group health benefits plans issued or renewed on or after January 1, 2026.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this emergency regulation is imperatively necessary to comply with state and federal law, including federal regulation, and for the preservation of public health, safety, or welfare and compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interests. The Department of Health and Human Services (“HHS”) released the 2026 Actuarial Value Calculator Methodology, pursuant to 45 C.F.R. § 156.135(g), on October 16, 2024. Carriers are required to use the 2026 Actuarial Value Calculator Methodology for benefit year 2026, pursuant to 45 C.F.R.§ 156.135(a). Carriers must also notify the Division of Insurance by March 1, 2025, whether they have achieved the premium rate reduction requirements for their 2026 standardized plans, pursuant to § 10-16-1306(2), C.R.S. This emergency regulation ensures that carriers have the guidance and instructions to develop and adjust their standardized plans to ensure compliance with state law, including the March 1, 2025, notification deadline under § 10-16-1306(2), C.R.S., and federal law.

Section 3 Applicability

This regulation applies to all carriers offering individual and small group health benefit plans subject to the individual and small group laws of Colorado and the requirements of federal law.

Section 4 Definitions

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

B. “Behavioral, mental health, and substance use disorder” shall have the same meaning as found at § 10-16-104(5.5)(d), C.R.S.

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

D. “Colorado Option Standardized Plan” or “Standardized plan” shall have the same meaning as found at § 10-16-1303(14), C.R.S.

E. “Colorado Plans and Benefits Template” or “Colorado PBT” means, for the purposes of this regulation, the Colorado-specific modified version of the Federal PBT for submission of plans offered through the Public Benefit Corporation.

F. “Colorado Supplement to the Summary of Benefits and Coverage Form” or “COSSBC” shall have the same meaning as found at Colorado Insurance Regulation 4-2-20.

G. “Consumer Facing Materials” means, for the purposes of this regulation, plan-specific policy forms including the Summary of Benefits and Coverage Form, Colorado Supplement to the Summary of Benefits and Coverage Form, Evidence of Coverage, Certificate of Coverage, and plan-specific marketing materials including brochures, direct mail, website landing page, broker website portal landing page, welcome kit, newsletters, advertisements, and shopping portals on-Exchange and off-Exchange through the Public Benefit Corporation.

H. “Covered person” shall have the same meaning as found at § 10-16-102(15), C.R.S.

I. “Embedded deductible” means, for the purposes of this regulation, a cost-sharing provision within family policies where a covered person may satisfy their own individual deductible before the overall family deductible is satisfied.

J. “Embedded out-of-pocket maximum” means, for the purposes of this regulation, a cost-sharing provision within family policies where a covered person may satisfy their own individual out-of-pocket maximum before the overall family out-of-pocket maximum is satisfied.

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

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

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

N. “Federal Plans and Benefits Template” or “Federal PBT” means, for the purposes of this regulation, the Plans & Benefits Template created by the Centers for Medicare & Medicaid Services.

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

P. “Network” shall have the same meaning as found at § 10-16-102(45), C.R.S.

Q. “Preventive drug” shall have the same meaning as found at Colorado Insurance Regulation 4-2-58.

R. “Provider” shall have the same meaning as found at § 10-16-102(56), C.R.S.

S. “Public Benefit Corporation” shall have the same meaning as found at § 10-16-1303(12), C.R.S.

T. “Silver Enhanced Plan” means, for the purposes of this regulation, the standardized silver plan offered by Connect for Health Colorado on the Colorado Public Benefit Corporation with an increase in the plan’s actuarial value to 94% and a $0 premium containing the same plan design and cost sharing as the Colorado Option On-Exchange Silver (94% AV) Standardized Plan.

U. “Summary of Benefits and Coverage Form” or “SBC” means, for the purposes of this regulation, the Summary of Benefits and Coverage Form created by the Centers for Medicare & Medicaid Services.

Section 5 Standardized Health Benefit Plan

A. Carriers shall offer a Standardized plan at the bronze, silver, and gold metal level tiers, as required under § 10-16-1304, C.R.S., and shall:

1. Offer the individual market Standardized plans on-Exchange and off-Exchange through the Public Benefit Corporation.

2. Use the following naming conventions in the Federal PBT and Colorado PBT as well as on consumer facing materials.

   a. For all metal tier plans: "[Name of Carrier] Colorado Option [Metal Tier]." The name of the carrier may be shortened to an easily identifiable acronym that is commonly used by the carrier in consumer facing publications.

   b. For silver cost-sharing reduction variant plans: “[Name of Carrier] Colorado Option Silver [% AV value].” The name of the carrier may be shortened to an easily identifiable acronym that is commonly used by the carrier in consumer facing publications.

3. Use the following naming conventions on identification cards:

   a. For all metal tier plans: “CO Option [Metal Tier].”

   b. For silver cost-sharing reduction variant plans: “CO Option Silver [% AV value].”

4. Use a Division approved, co-branded logo in individual and small group Standardized plan consumer facing materials. A co-branded logo will use both the Colorado Option logo and the carrier’s logo, to form a dual logo that is a single image.

5. Include a service area or network identifier in the plan name if the plan is not offered on a statewide basis with a statewide network.

B. Coverage must be provided in a manner consistent with the requirements of:

1. Federal law.

2. Article 16 of Title 10 of the Colorado Revised Statutes, as applicable to individual and small group health benefit plans, including but not limited to:

   a. §§ 10-16-1304, 10-16-1305, 10-16-1306, C.R.S.

   b. §§ 10-16-104(5.5) and 10-16-147, C.R.S. and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) as defined at § 10-16-102(43.5), C.R.S.

(1) Carriers shall submit the CO Financial Requirement and Quantitative Treatment Limitation Classification Template and the Financial Requirements Attestation Template for Standardized Plans, required by Colorado Insurance Regulation 4-2-64, no later than March 1 of each year.

(2) If it is determined that a carrier's Standardized plan does not comply with MHPAEA financial requirements and quantitative treatment limitations, the Division will make the minimum adjustments necessary to the cost sharing structure in the Standardized plan to meet these requirements.

3. United States Preventive Services Task Force A and B recommendations, Advisory Committee on Immunization Practices age-appropriate immunization and vaccine schedules, and the Women's Preventive Services Guidelines published by the Health Resources and Services Administration (HRSA).

C. As part of the annual filings process, Standardized plans must be consistent with Colorado Insurance Regulations and guidance regarding rate and form filings, including but not limited to Colorado Insurance Regulations 4-2-39, 4-2-41, 4-2-58 and 4-2-64.

D. Individual market carriers must file all Standardized plans, except bronze plans, on Benefits Package 1 and bronze plans on Benefits Package 2 of the federal Plans and Benefits Template. Individual market carriers must file the Standardized bronze, off-Exchange silver, silver enhanced, and gold plans on the Colorado Plans and Benefits Template. Small group market carriers must file all Standardized plans, except bronze plans, on Benefits Package 1 and bronze plans on Benefits Package 2 of the federal Plans and Benefits Template.

E. Coverage must provide essential health benefits as defined in Colorado Insurance Regulation 4-2-42. Carriers are not permitted to add benefits outside of those outlined in Colorado Insurance Regulation 4-2-42 except that carriers may include reproductive health services in addition to the benefits in Colorado Insurance Regulation 4-2-42, subject to approval by the Division of Insurance. Carriers must follow the defined cost-sharing requirements for the benefits listed in Appendix A. Carriers may vary cost-sharing amounts for essential health benefits not listed in Appendix A.

F. The bronze, silver, and gold Standardized plans must include the following coverage:

1. Mental health, behavioral health and substance use disorder visits and primary care visits in accordance with the cost-sharing requirements contained in Appendix A.

2. Prenatal and postnatal visits in accordance with the cost-sharing requirements contained in Appendix A.

a. Carriers utilizing a global billing structure for pregnancy-related care shall account for the cost sharing outlined in the Standardized plan in the global billing fee structure.

b. Home visits shall be considered a covered postnatal care visit, subject to the cost-sharing for "prenatal and postnatal visits" contained in Appendix A.

c. Prenatal and postnatal visits shall be combined in instances where a number of visits is specified in Appendix A.

3. Diabetes supplies, including but not limited to Continuous Glucose Monitors and all associated components with automated insulin delivery systems, must be provided with no cost sharing.

a. Carriers must maintain an easy-to-understand, transparent, and searchable page on the carrier's website titled "Covered Diabetic Supplies for Colorado Option Plans" that includes the following information, updated for each plan year:

(1) A clear statement that Colorado Option plans provide coverage of diabetic supplies at $0 cost-sharing and not subject to a deductible, copayments, or coinsurance.

(2) A complete list of all diabetic supplies organized by category of items or supplies.

(a) For each category, the name of all items or supplies that are covered at $0 cost-sharing and not subject to a deductible, copayment, or coinsurance under the Colorado Option Standardized Health Benefit Plan must be listed.

(b) At a minimum, the list must include the following categories: "Continuous Glucose Monitors and Components", "Insulin Pumps", "Blood Glucose Monitors and Test Strips", and "Other Covered Diabetic Supplies".

