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Introduction

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

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

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

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

Notice of Proposed Rulemaking

Tracking number

2016-00362

Department

300 - Department of Education

Agency

303 - Division of Public School Capital Construction Assistance

CCR number

1 CCR 303-1

Rule title

RULES PERTAINING TO THE ADMINISTRATION OF THE PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE BOARD

Rulemaking Hearing

Date

09/28/2016

Time

01:00 PM

Location

201 East Colfax

Subjects and issues involved

The Public School Capital Construction Guidelines are being updated to include the latest agency oversight updates to include the Division of Fire Prevention and Control and The Department of Health and Environment. The updates also include the current design parameters for mechanical, electrical, plumbing, security and technology.

Statutory authority

Pursuant to 22-43.7-106(2)(i)(I) C.R.S.& HB 08-1335 the Public School Capital Construction Assistance Board (Assistance Board) shall provide a copy of any proposed Assistance Board rule to the State Board on or before the date on which the Assistance Board issues a notice of proposed rule-making.

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COLORADO DEPARTMENT OF EDUCATION

DIVISION OF PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE

1 CCR 303(1)

PUBLIC SCHOOL FACILITY CONSTRUCTION GUIDELINES

Article 1 – Purpose and Authority to Promulgate Rules

1.1. Purpose

1.1.1. Section 22-43.7-107(1)(a), C.R.S. states, The board shall establish public school facility construction guidelines for use by the board in assessing and prioritizing public school capital construction needs throughout the state as required by section 22-43.7-108, C.R.S. reviewing applications for financial assistance, and making recommendations to the state board regarding appropriate allocation of awards of financial assistance from the assistance fund only to applicants. The board shall establish the guidelines in rules promulgated in accordance with article 4 of title 24, C.R.S.

1.1.2. Section 22-43.7-107(1)(b), C.R.S. states, It is the intent of the general assembly that the Public School Facility Construction Guidelines established by the board be used only for the purposes specified in section 1.1.1 above.

1.1.3. The Public School Facility Construction Guidelines shall identify and describe the capital construction, renovation, and equipment needs in public school facilities and means of addressing those needs that will provide educational and safety benefits at a reasonable cost.

1.2. Statutory Authority

1.2.1. Section 22-43.7-106(2)(i)(I) C.R.S. states, the board may promulgate rules in accordance with article 4 of title 24, C.R.S. The board is directed to establish Public School Facility Construction Guidelines in rule pursuant to 22-43.7-107(1)(a), C.R.S.

Article 2 – Definitions

2.1. The definitions provided in 22-43.7-103, C.R.S., shall apply to these rules. The following additional definitions shall also apply:

"C.R.S." means Colorado Revised Statutes.

"ES" means Elementary School.

"F.T.E.s" means Full Time Equivalent Students.

"Gross Square Feet (GSF)" means the total area of the building (inclusive of all levels as applicable) of a building within the outside faces of the exterior walls, including all vertical circulation and other shaft (HVAC) areas connecting one floor to another.

"Guidelines" means the Public School Facility Construction Guidelines.

"Historical significance" means having importance in the history, architecture, archaeology, or culture of this state or any political subdivision thereof or of the United States, as determined by the state historical society.

"HS" means High School.

"K12" means Kindergarten through 12th Grade School that is under all one facility / campus.

"MS" means Middle School.

"SF" means Square Foot.

"S.T.E.M." means Science, Technology, Engineering, & Mathematics.

Article 3 – Codes, Documents and Standards incorporated by reference

3.1. The following materials are incorporated by reference within the Public School Facility Construction Guidelines:

3.1.1. ASHRAE 90.1-2013 Energy Standard for Buildings Except Low-Rise Residential Buildings.

3.1.2. ASHRAE Standard Benchmark Energy Utilization Index (October 2009).

3.1.3. ASHRAE Standard 189.1 - 2011 Standard for the Design of High-Performance Green Buildings.

3.1.4. ANSI/ASA S12.60-2010/ Part 1, Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools, Part 1 Permanent Schools

3.1.5. International Code Council's International Plumbing Code (2015) amended by Rules and Regulations of the Colorado State Plumbing Board 3 CCR 720-1, 2016-4-1

3.1.6. National Fire Protection Association (NFPA) 70: National Electrical Code (2014).

3.1.7. National Fire Protection Association (NFPA) 13: Standard for the Installation of Sprinkler Systems, 2013 Edition

3.1.8. ~~LEED 2009 for Schools New Construction and Major Renovations.~~

3.1.9. ~~CO-CHPS Criteria for New Construction and Major Modernizations (2009).~~

3.1.10. ~~ASHRAE Standard 62.1-2013 Ventilation for Acceptable Indoor Air Quality (2013).~~

3.1.11. ~~Environmental Protection Agency's Safe Water Drinking Act (1996).~~

3.1.12. National Fire Protection Association (NFPA) 72: National Fire Alarm and Signaling Code, 2013 Edition.

3.1.13. National Fire Protection Association (NFPA) 80: Standard for Fire Doors and Other Opening Protectives, 2016 Edition

3.1.14. ASHRAE Standard 62.1-2013 Ventilation for Acceptable Indoor Air Quality (2013).

3.1.15. Colorado Department of Public Health and Environment which references Air Quality, Hazardous Waste, Public and environmental health, Radiation Control, Solid Waste and Water Quality. ~~Environmental Protection Agency's Safe Water Drinking Act (1996).~~

3.1.16. International Fire Code (IFC) – 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.), including Appendices B and C.

3.1.17. International Mechanical Code - 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.)

3.1.18. International Energy Conservation Code (IECC) - 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.)

3.1.19. International Existing Building Code – 2015 Edition, First Printing: May 2014 (Copyright 201 by International Code Council, Inc. - Washington, D.C.)

3.1.20. All projects shall be constructed and maintained in accordance with the codes and regulations as currently adopted by the Colorado Division of Fire Prevention & Control which incorporates current building, fire, existing building, mechanical, and energy conservation codes.

3.2. The Division shall maintain copies of the complete texts of the referenced incorporated materials, which are available for public inspection during regular business hours with copies available at a reasonable charge. Interested parties may inspect the referenced incorporated materials by contacting the Director of the Division of Public School Capital Construction Assistance, 1580 Logan Street, Suite 310, Denver, Colorado 80203.

3.3. This rule does not include later amendments or editions of the incorporated material.

Article 4 - These Guidelines are not mandatory standards to be imposed on school districts, charter schools, institute charter schools, the boards of cooperative services or the Colorado School for the Deaf and Blind. As required by statute, the Guidelines address:

4.1 Health and safety issues, including security needs and all applicable health, safety and environmental codes and standards as required by state and federal law. Public school facility accessibility.

4.1.1 **Sound building structures.** Each building should be constructed and maintained with sound structural foundation, floor, wall and roof systems.

4.1.1.1 - All building structures shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30. ~~IBC 2015 and ANSI S12.60, Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools.~~

4.1.2 **Classroom Acoustics**. To address issues of reverberation time and background noise in classrooms refer to ANSI/ASA S12.60-2010/ Part 1, American National Standard Acoustical Performance Criteria, Design Requirements, and Guidelines for Schools, Part 1: Permanent Schools.

4.1.3 **Roofs.** A weather-tight roof that drains water positively off the roof and discharges the water off and away from the building. All roofs shall be installed by a qualified contractor who is approved by the roofing manufacturer to install the specified roof system and shall receive the specified warranty upon completion of the roof. The National Roofing Contractors Association divides roofing into two generic classifications: low-slope roofing and steep-slope roofing. Low-slope roofing includes water impermeable, or weatherproof types of roof membranes installed on slopes of less than or equal to 3:12 (fourteen degrees). Steep slope roofing includes water-shedding types of roof coverings installed on slopes exceeding 3:12 (fourteen degrees).

4.1.3.1 - Low slope roofing systems:

4.1.3.1.1 - Built-up – minimum 4 ply, type IV fiberglass felt, asphalt BUR system. Gravel or cap sheet surfacing required.

4.1.3.1.2 - Ethylene Propylene Diene Monomer - minimum 60 mil EPDM membrane, with a ballasted or adhered system.

4.1.3.1.3 - Poly Vinyl Chloride - minimum 60 mil PVC membrane adhered or mechanically attached systems.

4.1.3.1.4 - Thermal Polyolefin - minimum 60 mil membrane adhered or mechanically attached systems.

4.1.3.1.5 - Polymer-modified bitumen sheet membrane - Styrene-Butadiene-Styrene (SBS) membranes only, to be used only as a component of a built-up system noted above.

4.1.3.2 - Steep slope roofing systems:

4.1.3.2.1- Asphalt shingles - minimum 50 year spec asphalt shingles, UL Class A.

4.1.3.2.2- Clay tile and concrete tile - minimum 50 year spec clay or concrete tile, UL Class A.

4.1.3.2.3- Metal roof systems for steep-slope applications - minimum 24 gage prefinished steel, standing seam roof system with a minimum 1.5" seam height.

4.1.3.2.4- Slate - ¼" minimum thickness, 50 year spec. UL Class A.

4.1.3.2.5- Synthetic shingles - minimum 50 year spec, UL Class A.

4.1.4 **Electrical ~~and distribution systems~~ Systems – Power Distribution and Utilization.** Safe and secure electrical service and distribution systems shall be designed and installed to meet the ~~National Fire Protection Association 70: National Electrical Code (2014)~~ National Electrical Code (NEC, NFPA 70); edition as enforced by the Colorado State Buildings Programs (SBP), unless otherwise more stringent based on local Authority Having Jurisdiction (AHJ), and ANSI/ASHRAE/IES Standard 90.1-2013 ~~"~~Energy Standard for Buildings Except Low-Rise Residential Buildings~~"~~.

4.1.4.1 – Energy use intensity should not exceed the U.S. Department of Energy (DOE) building benchmarks, and shall conform to ASHRAE Standard Benchmark Energy Utilization Index (October 2009).

4.1.4.2 - Emergency lighting shall operate when normal lighting systems fail in locations and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.5 **Lighting Systems.** Lighting systems shall be designed and installed to achieve appropriate lighting levels utilizing energy-efficient lighting fixtures and energy-saving automatic and manual control systems.

4.1.5.1 **-** Lighting systems shall be designed and installed to meet the National Electrical Code (NEC, NFPA 70) edition as enforced by the Colorado State Buildings Programs (SBP), unless otherwise more stringent based on local Authority Having Jurisdiction (AHJ).

4.1.5.2 **–** Illuminance levels shall meet the requirements for applicable spaces as recommended within in the Illuminating Engineering Society (IES) Handbook, and dictated by the Rules and Regulations Governing Schools in the State of Colorado 6 CCR 1010-6.

4.1.5.3 **–** Lighting power density shall not exceed the values indicated in ANSI/ASHRAE/IES Standard 90.1-2013.

4.1.5.4 **-** Lighting Control Systems shall be provided to comply with ANSI/ASHRAE/IES Standard 90.1-2013.

~~4.1.6~~ **Mechanical ~~systems.~~ Systems – Heating, Ventilation, and Air Conditioning (HVAC).** ~~A s~~Safe and energy efficient mechanical systems ~~that~~ shall be designed and installed to provide~~s~~ proper ventilation, ~~proper sound levels~~ and maintain~~s~~ the building temperature and relative humidity~~.~~,while achieving appropriate sound levels. ~~The mechanical system shall be designed, maintained and installed utilizing current State and Federal building codes, and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.~~

4.1.6.1 – Mechanical systems shall be designed and installed to meet the International Mechanical Code, International Fuel Gas Code, International Building Code, and other Codes as adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507.

4.1.6.2 - Healthy building indoor air quality (IAQ) shall be provided through the use of the mechanical heating, ventilation and air conditioning (HVAC) systems, or by operable windows, and by reducing air infiltration and water penetration with a tight building envelope~~.~~, in compliance with the enforced International Building Code and ASHRAE Standard 62. 1- 2013.

4.1.6.3 - Mechanical systems shall comply with: ASHRAE Standard 62.1-2013 Ventilation for Acceptable Indoor Air Quality, ASHRAE Standard 90.1-2013 Energy Standard for Buildings Except Low-Rise Residential Buildings, and ASHRAE Standard 189.1-2014 Standard for the Design of High-Performance Green Buildings.

4.1.6.4 Sound levels due to mechanical equipment shall comply with Occupational Safety & Health Administration Standard 1910.95 and ANSI/ASA Standard S12.60-2010 Part 1 for acoustical considerations within school facilities.

4.1.7 **Plumbing Systems.** ~~A potable water source and supply system that complies with the Colorado Primary Drinking Water Regulations, 5 CCR 1003-1,~~ Waste Water, Storm water, Domestic Water and Plumbing Supporting HVAC shall be in compliance with Division of Fire Prevention and Control in 8 CCR1507 and the Colorado Department of Health & Environment regulations. ~~the Environmental Protection Agency's Safe Water Drinking Act, and the International Code Council's 2015 International Plumbing Code~~.

4.1.8 ~~**Fire management.**~~ **Fire Protection Systems.** Building fire detection, alarm and emergency notification systems in all school facilities shall be designed in accordance with State requirements. Exceptions ~~include unoccupied very small single story buildings, sheds and temporary facilities~~ where code required systems are not mandatory and the occupancy classification according to the International Building Code 2015 does not warrant a system. All fire management systems shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30 and the adopted Fire Code.

4.1.8.1 - Types of fire alarm notifications systems.

4.1.8.1.1– Internal audible and visual alarms.

4.1.8.1.2– External alarm monitoring and dispatch via internet / modem, telephone, radio, or cellular monitoring systems.

4.1.8.2 - Automatic Sprinkler Systems in Group E Occupancy a sprinkler system shall be provided as noted in the adopted Fire Code. Refer to the adopted Fire Code for exceptions.

4.1.8.2.1 All Group E fire areas greater than 12,000 square feet in area.

4.1.8.2.2 Throughout every portion of educational buildings below the lowest level of exit discharge serving that portion of the building.

4.1.8.3 - Types of ~~fire suppression systems~~ Fire Protection Water Supplies.

4.1.8.3.1- Fire hydrants.

4.1.8.3.2- Static fire water storage tanks.

4.1.9 ~~**Paths**~~ **Means of egress.** A continuous and unobstructed path of vertical and horizontal egress travel from any occupied portion of a building or structure to a *public way*. A means of egress consists of three separate and distinct parts: the exit access, the *exit* and the *exit discharge*. ~~path of egress from any point in the school that provides accessible routes to an area of refuge, a horizontal exit, or public way~~. Reference 2015 International Building Code, Chapter 2, Definitions .A ~~facility~~ building code analysis shall be conducted to determine all code requirements.

4.1.10 **Facilities with safely managed hazardous materials.** Potential hazardous materials in building components, which are identified in the Asbestos Hazard Emergency Response Act (AHERA) report, may include: asbestos, radon, lead, lamps and devices containing mercury. Additional hazardous materials may include: science chemicals, cleaning chemicals, blood-borne pathogens, acid neutralization tank for science departments, and bulk fuel storage (UST/AST) management that may be stored by the occupant.

4.1.10.1 - Public schools shall comply with all AHERA criteria and develop, maintain, and update an asbestos management plan, to be kept on record at the school district. This should include a building survey of the exterior of the building, and identification of all friable, non-friable, and trace asbestos materials. Reference regulation Number 8, Control of Hazardous Air Pollutants, 5 CCR 1001-10.

4.1.10.2 - All new facilities and additions shall conduct radon testing following completion of construction within nineteen months after occupancy as required by Colorado Department of Public Health and Environment, 6 CCR 1010-6.

4.1.10.3 - Lead based paint. All schools shall conform to the regulations adopted by the Colorado Air Quality Control Commission governing the abatement of lead-based paint from target housing (constructed prior to 1978) and child-occupied facilities, reference C.R.S. 25-5-1101.

4.1.11 **Security.** The degree of resistance to, or protection from, harm. It applies to any vulnerable and valuable asset; such as a person, building or dwelling. Security provides "a form of protection where a separation is created between the assets and the threat." These separations are generically called "controls," and sometimes include changes to the asset or the threat. These separations and degrees of resistance can be achieved through several models and techniques.

4.1.11.1 - Video Management Systems (VMS).

4.1.11.1.1 - Cameras. Video cameras are typically used to implement a video management system. In new construction, these should be internet protocol (IP) cameras on Power over Ethernet (PoE) cabling infrastructure, with color CCD, day-night operation and supplemental IR illuminators and environmental accessories as required for application, ~~high definition over coax cameras, or analog cameras.~~ Cameras should support motion activation, digital zoom and focus, ~~pan-tilt-zoom functionality~~, and standard video compression. Fixed and pan-tilt-zoom (PTZ) cameras shall be considered to meet requirements. Consideration shall be given to cameras with integral audio microphones.

4.1.11.1.2 - ~~Closed circuit or IP video recorders.~~ Monitoring & Recording Systems. - A central video management system should be capable of monitoring live feeds from multiple cameras from a central location and remote locations, recording all video, searching and reviewing recorded video, and exporting video to portable digital media. ~~to digital media~~. ~~Acceptable recorders include: network video recorder (NVR), high-definition composite video interface (HD-CVI), digital video recorder (DVR).~~ A minimum of 30 days of storage of all videos at 15fps (frames per second) is required.

4.1.11.1.3 ~~- All video management systems should be integrated into their local first responder's alert notification system~~.

4.1.11.2 - Controlled Access.

4.1.11.2.1 - ~~Manual~~. General Requirements

4.1.11.2.1.1 - The number of entryways into the building or onto the campus should be limited. New construction shall be designed to restrict normal entrance to only one or two locations, with no recessed doorways, provided that sufficient entryways are available for fire department access and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.11.2.1.2 - All exterior doors shall be locking and equipped with panic bars to open readily from the egress side. Panic bars should utilize flush push bar hardware to prevent chaining doors shut.

4.1.11.2.1.2.1 - Unless a door is intended for ingress, exterior doors should not have handles and locks on the outside. In all cases exposed hardware should be minimized, provided that sufficient entryways are available for fire department access and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.11.2.1.3 - Doors should be constructed of steel, aluminum alloy, or solid-core hardwood. If necessary, glass doors should be fully framed and equipped with burglar-resistant tempered glass. Translucent glass should be avoided in all cases.

4.1.11.2.1.4 - Exit doors with panic push-bars should be “Access Control Doors” per the codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30, to prevent easy access by criminals and vandals, or in a lock-down / lock-out situation.

4.1.11.2.1.5 - Heavy-duty metal or solid-core wooden doors should be used at entrances in areas containing expensive items. These areas include classrooms, storerooms, and custodians’ rooms. Interior doorway doors should also be heavy-duty metal or solid-core wooden doors.

4.1.11.2.1.6 - Door hinges should have non-removable pins.

4.1.11.2.1.7 - Door frames should be constructed of pry-proof material.

4.1.11.2.1.8 - Armored strike plates shall be securely fastened to the door frame in direct alignment to receive the latch easily.

4.1.11.3 - Automated Locking Mechanisms. ~~Acceptable automated controlled access includes: automatic identification card/badge readers.~~

4.1.11.3.1.1 Use of automated locking mechanisms (electronic access control) should be considered for exterior doors identified for entry and select interior doors associated with the main entry vestibule.

4.1.11.3.1.2 Acceptable automated electronic access control systems include RF-based proximity credential readers and biometric scanning devices. If the electronic access control systems are to be utilized the following shall apply:

4.1.11.3.1.2.1 - ~~Faculty, staff, and administration.~~ School personnel may be issued ~~additional tools~~ credentials for authenticating their identity in order to maintain efficient access to school facilities.

~~4.1.11.3.1.2.2 Student. Schools shall expect students to carry some form of verifiable identification, if automated access to school facilities is to be provided.~~

4.1.11.3.1.2.3 Students are not necessarily expected to carry electronic access control credentials. During normal arrival times, electronic locking

systems may be disengaged via a timer while entries are monitored by school personnel.

4.1.11.3.1.2.4 All exterior doors shall utilize door position switches to notify staff of open doors and eliminate “door propping”.

4.1.11.3.1.2.5 Doors utilizing electronic access controls shall “fail secure” from the unsecure side. Free egress shall not be inhibited from the secure side in any scenario.

4.1.11.4 Manual Locking Devices

4.1.11.4.1 Use of a manual locking mechanism, such as traditional cylinder and key locks, should be provided for all interior doors requiring access control.

4.1.11.4.2 Manual and Electronic access control should not be used on the same door.

4.1.11.5 Emergency Lockdown

4.1.11.5.1 All exterior doors shall be able to be quickly and automatically secured from a position of safety (Administrative desk, Principal’s office, etc) without traveling to each individual exterior door.

4.1.11.5.2 Interior doors to occupied spaces shall be capable of quickly being secured from the inside by school personnel. Locking of doors may be done via manual deadbolt or automatic locking mechanism. Locking mechanism shall not interfere with automatic closing and latching functions required by the fire code and may have door sidelights, or door vision glass that allow line of sight into the corridors during emergencies, and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.11.6 Intrusion Detection

4.1.11.6.1 A system shall be put in place to identify, alarm, and notify authorities in the case of unauthorized entry.

4.1.11.7 Alarm System

Passive infrared (PIR) sensors shall be located interior to all building entries to monitor human movement.

4.1.11.7.1.1 – An alarm keypad shall be located at selected building entries to arm and disarm the intrusion detection system.

4.1.11.7.1.2 – A manual alarm device shall be located in a position of safety (Administrative desk, Principal’s office, etc.) to force intrusion detection system into alarm status.

4.1.11.7.1.3 – The intrusion detection shall notify local authorities or monitoring company upon alarm status.

4.1.11.8 Security Integration

4.1.11.8.1 The Video Management System (VMS), Access Control System, and Intrusion Detection System may be components of an integrated security solution.

4.1.11.9 - ~~Front door security~~ Main Entry Physical Security

4.1.11.9.1 - Building vestibules. Where appropriate, buildings shall employ double entry door designs that provide a secured area for visitors to authenticate and gain clearance. Known as “man traps”, security vestibules solve several common security issues such as students opening doors for visitors, visitors bypassing check-in points, direct access to the interior from attackers, piggy-back entrances, and propped doors.

4.1.11.9.2 - Video based entrance intercom systems. Building designs shall allow for school personnel to be able to monitor incoming visitors from a safe location out of reach, or line of site from incoming visitors who have not yet been authenticated or cleared for entry. These entry points shall use remote video and access control technology to conduct multi-factor authentication of incoming visitors (e.g. visual verification and ID, PIN/password and ID, or biometric and other form of visual identification).

4.1.11.9.2.1 - Video based entrance systems shall use IP technology to allow access control to be conducted by school personnel from multiple locations, so that multiple personnel can provide coverage for screening incoming visitors. ~~, eliminating entry system override or “door propping”.~~

4.1.11.9.2.2 - ~~Video entrance systems shall be integrated with school communication, alarm, or school database systems to allow personnel to screen visitors.~~

4.1.11.9.3 - Line of sight. The front entrance should be designed to maximize the line of sight distance for school occupants to detect an intruder from each relevant perimeter (e.g. classroom to hallway, office or guard station to entryway, or entryway to exterior fence access, or exterior fence access to property perimeter).

4.1.11.10 - ~~Door lock / intrusion detection. Doors should have sufficient data cabling to a central interim distribution frame (IDF) or master distribution frame (MDF) to support access control/door release mechanisms, door sensors, IP Authentication sensors, and/or IP surveillance cameras as well as power cabling sufficient to support such hardware.~~

~~4.1.11.10.1 - Interior classroom doors shall have locking hardware for lock downs, which does not interfere with automatic closing and latching functions required by the fire code and may have door sidelights, or door vision glass that allow line of sight into the corridors during emergencies, and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.~~

4.1.11.11 - Event alerting and notification (EAN) system. An EAN system that utilizes an intercom / phone system with communication devices located in all classrooms and throughout the school to provide efficient inter-school communications, and communication with local fire, police, and medical agencies during emergency situations.

4.1.11.12 - Secure sites should include the following:

4.1.11.12.1 - Locations to avoid.

4.1.11.12.2 - Location of utilities.

4.1.11.12.3 - Roof access.

4.1.11.12.4 - Lighted walkways.

4.1.11.12.5 - Secured playgrounds.

4.1.11.12.6 - Bollards at main entrances and shop areas with overhead doors.

4.1.11.12.7 - Signage.

4.1.12 **Health code standards.** Schools, including labs, shops, vocational and other areas with hazardous substances shall conform to the Department Of Public Health and Environment, Division of Environmental Health and Sustainability, 6 CCR 1010-6 Rules and Regulations Governing Schools in the State of Colorado. ~~Rules and Regulations Governing Schools: 6 CCR 1010-6.~~

4.1.13 **Food preparation equipment and maintenance**. Food preparation and associated facilities equipped and maintained to provide sanitary facilities for the preparation, distribution, and storage of food as required by Department Of Public Health And Environment, Division of Environmental Health and Sustainability, 6 CCR 1010-6 Rules and Regulations Governing Schools in the State of Colorado. ~~Rules and Regulations Governing Schools Consumer Protection Division, Colorado Retail Food Establishments Rules and Regulations: 6 CCR 1010-2.~~

4.1.14 **Health ~~Emergency~~ care room.** A separate health ~~emergency~~ care room shall be provided and ~~This room shall have a dedicated bathroom, and~~ shall comply with the Department Of Public Health and Environment, Division of Environmental Health and Sustainability, 6 CCR 1010-6 Rules and Regulations Governing Schools in the State of Colorado. ~~Rules and Regulations Governing Schools 6 CCR 1010-6.~~

4.1.15 **A site that safely separates pedestrian and vehicular traffic and is laid out with the following guidelines:**

4.1.15.1 - Physical routes for basic modes (busses, cars, pedestrians, and bicycles) of traffic should be separated as much as possible from each other. If schools are located on busy streets and/or high traffic intersections, coordinate with the applicable municipality or county to provide for adequate signage, traffic lights, and crosswalk signals to assist school traffic in entering the regular traffic flow.

4.1.15.2 - When possible, provide a dedicated bus staging and unloading area located away from students, staff, and visitor parking.

4.1.15.3 - Provide an adequate driveway zone for stacking cars on site for parent drop-off/pick-up zones. Drop-off area design should not require backward movement by vehicles, and be one-way in a counterclockwise direction where students are loaded and unloaded directly to the curb/sidewalk. Students should not have to load or unload where they have to cross a vehicle path before entering the building. It is recommended all loading areas have “No Parking” signs posted.

4.1.15.4 - Provide well-maintained sidewalks and a designated safe path leading to the school entrance(s).

4.1.15.5 - Building service loading areas and docks should be independent from other traffic and pedestrian crosswalks. If possible, loading areas shall be located away from school pedestrian entries.

4.1.15.6 - Facilities should provide bicycle access and storage if appropriate.

4.1.15.7 - Fire lanes shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30 or the local fire department. Local fire department must adhere to the codes adopted by DFPC.

4.1.15.8 - Playgrounds shall comply with the ICC A117.1-2009 Accessible and Usable Buildings and Facilities and shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30.

4.1.16 **Severe weather preparedness.**

4.1.16.1 - Designated emergency shelters ~~shall be constructed as category IV buildings and~~ shall conform to all applicable codes adopted by the Colorado Division of Fire Prevention and Control in 8 CCR 1507-30 and ICC 500.

4.2 Technology, including but not limited to telecommunications and internet connectivity technology and technology for individual student learning and classroom instruction.

4.2.1 Educational facilities for individual student learning, classroom instruction, online instruction and associated technologies, connected to the Colorado institutions of higher education distant learning networks “Internet” and “Internet two.”

~~4.2.2 Educational facilities with standards based wired and wireless network connectivity.~~

4.2.2 Educational facilities shall be supplied with standards-based wired and wireless network connectivity.

4.2.3 Security and associated filtering and intrusion control for internal voice, video and data networks shall be provided.