(3) At all times, the list shall include all of the diabetic supplies that are covered for the current plan year. If a carrier has a change in the covered items and supplies, the carrier shall update the public-facing list within 10 business days of the change becoming effective.

(4) During the annual Open Enrollment Period, the website shall also display the diabetic supplies covered for the upcoming plan year.

b. If the carrier offers multiple Colorado Option plans that cover different diabetic supplies, a different list should be included for each plan, and clearly marked with the marketing name(s) of the Colorado Option plan(s) that cover the specific supplies listed.

c. Next to each item or supply, the carrier must clearly indicate whether it is covered under the medical benefit, including durable medical equipment (DME), or prescription drug benefit.

(1) If an item or supply is covered as DME, the carrier must include clear instructions for how a consumer may obtain the diabetic supply through the covered DME supplier, including where to find the contact information for the carrier's covered DME supplier.

(2) If an item or supply is covered under the prescription drug benefit, the carrier must include clear instructions on how a consumer can access the carrier's most recent prescription drug formulary and the carrier's provider directory.

4. Carrier formularies:

a. Formularies shall have five drug tiers that allow copay only cost sharing:

(1) Tier 1: The prescription drug tier which consists of drugs used for preventive purposes.

(2) Tier 2: The prescription drug tier which consists of the lowest cost tier of prescription drugs, most are generic.

(3) Tier 3: The prescription drug tier which consists of medium-cost prescription drugs, most are generic, and some brand-name prescription drugs.

(4) Tier 4: The prescription drug tier which consists of the higher-cost prescription drugs, most are brand-name prescription drugs, and some specialty drugs.

(5) Tier 5: The prescription drug tier which consists of the highest-cost prescription drugs, most are specialty drugs.

b. Carriers may assign prescription drugs to one of the five tiers based on drug usage, cost and clinical effectiveness so long as such classification remains in compliance with applicable Federal and Colorado state law requirements.

c. The cost-share amounts in Appendix A are for a 30-day supply of a prescription drug. A carrier may apply up to three times the cost-share amount for a 90-day supply.

4. Consistent with existing coverage requirements, carriers must provide the following:

a. Carriers must include the “Colorado QuitLine” as part of covered tobacco cessation programs;

b. When outpatient education for prediabetes is recommended by a provider, carriers must include a program recognized by the National Centers for Disease Control and Prevention (CDC) Diabetes Prevention Program as part of diabetes prevention coverage.

G. The Colorado Option bronze, silver, and gold Standardized plans may not have a tiered network with different copays for different network tiers.

H. Covered persons in the Standardized plans must receive care at the cost-sharing levels required for the different services in the Standardized plans for any “In-Network” provider. In-network services include services provided by an out-of-network provider, but are approved as in-network by the carrier.

I. The Standardized bronze, silver, and gold plans do not specify cost-sharing amounts for any out-of-network services except for those services required under state or federal law to have in-network cost-share amounts.

J. Any copay, coinsurance, and deductible payments for in-network covered services shall apply to the out-of-pocket maximum.

K. Carriers shall use an embedded deductible.

L. Carriers shall use an embedded out-of-pocket maximum.

M. Carriers are not required to submit reasonable modification requests for benefits and/or cost-sharing modifications found in Appendix A of this regulation. Carriers are required to submit any other benefits and/or cost-sharing reasonable modification requests to the Standardized plans, pursuant to Colorado Insurance Regulation 4-2-27.

Section 6 Incorporation by Reference

The age-appropriate immunization and vaccine schedules as recommended by the Advisory Committee on Immunization Practices, as published by the Advisory Committee on Immunization Practices shall mean age-appropriate immunization and vaccine schedules as published on the effective date of this regulation and do not include later amendments to, or editions of, the age-appropriate immunization and vaccine schedules. The age-appropriate immunization and vaccine schedules as recommended by the Advisory Committee on Immunization Practices may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the Advisory Committee on Immunization Practices website at http://www.cdc.gov/vaccines/schedules/hcp/index.html. Certified copies of the age-appropriate immunization and vaccine schedules as recommended by the Advisory Committee on Immunization Practices are available from the Colorado Division of Insurance for a fee.

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

The Women's Preventive Services Guidelines, published by the Health Resources and Services Administration, shall mean the Women's Preventive Services Guidelines published by the Health Resources and Services Administration, as published on the effective date of this regulation and does not include later amendments to, or editions of the Women's Preventive Services Guidelines published by the Health Resources and Services Administration. The Women's Preventive Services Guidelines published by the Health Resources and Services Administration may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the Health Resources and Services Administration website at https://www.hrsa.gov/womens-guidelines. Certified copies of the Women's Preventive Services Guidelines, published by the Health Resources and Services Administration, are available from the Colorado Division of Insurance for a fee.

Section 7 Severability

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

Section 8 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 9 Effective Date

This emergency regulation shall become effective on February 14, 2025.

Section 10 History

This emergency regulation shall become effective February 14, 2025.

Appendix A: 2026 Gold, Silver, and Bronze Standardized Plans

This Appendix outlines the plan designs for the gold, silver, and bronze metal tier standardized plans.

- The column **"Member Cost Share (In Network)"** refers to the cost share amount paid by the covered person after their deductible is met.
- The **"x" in the "Deductible Applies"** column indicates that a covered person is expected to meet their deductible prior to paying the cost share amount listed in the "Member Cost Share (In Network)" column.
- If there is **no "x" in the "Deductible Applies"** column, this indicates that the cost-share is pre-deductible or first dollar coverage.

Standardized Silver Cost Sharing Reduction Plans at 73% AV and 87% AV are only required to be offered in the individual, on-Exchange market. Standardized Silver Cost Sharing Reduction Plans at the 94% AV level are required to be offered in the individual, on-Exchange market, and the individual, off-Exchange market through the Public Benefit Corporation.

Gold Standardized Plan

Actuarial Value	**78.0%**
Individual Deductible (Combined Medical & Drug)	$2,050
Individual Out-of-Pocket Maximum	$9,600
Family Deductible	$4,100

Family Out-of-Pocket Maximum			$19,200
Common Medical Event	Service Type	Member Cost Share (In Network)	Deductible Applies
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$55	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Outpatient services	30%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	30%	X
Tests	Laboratory tests	30%	X
	X-rays and diagnostic imaging	30%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	30%	X

Drugs to treat Illness or Condition	Tier 1	$0	
	Tier 2	$10	
	Tier 3	$50	
	Tier 4	$200	
	Tier 5	$600	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	30%	X

	Physician/Surgical Services	30%	X
Need Immediate Attention	Urgent care centers or facilities	$50	
	Emergency room services	30%	X
	Emergency medical transportation (ambulance)	30%	X
Hospital Stay	Inpatient Hospital services	30%	X
	Inpatient Physician and Surgical Services	30%	X

	Inpatient Rehabilitation Services	30%	X
	Inpatient Habilitation Services	30%	X
Help recovering or other health needs	Speech Therapy	30%	X
	Physical Therapy	30%	X
	Occupational Therapy	30%	X
	Durable medical equipment[1]	30%	X

	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Silver Standardized Plan

(On-Exchange Individual Market & Small Group Market)

Actuarial Value	**70.0%**
Individual Deductible (Combined Medical & Drug)	$4,400
Individual Out-of-Pocket Maximum	$9,800
Family Deductible	$8,800
Family Out-of-Pocket Maximum	$19,600

Common Medical Event	Service Type	Member Cost Share	Deductible Applies

		(In Network)	
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$90	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	40%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	40%	X
Tests	Laboratory tests	40%	X
	X-rays and diagnostic imaging	40%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	40%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$20	
	Tier 3	$125	
	Tier 4	$300	
	Tier 5	$650	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	40%	X
	Physician/Surgical Services	40%	X

Need Immediate Attention	Urgent care centers or facilities	$80	
	Emergency room services	40%	X
	Emergency medical transportation (ambulance)	40%	X
Hospital Stay	Inpatient Hospital services	40%	X
	Inpatient Physician and Surgical Services	40%	X
	Inpatient Rehabilitation Services	40%	X

	Inpatient Habilitation Services	40%	X
Help recovering or other health needs	Speech Therapy	40%	X
	Physical Therapy	40%	X
	Occupational Therapy	40%	X
	Durable medical equipment[1]	40%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Silver (73% AV) Standardized Plan

(On-Exchange Individual Market)

Actuarial Value	**73.0%**
Individual Deductible (Combined Medical & Drug)	$2,850
Individual Out-of-Pocket Maximum	$8,000
Family Deductible	$5,700
Family Out-of-Pocket Maximum	$16,000

Common Medical Event	Service Type	Member Cost Share	Deductible Applies

		(In Network)	
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$90	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	40%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	40%	X
Tests	Laboratory tests	40%	X
	X-rays and diagnostic imaging	40%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	40%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$20	
	Tier 3	$125	
	Tier 4	$300	
	Tier 5	$600	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	40%	X
	Physician/Surgical Services	40%	X