4.2.4 External internet service provider (ISP) connection and internal wide area network (WAN) connections meeting or exceeding recommended guidelines of the state education technology education directors association (SETDA) broadband imperative, and devices meeting or exceeding recommended specifications according to the most current version of technology guidelines for the partnership for assessment of readiness for college and careers (PARCC) assessments.

4.2.5 Provide school administrative offices with web-based activity access.

~~4.2.6 Administrative software individual educational programs (IEP), individual learning programs (ILP), and personal learning plans (PLP).~~

~~4.2.7 Emergency power backup, redundant a/c for voice, video and data systems.~~

~~4.2.8 Bi-Directional Amplification (BDA). Signal boosters that enhance in-building signals across a range of frequencies.~~

4.2.9 Building shall be constructed with long-term sustainable technology infrastructure. Facilities should be built with sufficient data cabling and/or conduit and power infrastructure to allow for maximum flexibility as technological systems are upgraded and replaced in the future. A plan for technology lifecycle review intervals should be put in place for review at 2-4 year intervals.

4.2.9.1 Applicable Standards. The design and installation of technology systems shall comply with:

4.2.9.1.1 ANSI/TIA/EIA-568-C

4.2.9.1.2 ANSI/TIA/EIA-569

4.2.9.1.3 ANSI/TIA/EIA-606-B

4.2.9.1.4 ANSI/TIA/EIA-607-B

4.2.9.1.5 ANSI/BICSI 001-2009, Information Transport Systems Design Standard for K-12 Educational Institutions

~~4.2.10 Data center and non-data centers.~~ Telecom Equipment Rooms

4.2.10.1 - Uninterruptible power ~~center~~ supplies (UPS). ~~IDF and MDF locations should be wired with 30 Amp or 40 Amp power circuits to support sufficient backup power systems to maintain secure systems operation during a power outage, or intentional school attack.~~ Telecom Rooms (TRs) and Equipment Rooms (ERs) shall be provided with UPS equipment to provide continuous clean power to communications systems for a minimum of 90 minutes.

4.2.10.1.1 ~~- Data center and non-data centers should be backed up by a generator.~~

4.2.10.2 Generators. A backup generator shall be considered for providing backup power to telecommunications systems of backup power is required beyond 9 minutes, or if the generator is already located for other purposes.

4.2.10.3 Heating, Ventilation and Air Conditioning (HVAC). Mechanical equipment shall be used to accommodate heating loads within TRs and ERs. Ventilation-only systems may be used in spaces with limited equipment, active cooling systems should be considered for larger rooms. Maintained space temperatures shall target 65 degrees F. peak space temperatures shall not exceed 90 degrees F.

4.2.10.3.1 Direct evaporative cooling systems shall not be used, due to lack of control on humidity levels.

4.2.10.4 Alarms shall be provided to notify assigned school personnel if environmental conditions approach or exceed bounds of operational conditions.

4.2.11 Connectivity standards.

4.2.11.1 - Wireless. Data cabling shall be planned to support appropriately spaced multiple-antenna wireless networking infrastructure allowing for ~~a centrally located antenna every 2500 to 5000 square feet (or preferably performing a professional site survey/ resonance analysis)~~ wireless access points to support expected quantity of connected devices and required bandwidth. Support for 802.11b/g/n, 802.11ac, and/or newer protocols are recommended.

4.2.11.2 - Wired.

4.2.11.2.1 - Cabling. All new runs of copper data cable should be ~~augmented category~~ Category 6 cable or newer standards. Any data ~~jack~~ outlet should be ~~backed~~ supplied by two cables ~~runs~~. Unshielded twisted pair (UTP) shall be used unless local conditions warrant otherwise.

4.2.11.2.2 - ~~Intermediate distribution frame (IDF) or Main distribution frame (MDF)~~. Telecom Rooms (TRs) and Equipment Rooms (ERs). ~~Data closets~~ TRs and ERs shall be connected by conduit and a combination of copper and fiber optic cable to allow for maximum data performance and upgradeability.

4.2.11.2.3 - ~~IDF or MDF~~ TR to classroom. Classrooms should have a data ~~jack~~ outlet on the wall at the front and back of the room ~~as well as data cable to the door for access control and a data jack on the ceiling near the front of the room for projection and/or smart board equipment as well as security/PA/clock devices~~ at a minimum for network/ internet access.

Additional cabling may be warranted for security, audiovisual and special systems purposes.

4.2.11.2.4 - ~~IDF~~ TR to office, and library or technology/media centers. Any areas designed for independent work or study should have a dedicated data ~~jack~~ outlet with two copper cable runs each.

4.2.11.2.5 - ~~IDF~~ TR to common areas, auditorium, and cafeteria. Common areas should contain ~~one data jack per forty feet of linear wall space and such jacks shall be distributed at reasonably equal spacing throughout the room~~ data outlets located as required to support program and curriculum requirements.

4.3 Building site requirements. Functionality of existing and planned public school facilities for core educational programs, particularly those educational programs for which the State Board has adopted state model content standards. Capacity of existing and planned public school facilities, taking into consideration potential expansion of services for the benefit of students such as full-day kindergarten and preschool- and school-based health services and programs.

4.3.1 **Traditional education model, S.T.E.M. & Montessori / Expeditionary education models.**

4.3.1.1 - Minimum occupancy requirements for schools:

Median Gross Square Foot (GSF) Per Pupil								
	Traditional ES (K-5)		Traditional MS (6-8)		Traditional HS (9-12)		Traditional K-12	
F.T.E.s	GSF/Pupil	Total GSF	GSF/Pupil	Total GSF	GSF/Pupil	Total GSF	GSF/Pupil	Total GSF
100	151	15,064	161	16,102	192	19,183	164	16,393
200	146	29,197	159	31,813	190	38,030	161	32,298
300	141	42,401	157	47,136	188	56,540	159	47,715
400	137	54,674	155	62,068	187	74,713	157	62,645
500	132	66,017	153	76,610	185	92,550	154	77,087
600	127	76,429	151	90,763	183	110,050	152	91,041
700	123	85,912	149	104,526	182	127,214	149	104,508
800	118	94,464	147	117,899	180	144,041	147	117,488
900	113	102,086	145	130,883	178	160,531	144	129,979
1000	109	108,778	143	143,476	177	176,685	142	141,984
1100	104	114,540	142	155,680	175	192,502	140	153,500
1200	99	119,371	140	167,494	173	207,982	137	164,529

Median Gross Square Foot Per Pupil - Alternate Programs (Expeditionary (Exp.), Montessori (Mtsri.), S.T.E.M.)												
	Alt. ES (GSF/Pupil)			Alt. MS (GSF/Pupil)			Alt. HS (GSF/Pupil)			Alt. K12 (GSF/Pupil)		
F.T.E.s	Exp.	Mtsri.	S.T.E.M.	Exp.	Mtsri.	S.T.E.M.	Exp.	Mtsri.	S.T.E.M.	Exp.	Mtsri.	S.T.E.M.
100	160	161	156	171	169	166	203	198	201	174	172	180
200	155	156	151	169	167	164	202	196	199	171	170	177
300	150	151	146	167	165	162	200	194	197	169	167	175
400	145	146	141	164	163	160	198	192	195	166	164	172
500	140	141	137	162	161	158	196	191	194	163	162	169
600	135	136	132	160	159	156	194	189	192	161	159	167
700	130	131	127	158	157	154	193	187	190	158	157	164
800	125	126	122	156	155	152	191	185	188	156	154	161
900	120	121	117	154	153	150	189	184	187	153	152	159
1000	115	116	113	152	151	148	187	182	185	151	149	156
1100	110	111	108	150	149	146	186	180	183	148	146	153
1200	105	106	103	148	147	144	184	179	181	145	144	151

Square Foot Values - Assembly								
	ES Assembly		MS Assembly		HS Assembly		K12 Assembly	
F.T.E.s	Cafeteria	Auditorium	Cafeteria	Auditorium	Cafeteria	Auditorium	Cafeteria	Auditorium
100	675	1,300	675	1,500	675	1,700	675	1,700
200	1,200	1,600	1,200	1,800	1,200	2,000	1,200	2,000
300	1,800	1,900	1,800	2,100	1,800	2,300	1,800	2,300
400	2,400	2,400	2,400	2,600	2,400	2,800	2,400	2,800
500	3,000	2,700	3,000	2,900	3,000	3,100	3,000	3,100
600	3,600	3,000	3,600	3,200	3,600	3,400	3,600	3,400
700	4,200	3,900	4,200	3,900	4,200	3,900	4,200	3,900
800	4,800	4,200	4,800	4,200	4,800	4,200	4,800	4,200
900	5,400	4,500	5,400	4,500	5,400	4,500	5,400	4,500
1000	6,000	4,800	6,000	4,800	6,000	4,800	6,000	4,800
1100	6,600	5,100	6,600	5,100	6,600	5,100	6,600	5,100
1200	7,200	5,400	7,200	5,400	7,200	5,400	7,200	5,400

- Cafeteria Capacity assumes three (3) seatings without a secondary function overlay.
- Auditorium Capacity SF is sized for 1/3 of General enrollment and is inclusive of stage (size varies: 1,000 to 1,800); Basis is 9 SF per seat (1/3 FTES) plus stage at various sizes, stage includes a small amount of storage or similar support.

Square Foot (SF) Values - Core Classrooms (Minimum (Min) classroom size = 675 sf)								
	ES Min (24-30 FTES)		MS Min (24-30 FTES)		HS Min (24-30 FTES)		K12 Min (24-30 FTES)	
F.T.E.s	SF/Pupil	Total SF	SF/Pupil	Total SF	SF/Pupil	Total SF	SF/Pupil	Total SF
Kindergarten	38	1,140	-	-	-	-	38	1,140
Grade 1	32	960	-	-	-	-	32	960
Grade 2	32	960	-	-	-	-	32	960
Grade 3	32	960	-	-	-	-	32	960
Grade 4	30	900	-	-	-	-	30	900
Grade 5	30	900	-	-	-	-	30	900
Grade 6	-	-	30	900	-	-	30	900
Grade 7	-	-	28	840	-	-	28	840
Grade 8	-	-	28	840	-	-	28	840
Grade 9	-	-	-	-	28	840	28	840
Grade 10	-	-	-	-	28	840	28	840
Grade 11	-	-	-	-	28	840	28	840
Grade 12	-	-	-	-	28	840	28	840
Montessori	40	1,200	40	1,200	40	1,200	40	1,200
Expeditionary	36	1,080	36	1,080	36	1,080	36	1,080

Square Foot (SF) Values - Exploratory Spaces (minimum size = 675 sf)								
	ES Min (24-30 F.T.E.s)		MS Min (24-30 F.T.E.s)		HS Min (24-30 F.T.E.s)		K12 Min (24-30 F.T.E.s)	
F.T.E.s	SF/Pupil	Total SF	SF/Pupil	Total SF	SF/Pupil	Total SF	SF/Pupil	Total SF
Comp/Tech	30		32	-	32	-	32	
Music	35		35	-	35	-	35	
Science	38		40		44		44	
Lecture	28		28		28		28	
Art	35		40		45		45	
Gym / MP	3,000 SF (50'x60')		5,400 SF (60'x90')		7,300 SF (70'x104')		7,300 SF (70'x104')	
Special Ed	37		37		37		37	
VoAg	-	-	-	-	60	-	60	-
Media Center	1200 sf (30 occ)		2400 sf (60 occ)		3600 sf (60 occ)		3600 sf (60 occ)	
"Gymatorium"	4,400 SF (See notes)		4,400 SF (See notes)		-		-	

- ES Gymnasium basis is 50'X60' play area; Capacity Assumes (GE.25)/7 periods (without fixed seats)*
- MS Gymnasium basis is 60'X90' play area; Capacity Assumes (GE.5)/7 periods (without fixed seats)*
- HS Gymnasium basis is 70'X104' practice gym; Capacity Assumes (GE.5)/7 periods (with limited fixed seats) Note: National Federation of State High School Association's standards outline an "ideal" court for high school age as 84'x50' (and not greater than 94'x50')*
- "Gymatorium" basis is 50'x60' play area and 1000 SF platform stage with 400 SF storage

Instructor / Support Areas		
Space Type:	**Square Feet**	**Notes:**
Office - typical	120	
Office - large	150	
Work room	250	Multiple indivual (or in aggregate) may be required due to scale
Team planning (conf)	240	12-16 occupants (assembly use)
Instruction - sm group	320	16 occupants (classroom use)
Storage	50	Ave per instructor
Staff toilets	50	Multiple may be required due to scale

4.3.2 **Other rooms.**

4.3.2.1 - Facilities with preschools shall comply with Rules Regulating Child Care Centers (Less Than 24-Hour Care) 12 CCR 2509-8 and shall comply with the Colorado Department of Public Health and Safety's Regulations Governing Child Care, 6 CCR 1010-7.

4.3.2.2 - Special education classrooms. Special Education classrooms and facilities meeting or exceeding the accessibility and adaptive needs of the current and reasonably anticipated student population, in accordance with Section 504 and Title II of the Americans with Disabilities Act, the Exceptional Children's Educational Act, and Individuals with Disabilities Education Act.

4.4 <u>Building performance standards and guidelines for green building and energy efficiency.</u>

Section 24-30-1305.5 C.R.S., requires all new facilities, additions, and renovation projects funded with 25% or more of state funds to conform with the High Performance Certification Program (HPCP) policy adopted by the Office of the State Architect (OSA) if:

- The new facility, addition, or renovation project contains 5,000 or more building square feet; and
- The project includes an HVAC system; and
- If increased initial cost resulting from HPCP can be recouped by decreased operational costs within 15 years, and
- In the case of a renovation project, the cost of the renovation exceeds 25% of the current value of the property.

4.4.1 **High Performance Certification Programs.**

4.4.1.1 The Department of Personnel and Administration, Office of the State Architect has determined the following three guidelines as meeting the High Performance Certification Program (HPCP) requirements per C.R.S.24-30-1305.5; the U.S. Green Building Council, Leadership in Energy and Environmental Design – New Construction (USGBC LEED™-NC) guideline with Gold as the targeted certification level; and the Green Building Initiative (GBI), Green Globes guideline with Three Globes the targeted certification level; and for the Colorado Department of Education, K-12 construction, the Collaborative for High Performance Schools (US-CHPS) is an optional guideline with Verified Leader as the targeted certification level.

4.4.1.2 – LEED, or Leadership in Energy and Environmental Design ~~(LEED)~~ (for schools) is a globally recognized symbol of excellence in green building. ~~LEED, or LeadReference LEED 2009 for Schools New Construction and Major Renovations.~~

4.4.1.2.1 LEED is an internationally recognized certification system that measures a building using several metrics, including: energy savings, water efficiency, sustainable land use, improved air quality, and stewardship of natural resources.

4.4.1.2.2 Points are awarded on a 100-point scale, and credits are weighted to reflect their potential environmental impacts. Different levels of certification are granted based on the total number of earned points. The four progressive levels of certification from lowest to highest are: certified, silver, gold and platinum.

4.4.1.3 United States Collaborative for High Performance Schools (US-CHPS).~~- Priority Outcomes of the CHPS National Core Criteria~~ US-CHPS reflects the three priority outcomes of the Core Criteria. These are, in order of importance.

4.4.1.3.1 Maximize the health and performance of students and staff.

4.4.1.3.2 Conserve energy, water and other resources in order to save precious operating dollars.

4.4.1.3.3 Minimize material waste, pollution and environmental degradation created by a school.

4.4.1.3.4 The CHPS National Technical Committee has weighted the available point totals for prerequisites and credits in seven categories to reflect these three priorities.

~~4.4.1.3.5The US-CHPS Criteria is a benchmarking system that defines the attributes of a high performance school. The criteria addresses site and materials selection, energy and water efficiency, indoor environmental quality, innovation, performance, and integrated delivery, and provide high performance school strategies that can be used by schools and districts and their design teams for new campuses, buildings and major modernizations.~~

~~4.4.1.3.6- The CO-CHPS Criteria for New Construction and Major Modernizations (2009) requires the project achieves a 25% reduction in total energy cost savings compared to ASHRAE 90.1-2013 Energy Standard for Buildings Except Low-Rise Residential Buildings, set an ENERGY STAR goal of at least 75, and use the resulting site Energy Use Intensity (EUI) as a performance target and utilize the Flex Energy design tool.~~

4.4.2 **Renewable energy strategies.**

4.4.2.1 - Solar Photovoltaic / Solar Thermal.

4.4.2.2 - Geothermal / Geo exchange.

4.4.2.3 - Wind.

4.4.2.4 - Passive Solar Design.

4.4.3 **Energy management plan.**

4.4.3.1 - Energy programs assist with creating a culture of energy efficiency within a school. Reference Energy Star Guidelines for Energy Management to help develop a plan.

4.4.4 **Other energy efficient options.**

4.4.4.1 - ENERGY STAR Labeled HVAC / mechanical systems.

4.4.4.2 - Windows, doors, and skylights (collectively known as fenestration).

4.4.4.3 - Building Envelope.

4.4.4.3.1- The interface between the interior of the building and the outdoor environment, including the walls, roof, and foundation – serves as a thermal barrier and plays an important role in determining the amount of energy necessary to maintain a comfortable indoor environment relative to the outside environment.

4.4.4.3.2- Roof. Roof design and materials can reduce the amount of air conditioning required in hot climates by increasing the amount of solar heat that is reflected, rather than absorbed, by the roof. For example, roofs that qualify for ENERGY STAR® are estimated to reduce the demand for peak cooling by 10 to 15 percent.

4.4.4.3.3- Insulation is important throughout the building envelope.

4.4.4.4 - Lighting.

4.4.4.4.1- Light emitting diodes (LEDs), compact fluorescents (CFLs) and fluorescent lighting should be considered over traditional incandescent lighting.

4.4.4.5 - Commissioning, retro commissioning and re-commissioning.

4.4.4.5.1- Commissioning ensures that a new building operates initially as the owner intended and that building staff are prepared to operate and maintain its systems and equipment.

4.4.4.5.2- Retro commissioning is the application of the commissioning process to existing buildings.

4.4.4.5.3- Re-commissioning is another type of commissioning that occurs when a building that has already been commissioned, undergoes another commissioning process.

4.4.4.6 - Measurement and verification. Measurement and verification (M&V) is the term given to the process for quantifying savings delivered by an Energy Conservation Measure (ECM), as well as the sub-sector of the energy industry involved with this practice. M & V demonstrates how much energy the ECM has avoided using, rather than the total cost saved.

4.4.5 - **Landscaping**

4.4.5.1.1 Irrigation: Consider water management which could include reducing storm-water run-off, preventing erosion and decreasing the effects of soil expansion.

4.4.5.1.2 Plant Materials: Consider Native materials, Xeriscaping.

4.4.5.1.3 Grass/ Sod Areas: Consider use of grass/ sod areas, consider water use, alternate options if planting sports fields.

4.4.6 – **Permitting**

4.4.6.1 Application for public school construction projects permits can be made at the DFPC website, www.colorado.gov/dfpc > Sections >_Fire & Life Safety > Permits and Construction > School Construction.

4.4.6.2 If a local building department has entered into a memorandum of understanding (MOU) with DFPC, that local building department is considered a Prequalified Building Department (PBD). A School District may, at its discretion, choose to apply for permit through DFPC or the PBD that has jurisdiction of construction projects for the location of the school construction project. The list of PBD' is available on the DFPC website, School Construction.

4.5 The historic significance of existing public school facilities and their potential to meet current programming needs by rehabilitating such facilities.

4.5.1 Buildings that are 50 years or older at the time of application may be subject to the State Register Act 24-80.1-101 to 108 in determining if the affected properties have historical significance.

4.5.1.1 - Historical significance means having importance in the history, architecture, archaeology, or culture of this state or any political subdivision thereof or of the United States, as determined by the state historical society.

4.5.2 When determining if a facility should be replaced, the cost to rehabilitate versus the cost to replace should be evaluated.

Notice of Proposed Rulemaking

Tracking number

2016-00361

Department

300 - Department of Education

Agency

303 - Division of Public School Capital Construction Assistance

CCR number

1 CCR 303-3

Rule title

BUILDING EXCELLENT SCHOOLS TODAY GRANT PROGRAM

Rulemaking Hearing

Date

09/28/2016

Time

01:00 PM

Location

201 E Colfax Ave Denver C) 80203

Subjects and issues involved

The Assistance Board previously adopted the attached BEST Grant Program Rules; however, recent changes to the BEST statute (SB16-072, HB-1422) has called for the BEST Rules to be updated.

Statutory authority

Pursuant to 22-43.7-106(2)(i) C.R.S. & HB 08-1335

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COLORADO DEPARTMENT OF EDUCATION

DIVISION OF PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE

1 CCR 303-3

BUILDING EXCELLENT SCHOOLS TODAY GRANT PROGRAM

Authority

§ 22-43.7-106(2)(i)(I) C.R.S., the Public School Capital Construction Assistance Board may promulgate rules, in accordance with Article 4 of Title 24, C.R.S., as are necessary and proper for the administration of the BEST Act.

Scope and Purpose

This regulation shall govern the Building Excellent Schools Today (BEST) Public School Capital Construction Assistance Program pursuant to the BEST Act.

1. Definitions

1.1. "Applicant" means an entity that submits an Application for Financial Assistance to the Board, including:

1.1.1. A School District;

1.1.2. A District Charter School;

1.1.3. An Institute Charter School;

1.1.4. A Board of Cooperative Educational Services (BOCES);

1.1.5. The Colorado School for the Deaf and Blind.

1.2. "Application" means the Application for Financial Assistance submitted by an Applicant.

1.3. "Assistance Fund" means the public school capital construction assistance fund created in § 22-43.7-104(1) C.R.S.

1.4. "Authorizer" means the School District that authorized the charter contract of a Charter School or, in the case of an Institute Charter School, as defined in § 22-43.7-106(1) C.R.S., the State Charter School Institute created and existing pursuant to § 22-30.5-502(6) C.R.S.

1.5. "BEST Act" means § 22-43.7-101 C.R.S. et seq.

1.6. "BEST Lease-purchase Funding" means funding from a sublease-purchase agreement entered into between the state and an entity as described in 2.1 pursuant to § 22-43.7-110(2) C.R.S.

1.7. "BEST Cash Grant" means cash funding as a matching grant.

1.8. "BEST Emergency Grant" means a request for Financial Assistance in connection with a Public School Facility Emergency.

1.9. “Board” means the Public School Capital Construction Assistance Board created in § 22-43.7-106 (1) C.R.S.

1.10. “Board of Cooperative Educational Services" or “BOCES” means a Board of Cooperative Services created and existing pursuant to § 22-5-104 C.R.S. that is eligible to receive State moneys pursuant to § 22-5-114 C.R.S.

1.11. “Capital Construction” means, pursuant to § 24-75-301 (1) C.R.S.:

1.11.1. Purchase of land, regardless of the value thereof;

1.11.2. Purchase, construction, or demolition of buildings or other physical facilities, including utilities and state highways or remodeling or renovation of existing buildings or other physical facilities, including utilities and state highways to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to the health and safety of persons which are not covered by codes, to effect conservation of energy resources, to effect cost savings for staffing, operations, or maintenance of the facility, or to improve appearance;

1.11.3. Site improvement or development;

1.11.4. Purchase and installation of the fixed and movable equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities and for the conduct of programs initially housed therein upon completion of the new construction, remodeling, or renovation;

1.11.5. Purchase of the services of architects, engineers, and other consultants to prepare plans, program documents, life-cycle cost studies, energy analyses, and other studies associated with any Capital Construction project and to supervise construction or execution of such Capital Construction projects;

1.11.6. Any item of instructional or scientific equipment if the cost will exceed fifty thousand dollars.

1.12. “Capital Renewal Reserve" means moneys set aside by an Applicant that has received an award for a project for the specific purpose of replacing major Public School Facility systems with projected life cycles such as, but not limited to, roofs, interior finishes, electrical systems and heating, ventilating, and air conditioning systems.

1.13. “Charter School” means a Charter School as described in § 22-54-124 (1)(f.6)(I)(A) or (1)(f.6)(I)(B) C.R.S.~~, that has been chartered for at least five years on the date its Authorizer forwards an Application for Financial Assistance to the Board on the Charter School’s behalf pursuant to § 22-43.7-103(7) C.R.S.~~

1.14. “Eligible Charter School” means a qualified charter school that is eligible for the Loan Program as defined in section 22-30.5-408(1)(c) C.R.S. and authorized to receive financial assistance pursuant to 22-43.7-103~~9~~(7) C.R.S.

1.15. “Division” means the Division of Public School Capital Construction Assistance created in § 22-43.7-105 C.R.S.

1.16. “Financial Assistance” means BEST Cash Grants; BEST Lease-purchase Funding; BEST Emergency Grants; funding provided as matching grants by the Board from the Assistance Fund to an Applicant; or any other expenditure made from the Assistance Fund for the purpose of financing Public School Facility Capital Construction as authorized by the BEST Act.

1.17. "Grantee" means a School District, Charter School, Institute Charter School, BOCES or the Colorado School for the Deaf and Blind that has applied for Financial Assistance and received an award.

1.18. "Institute Charter School" means a Charter School chartered by the Colorado State Charter School Institute pursuant to § 22-30.5-507 C.R.S.

1.19. "Loan Program" means the charter school matching moneys loan program pursuant to 22-43.7-110.5 C.R.S.

1.20. "Matching Moneys" means moneys required to be used directly to pay a portion of the costs of a Public School Facility Capital Construction project by an Applicant as a condition of an award of Financial Assistance to the Applicant pursuant to § 22-43.7-109 (9) C.R.S and/or 22-43.7-110(2) C.R.S.

1.21. "Project" means the Capital Construction Project for which Financial Assistance is being requested.

1.22. "Public School Facility" means a building or portion of a building used for educational purposes by a School District, Charter School, Institute Charter School, a Board of Cooperative Education Services, the Colorado School for the Deaf and Blind created and existing pursuant to § 22-80-102(1)(a) C.R.S., including but not limited to school sites, classrooms, data centers, libraries and media centers, cafeterias and kitchens, auditoriums, multipurpose rooms, and other multi-use spaces; except that "Public School Facility" does not include a learning center, as defined in § 22-30.7-102(4) C.R.S., that is not used for any other public school purpose and is not part of a building otherwise owned, or leased in its entirety, by a School District, a Board of Cooperative Education Services, a Charter School, Institute Charter School, or the Colorado School for the Deaf and Blind for educational purposes.

1.23. "Public School Facility Construction Guidelines" means Public School Facility Construction Guidelines as established in § 22-43.7-107 C.R.S.

1.24. "Public School Facility Emergency" means an unanticipated event that makes all or a significant portion of a Public School Facility unusable for educational purposes or poses an imminent threat to the health or safety of persons using the Public School Facility.

1.25. "School District" means a School District, other than a junior or community college district, organized and existing pursuant to law in Colorado pursuant to § 22-43.7-103 (14) C.R.S.

1.26. "State Board" means the State Board of Education created and existing pursuant to section 1 of article IX of the State Constitution.

1.27. "Statewide Assessment" means the Financial Assistance priority assessment conducted pursuant to § 22-43.7-108 C.R.S.

2. Eligibility

2.1. The following entities are eligible to apply for Financial Assistance:

2.1.1. A School District;

2.1.2. A District Charter School or individual school of a School District if the school applies through the School District in which the school is located. The School District shall forward the Application from a Charter School or individual school of a School District to the Division with its comments;

2.1.3. An Institute Charter School;

2.1.4. A Board of Cooperative Educational Services (BOCES);

2.1.5. The Colorado School for the Deaf and Blind.

2.2. The Board may only provide Financial Assistance for a Project for a Public School Facility that the Applicant owns or will have the right to own in the future under the terms of a lease-purchase agreement with the owner of the facility or a sublease-purchase agreement with the state entered into pursuant to § 22-43.7-110(2) C.R.S.