Need Immediate Attention	Urgent care centers or facilities	$80	
	Emergency room services	40%	X
	Emergency medical transportation (ambulance)	40%	X
Hospital Stay	Inpatient Hospital services	40%	X
	Inpatient Physician and Surgical Services	40%	X
	Inpatient Rehabilitation Services	40%	X

	Inpatient Habilitation Services	40%	X
Help recovering or other health needs	Speech Therapy	40%	X
	Physical Therapy	40%	X
	Occupational Therapy	40%	X
	Durable medical equipment[1]	40%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Silver (87% AV) Standardized Plan

(On-Exchange Individual Market)

Actuarial Value			**87.0%**
Individual Deductible (Combined Medical & Drug)			$950
Individual Out-of-Pocket Maximum			$3,350
Family Deductible			$1,900
Family Out-of-Pocket Maximum			$6,700
Common Medical Event	Service Type	Member Cost Share	Deductible Applies

		(In Network)	
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$65	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	30%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	30%	X
Tests	Laboratory tests	30%	X
	X-rays and diagnostic imaging	30%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	30%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$0	
	Tier 3	$60	
	Tier 4	$120	
	Tier 5	$180	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	30%	X
	Physician/Surgical Services	30%	X

Need Immediate Attention	Urgent care centers or facilities	$60	
	Emergency room services	30%	X
	Emergency medical transportation (ambulance)	30%	X
Hospital Stay	Inpatient Hospital services	30%	X
	Inpatient Physician and Surgical Services	30%	X
	Inpatient Rehabilitation Services	30%	X

	Inpatient Habilitation Services	30%	X
Help recovering or other health needs	Speech Therapy	30%	X
	Physical Therapy	30%	X
	Occupational Therapy	30%	X
	Durable medical equipment[1]	30%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Silver (94% AV) Standardized Plan

(On-Exchange Individual Market and Off-Exchange Individual Market through the Public Benefit Corporation)

Actuarial Value			**94.5%**
Individual Deductible (Combined Medical & Drug)			$100
Individual Out-of-Pocket Maximum			$1,375
Family Deductible			$200
Family Out-of-Pocket Maximum			$2,750
Common Medical Event	Service Type	Member	Deductible

		Cost Share (In Network)	Applies
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$40	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	20%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	20%	X
Tests	Laboratory tests	20%	X
	X-rays and diagnostic imaging	20%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	20%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$0	
	Tier 3	$20	
	Tier 4	$40	
	Tier 5	$60	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	20%	X
	Physician/Surgical Services	20%	X

Need Immediate Attention	Urgent care centers or facilities	$40	
	Emergency room services	20%	X
	Emergency medical transportation (ambulance)	20%	X
Hospital Stay	Inpatient Hospital services	20%	X
	Inpatient Physician and Surgical Services	20%	X
	Inpatient Rehabilitation Services	20%	X

	Inpatient Habilitation Services	20%	X
Help recovering or other health needs	Speech Therapy	20%	X
	Physical Therapy	20%	X
	Occupational Therapy	20%	X
	Durable medical equipment[1]	20%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Silver Off Exchange Standardized Plan

(Individual Market Off-Exchange)

Actuarial Value	**70.0%**
Individual Deductible (Combined Medical & Drug)	$4,400
Individual Out-of-Pocket Maximum	$9,800
Family Deductible	$8,800
Family Out-of-Pocket Maximum	$19,600

Common Medical Event	Service Type	Member Cost Share	Deductible Applies

		(In Network)	
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$90	
Pregnancy	Prenatal and postnatal visits	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	

Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Outpatient services	40%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	40%	X
Tests	Laboratory tests	40%	X
	X-rays and diagnostic imaging	40%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	40%	X
	Tier 1	$0	

Drugs to treat Illness or Condition	Tier 2	$20	
	Tier 3	$125	
	Tier 4	$300	
	Tier 5	$650	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	40%	X
	Physician/Surgical Services	40%	X

Need Immediate Attention	Urgent care centers or facilities	$80	
	Emergency room services	40%	X
	Emergency medical transportation (ambulance)	45%	X
Hospital Stay	Inpatient Hospital services	40%	X
	Inpatient Physician and Surgical Services	40%	X
	Inpatient Rehabilitation Services	40%	X

	Inpatient Habilitation Services	40%	X
Help recovering or other health needs	Speech Therapy	40%	X
	Physical Therapy	40%	X
	Occupational Therapy	40%	X
	Durable medical equipment[1]	40%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

Bronze Standardized Plan

Actuarial Value	**63.5%**
Individual Deductible (Combined Medical & Drug)	$7,500
Individual Out-of-Pocket Maximum	$10,000
Family Deductible	$15,000
Family Out-of-Pocket Maximum	$20,000

Common Medical Event	Service Type	Member Cost Share (In Network)	Deductible Applies

Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	First 3 visits $0, then deductible, then $50	X
	Specialist visit	50%	X
Pregnancy	Prenatal and postnatal visits	First 3 visits $0, then deductible, then $50	X
Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Outpatient services	50%	X

	Mental/Behavioral Health and Substance Use Disorder Inpatient services	50%	X
Tests	Laboratory tests	50%	X
	X-rays and diagnostic imaging	50%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	50%	X
Drugs to treat Illness or Condition	Tier 1	$0	
	Tier 2	$30	

	Tier 3	$200	
	Tier 4	$350	
	Tier 5	$700	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	50%	X
	Physician/Surgical Services	50%	X
	Urgent care centers or facilities	50%	X

Need Immediate Attention	Emergency room services	50%	X
	Emergency medical transportation (ambulance)	50%	X
Hospital Stay	Inpatient Hospital services	50%	X
	Inpatient Physician and Surgical Services	50%	X
	Inpatient Rehabilitation Services	50%	X
	Inpatient Habilitation Services	50%	X

Help recovering or other health needs	Speech Therapy	50%	X
	Physical Therapy	50%	X
	Occupational Therapy	50%	X
	Durable medical equipment[1]	50%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing

[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this emergency regulation is imperatively necessary to comply with state and federal law, including federal regulation, and for the preservation of public health, safety, or welfare and compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interests. The Department of Health and Human Services ("HHS") released the 2026 Actuarial Value Calculator Methodology, pursuant to 45 C.F.R. § 156.135(g), on October 16, 2024. Carriers are required to use the 2026 Actuarial Value Calculator Methodology for benefit year 2026, pursuant to 45 C.F.R.§ 156.135(a). Carriers must also notify the Division of Insurance by March 1, 2025, whether they have achieved the premium rate reduction requirements for their 2026 standardized plans, pursuant to § 10-16-1306(2), C.R.S. This emergency regulation ensures that carriers have the guidance and instructions to develop and adjust their standardized plans to ensure compliance with state law, including the March 1, 2025, notification deadline under § 10-16-1306(2), C.R.S., and federal law.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2025-00054

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Insurance

on 02/14/2025

3 CCR 702-4 Series 4-2

LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)

The above-referenced rules were submitted to this office on 02/18/2025 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.

March 06, 2025 08:52:47

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

3 CCR 702-4 Series 4-2 LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General) 1 - eff 02/14/2025

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06/14/2025

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 25-E-02

CONCERNING THE METHODOLOGY FOR CALCULATING PREMIUM RATE REDUCTIONS FOR COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLANS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-109, 10-16-1304, 10-16-1305, 10-16-1306, and 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish rules for the required premium reduction methodology for the Colorado Option standardized bronze, silver and gold health benefit plans to be offered by all carriers offering individual and small group health benefits plans issued or renewed on or after January 1, 2026.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this emergency regulation is imperatively necessary to comply with state and federal law, including federal regulation, and for the preservation of public health, safety, or welfare and compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interests. The Department of Health and Human Services (“HHS”) released the 2026 Actuarial Value Calculator Methodology, pursuant to 45 C.F.R. § 156.135(g), on October 16, 2024. Carriers are required to use the 2026 Actuarial Value Calculator Methodology for benefit year 2026, pursuant to 45 C.F.R.§ 156.135(a). Carriers must also notify the Division of Insurance by March 1, 2025, whether they have achieved the premium rate reduction requirements for their 2026 standardized plans, pursuant to § 10-16-1306(2), C.R.S. This emergency regulation ensures that carriers have the guidance and instructions to develop and adjust their standardized plans to ensure compliance with state law, including the March 1, 2025, notification deadline under § 10-16-1306(2), C.R.S., and federal law.

Section 3 Applicability

This regulation applies to all carriers offering individual and small group health benefit plans subject to the individual and small group laws of Colorado and the requirements of federal law.

This regulation is applicable subject to § 10-16-1308(2)(b), C.R.S.

Section 4 Definitions

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

B. "Baseline Plan" or "2021 Baseline Plan" means, for the purposes of this regulation, the health benefit plan with the carrier's lowest 21-year-old non-tobacco use premium rate, by metal level, in the applicable county from the 2021 Benefit Year, regardless of whether the health benefit plan is sold in the entire county or a partial county. The Baseline Plan shall only consider on-Exchange health benefit plans for the Individual market and be determined prior to the impact of the Colorado reinsurance program. The Baseline Plan shall only consider off-Exchange health benefit plans for the Small Group market.