2.3. The Board, with the support of the Division and subject to the approval of the State Board and the lessor of the property, may provide financial assistance as specified in this section to an applicant that is operating or will operate in the next budget year in a leased facility that is:

2.3.1. Listed on the state inventory of real property and improvements and other capital assets maintained by the Office of the State Architect pursuant to section 24-30-1303.5, C.R.S.; or

2.3.2. State-owned property leased by the State Board of Land Commissioners, described in section 36-1-101.5, C.R.S., to the applicant.

~~2.1.6.~~2.3.3. An award of financial assistance must be sent to preserve or enhance the value of state-owned, leased property.

~~2.2. The Board may provide Financial Assistance to a Charter School that first occupies a Public School Facility on or after May 22, 2008, only if the Public School Facility occupied by the Charter School complied with all Public School Facilities Construction Guidelines addressing health and safety issues when the Charter School first occupied the facility.~~

2.4. The Board may only provide financial assistance for a capital construction project for a public school in existence for at least three years at any time before the Board receives an application for financial assistance.

~~2.3.~~2.5. For a BEST Emergency Grant, the Applicant shall be operating in the Public School Facility for which Financial Assistance is requested.

3. Assistance Board

3.1. Conflict of Interest

3.1.1. In regard to Board members providing information to potential Applicants:

3.1.1.1. Board members shall exercise caution when responding to requests for information regarding potential Applications, especially in regard to questions that may increase the chances that the Board would give a favorable recommendation on an Application or Project.

3.1.2. If a potential or actual conflict of interest occurs with a Board member, the Board member will complete a Conflict of Interest disclosure form and it will be presented at the following CCAB meeting. The Division shall document the date of the disclosure, the name of the board member and conflict disclosed, and the documented disclosure shall be retained and made available at all board meetings which evaluation of applications or voting occurs.

3.1.3. Board members, and their firms, shall not present their position on the Board to School Districts, Charter Schools, Institute Charter Schools, BOCES, or the Colorado School for the

Deaf and Blind as an advantage for using their firm over other firms in a bid to provide services on any capital construction project.

3.1.4. In regard to Board members avoiding potential conflicts of interest in evaluation of and voting on Applications:

3.1.4.1. If a Board member's firm has no prior involvement regarding the Project included in an Application and the Board member does not have a direct or indirect substantial financial interest in an Application, the Board member may appropriately vote on the Application, but may not bid or work on the Project. The Board member's firm may bid or work on the Project, so long as the Board member plays no role in the entire procurement process and the Board member discloses any conflict of interest;

3.1.4.2. No Board member shall participate in the Board's evaluation process, including voting, for any Application when the Board member has a direct or indirect substantial financial interest in the Project or Application or the Board member's firm has had prior involvement with the Applicant directly related to the Project or Application;

3.1.4.3. At all times Board members must exercise judgment and caution to avoid conflicts of interest and/or appearance of impropriety, and should inform the Division staff of any questionable situation that may arise. A Board member may recuse himself or herself from any vote.

3.1.4.4. Board members shall be aware of and comply with the Colorado Code of Ethics, section 24-18-108.5(2), C.R.S., and shall not perform any official act which may have a direct economic benefit on a business or other undertaking in which the member has a direct or substantial financial interest.

3.1.4.4.1. A financial interest means a substantial interest held by an individual which is (i) an ownership interest in a business, (ii) a creditor interest in an insolvent business, (iii) an employment or prospective employment for which negotiations have begun, (iv) an ownership interest in real or personal property, (v) a loan or any other, or (vi) a directorship or officer ship in a business.

3.1.4.4.2. An official action means any vote decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority.

3.1.5. In cases where a Board member has violated the conflict of interest policy as determined by the board chair, the Division Director will notify the Board member's appointing authority of the violation in writing. In the event of a conflict involving the board chair, the vice-chair will make the determination.

4. Matching Requirement

4.1. Except as provided below in section 4.2, Financial Assistance may be provided only if the Applicant provides Matching Moneys in an amount equal to a percentage of the total cost of the Project determined by the Board after consideration of the Applicant's financial capacity, based on the following factors:

4.1.1. With respect to a School District's Application for Financial Assistance:

4.1.1.1. The School District's assessed value per pupil relative to the state average;

4.1.1.2. The School District's median household income relative to the state average;

4.1.1.3. The School District's bond redemption fund mill levy relative to the statewide average;

4.1.1.4. The percentage of pupils enrolled in the School District who are eligible for free or reduced-cost lunch;

4.1.1.5. The school district's current available bond capacity remaining;

4.1.1.6. The school district's unreserved fund balance as a percentage of its annual budget; and

4.1.1.7. The amount of effort put forth by the School District to obtain voter approval for a ballot question for bonded indebtedness, including but not limited to, a ballot question for entry by the district into a sublease-purchase agreement of the type that constitutes an indebtedness of the district pursuant to § 22-32-127 C.R.S., during the ten years preceding the year in which the district submitted the Application, which factor may be used only to reduce the percentage of Matching Moneys required from a district that has put forth such effort and not to increase the amount of Matching Moneys required from any district;

4.1.1.8. A School District shall not be required to provide any amount of Matching Moneys in excess of the difference between the School District's limit of bonded indebtedness, as calculated pursuant to § 22-42-104 C.R.S., and the total amount of outstanding bonded indebtedness already incurred by the School District.

4.1.2. With respect to a Board of Cooperative Education Services' Application for Financial Assistance:

4.1.2.1. The average assessed value per pupil of all members of the Board of Cooperative Education Services participating in the Project relative to the state average;

4.1.2.2. The average median household income of all members of the Board of Cooperative Education Services participating in the Project relative to the state average;

4.1.2.3. The average bond redemption fund mill levy of all members of the Board of Cooperative Education Services participating in the Project relative to the statewide average;

4.1.2.4. The percentage of pupils enrolled in the member schools within the Board of Cooperative Education Services that are participating in the Project who are eligible for free or reduced-cost lunch;

4.1.2.5. The average available bond capacity remaining of all members of the board of cooperative services participating in the capital construction project;

4.1.2.6. The average unreserved fund balance as a percentage of the annual budget of all members of the board of cooperative services participating in the capital construction project; and

4.1.2.7. The amount of effort put forth by the members of the Board of Cooperative Education Services to obtain voter approval for a ballot question for bonded indebtedness, including but not limited to a ballot question for entry by any member into a sublease-purchase agreement of the type that constitutes an indebtedness of the member pursuant to § 22-32-127 C.R.S., during the ten years preceding the year in which the Board of Cooperative Education Services submitted the Application, which factor may be used only to reduce the percentage of Matching Moneys required from a Board of Cooperative Education Services whose members, or any of them, have put forth such effort and not to increase

the amount of Matching Moneys required from any Board of Cooperative Education Services.

4.1.3. With respect to a Charter School's Application for Financial Assistance:

4.1.3.1. The weighted average of the match percentages for the school districts of residence for the students enrolled in a district charter school or fifty percent of the average of the match percentages for all school districts in the state for an institute charter school;

4.1.3.2. Whether the charter school's authorizer retains no more than ten percent of its capacity to issue bonds;

4.1.3.3. Whether the charter school is operating in a district-owned facility at the time it submits its application;

4.1.3.4. In the ten years preceding the year in which the charter school submits the application, the number of times the charter school has attempted to obtain or has obtained:

4.1.3.4.1. Bond proceeds pursuant to 22-30.5-404 C.R.S through inclusion in a ballot measure submitted by the charter school's authorizer to the registered electors of the school district:

4.1.3.4.2. Proceeds from a special mill levy for capital needs pursuant to 22-30.5-405 C.R.S.;

4.1.3.4.3. Grant funding for capital needs from a source other than the assistance fund; and

4.1.3.4.4. Funding for capital construction from bonds issued on its behalf by the Colorado Educational and Cultural Facilities authority created and existing pursuant to 23-15-104(1)(a), C.R.S., or from some other source of financing.

4.1.3.5. If the charter school is a district charter school, the student enrollment of the charter school as a percentage of the student enrollment of the charter school's authorizing school district.

4.1.3.6. The percentage of students enrolled in the charter school who are eligible for the federal free and reduced-cost lunch program in relation to the overall percentage of students enrolled in the public schools in the State who are eligible for the federal free and reduced-cost lunch program.

4.1.3.7. The percentage of the per pupil revenue received by the charter school that the charter school spends on facility costs other than facilities operations and maintenance.

4.1.3.8. The charter school's unreserved fund balance as a percentage of its annual budget.

4.1.3.9. The match percentage for a charter school calculated based on the above criteria shall not be higher than the highest match percentage for a school district, or lower than the lowest match percentage for a school district, in the same grant cycle.

4.2. Waiver or reduction of Matching Moneys

4.2.1. An Applicant may apply to the Board for a waiver or reduction of the Matching Moneys requirement. Such application shall discuss unique issues demonstrating why the percentage

is not representative of the Applicant's current financial state. The Board may grant a waiver or reduction if it determines:

4.2.1.1. That the waiver or reduction would significantly enhance educational opportunity and quality within a School District, Board of Cooperative Education Services, or Applicant school,

4.2.1.2. That the cost of complying with the Matching Moneys requirement would significantly limit educational opportunities within a School District, Board of Cooperative Education Services, or Applicant school, or

4.2.1.3. That extenuating circumstances deemed significant by the Board make a waiver appropriate.

4.2.2. An applicant must complete a waiver application and submit it to the Board in conjunction with their grant application. The waiver application shall explain issues and impacts in detail, including dollar amounts of the issues and impacts, and demonstrate why each of the factors used to calculate their Matching Moneys percentage are not representative of their actual financial capacity. The Board will determine the merit of the waiver by evaluating each wavier application using the prescribed wavier application evaluation tool.

4.3. Charter School matching moneys Loan Program.

4.3.1. The Charter School matching moneys Loan Program will assist Eligible Charter Schools in obtaining the Matching Moneys requirement for an award of Financial Assistance pursuant to 22-43.7-109 C.R.S.

4.3.2. An Eligible Charter School that chooses to seek a loan through the Loan Program shall apply to the Board to receive a loan.

4.3.3. To be an Eligible Charter School for the Loan Program means a Charter School that is described in section 22-30.5-104 or an Institute Charter School as that term is defined in section 22-30.5-502 has a stand-alone credit assessment or rating of at least investment grade by a nationally recognized rating agency at the time of issuance of any qualified Charter School bonds on behalf of the Charter School by the Colorado educational and cultural facilities authority pursuant to the "Colorado Educational and Cultural Facilities Authority Act", article 15 of title 23, C.R.S., and that has been certified as a qualified Charter School by the State Treasurer.

4.3.4. The Board may approve a loan for an Eligible Charter School in an amount that does not exceed fifty percent of the amount of Matching Moneys calculated for the Eligible Charter School pursuant to 22-43.7-109(9)(c) C.R.S.

4.3.5. If a loan is approved by the Board the project will be considered as a BEST Lease-Purchase project pursuant to 22-43.7-110.5(2)(b)C.R.S., and the proposed project must be one that is financeable.

4.3.6. The Board shall direct the State Treasurer to include the amount of a loan approved pursuant to the terms in the Lease-Purchase agreement entered into pursuant to 22-43.7-110 (2) C.R.S. to provide Financial Assistance to the Eligible Charter School for which the loan is approved.

4.3.7. Charter School Loan Program application

4.3.7.1. An application for a loan shall include:

4.3.7.1.1. Basic contact information, justification for seeking a BEST loan and documentation of a stand-alone credit assessment or rating of at least investment grade by a nationally recognized rating agency for the Charter School;

4.3.7.1.2. Identify the Charter Schools current facilities and indicate if those facilities are owned, leased or in a lease-purchase agreement;

4.3.7.1.3. A current credit disclosure statement along, any business notes payable or reviews, notices or warnings from the Charter School's authorizer;

4.3.7.1.4. Financial information to include internal financial statements, CPA Audits and IRS 990's for the previous three years. Detailed operating budget for the current and next year. The Charter School's projected operating budget for the next five years. Enrollment figures for the previous three years, the current year and the following three years;

4.3.7.1.5. CDE listed minimum match requirement for the BEST grant;

4.3.7.1.6. Amount of total match provided by the Charter School for the BEST grant;

4.3.7.1.7. Amount of the loan request for the BEST grant;

4.3.7.1.8. A loan application from a Charter School shall include signatures of the District Superintendent, School Board Officer, and the Charter School Director;

4.3.7.1.9. A loan application from an Institute Charter School shall include signatures of the Charter School Institute Director and the Institute Charter School Director;

4.3.7.1.10. Applications that are incomplete may be rejected without further review.

4.3.8. Charter School Loan Program deadline for submission

4.3.8.1. The loan application, along with any supporting material, shall be submitted with the BEST grant application on or before the BEST grant application due date.

4.3.8.2. An application will not be accepted unless it is received in the Board office by 4:30 p.m. on or before the deadline date determined by the board.

4.3.8.3. The Board may, in its sole discretion and upon a showing of good cause in written request from an Applicant, extend the deadline for filing an Application.

4.3.9. To receive a loan through the Loan Program, an Eligible Charter School shall:

4.3.9.1. Authorize the State Treasurer to withhold moneys payable to the Eligible Charter School in the amount of the loan payments pursuant to 22-30.5-406 C.R.S.;

4.3.9.2. Pay an interest rate on the loan that is equal to the interest rate paid by the State Treasurer on the Lease-Purchase agreement entered into pursuant to 22-43.7-110 C.R.S. to provide Financial Assistance to the Eligible Charter School for which the loan is approved;

4.3.9.3. Amortize the loan payments over the same period in years as the Lease-Purchase agreement entered into pursuant to 22-43.7-110 C.R.S. to provide Financial Assistance

to the Eligible Charter School for which the loan is approved; except that the Eligible Charter School may pay the full amount of the loan early without incurring a prepayment penalty; and

4.3.9.4. Create an escrow account for the benefit of the state with a balance in the amount of six months of loan payments.