C. "Benefit Year" means, for the purposes of this regulation, the calendar year for individual health benefit plans, or the twelve month period beginning with the health benefit plan contract date for small group health benefit plans.

D. "Calibrated Plan Adjusted Index Rate" means, for the purpose of this regulation, line 3.14 on Worksheet 2 of the URRT.

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

F. "Colorado Option Standardized Plan" or "Standardized Plan" or shall have the same meaning as found at § 10-16-1303(14), C.R.S.

G. "Commissioner" shall have the same meaning as found at § 10-16-102(13), C.R.S.

H. "CSR" means, for the purposes of this regulation, a cost-sharing reduction health benefit plan variation defined in 45 C.F.R. § 156.420(a).

I. "CSR Load" means, for the purposes of this regulation, the load in the silver plan premiums necessary to cover the cost of providing the CSR benefit to qualified consumers in the on-Exchange silver health benefit plans.

J. "CPI-U" means, for the purposes of this regulation, the Consumer Price Index for all urban consumers, U.S. city average, and all items, as determined by the Bureau of Labor Statistics of the United States Department of Labor.

K. "Essential health benefits" or "EHB" shall have the same meaning as found at § 10-16-102(22), C.R.S.

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

M. "Expanded bronze" means, for the purposes of this regulation, a bronze health benefit plan that provides coverage for at least one (1) major service, other than preventive services, prior to meeting the deductible, or meets the requirements to qualify as a high deductible health plan under 26 U.S.C 223(c)(2), as established at 45 C.F.R. § 156.140(c), with a bronze actuarial value of 60%.

N. "Federal Actuarial Value Calculator" or "Federal AV Calculator" means, for the purposes of this regulation, the AV Calculator required pursuant to 45 C.F.R. § 156.135.

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

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

Q. “Healthcare coverage cooperative” shall have the same meaning as found at § 10-16-1002(2), C.R.S.

R. “Induced demand factor” means, for the purposes of this regulation, the anticipated induced demand associated with the health benefit plan’s cost sharing (metal) level.

S. “Medical Inflation” shall have the same meaning as found at § 10-16-1303(10), C.R.S.

T. “Metal Level" means, for the purposes of this regulation, the bronze, silver, and gold health benefit plans available in the individual and small group market as found at § 10-16-103.4, C.R.S.

U. “Non-EHB” means, for the purposes of this regulation, any benefit in a health benefit plan that is not an EHB as found at § 10-16-102(22), C.R.S.

V. “Plans and Benefits Template” or “PBT” means, for the purpose of this regulation, the Plans & Benefits Template created by the Centers for Medicare & Medicaid Services (CMS).

W. “Premium” shall have the same meaning as found at § 10-16-102(51), C.R.S.

X. “Reinsurance” shall have the same meaning as found at § 10-16-1103(12), C.R.S.

Y. “SERFF” means, for the purposes of this regulation, the System for Electronic Rate and Form Filing.

Z. “Supplemental Template” shall have the same meaning as found at Colorado Insurance Regulation 4-2-39 Section (6)(C)(3).

AA. “Substantially Similar Plan” means, for the purposes of this regulation, the silver level health benefit plan that is substantially similar to the on-Exchange CSR-loaded silver health benefit plan, but without the CSR load, for those off-Exchange consumers who do not qualify for advanced premium tax credits or CSRs.

AB. “URRT” means, for the purpose of this regulation, the Unified Rate Review Template created by the Centers for Medicare & Medicaid Services.

Section 5 Premium Rate Reduction Methodology for Colorado Option Standardized Health Benefit Plans

A. Pursuant to § 10-16-1305(2)(a)-(c), C.R.S., carriers offering a Standardized Plan at the bronze, silver, and gold metal levels must offer standardized plans with a premium that is reduced by a specified percent relative to their 2021 premiums, after adjustments for medical inflation. The Division will define the allowable adjustments for the calculation of the premium rate reduction methodology required for the Colorado Option. The required premium reductions are:

1. Five percent premium reduction for the Benefit Year beginning in 2023;

2. Ten percent premium reduction for the Benefit Year beginning in 2024; and

3. Fifteen percent premium reduction for the Benefit Year beginning in 2025.

B. Pursuant to § 10-16-1305(2)(d), C.R.S., for the Benefit Year beginning on or after January 1, 2026, and each year thereafter, each carrier and healthcare coverage cooperative shall limit any annual premium rate increase to a rate that is no greater than medical inflation, relative to the Maximum Colorado Option Standardized Plan Premium of the previous Benefit Year, as defined in Section 5.C.10 of this regulation.

C. The Division will calculate whether a carrier meets the premium reductions specified in Sections 5.A. and 5.B. using the following methodology.

1. Bronze and Expanded Bronze health benefit plans will be combined to determine the lowest cost premium rate for the Bronze Colorado Option Standardized Plan.

2. The 2021 Baseline Plan Unadjusted Premium will be calculated on a county, metal level, and market basis for each carrier. The 2021 Baseline Plan Unadjusted Premium will be calculated as follows:

a. For the Individual Market:

(1) 2021 Baseline Plan Unadjusted Premium =

(minimum 2021 Calibrated Plan Adjusted Index Rate offered in the county for the metal level) x (1.0 age factor) x (2021 Geographic Rating Factor for the applicable county)

(2) The Minimum 2021 Calibrated Plan Adjusted Index Rate will be determined using the carrier's 2021 "No Reinsurance" URRT.

b. For the Small Group Market:

(1) 2021 Baseline Plan Unadjusted Premium =

(minimum annual filing 2021 Calibrated Plan Adjusted Index Rate offered in the county for the metal level) x ((fourth quarter rate of 2021 Baseline Plan) / (first quarter rate of 2021 Baseline Plan)) x (1.0 age factor) x (2021 Geographic Rating Factor for the applicable county)

(2) If a carrier submitted quarterly rate filing(s) subsequent to the annual filing, the last filing submitted will be used to determine the fourth quarter rate for the Baseline plan.

3. An adjustment factor will be applied to reflect changes in the member cost sharing from the 2021 Baseline Plan to the applicable Colorado Option Standardized Plan design and underlying data changes in the 2023, 2024, 2025, and 2026 federal AV calculators, including meaningfully different changes across the various metal levels beyond the impact of claim cost and utilization trends and trend leveraging. The Changes in Member Cost Sharing Adjustment will be calculated as follows:

(Colorado Option Standardized Plan AV) x (CY2023 AV Calculator Adjustment) x (CY2024 AV Calculator Adjustment) x (CY2025 AV Calculator Adjustment) x (CY2026 AV Calculator Adjustment) x (Pricing AV Adjustment)

÷

(2021 Baseline Plan AV)

a. Colorado Option Standardized Plan AV for the applicable metal level.

b. The CY2023 AV Calculator Adjustment will be:

(1) 0.992 for Gold Metal Level Plans

(2) 0.971 for Silver Metal Level Plans

(3) 1.002 for Bronze Metal Level Plans

c. The CY2024 AV Calculator Adjustment will be:

(1) 1.017 for Gold Metal Level Plans

(2) 1.019 for Silver Metal Level Plans

(3) 1.020 for Bronze Metal Level Plans

d. The CY2025 AV Calculator Adjustment will be:

(1) 1.027 for Gold Metal Level Plans

(2) 1.040 for Silver Metal Level Plans

(3) 1.039 for Bronze Metal Level Plans

e. The CY2026 AV Calculator Adjustment will be:

(1) 1.00 for Gold Metal Level Plans

(2) 1.00 for Silver Metal Level Plans

(3) 1.00 for Bronze Metal Level Plans

f. The Pricing AV Adjustment will be consistent across carriers and determined using information provided to the Division in a data call.

g. The 2021 Baseline Plan AV will be determined by the value entered in the carrier's PBT for the 2021 Baseline Plan.

4. An adjustment factor will be applied to reflect changes in the loading applied to Individual market Silver health benefit plans for CSR payments. The CSR load will be calculated for both the Colorado Option Standardized Plan and the 2021 Baseline Plan using the ratio of the on-Exchange silver health benefit plan and the off-Exchange Substantially Similar Plan. The CSR Load Adjustment will be calculated as follows:

(Colorado Option Standardized Plan CSR Load) ÷

(2021 Baseline Plan CSR Load)

a. The Colorado Option Standardized Plan CSR Load will be calculated as follows:

(The Calibrated Plan Adjusted Index Rate for the on-Exchange Colorado Option Standardized Silver Plan ÷ (the Calibrated Plan Adjusted Index Rate of the Substantially Similar off-Exchange Colorado Option Standardized Silver Plan) x

(Substantially Similar off-Exchange Colorado Option Standardized Silver Plan Induced Demand Factor) ÷ (on-Exchange Colorado Option Standardized Silver Plan Induced Demand Factor).

b. The 2021 Baseline Plan CSR Load will be calculated using the Calibrated Plan Adjusted Index Rate for the 2021 Baseline Plan divided by the Calibrated Plan Adjusted Index Rate of the Substantially Similar off-Exchange plan of the 2021 Baseline Plan.