5. Applications

5.1. Deadline for submission

5.1.1. Except as provided below, Applications shall be filed with the Board on or before a date determined by the Board.

5.1.2. An Application will not be accepted unless it is received in the Board office by 4:00 p.m. on or before the deadline date determined by the Board. This does not apply to an Application in connection with a Public School Facility Emergency;

5.1.3. The Board may, in its sole discretion and upon a showing of good cause in a written request from an Applicant, extend the deadline for filing an Application.

5.2. The Board prefers Applications to be in electronic form, but one hard copy to the Board office is acceptable. Each Application shall be in a form prescribed by the Board and shall include, but not be limited to, the following (with supporting documentation):

5.2.1. A description of the scope and nature of the Project;

5.2.2. A description of the architectural, functional, and construction standards that are to be applied to the Project that indicates whether the standards are consistent with the Construction Guidelines and provides an explanation for the use of any standard that is not consistent with the Construction Guidelines;

5.2.3. The estimated amount of Financial Assistance needed for the Project and the form and amount of Matching Moneys that the Applicant will provide for the Project;

5.2.4. If the Project involves the construction of a new Public School Facility or a major renovation of an existing Public School Facility, a demonstration of the ability and willingness of the Applicant to renew the Project over time that includes, at a minimum, the establishment of a capital renewal budget and a commitment to make annual contributions to a Capital Renewal Reserve within a School District's capital reserve fund or any functionally similar reserve fund separately maintained by an Applicant that is not a School District;

5.2.5. If the Application is for Financial Assistance for the renovation, reconstruction, expansion, or replacement of an existing Public School Facility, a description of the condition of the Public School Facility at the time the Applicant purchased or completed the construction of the Public School Facility and, if the Public School Facility was not new or was not adequate at that time, the rationale of the Applicant for purchasing the Public School Facility or constructing it in the manner in which it did;

5.2.6. A statement regarding the means by which the Applicant intends to provide Matching Moneys required for the Project, including but not limited to voter-approved multiple-fiscal year debt or other financial obligations, gifts, grants, donations, or any other means of financing permitted by law, or the intent of the Applicant to seek a waiver of the Matching Moneys requirement. If an Applicant that is a School District or a Board of Cooperative Educational Services with a participating School District intends to raise Matching Moneys by obtaining

voter approval to enter into a sublease-purchase agreement that constitutes an indebtedness of the district as pursuant to § 22-32-127 C.R.S., it shall indicate whether it has received the required voter approval or, if the election has not already been held, the anticipated date of the election;

5.2.7. A description of any efforts by the Applicant to coordinate Capital Construction projects with local governmental entities or community-based or other organizations that provide facilities or services that benefit the community in order to more efficiently or effectively provide such facilities or services, including but not limited to a description of any financial commitment received from any such entity or organization that will allow better leveraging of any Financial Assistance awarded;

5.2.8. A copy of any existing Master Plan or facility assessment relating to the facility(ies) for which Financial Assistance is sought;

5.2.9. Any other information that the Board may require for the evaluation of the project;

5.2.10. An Application from a School District shall include signatures of the Superintendent and a District Board Officer;

5.2.11. An Application from a Charter School shall include signatures of the District Superintendent, School Board Officer, and the Charter School Director;

5.2.12. An Application from an Institute Charter School shall include signatures of the Charter School Institute Director and the Institute Charter School Director;

5.2.13. An Application from a Board of Cooperative Educational Services shall include signatures of the BOCES Director and a BOCES Board Officer;

5.2.14. An Application from the Colorado School for the Deaf and Blind shall include signatures of the Colorado School for the Deaf and Blind Director and a Colorado School for the Deaf and Blind Board Officer.

5.3. BEST Lease-Purchase Funding

5.3.1. In addition to the information required in section 5.2 above, the Applicant shall agree to provide any necessary documentation related to securing the lease-purchase agreement.

5.4. BEST Emergency Grants

5.4.1. Applicant shall contact the Division by phone, fax, or email. Appropriate follow up documentation will be determined based on type and severity of emergency, including financial need.

5.4.2. In the event the Governor declares a disaster emergency, pursuant to section 24-33.5-704(4) C.R.S., the Division shall, as soon as possible following the declaration of the disaster emergency, contact each affected school facility in any area of the State in which the Governor declared the disaster emergency to assess any facility needs resulting from the declared disaster emergency.

5.4.2.1. The Division must report its findings to the Board as soon as possible following its outreach.

5.4.2.2. In determining whether to recommend to the State Board that Emergency Financial Assistance be provided, the Board shall consider the findings that the Division provided to the Board.

5.4.3. The Board shall meet within fifteen days of receiving the Application for a BEST Emergency Grant to determine whether to recommend to the State Board that emergency Financial Assistance be provided, the amount of any assistance recommended to be provided, and any conditions that the Applicant shall meet to receive the assistance.

5.5. Applications that are incomplete may be rejected without further review.

5.6. The Board may request supplementation of an Application with additional information or supporting documentation.

6. Application Review

6.1. Time for Review

6.1.1. The Board, with the support of the Division, will review the Applications;

6.1.2. The Board will submit the prioritized list of Projects to the State Board for which the Board is recommending Financial Assistance according to the timeline established by the Board;

6.1.3. In the case of Financial Assistance that involves lease-purchase agreements, the prioritized list is subject to both the preliminary approval of the state board and the final approval of the capital development committee.

6.1.4. The Board may, in its discretion, extend these deadlines.

6.2. The Board, taking into consideration the Statewide Assessment, shall prioritize and determine the type and amount of the grant or matching grant for Applications for Projects deemed eligible for Financial Assistance based on the following criteria, in descending order of importance:

6.2.1. Projects that will address safety hazards or health concerns at existing Public School Facilities, including concerns relating to Public School Facility security, and projects that are designed to incorporate technology into the educational environment;

6.2.1.1. In prioritizing an Application for a Public School Facility renovation project that will address safety hazards or health concerns, the Board shall consider the condition of the entire Public School Facility for which the project is proposed and determine whether it would be more fiscally prudent to replace the entire facility than to provide Financial Assistance for the renovation project.

6.2.2. Projects that will relieve overcrowding in Public School Facilities, including but not limited to projects that will allow students to move from temporary instructional facilities into permanent facilities, and.

~~6.2.3. Projects that are designed to incorporate technology into the educational environment; and~~

~~6.2.4.~~6.2.3. All other projects.

~~6.2.5.~~6.2.4. Among other considerations, the Board may take into account the following in reviewing Applications:

~~6.2.5.1.~~6.2.4.1. The amount of the matching contribution being provided in excess of or less than the minimum;

~~6.2.5.2.~~6.2.4.2. Whether the Applicant has been placed on financial watch by the Colorado Department of Education;

~~6.2.5.3.~~6.2.4.3. Overall condition of the Applicant's existing facilities;

~~6.2.5.4.~~6.2.4.4. The project cost per pupil based on number of pupils affected by the proposed Project;

~~6.2.5.5.~~6.2.4.5. The project life cycle.

~~6.2.5.6.~~6.2.4.6. The[MA1] Public School Facility's Facility Condition Index (FCI), Colorado Facility Index (CFI), school priority score and construction guidelines score.

~~6.2.5.7.~~6.2.4.7. The Applicants ability to help itself, including available bonding capacity, planning and criteria in sections 4.1.1 or 4.1.2 or 4.1.3.

6.3. Additional actions the Board may take when reviewing an Application:

6.3.1. The Board may modify the amount of Financial Assistance requested or modify the amount of Matching Moneys required;

6.3.2. The Board may recommend funding a project in its entirety or recommend a partial award to the project;

6.3.2.1. If a project is partially funded a written explanation will be provided.

6.4. The Board shall submit to the State Board the prioritized list of Projects. The prioritized list shall include:

6.4.1. The Board's recommendation to the State Board as to the amount of Financial Assistance to be provided to each Applicant approved by the Board to receive funding and whether the assistance should be in the form of a BEST Cash Grant, BEST Lease-purchase Funding or a BEST Emergency Grant.

6.5. In considering the amount of each recommended award of Financial Assistance, the Board shall seek to be as equitable as practical in considering the total financial capacity of each Applicant.

7. BEST Lease-purchase Funding

7.1. Subject to the following limitations, the Board may instruct the State Treasurer to enter into lease-purchase agreements on behalf of the state to provide Lease-purchase Funding for Projects for which the State Board has authorized provision of Financial Assistance.

7.2. Whenever the State Treasurer enters into a lease-purchase agreement pursuant to § 22-43.7-110 C.R.S., the Applicant that will use the facility funded with the Lease-purchase Funding shall enter into a sublease-purchase agreement with the state that includes, but is not limited to, the following requirements:

7.2.1. The Applicant shall perform all the duties of the state to maintain and operate the Public School Facility that are required by the lease-purchase agreement;

7.2.2. The Applicant shall make periodic rental payments to the state, which payments shall be credited to the Assistance Fund as Matching Moneys of the Applicant;

7.2.3. Ownership of the Public School Facility shall be transferred by the state to the Applicant upon fulfillment of both the state's obligations under the lease-purchase agreement and the Applicant's obligations under the sublease-purchase agreement.

8. Payment and Oversight

8.1. Payment.

8.1.1. All Cash Grant Financial Assistance Grantees must sign a grant contract with CDE outlining the terms and conditions associated with the Financial Assistance.

8.1.2. All Financial Assistance awarded is expressly conditioned on the availability of funds.

8.1.3. Payment of Financial Assistance will be on a draw basis. As a Grantee expends funds on a Project, the Grantee may submit a request for funds to the Division on a fund request form provided by the Division. The fund request shall be accompanied by copies of invoices from the vendors for which reimbursement is being requested and any other documentation requested by the Division.

8.1.3.1. The Division will review the fund request and make payment. Payments will only be made for work that is included in the Project scope of work defined in the Application.

8.1.3.2. If the Grantee is a School District, request for payment shall come from the School District. Requests will not be accepted from individual School District schools.

8.1.3.3. If the Grantee is a District Charter School, request for payment shall come from the School District. Payment shall be made to the School District and the School District shall make payment to the charter school. The School District may not retain any portion of the moneys for any reason.

8.1.3.4. If the Grantee is an Institute Charter School, request for payment shall come from the Charter School Institute and the Charter School Institute shall make payment to the Institute Charter School. Payment shall be made directly to the Charter School Institute.

8.1.3.5. If the Grantee is a Board of Cooperative Educational Services, request for payment shall come from the Board of Cooperative Educational Services. Requests will not be accepted from individual Board of Cooperative Educational Services schools.

8.1.3.6. If the Grantee is the Colorado School for the Deaf and Blind, request for payment shall come from the Colorado School for the Deaf and Blind.

8.1.4. Payment of BEST Lease-purchase Funding will be determined by the terms of the lease-purchase agreement and any subsequent sublease-purchase agreements.

8.1.5. Each grant cycle the Board may~~shall~~ make a motion to authorize up to 5~~10~~% of the assistance fund dollars be used to address grant reserves for projects awarded in that given year.

8.1.5.1. Grant reserve requests shall be submitted on a Division provided application;

8.1.5.2. Grant reserve applications will be submitted to the Board as an action item at the board meeting following the date the grant reserve application was submitted to the Division.

8.1.5.3. Grant reserve draws shall be limited to issues that were unforeseen, unanticipated and could not have been known about or planned for at the time the Application was submitted.

8.2. Oversight

8.2.1. When a Grantee completes Project, it shall submit a final report to the Division on a Division provided form before final payment will be made. Once the final report is submitted and final payment is made, the Project shall be considered closed.

8.2.2. If a Grantee has not used all Financial Assistance on a closed out BEST Cash Grant, the unused balance will be returned to the Assistance Fund.

8.2.3. If a Grantee has not used all Financial Assistance on a closed out Lease-Purchase Grant, the unused balance will be treated in accordance with the Board policy on returning Matching Moneys.

8.2.4. The Division may make site visits to review Project progress or to review a completed Project;

8.2.5. The Division may require a Grantee to hire additional independent professional construction management to represent the Applicant's interests, if the Division deems it necessary due to the size of the Project, the complexity of the Project, or the Grantee's ability to manage the Project with Grantee personnel.

8.2.6. Upon completion of a new school, major renovation or addition Project, the Grantee shall affix a permanent sign that reads: "Funding for this school was provided through the Building Excellent Schools Today Program from School Trust Lands," unless waived in writing by the Division.

9. Technical Consultation

9.1. The Division will provide technical consultation and administrative services to School Districts, Charter Schools, Institute Charter Schools, BOCES and the Colorado School for the Deaf and Blind.

Notice of Proposed Rulemaking

Tracking number

2016-00351

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-1

Rule title

CHAPTER P-1 - PARKS AND OUTDOOR RECREATION LANDS

Rulemaking Hearing

Date

09/08/2016

Time

08:30 AM

Location

Ruth Humphreys Brown Theatre, 120 South Main Street, Creede, CO 81130

Subjects and issues involved

Chapter P-01 - Parks and Outdoor Recreation Lands - See Attached

Statutory authority

See Attached

Contact information

Name

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Title

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Email

katie.lanter@state.co.us

July 29, 2016

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
September 8-9, 2016

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at their next meeting on **September 8-9, 2016. The Parks and Wildlife Commission meeting will be held at the Ruth Humphreys Brown Theatre, 120 South Main Street, Creede, CO 81130. The following regulatory subjects and issues shall be considered** pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially sections 33-1-104, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION - **September 8-9, 2016,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the September 2016 Parks and Wildlife Commission meeting: November 1, 2016, unless otherwise noted.

FINAL REGULATIONS

PARKS REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" 2 CCR 405-1 and those related provisions of Chapter W-5 ("Small Game - Migratory Birds" 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter P-1

Open for consideration of final regulations including, but not limited to, establishing park-specific regulations to allow limited waterfowl hunting on two sections of the James M Robb Colorado River State Park.