5. An adjustment factor will be applied to reflect changes in the Induced Demand Factor applied in 2021 and the applicable Colorado Option Standardized Plan design. The Induced Demand Factor Adjustment will be calculated as follows:

(Colorado Option Standardized Plan Induced Demand Factor) ÷

(2021 Baseline Plan Induced Demand Factor)

a. The Colorado Option Standardized Plan Induced Demand Factor will be determined by the following formula:

Colorado Option Standardized Plan Induced Demand Factor =

$1.24 - (AV) + (AV)^2$

b. The 2021 Baseline Plan Induced Demand Factor will be determined by the value supplied to the Division in a data call regarding 2021 plans. The 2021 Baseline Plan Induced Demand Factors are normalized based on the projected membership carriers assumed for the 2021 Benefit Year. To ensure the induced demand adjustment is consistent, a normalization factor will be developed and applied to the Induced Demand Factor using the formula in (a). This normalization factor will be developed separately for each carrier and ensure that the shift from carrier-specific Induced Demand Factor to the federal induced demand formula is revenue-neutral across each carrier's 2021 rate filing.

6. The Adjustment for EHB Changes of 1.0016 will be applied to reflect the changes in the EHB-benchmark plan, which will be in effect starting with the 2023 Benefit Year. This adjustment will be based on the cost impact of the benefit changes in the actuarial analysis submitted to CMS for approval of these changes.

7. If the Baseline Plan has non-EHBs not reflected in the Colorado Option Standardized Plan, an adjustment will be made based on the EHB Percent of Total Premium in the Plan & Benefits Template for 2021. Additionally, if the 2021 Baseline Plan did not include any non-EHB benefits but the carrier chooses to offer allowable non-EHB benefits in the Colorado Option Standardized Plan, an adjustment would also be made based on the EHB Percent of Total Premium in the Plan & Benefits Template for the Benefit Year. The Adjustment for non-EHB Changes will be calculated as follows:

("EHB Percent of Total Premium" for 2021 Baseline Plan) ÷

("EHB Percent of Total Premium" for the Colorado Option Standardized Plan)

a. The "EHB Percent of Total Premium" for the Colorado Option Standardized Plan will be determined by the value entered in the carrier's PBT for the Colorado Option Standardized Plan.

b. The “EHB Percent of Total Premium” for the Baseline Plan will be determined by the value entered in the carrier’s 2021 PBT.

8. The Medical Inflation Trend will be calculated as follows:

(1 + “Medical Inflation) ^ (Months of Trend/12)

a. “Medical Inflation” will be defined as the latest CPI-U for Medical Care for the Denver-Aurora-Lakewood, CO Core Based Statistical Area published 30 days prior to the issuance of a Division bulletin by June 30, 2023 for the 2024 Benefit Year, and January 1 of each year thereafter.

b. Months of Trend will be calculated as the difference between the midpoint of the Colorado Option Standardized Plan Benefit Year and the midpoint of the effective period of the 2021 Baseline Plan.

9. The Required Rate Reduction Factor will be calculated as follows:

(1 – Benefit Year Required Rate Reduction Percentage)

The Benefit Year Required Rate Reduction will equal 5% for Benefit Year 2023, 10% for Benefit Year 2024 and 15% for Benefit Years 2025 and all subsequent Benefit Years.

10. The Colorado Option Standardized Plan premium rate for a 21-year-old non-tobacco user, calculated on a county, metal level, and market basis for each carrier must be less than or equal to the Maximum Colorado Option Standardized Premium. The Maximum Colorado Option Standardized Plan Premium will be calculated as follows:

a. For Colorado Option Standardized Gold and Bronze Plans in the Individual and Small Group markets, and Colorado Option Standardized Silver Plans in the Small Group Market:

(1) Maximum Colorado Option Standardized Plan Premium =

(2021 Baseline Plan Unadjusted Premium) x (Changes in Member Cost Sharing Adjustment) x (Induced Demand Factor Adjustment) x (Adjustment for EHB Changes) x (Adjustment for non-EHB Changes) x (Medical Inflation Trend) x (Required Rate Reduction Factor)

(2) The Maximum Colorado Option Standardized Plan Premium for the Small Group Market is the maximum allowable premium for all plans commencing during the applicable benefit year, irrespective of whether the rates are based on an annual or quarterly rate filing.

b. For On-Exchange Colorado Option Standardized Silver Plans in the Individual Market:

(1) Maximum Colorado Option Standardized Plan Premium =

(2021 Baseline Plan Unadjusted Premium) x (Changes in Member Cost Sharing Adjustment) x (CSR Load Adjustment) x (Induced Demand Factor Adjustment) x (Adjustment for EHB Changes) x (Adjustment for non-EHB Changes) x (Medical Inflation Trend) x (Required Rate Reduction Factor)

(2) A separate calculation will not be required for the Off-Exchange Colorado Option Standardized Silver Plan.

c. If a carrier is offering the Standardized Plan in a county where the carrier did not sell plans in 2021, the Maximum Colorado Option Standardized Plan Premium will be the weighted average, using enrollment as of April 1, 2021, of the Maximum Colorado Option Standardized Plan Premiums, across all carriers, that offered plans in the applicable county in 2021, regardless of whether plans are sold in the entire county or a partial part of the county. If a county did not have enrollment in any plans in the applicable metal level as of April 1, 2021, the Maximum Colorado Option Standardized Plan Premium will be the average of all plans in the applicable county in 2021, regardless of whether plans are sold in the entire county or a partial part of the county. A carrier's 2021 premiums will be excluded from the calculation described in this paragraph if the carrier has exited the market nationwide since 2021.

D. Carrier-filed Colorado Option Standardized Plan premiums submitted as part of rate filings pursuant to § 10-16-1306(1), C.R.S., must be at or below the rates set forth in Section 5.C.10. in order to be compliant with the required premium rate reductions pursuant to § 10-16-1305(2), C.R.S.

Section 6 Filing Requirements

A. For premium rates applicable in 2026 or any subsequent year, carriers shall notify the Commissioner by March 1 of the preceding year whether the carrier's Colorado Option Standardized Plan will comply with the required premium rate reductions set forth in § 10-16-1305(2), C.R.S., and calculated pursuant to Section 5 of this regulation.

B**.** Format of Filings

1. Carriers shall submit the notification of whether Colorado Option Standardized Plans will meet the required premium rate reductions through the "Colorado Option Standardized Plan Premium Rate Reduction" template supplied by the Division.

2. Carriers shall submit the "Colorado Option Standardized Plan Premium Rate Reduction" template in SERFF through an "Colorado Option Rate Reduction Notice" filing. This filing shall be submitted separately from any rate, form, annual certification, binder or network adequacy filing.

3. For the Individual market, Carriers shall use January 1 of the Benefit Year for which the filing applies for the "Effective Date" in SERFF.

4. For the small group market, Carriers shall use January 1 of the Benefit Year for the annual filing period as the "Effective Date" in SERFF. For other periods, the carrier shall use April 1, July 1 or October 1 of the Benefit Year for which the filing applies for the "Effective Date" in SERFF.

5. Carriers shall use "Informational" for the "Requested Filing Mode" in SERFF.

6. Carriers shall complete the SERFF Form Schedule tab to specify the forms to which this filing applies.

7. Carriers shall provide a filing description, including the Benefit Year the filing will support.

Section 7 Severability

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

Section 8 Incorporation by Reference

45 C.F.R. § 156.420(a) published by the Government Printing Office shall mean 45 C.F.R. § 156.420(a) as published on the effective date of this regulation and does not include later amendments to or editions of 45 C.F.R. § 156.420(a). A copy of 45 C.F.R. § 156.420(a) may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 C.F.R. § 156.420(a) may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

45 C.F.R. § 156.140(c) published by the Government Printing Office shall mean 45 C.F.R. § 156.140(c) as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 156.140(c). A copy of 45 C.F.R. § 156.140(c) may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 C.F.R. § 156.140(c) may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

45 C.F.R. § 156.135 published by the Government Printing Office shall mean 45 C.F.R. § 156.135 as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 156.135. A copy of 45 C.F.R. § 156.135 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 C.F.R. § 156.135 may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

Section 9 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 10 Effective Date

This emergency regulation shall be effective February 14, 2025.

Section 11 History

Emergency regulation effective February 14, 2025.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this emergency regulation is imperatively necessary to comply with state and federal law, including federal regulation, and for the preservation of public health, safety, or welfare and compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interests. The Department of Health and Human Services ("HHS") released the 2026 Actuarial Value Calculator Methodology, pursuant to 45 C.F.R. § 156.135(g), on October 16, 2024. Carriers are required to use the 2026 Actuarial Value Calculator Methodology for benefit year 2026, pursuant to 45 C.F.R.§ 156.135(a). Carriers must also notify the Division of Insurance by March 1, 2025, whether they have achieved the premium rate reduction requirements for their 2026 standardized plans, pursuant to § 10-16-1306(2), C.R.S. This emergency regulation ensures that carriers have the guidance and instructions to develop and adjust their standardized plans to ensure compliance with state law, including the March 1, 2025, notification deadline under § 10-16-1306(2), C.R.S., and federal law.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2025-00055

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Insurance

on 02/14/2025

3 CCR 702-4 Series 4-2

LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)

The above-referenced rules were submitted to this office on 02/18/2025 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.