Chapter P-7 - "Passes, Permits and Registrations" 2 CCR 405-7

Open for consideration of final regulations including, but not limited to, removing the two night minimum camping reservation requirements for all yurts at Pearl Lake State Park, all cabins at Mueller State Park, Large Cabin #1 at Sylvan Lake State Park and all facilities at Harmsen Ranch and Works Ranch at Golden Gate Canyon State Park.

CITIZEN PETITION

WILDLIFE REGULATIONS

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Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3

At its September meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Furbearers and Small Game, as follows:

- A Citizen Petition for rulemaking requesting the Commission consider removing or reducing the bullet weight restriction for fall turkey hunting from 38 grains to 17 grains to allow the use of .17 magnum rimfire rifles.

The Commission may accept all or a portion of this petition for final action, further consideration or otherwise reject the petition at the September Commission meeting. A copy of any petition may be obtained by contacting Katie Lanter (303) 866-3203 ext. 4601, Policy and Planning Supervisor, Colorado Parks and Wildlife.

FINAL REGULATIONS

WILDLIFE REGULATIONS

Chapter W-6 - "Falconry" - 2 CCR 406-6 and those related provisions of Chapter W-13 ("Wildlife Possession, Scientific Collecting & Special Licenses" 2 CCR 406-13) and Chapter W-14 ("Wildlife Rehabilitation" 2 CCR 406-14) necessary to accommodate changes to or ensure consistency with Chapter W-6

Open for consideration of final regulations including, but not limited to, the following:

- Exempting both residents and non-residents from state licensing requirements when conducting federally permitted educational raptor programs in Colorado.
- Limiting non-resident educational raptor possession in Colorado to 30 days or less annually.
- Allowing the transfer of non-releasable rehab raptors to a federal permit in lieu of an educational scientific collection license.
- Renaming of Chapter W-6 to "Raptors."
- Clarifying the meaning of "recently-fledged young" related to peregrine falcons.
- Changes to the abatement provisions to ensure consistency with the education provisions and to clarify which raptors may be used for abatement activities.

DRAFT REGULATIONS

WILDLIFE REGULATIONS

Chapter W-2 - "Big Game" 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-15 - "License Agents" 2 CCR 406-15

Open for consideration of regulations regarding license agents, including but not limited to, adjusting commission rates applicable to the sale of licenses by license agents according to the Consumer Price Index.

ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-3 - "River Outfitters" 2 CCR 405-3

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to licensing, required equipment, training, record keeping, and safe operation of vessels and vehicles by river outfitters (including guides, trip leaders, and guide instructors) within the state.

WILDLIFE REGULATIONS

Chapter W-1- "Fishing" - 2 CCR 406-1 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-1

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Chapter W-2 - "Big Game" 2 CCR 406-2

Open for annual review of provisions regarding mountain lion hunting, including but not limited to, licensing requirements, license areas, season dates, minor unit boundary changes and manner of take provisions. This regulatory item will not include harvest limit quotas for the 2016-2017 hunting season, as quotas were previously adopted at the June 2016 Parks and Wildlife Commission Meeting.

Chapter W-3 - "Furbearers and Small Game, except Migratory Birds" 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for the 2017 turkey hunting seasons.

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Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

> **August 25, 2016,** for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **August 26, 2016.**

Comments received by the Division after noon on **August 25, 2016,** will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to **dnr_cpwcommission@state.co.us**.

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OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at **http://cpw.state.co.us**, on or after **August 29, 2016**.

Notice of Proposed Rulemaking

Tracking number

2016-00352

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-7

Rule title

CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS

Rulemaking Hearing

Date

09/08/2016

Time

08:30 AM

Location

Ruth Humphreys Brown Theatre, 120 South Main Street, Creede, CO 81130

Subjects and issues involved

CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS - See Attached

Statutory authority

See Attached

Contact information

Name

Katie Lanter

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Policy and Planning Supervisor

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303-866-3203 x 4601

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katie.lanter@state.co.us

July 29, 2016

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FINAL REGULATIONS

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Notice of Proposed Rulemaking

Tracking number

2016-00353

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-5

Rule title

CHAPTER W-5 - MIGRATORY BIRDS

Rulemaking Hearing

Date

09/08/2016

Time

08:30 AM

Location

Ruth Humphreys Brown Theatre, 120 South Main Street, Creede, CO 81130

Subjects and issues involved

CHAPTER W-5 - MIGRATORY BIRDS - See Attached

Statutory authority

See Attached

Contact information

Name

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July 29, 2016

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FINAL REGULATIONS

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CITIZEN PETITION

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FINAL REGULATIONS

WILDLIFE REGULATIONS

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DRAFT REGULATIONS

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ISSUES IDENTIFICATION

PARKS REGULATIONS

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Notice of Proposed Rulemaking

Tracking number

2016-00354

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-6

Rule title

CHAPTER W-6 - FALCONRY

Rulemaking Hearing

Date

09/08/2016

Time

08:30 AM

Location

Ruth Humphreys Brown Theatre, 120 South Main Street, Creede, CO 81130

Subjects and issues involved

CHAPTER W-6 - FALCONRY - See Attached

Statutory authority

See Attached

Contact information

Name

Katie Lanter

Title

Policy and Planning Supervisor

Telephone

303-866-3203 x 4601

Email

katie.lanter@state.co.us

July 29, 2016

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
September 8-9, 2016

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FINAL REGULATORY ADOPTION - **September 8-9, 2016,** beginning **at 8:30 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the September 2016 Parks and Wildlife Commission meeting: November 1, 2016, unless otherwise noted.

FINAL REGULATIONS

PARKS REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" 2 CCR 405-1 and those related provisions of Chapter W-5 ("Small Game - Migratory Birds" 2 CCR 406-5) necessary to accommodate changes to or ensure consistency with Chapter P-1

Open for consideration of final regulations including, but not limited to, establishing park-specific regulations to allow limited waterfowl hunting on two sections of the James M Robb Colorado River State Park.

Chapter P-7 - "Passes, Permits and Registrations" 2 CCR 405-7

Open for consideration of final regulations including, but not limited to, removing the two night minimum camping reservation requirements for all yurts at Pearl Lake State Park, all cabins at Mueller State Park, Large Cabin #1 at Sylvan Lake State Park and all facilities at Harmsen Ranch and Works Ranch at Golden Gate Canyon State Park.

CITIZEN PETITION

WILDLIFE REGULATIONS

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Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3

At its September meeting, the Parks and Wildlife Commission will consider a Citizen Petition for Rulemaking related to Furbearers and Small Game, as follows:

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FINAL REGULATIONS

WILDLIFE REGULATIONS

Chapter W-6 - "Falconry" - 2 CCR 406-6 and those related provisions of Chapter W-13 ("Wildlife Possession, Scientific Collecting & Special Licenses" 2 CCR 406-13) and Chapter W-14 ("Wildlife Rehabilitation" 2 CCR 406-14) necessary to accommodate changes to or ensure consistency with Chapter W-6

Open for consideration of final regulations including, but not limited to, the following:

- Exempting both residents and non-residents from state licensing requirements when conducting federally permitted educational raptor programs in Colorado.
- Limiting non-resident educational raptor possession in Colorado to 30 days or less annually.
- Allowing the transfer of non-releasable rehab raptors to a federal permit in lieu of an educational scientific collection license.
- Renaming of Chapter W-6 to "Raptors."
- Clarifying the meaning of "recently-fledged young" related to peregrine falcons.
- Changes to the abatement provisions to ensure consistency with the education provisions and to clarify which raptors may be used for abatement activities.

DRAFT REGULATIONS

WILDLIFE REGULATIONS

Chapter W-2 - "Big Game" 2 CCR 406-2

Open for consideration of regulations adjusting non-resident big game license fees according to the Consumer Price Index, and adjusting non-resident big game license fees within statutory limitations pursuant to 33-4-102 (1.6)(IV)(b), C.R.S.

Chapter W-15 - "License Agents" 2 CCR 406-15

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ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-3 - "River Outfitters" 2 CCR 405-3

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to licensing, required equipment, training, record keeping, and safe operation of vessels and vehicles by river outfitters (including guides, trip leaders, and guide instructors) within the state.

WILDLIFE REGULATIONS

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Open for annual review of provisions regarding mountain lion hunting, including but not limited to, licensing requirements, license areas, season dates, minor unit boundary changes and manner of take provisions. This regulatory item will not include harvest limit quotas for the 2016-2017 hunting season, as quotas were previously adopted at the June 2016 Parks and Wildlife Commission Meeting.

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Notice of Proposed Rulemaking

Tracking number

2016-00355

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-13

Rule title

CHAPTER W-13 - POSSESSION OF WILDLIFE, SCIENTIFIC COLLECTING, AND SPECIAL LICENSES

Rulemaking Hearing

Date

09/08/2016

Time

08:30 AM

Location

Ruth Humphreys Brown Theatre, 120 South Main Street, Creede, CO 81130

Subjects and issues involved

CHAPTER W-13 - POSSESSION OF WILDLIFE, SCIENTIFIC COLLECTING, AND SPECIAL LICENSES - See Attachment

Statutory authority

See Attachement

Contact information

Name

Katie Lanter

Title

Policy and Planning Supervisor

Telephone

303-866-3203 x 4601

Email

katie.lanter@state.co.us

July 29, 2016

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September 8-9, 2016

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Notice of Proposed Rulemaking

Tracking number

2016-00356

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-14

Rule title

CHAPTER W-14 - WILDLIFE REHABILITATION

Rulemaking Hearing

Date

09/08/2016

Time

08:30 AM

Location

Ruth Humphreys Brown Theatre, 120 South Main Street, Creede, CO 81130

Subjects and issues involved

CHAPTER W-14 - WILDLIFE REHABILITATION - See Attached

Statutory authority

See Attached

Contact information

Name

Katie Lanter

Title

Policy and Planning Supervisor

Telephone

303-866-3203 x 4601

Email

katie.lanter@state.co.us

July 29, 2016

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PARKS REGULATIONS

Chapter P-3 - "River Outfitters" 2 CCR 405-3

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to licensing, required equipment, training, record keeping, and safe operation of vessels and vehicles by river outfitters (including guides, trip leaders, and guide instructors) within the state.

WILDLIFE REGULATIONS

Chapter W-1- "Fishing" - 2 CCR 406-1 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) necessary to accommodate changes to or ensure consistency with Chapter W-1

Open for annual review of the entire chapter including, but not limited to, consideration of regulations regarding seasons and season dates, bag and possession limits, licensing requirements, manner of take provisions and special conditions or restrictions applicable to waters of the state.

Chapter W-2 - "Big Game" 2 CCR 406-2

Open for annual review of provisions regarding mountain lion hunting, including but not limited to, licensing requirements, license areas, season dates, minor unit boundary changes and manner of take provisions. This regulatory item will not include harvest limit quotas for the 2016-2017 hunting season, as quotas were previously adopted at the June 2016 Parks and Wildlife Commission Meeting.

Chapter W-3 - "Furbearers and Small Game, except Migratory Birds" 2 CCR 406-3

Open for annual review of regulations regarding turkey hunting, including but not limited to, license areas and license numbers, season dates, and manner of take provisions for the 2017 turkey hunting seasons.

Except for the day and time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission's schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection and distribution at the Office of the Regulations Manager, Division of Parks and Wildlife, 1313 Sherman St., Denver, Colorado, at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Comment deadlines: Comments will be accepted at any time prior to, or as part of the meeting. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

> **August 25, 2016,** for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **August 26, 2016.**

Comments received by the Division after noon on **August 25, 2016,** will be provided to the Commission on the day of the meeting.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be submitted to the Division of Parks and Wildlife at 1313 Sherman St., Denver, CO 80203; or e-mailed to **dnr_cpwcommission@state.co.us**.

Use of Consent Agenda:
In order to increase the Parks and Wildlife Commission's efficiency and allow more time for consideration of parks and wildlife policy and contested issues, some or all of this regulatory agenda may be listed for action by the Commission as part of a "Consent Agenda" for this meeting.

The process for placing matters on the Consent Agenda is as follows:
The Director identifies matters where the recommended action follows established policy or precedent, there has been agreement reached or the matter is expected to be uncontested and non-controversial.

Regulatory Matters on the Consent Agenda are noticed for hearing at the same time and in the same manner as other Consent Agenda items. If a member of the Commission requests further consideration of an item on the Consent Agenda, that item will be withdrawn from the Consent Agenda and discussed at the end of the meeting or at the next meeting. The Consent Agenda may be voted on without the necessity of reading individual items. Any Commission member may request clarification from the Director of any matter on the Consent Agenda.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda may be viewed on the Division of Parks and Wildlife's internet home page at **http://cpw.state.co.us**, on or after **August 29, 2016**.

Notice of Proposed Rulemaking

Tracking number

2016-00358

Department

600 - Department of Transportation

Agency

601 - Transportation Commission and Office of Transportation Safety

CCR number

2 CCR 601-11

Rule title

RULES GOVERNING PRACTICE AND PROCEDURES OF THE TRANSPORTATION COMMISSION OF COLORADO

Rulemaking Hearing

Date

09/12/2016

Time

01:00 PM

Location

CO Department of Transportation, Auditorium, 4201 E. Arkansas Ave., Denver, CO 80222

Subjects and issues involved

The purpose of these rules is to set forth provisions governing the Transportation Commissions actions, administrative practices, and transaction of business. The Transportation Commission is updating its rules to change the name of the Disadvantaged Business Enterprises (DBE) Committee to Small Business and Diversity (SBD) Committee, to clarify the timeline of the election of Commission officers, to clarify the role and expand the membership of the Efficiency and Accountability Committee pursuant to House Bill 16-1172, and to make other minor clarifying revisions. The authority under which the Transportation Commission of Colorado shall establish these rules is set forth in § 43-1-106(6) and § 43-1-106(8)(k), C.R.S.

Statutory authority

§ 43-1-106(6), § 43-1-106(8)(k), and recent amendments to § 43-1-106(17)(a), C.R.S. as a result of House Bill 16-1172.