March 06, 2025 08:53:18

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Veterinary Medicine

CCR number

4 CCR 727-1

Rule title

4 CCR 727-1 VETERINARIAN AND VETERINARY TECHNICIAN RULES AND REGULATIONS 1 - eff 02/13/2025

Effective date

02/13/2025

Expiration date

06/13/2025

DEPARTMENT OF REGULATORY AGENCIES

State Board of Veterinary Medicine

VETERINARIAN AND VETERINARY TECHNICIAN RULES AND REGULATIONS

4 CCR 727-1

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

…

1.8 VETERINARY TECHNICIAN REGISTRATION REQUIREMENTS

…

C. Registration by Completion of Provisional Requirements

…

3. An applicant may submit a request to the Board for a hardship extension for its consideration to extend the provisional registration expiration date to a date no later than June 30, 2028.

…

D. Reinstatement Requirements for Expired Provisional Registration

1. In order to reinstate a provisional registration back into active status, each applicant shall submit a completed Board approved application along with the required registration fee and proof of current employment in the role or performing the duties of a veterinary technician including endorsement of these hours by a supervising veterinarian in order to be considered for provisional registration reinstatement approval. Each applicant must also verify that the applicant:

    a. Accurately and completely lists any acts that would be grounds for disciplinary action under the Veterinary Practice Act and provides a written explanation of the circumstances of such act, including supporting documentation, if required, since registering or last renewing their provisional registration to an active status in this state.

2. A provisional veterinary technician registration may not be reinstated after 10/31/2026.

E. Registration by Endorsement

…

F. Inactive Status and Reactivation of a Registration

…

G. Reinstatement Requirements for Expired Registration

…

H. Revocation

…

I. Renewal

…

Editor's Notes

History

Rules 1.00, 4.00 eff. 09/30/2007.
Rule 4.00 eff. 01/30/2008.
Entire rule eff. 12/30/2011.
Rule I.B eff. 08/30/2012.
Rule I.B emer. rule eff. 02/08/2013.
Rules I.A, 1.B, 1.E eff. 05/30/2013.
Rule I.A eff. 06/14/2013.
Rules I.B, II.A.17 eff. 09/30/2013.
Rule I eff. 08/14/2014.
Rules 1.2 A.8-18, 1.2 E.4, 1.2 G eff. 11/30/2019.
Rule 1.23 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.24 emer. rule eff. 05/11/2020; expired 09/08/2020.
Rule 1.23 emer. rule eff. 08/30/2020; expired 12/28/2020.
Rule 1.24 emer. rule eff. 09/09/2020.
Entire rule eff. 10/15/2020.
Rule 1.10 B eff. 12/15/2020.
Rules 1.24, 1.25 emer. rules eff. 12/28/2020.
Rule 1.25 emer. rule eff. 01/11/2021.
Rules 1.4 E-F, 1.12 C eff. 04/14/2021.
Rules 1.24, 1.25 emer. rules eff. 04/27/2021.
Rule 1.25 emer. rule eff. 05/11/2021.
Rules 1.24, 1.25 emer. rules eff. 07/12/2021.
Rule 1.26 emer. rule eff. 11/01/2021.
Rules 1.24, 1.25 emer. rules eff. 11/02/2021.
Rules 1.17 C.1, 1.26 eff. 11/30/2021.
Rules 1.24, 1.25 emer. rules eff. 03/02/2022.
Rules 1.24, 1.25 emer. rules eff. 06/28/2022.
Rules 1.21, 1.22 emer. rules eff. 10/13/2022.
Rules 1.18, 1.19 emer. rules eff. 10/26/2022.
Rules 1.18, 1.19 emer. rules eff. 11/11/2022.
Rules 1.2-1.10, 1.12-1.22 eff. 12/15/2022.
Rules 1.18, 1.19 emer. rules eff. 01/09/2023; expired 05/09/2023.

Rule 1.11 eff. 04/14/2023.

Rules 1.21, 1.22 repealed, rule 1.20 renumbered as 1.18 eff. 11/30/2023.

Annotations

Rules 1.22 B. and 1.22 C. (adopted 10/13/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

JUSTIFICATION for EMERGENCY RULES

Justification for Emergency Justification

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Regulator, as defined in section 12-20-102(14), C.R.S., hereby finds the immediate adoption of these emergency rules is imperatively necessary to revise the current rules related to reinstatement requirements for expired Provisional Veterinary Technician or PVT registrations. The adoption of emergency rules is imperatively necessary to for the preservation of public health, safety or welfare and compliance with the requirements of section 24-4-103(3), C.R.S., would have been contrary to the public interest.

The Regulator finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect February 13, 2025, and remain in effect for up to a maximum of 120 days after adoption of these temporary/emergency rules.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2025-00046

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Veterinary Medicine

on 02/13/2025

4 CCR 727-1

VETERINARIAN AND VETERINARY TECHNICIAN RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 02/13/2025 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.

March 05, 2025 08:22:26

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Office of Combative Sports

CCR number

4 CCR 740-1

Rule title

4 CCR 740-1 COMBATIVE SPORTS RULES AND REGULATIONS 1 - eff 02/19/2025

Effective date

02/19/2025

Expiration date

06/19/2025

DEPARTMENT OF REGULATORY AGENCIES

Colorado Office of Combative Sports and Colorado Combative Sports Commission

COMBATIVE SPORTS RULES AND REGULATIONS

4 CCR 740-1

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

…

1.3 APPLICABILITY

…

The standards and regulations incorporated by reference may be examined at the Colorado Office of Combative Sports and Colorado Combative Sports Commission, 1560 Broadway, Suite 1350, Denver, Colorado 80202, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at cost upon request. The Director or the Director's designee will provide information regarding how the incorporated standards and regulations may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rules as follows: Association of Boxing Commissions and Combative Sports (https://www.abcboxing.com/wp-content/uploads/2024/07/unified-mma-rules-rev-july-2024.pdf (effective November 1, 2024,)) and the Association of Boxing Commissions and Combative Sports (https://www.abcboxing.com/unified-rules-kickboxing (effective July 26, 2017)). This rule does not include any later amendments or editions of the code, standard, guideline, or rules.

…

1.9 REQUIREMENT FOR PROFESSIONAL KICKBOXING AND MUAY THAI PARTICIPANTS

This Rule is promulgated pursuant to section 12-110-107, C.R.S.

A. CONDUCT OF KICKBOXING AND MUAY THAI EVENTS – RULES AND PROCEDURES

…

The standards and regulations incorporated by reference may be examined at the Colorado Office of Combative Sports and Colorado Combative Sports Commission, 1560 Broadway, Suite 1350, Denver, Colorado 80202, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at cost upon request. The Director or the Director's designee will provide information regarding how the incorporated standards and regulations may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rules as follows: Association of Boxing Commissions and Combative Sports (https://www.abcboxing.com/wp-content/uploads/2024/07/unified-mma-rules-rev-july-2024.pdf (effective November 1, 2024)) and the Association of Boxing Commissions and Combative Sports (https://www.abcboxing.com/unified-rules-kickboxing (effective July 26, 2017)). This rule does not include any later amendments or editions of the code, standard, guideline, or rules.

…

1.10 REQUIREMENTS FOR PROFESSIONAL MIXED MARTIAL ARTS (MMA) AND MARTIAL ARTS (MA) PARTICIPANTS

This Rule is promulgated pursuant to section 12-110-107, C.R.S.

A. RULES AND PROCEDURES

…

The standards and regulations incorporated by reference may be examined at the Colorado Office of Combative Sports and Colorado Combative Sports Commission, 1560 Broadway, Suite 1350, Denver, Colorado 80202, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at cost upon request. The Director or the Director's designee will provide information regarding how the incorporated standards and regulations may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rules as follows: Association of Boxing Commissions and Combative Sports (https://www.abcboxing.com/wp-content/uploads/2024/07/unified-mma-rules-rev-july-2024.pdf (effective November 1, 2024)) and the Association of Boxing Commissions and Combative Sports (https://www.abcboxing.com/unified- rules-kickboxing (effective July 26, 2017)). This rule does not include any later amendments or editions of the code, standard, guideline, or rules.

1.17 REQUIREMENTS FOR ELIMINATION BOUTS

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G. WEIGHT CLASSES

…

d. Mixed Martial Arts: The Commission adopts by reference the Association of Boxing Commissions and Combative Sports Unified Rules of Mixed Martial Arts regarding weight categories (https://www.abcboxing.com/wp-content/uploads/2024/07/unified-mma-rules-rev-july-2024.pdf (effective November 1, 2024)).

The standards and regulations incorporated by reference may be examined at the Colorado Office of Combative Sports and Colorado Combative Sports Commission, 1560 Broadway, Suite 1350, Denver, Colorado 80202, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at cost upon request. The Director or the Director's designee will provide information regarding how the incorporated standards and regulations may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rules as follows: Association of Boxing Commissions and Combative Sports (https://www.abcboxing.com/wp-content/uploads/2024/07/unified-mma-rules-rev-july-2024.pdf (effective November 1, 2024)) and the Association of Boxing Commissions and Combative Sports (https://www.abcboxing.com/unified-rules-kickboxing (effective July 26, 2017)).
This Rule does not include any later amendments or editions of the code, standard, guideline, or rules.

H. ELIMINATION RULES FOR BOXING, KICKBOXING, MUAY THAI AND MIXED MARTIAL ARTS

…

4. Unless specifically modified elsewhere under these rules, the Commission adopts by

reference the Association of Boxing Commissions and Combative Sports Unified Rules of Mixed Martial Arts (https://www.abcboxing.com/wp-content/uploads/2024/07/unified-mma-rules-rev-july-2024.pdf (effective November 1, 2024)).

The standards and regulations incorporated by reference may be examined at the Colorado Office of Combative Sports and Colorado Combative Sports Commission, 1560 Broadway, Suite 1350, Denver, Colorado 80202, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at cost upon request. The Director or the Director's designee will provide information regarding how the incorporated standards and regulations may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rules as follows: Association of Boxing Commissions and Combative Sports (https://www.abcboxing.com/wp-content/uploads/2024/07/unified-mma-rules-rev-july-2024.pdff (effective November 1, 2024)) and the Association of Boxing Commissions and Combative Sports (https://www.abcboxing.com/unified-rules-kickboxing (effective July 26, 2017)). This Rule does not include any later amendments or editions of the code, standard, guideline, or rules.

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Editor's Notes

History

Rule 1.018 emer. rule eff. 09/24/2010; expired eff. 01/22/2011.

Entire rule eff. 09/01/2011.

Rules 1.1, 1.5, 2.6, 2.8, 2.9, 2.11, 3.2, 3.6, 5.11, 7.6, 12.4, 13.2, 13.3, 14.1 eff. 07/01/2016.

Entire rule eff. 07/01/2018.

Rules 1.1, 1.2, 1.7, 1.8, 2.5, 2.9-2.20, 3.3, 3.4, 5.1, Chapters 6-7, rules 8.6-8.13, 11.3 D.ix, 13.2, 13.3, 13.7-13.9, 14.1, 14.15-14.17 emer. rules eff. 06/18/2019.

Rules 1.1, 1.2, 1.7, 1.8, 2.1, 2.5, 2.9-2.20, 3.3, 3.4, 5.1, 5.4, 6.1-6.5, 7.1, 7.2, 8.6-8.13, 10.1, 11.3, 12.2-12.4, 13.1-13.9, 14.1, 14.2 D, 14.15-14.17 eff. 12/30/2019.

Entire rule eff. 05/30/2021.

Rule 1.4 K.2 eff. 11/30/2021.

Rule 1.18 emer. rule eff. 10/12/2022.

Rules 1.3, 1.6 F.6, 1.8 B, 1.10 A, 1.11 A, 1.12 D.4.b, 1.12 E.1, 1.13 A.11, 1.14 C.6.a, 1.16 D.1, 1.16 G.1.d, 1.16 H.4, 1.17 U, 1.18 eff. 11/30/2022.

Rules 1.3, 1.4 A, 1.4 D, 1.4 F, 1.5 D.2, 1.5 E, 1.6 D-I, 1.7 F, 1.8 D, 1.8 O, 1.11-1.18 eff. 10/15/2024. Rule 1.18 repealed eff. 10/15/2024.

Rules 1.3, 1.9 A, 1.10 A, 1.17 G.1.d, 1.17 H.4 emer. rules eff. 11/01/2024.

Annotations

Rules 1.18 B. and 1.18 C. (adopted 10/12/2022) were not extended by Senate Bill 23-102 and therefore expired 05/15/2023.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

JUSTIFICATION for EMERGENCY RULES

Justification for Emergency Rules

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Regulator, as defined in section 12-20-102(14), C.R.S., hereby finds the immediate adoption of these emergency rules is imperatively necessary to bring the rules into conformation with the *improved* recent safety standards promulgated by the Association of Boxing Commissions and Combative Sports as codified in the Unified Rules of Mixed Martial Arts. The adoption of emergency rules is imperatively necessary for the preservation of public health, safety or welfare and compliance with the requirements of section 24-4-103(3), C.R.S., would have been contrary to the public interest.

The Regulator finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect February 19, 2025, and remain in effect for up to a maximum of 120 days after adoption of these temporary/emergency rules.

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2025-00056

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Office of Combative Sports

on 02/19/2025

4 CCR 740-1

COMBATIVE SPORTS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 02/19/2025 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.

March 10, 2025 12:56:52

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General

Terminated Rulemaking

Department

Department of Law

Agency

Peace Officer Standards and Training Board

CCR number

4 CCR 901-1

Tracking number

2025-00032

Termination date

03/03/2025

Reason for termination

Date of meeting changed.

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 03/11/2025

Department

Department of Human Services

Agency

State Board of Human Services (Volume 12; Special Projects)

SCHEDULE FOR COMPREHENSIVE REVIEW OF RULES

Senate Bill 14-063 requires each Principal Department to conduct a review of its rules to assess the continuing need for, and the appropriateness and cost effectiveness of, its rules to determine if they should be continued in their current form, modified, or repealed. See 24-4-103.3, C.R. S.

The bill sets forth a list of considerations in conducting the review, including:

1. Whether the rule is necessary;
2. Whether the rule overlaps or duplicates other rules of the agency or with other federal, state, or local government rules;
3. Whether the rule is written in plain language and is easy to understand;
4. Whether the rule has achieved the desired intent and whether more or less regulation is necessary;
5. Whether the rule can be amended to give more flexibility, reduce regulatory burdens, or reduce unnecessary paperwork or steps while maintaining its benefits;
6. Whether the rule is implemented in an efficient and effective manner, including the requirements for the issuance of permits and licenses;
7. Whether a cost-benefit analysis was performed by the applicable rule making agency or official in the principal department pursuant to Section 24-4-103 (2.5); and
8. Whether the rule is adequate for the protection of the safety, health, and welfare of the state or its residents.

The below table summarizes the proposed 2025-2029 Department of Human Services' (CDHS) schedule to review all of CDHS rules between April 2025 and November 2029. CDHS will be open to accepting feedback on rules at any time. For each year 2025-2029, CDHS will follow the below schedule, reviewing rules in the sequence as depicted in the below table:

- **April 7 - May 7** - CDHS will post a notice that it will begin accepting and considering feedback based on submissions by stakeholders of the stakeholder feedback form found on the last page of this document.
- **May 8 - September** - CDHS staff will review rules as designated in the below table pursuant to 24-4-103.3, C.R.S., as detailed above.
- **November 1** - CDHS will file its annual Regulatory Agenda, Report, and Results of Rule Review, as required by 2-7-203(4), C.R.S.

CDHS will continue to review rules as requested from feedback. As always, if there is a constituent requesting a rule to be reviewed they would need to submit the following Stakeholder Feedback form.

Review Year 2025		
Rule Series	**Volume Title**	**CCR Title**
2 CCR 502-1	Behavioral Health	BEHAVIORAL HEALTH
2 CCR 502-5	Behavioral Health	BEHAVIORAL HEALTH EXECUTIVE DIRECTOR RULES
2 CCR 502-6	Behavioral Health	BEHAVIORAL HEALTH ADMINISTRATIVE RULES
2 CCR 504-1	Division of Youth Corrections	PARENTAL FEE ASSESSMENT
2 CCR 505-1	Office of Civil and Forensic Mental Health	CIVIL AND FORENSIC MENTAL HEALTH
9 CCR 2501-1	Human Services Administration (Volume 1)	RULE MANUAL VOLUME 1, GENERAL POLICIES AND ADMINISTRATION
9 CCR 2502-1	County Personnel and Merit System (Volume 2)	RULE MANUAL VOLUME 2, COUNTY PERSONNEL RULES

Review Year 2026		
Rule Series	**Volume Title**	**CCR Title**
9 CCR 2503-3	Income Maintenance (Volume 3)	COLORADO REFUGEE SERVICES PROGRAM (CRSP)
9 CCR 2503-5	Income Maintenance (Volume 3)	ADULT FINANCIAL PROGRAMS
9 CCR 2503-6	Income Maintenance (Volume 3)	COLORADO WORKS PROGRAM
9 CCR 2503-7	Income Maintenance (Volume 3)	LOW-INCOME ENERGY ASSISTANCE PROGRAMS

Review Year 2026		
		(LEAP)
9 CCR 2503-8	Income Maintenance (Volume 3)	ADMINISTRATIVE PROCEDURES FOR THE COLORADO CHILD CARE ASSISTANCE PROGRAM
9 CCR 2503-10	Income Maintenance (Volume 3)	ENERGY-ELECTRONIC BENEFIT TRANSFER (E-EBT)

Review Year 2027		
Rule Series	**Volume Title**	**CCR Title**
9 CCR 2504-1	Child Support Services (Volume 6)	RULE MANUAL VOLUME 6, CHILD SUPPORT SERVICES RULES
10 CCR 2506-1	Supplemental Nutrition Assistance Program (SNAP)	RULE MANUAL VOLUME 4, SNAP
11 CCR 2508-1	County Finance and Accounting, Executive Director Rules (Volume 5)	RULE MANUAL VOLUME 5, FINANCE AND ACCOUNTING RULES
12 CCR 2509-1	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	OVERVIEW OF CHILD WELFARE SERVICES
12 CCR 2509-2	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	REFERRAL AND ASSESSMENT
12 CCR 2509-3	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS
12 CCR 2509-4	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	CHILD WELFARE SERVICES

Review Year 2028		
Rule Series	**Volume Title**	**CCR Title**
12 CCR 2509-5	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS
12 CCR 2509-6	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	RESOURCE DEVELOPMENT
12 CCR 2509-7	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	COUNTY RESPONSIBILITIES, STAFF TRAINING AND QUALIFICATIONS,
12 CCR 2509-8	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	CHILD CARE FACILITY LICENSING
12 CCR 2509-9	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	EARLY CHILDHOOD
12 CCR 2510-1	Services for the Aging (Volume 10; Older Americans Act (OAA) Programs)	RULE MANUAL VOLUME 10, OLDER AMERICANS ACT (OAA) PROGRAMS

Review Year 2029		
Rule Series	**Volume Title**	**CCR Title**
12 CCR 2511-1	State and Veterans Nursing Homes (Volume 11)	RULE MANUAL VOLUME 11, STATE AND VETERANS NURSING HOMES
12 CCR 2512-2	State Board of Human Services (Volume 12; Special Projects)	RULE MANUAL VOLUME 12, SPECIAL PROJECTS

Review Year 2029		
12 CCR 2515-1	Adoption Intermediary Commission	ADOPTION CONFIDENTIAL INTERMEDIARIES
12 CCR 2516-1	Commission for the Deaf, Hard of Hearing, and DeafBlind (Volume 27)	RULE MANUAL 27, COMMISSION FOR THE DEAF, HARD OF HEARING, AND DEAFBLIND
12 CCR 2517-1	Juvenile Parole Board	JUVENILE PAROLE BOARD
12 CCR 2518-1	Adult Protective Services	ADULT PROTECTIVE SERVICES

STAKEHOLDER FEEDBACK FORM

Email completed form to kyle.zinth@state.co.us

Name:
Organization/Affiliation:
Address:
Email Address:
Date:

These comments concern the Colorado Code of Regulations Rule No. _____ Sections _____

1) Is the regulation required by federal or state law? ___ Yes ___ No ___ Don't know

2) Is the regulation language duplicative, outdated, confusing or inconsistent? ___ Yes or ___ No
If you responded "yes," provide recommended revisions to make the regulation current, clear and concise:

3) Does the regulation adequately protect the health, safety, and welfare of Colorado and its residents? Has the regulation achieved the desired intent or could the purpose be accomplished with less regulation or less impact on business, small business, local government and individuals? If so, how?

4) Is the regulation implemented in an efficient and effective manner, including requirements for the issuance of any permits or licenses?

5) If there is a better, cheaper, or faster approach to accomplishing the purpose of the regulation, what is it? For rules promulgated after July 1, 2014, if a cost-benefit analysis was completed, use that information when determining whether the rule should continue in its current form, be revised or be repealed.

Additional comments:

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 03/20/2025

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC COMMENT HEARING

Regarding:

Holly Energy Partners – Operating, L.P. – Denver Products Terminal
Title V Operating Permit Modifications (96OPAD172)

SUBJECT:
The Colorado Air Quality Control Commission will hold a public hearing to elicit and record comments on the proposed modifications of the Title V Operating Permit for the Denver Products Terminal located at 8581 East 96th Avenue, Henderson, 80640, in Adams County, Colorado.

This facility is a Petroleum Products Marketing Terminal. The modifications associated with this revision to the operating permit include an increase in the throughput limits for gasoline and ethanol, a change in Tank 9 from gasoline to diesel service, conversion of Tank 3 to an internal floating roof, the addition of fugitive components, and updates to the facility potential-to-emit for volatile organic compounds (VOC) based on the storage of lower vapor pressure gasoline products and the addition of fugitive loading losses. The requested modifications will result in the following changes to permitted facility-wide emissions limits: an increase in NOx of 9.5 tons per year, an increase in CO of 23.6 tons per year, and a decrease in VOC of 13.1 tons per year.

Section 25-7-114.5(6)(b) of the Colorado Revised Statutes provides an opportunity for any interested person to provide comments on the sufficiency of the proposed modifications to the operating permit and accompanying documents and whether the permit application should be approved, denied, or modified. Comments from the public are invited regarding the scope of the modifications of the operating permit for the Denver Products Terminal in Adams County, Colorado. Instructions for providing public comment are provided within this notice and must be followed so the comments may be properly received and recorded into the hearing record.

All required documents for this public comment hearing including this Hearing Notice can be viewed at the Adams County Clerk's Office at 4430 South Adams County Parkway, 1st Floor Suite E2400, Brighton CO 80601, Phone: 720-523-6020 during regular business hours. Those same documents may also be viewed at the offices of the Colorado Department of Public Health and Environment, Air Pollution Control Division at 4300 Cherry Creek Drive South, Glendale, Colorado 80246, and they may also be found under the link to the Holly Energy Partners – Operating, L.P. – Denver Products Terminal on the website at: https://cdphe.colorado.gov/apens-and-air-permits/air-permit-public-notices

PARTY STATUS:
This is not a notice for rulemaking hearing and the Commission will not consider party status requests.

HEARING SCHEDULE:
The Air Quality Control Commission hearing will be held virtually over Zoom. There will be no in-person participation. For more information on virtual meetings, please refer to the Air Quality Control Commission website https://cdphe.colorado.gov/aqcc. These hearings will be recorded.

DATE: Thursday, April 24, 2025
TIME: 6:00 p.m. – 8:00 p.m.
The public comment hearing will begin at 6:00 p.m., and the hearing will conclude by 8:00 p.m. or earlier if all who wish to speak have been heard.

Meeting Registration Link: Holly Energy Partners Public Comment Hearing

To provide public comment you must register using the appropriate Zoom link provided above. The Commission hearing officer will set reasonable time limits for all oral statements.

Public comment registration will close once the allotted time is filled. If the time has not been fully booked, registration will close 24 hours prior to the start of the meeting. Interested persons registering to provide public comment will be listed on the commission's website in the Holly Energy Partners Public Comment Hearing folder.

IMPORTANT: The purpose of the public comment hearing is to solicit comments regarding the modifications of the operating permit. **Public comments on air quality issues not related to the modifying of the Title V operating permit will not be accepted into the record.**

PUBLIC PARTICIPATION ENCOURAGED:
The Commission encourages all interested persons to provide their written comments in advance of the hearing and oral comments during the hearing. The Commission encourages that all written comments, handouts, or exhibits be submitted by April 18, 2025, so that the Hearing Officer has the opportunity to review the information prior to the hearing. However, written comments will be accepted by the Commission up to the close of the public comment hearing.

PROCEDURAL MATTERS:
Submissions to the Commission should include your name and the name of the group or organization that you may be representing (if applicable).

Electronic submissions are to be emailed to: cdphe.aqcc@state.co.us

Written submissions are to be mailed to:

Colorado Air Quality Control Commission
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, EDO-AQCC-A5
Denver, Colorado 80246

The Commission has the discretion to provide additional time after the hearing for the submission of additional written public comments.

The Commission will not take action or issue rulings during the hearing.

Dated this 20th day of March, 2025, at Denver, Colorado.

Colorado Air Quality Control Commission

Jojo La, Administrator

Calendar of Hearings

Hearing Date/Time	Agency	Location
04/17/2025 09:15 AM	Division of Gaming - Rules promulgated by Gaming Commission	1707 Cole Blvd, Suite 300, Redrocks Conference Room, Lakewood, CO 80401, and virtually
04/15/2025 01:00 PM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver, CO 80202
04/15/2025 01:00 PM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver, CO 80202
04/15/2025 01:00 PM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver, CO 80202
04/23/2025 09:00 AM	Division of Professions and Occupations - State Board of Nursing	Webinar only - See below
04/18/2025 09:30 AM	Division of Professions and Occupations - Board of Marriage and Family Therapist Examiners	Webinar only - See below
04/14/2025 03:00 PM	Division of Family and Medical Leave Insurance	https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1
04/14/2025 03:00 PM	Division of Family and Medical Leave Insurance	https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1
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04/14/2025 03:00 PM	Division of Family and Medical Leave Insurance	https://us02web.zoom.us/j/81888254260?pwd=5uAD9mmVoRZqyHFJUKyJd9Dpz8FjCG.1
04/24/2025 09:00 AM	Inspection and Consumer Services Division	Zoom - link in hearing notice
04/18/2025 09:00 AM	Conservation Services Division	Zoom - link in hearing notice