Contact information

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Title

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DEPARTMENT OF TRANSPORTATION

Transportation Commission

Rules Governing Practice and Procedures of the Transportation Commission of Colorado

2 CCR 601-11

Statement of Basis, Purpose, and Statutory Authority

The purpose of these rules is to set forth provisions governing the Transportation Commission's actions, administrative practices, and transaction of business. In 2014, the rules were updated to make one substantive change to rule 2.06 (changing the annual election of officers from the August regular meeting to July) and to otherwise make numbering and other non-substantive changes. In 2016, the rules were updated to change the name of the Disadvantaged Business Enterprises ("DBE") Committee to Small Business and Diversity ("SBD") Committee, to clarify the timeline of the election of Commission officers, to clarify the role and expand the membership of the Efficiency and Accountability Committee pursuant to House Bill 16-1172, and to make other minor clarifying revisions. The authority under which the Transportation Commission of Colorado shall establish these rules is set forth in § 43-1-106(6) and § 43-1-106(8)(k), C.R.S.

1.00 Definitions

1.01 "Ad Hoc Committee" shall mean a committee created by the Commission for the purpose of addressing a specific need of a non-continuous nature.

1.02 "Bridge Enterprise Board of Directors" shall mean a type 1 board as defined in § 24-1-105, C.R.S., and shall be comprised of the members of the Transportation Commission of Colorado pursuant to § 43-4-805(2) C.R.S.

1.03 "Commission" shall mean the Transportation Commission of Colorado.

1.04 "Department" shall mean the Colorado Department of Transportation.

1.05 "Executive Director" shall mean the Executive Director of the Colorado Department of Transportation.

1.06 "Headquarters" shall mean the Colorado Department of Transportation's headquarters building, the address for which is provided on the Colorado Department of Transportation's website.

1.07 "HPTE Board" shall mean the Board of Directors of the High Performance Transportation Enterprise pursuant to § 43-4-806(2)(a), C.R.S., which shall be a type 1 board as defined in § 24-1-105, C.R.S., and shall include three members of the Transportation Commission appointed by resolution of the Commission.

1.08 "Meeting" shall mean any kind of gathering convened to discuss public business, in person, by telephone, electronically, or by other means of communication pursuant to § 24-6-402(1)(b), C.R.S.

1.09 "Secretary" shall mean the Secretary of the Transportation Commission of Colorado.

1.10 "Standing Committee" shall mean a committee created by the Commission to address a general need of a continuous nature.

1.11 "State" shall mean the State of Colorado.

2.00 Commission Members – Elections – Appointments - Successions

2.01 The Commission consists of eleven members, appointed by the Governor with the consent of the Senate for terms of four years. Each Commissioner shall reside in the district the Commissioner represents.

2.02 All members of the Commission shall take an oath of office prescribed by the constitution of the state for state officers and the oath shall be filed by the Secretary in the Office of the Secretary of State.

2.0.3 The members of the Commission and their successors shall constitute a body corporate to be known as the "Transportation Commission of Colorado"; shall have the power to adopt and use a common seal and to change and alter such seal at will; and shall have and exercise all powers necessarily incident to a body corporate.

2.04 All members of the Commission shall also serve as members of the Bridge Enterprise Board of Directors.

2.05 Three members of the Commission shall be appointed by Commission ratifying resolution to serve on the Board of Directors of the High Performance Transportation Enterprise. 2.06 Annual election of officers shall be the last order of business at the Commission's regular June meeting. The elected officers' terms shall begin on July 1, and expire on June 30 of the following year. 2.07 The Commission shall elect a Chairman, Vice Chairman and Secretary to serve for one year or until successors are elected.

2.08 The Chairman shall preside at all regular meetings of the Commission. The Chairman shall be a member of the Commission.

2.09 The Vice Chairman, in the absence or disability of the Chairman shall perform the duties of the Chairman. The Vice Chairman shall be a member of the Commission.

2.10 In the absence or disability of the Chairman or Vice Chairman, the Commission shall elect from its members present a Chairman pro tempore who shall perform the duties of the Chairman for that meeting.

2.11 The Secretary shall assist the Chairman in conducting the meetings of the Commission and shall keep the books and records of the Commission. The Secretary shall be a member of the Department staff.

3.00 Committees of the Commission

3.01 The Commission may create Standing Committees by full consent of the Commission as it deems necessary. Members shall be appointed by the Chairman, with the consent of the full Commission, to all existing Standing Committees. Members so appointed shall begin serving by the July regular meeting on the respective Committees and serve for one year or until their successors are appointed. The Commission shall ratify the appointments of members to Standing Committees by resolution. The Commission has created the following Standing Committees:

3.01.1 The Audit Review Committee ("ARC"), which shall be comprised of at least three but no more than five members of the Commission who shall meet periodically with executive

management and the Audit Director to review audits, reports and activities of the internal Audit Division.

3.01.2 The Small Business and Diversity (“SBD”) Committee, which shall be comprised of at least three but no more than five members of the Commission who shall meet periodically with executive management and the Director of the Civil Rights and Business Resource Center to review the civil rights and small business programs.

3.01.3 The Safety Committee, which shall be comprised of at least three but no more than five members of the Commission who shall meet periodically with executive management to review the safety program.

3.01.4 The Transit and Intermodal Committee ("T&I Committee"), which shall be comprised of at least three but no more than five members of the Commission who shall meet periodically with executive management and the Division of Transit and Rail Director to review transit and rail policies and practices.

3.01.5 The Efficiency and Accountability Committee, which is reestablished pursuant to § 43-1-106(17)(a), C.R.S., shall seek ways to maximize the efficiency and accountability of the Department and the Transportation Commission to allow increased investment in the transportation system over the short, medium, and long term, in compliance with § 43-1-106(17)(a), C.R.S.

A. Membership shall include, from the Executive Branch of the state government:

1. One member of the Commission designated by the Commission;

2. One member of the Office of the Executive Director designated by the Executive Director;

3. One member from each of the divisions of the Department created in § 43-1-104(1) C.R.S., designated by the Executive Director after consultation with the directors of each division; and

4. Any other employees of the Department the Executive Director may designate.

B. Membership shall include, from the Legislative Branch of the state government:

1. Two members of the House of Representatives, one appointed from the majority party by the speaker of the House of Representatives and one appointed from the minority party by the minority leader of the House of Representatives, pursuant to § 43-1-106(17); and

2. Two members of the Senate, one appointed from the majority party by the president of the Senate and one appointed from the minority party by the senate minority leader, pursuant to § 43-1-106(17).

C. Membership shall include, from outside state government, representatives of:

1. The construction Industry;

2. The engineering industry;

3. The environmental community;

4. Transportation planning organizations;

5. Public transportation providers;

6. Counties;

7. Municipalities;

8. Nonpartisan good governance organizations;

9. Any other industries or groups that the Commission determines should be represented on the committee; and

10. Any individuals or representatives of informally constituted groups of individuals that the Commission determines should be represented on the Committee.

D. The Efficiency and Accountability Committee shall periodically report to the Commission and the Executive Director regarding means by which the Commission and the Department may execute their duties more efficiently. The Executive Director or the Director's designee shall report at least once per calendar year to either the committees of the House of Representatives and the Senate that have jurisdiction over transportation or the Transportation Legislation Review Committee regarding their activities and recommendations and any actions taken by the Commission or Department to implement recommendations of the committee.

E. A member of the Efficiency and Accountability Committee who has a personal or private interest that could reasonably be expected to be affected if the Commission or the Department implements a proposed Committee recommendation shall disclose the interest to the Committee and shall abstain from any Committee vote to adopt or reject the recommendation.

3.02 The Chairman, with the consent of a majority of the Commission members, may appoint Ad Hoc Committees as deemed necessary to provide for the efficient conduct of the Commission's business; such committees shall serve at the pleasure of the Chairman.

4.00 Commission Attendance and Notice to Commission of Scheduled Meetings

4.01 Each Commissioner is encouraged to attend the following:

4.01.1 All meetings and hearings of the Commission.

4.01.2 All meetings or gatherings of private groups or associations at which Commission representation is requested.

4.01.3 All organized official field trips of the Commission.

4.01.4 All meetings of the Department and private companies, groups or governmental entities which the Commissioner attends at the request of the Chairman or the Executive Director.

4.01.5 All Commission meetings with Legislators, the Joint Budget Committee, the House Transportation and Energy Committee, and the Senate Transportation Committee.

4.01.6 All meetings of any standing or Ad Hoc Committee to which a Commissioner is appointed.

4.01.7 All meetings a Commissioner is assigned to attend as a representative of the Commission.

4.02 All absences of Commissioners at a meeting or hearing of the Commission shall be noted by the Secretary in the minutes of any meeting or hearing of the Commission. Commissioners are encouraged to notify the Secretary or Chairman in advance of any meeting or hearing if they will be unable to attend or if they will be absent from a portion of the meeting or hearing.

4.03 If a Commissioner does not answer roll call at the beginning of the meeting, that Commissioner shall be deemed absent unless excused by the Chairman or his or her subsequent arrival is noted in the minutes.

4.04 Except under special or emergency circumstances, the Secretary will provide to the Commission copies of material pertaining to items that require action within seven days of the meeting.

4.05 Special meetings may be called by the Governor, the Executive Director, the Chairman or a majority of the members of the Commission. The Secretary shall provide notice of any special meeting to the Commission by mail or electronic mail no less than three days prior to the date of any special meeting. However, in case of emergency, a 24-hour notice shall be given by telephone or electronic mail. *See* § 43-1-106(6) C.R.S.

5.00 Schedule of Meetings – Meeting Location

5.01 Except as provided in this section, regular meetings of the Commission shall be held on the third Thursday of each month and no less than eight times a year.

5.02 A schedule of regular meetings of the Commission shall be established and adopted each July for such fiscal year.

5.03 The Chairman of the Commission may propose postponement or advancement of the time and date of any regular meeting for Commission action and the Chairman may remove items from the agenda or rearrange the order of the agenda items.

5.04 The Commission meetings shall be held at Headquarters or at other locations throughout the state. The Commission will consider holding at least two of its meetings per 12-month period outside the Denver area to enable persons throughout the state to attend its meetings and express their opinions to the Commission.

6.00 Public Notice of Meetings

6.01 Public Notice of Commission meetings will be given as provided for in the Colorado Sunshine Act of 1972 (§ 24-6-401, *et seq.* C.R.S.).

6.02 All meetings of two or more members of the Commission at which public business is discussed or at which any formal action may be taken are declared to be public meetings and shall be open to the public at all times, excluding the convening of an executive session pursuant to Rule 7.09. *See* 24-6-402(2)(a), C.R.S.

6.03 Any meetings at which the adoption of any proposed policy, position resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the Commission is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. *See* § 24-6-402(2)(c), C.R.S.

6.04 The Commission shall be deemed to have given full and timely notice if the notice of the meeting is posted in the lobby of CDOT Headquarters and on CDOT's website, no less than twenty-four hours prior to the holding of the meeting.

6.05 In addition to the provisions of 6.04 of this rule, public notice of the regular meeting date and proposed agenda shall be posted by the Secretary in the lobby of the Headquarters and on CDOT's website at least five days prior to the meeting, or as soon as practicable.

7.00 Conduct of Meetings – Matters Coming Before the Commission

7.01 In any lawsuit or proceedings, all meetings of the Commission shall be presumed to have been duly called and regularly held.

7.02 Except for matters to be considered by the Commission in Executive Session pursuant to § 24-6-402(3)(a) or § 24-6-402(3)(b), C.R.S. ,all meetings of the Commission shall be open to the public and shall be conducted by the Chairman generally under Robert's Rules of Order, but may proceed on an informal basis.

7.03 A quorum of the Commission shall be six members. If a quorum of the Commission is present, a majority vote of the members present shall be required to carry any motion, order, regulation or other action of the Commission.

7.04 All formal action of the Commission shall be by resolution adopted at a regular or special meeting of the Commission as required by statute.

7.05 All resolutions originated by Department staff which require a legal determination must be approved as to legality and form by the Office of the Attorney General or its designee before being accepted as an action item on a Commission meeting agenda.

7.06 Persons or groups wishing to make a presentation at a Commission meeting or hearing may make a request to be placed on the agenda by contacting the Secretary in writing at CDOT Headquarters at least 17 days prior to the meeting. The public is encouraged to participate at these meetings.

7.07 The Secretary will furnish sign-in sheets for public comment at all meetings of the Commission. They will be available at the door of the meeting room.

7.08 Items which are not included or identified as action items in the public notice of the Commission meeting agenda may, nonetheless, be considered by the Commission for action at the noticed meeting on an emergency basis, provided that the items must be approved for action by either the Chairman or a majority of the Commissioners and that the Secretary must post public notice of such additional action items in accordance with the provisions of Section 6.00 of this rule.

7.09 Upon the announcement by the Commission to the public of the topic for discussion and after providing as much detail as possible without compromising the purpose for which the executive session is authorized, and by the affirmative vote of two-thirds of its members, the Commission may hold an Executive Session at a regular or special meeting for the sole purpose of considering any of the matters described in § 24-6-402(3)(a) or § 24-6-402(3)(b), C.R.S.. No adoption of any proposed policy, position, resolution, rule, regulations, or formal action, except the review, approval, and amendment of the minutes of an executive session shall occur at any executive session that is not open to the public.

8.00 Records - Minutes

8.01 All meetings of the Commission shall be electronically recorded.

8.02 The Secretary shall make and maintain minutes of all Commission meetings. Minutes shall be written in the order in which the issues were considered at the meeting, shall be prepared promptly, and shall be open to public inspection. Minutes of each meeting shall state, by name, the Commissioners that are either present or absent and all Department executive management that are present.

8.03 Minutes shall include all matters considered and action taken, if any, but need not be a verbatim transcript. The minutes shall reflect the number of yea and nay votes on each action item and shall state by name the Commissioners voting yea or nay, if there is a division of the vote.

8.04 Minutes of any meeting shall be approved, rejected or modified at the next regular meeting. After approval or modification, minutes shall be signed by the Secretary and made a part of the Commission's records. A copy of the signed minutes of any Commission meeting shall be available to the public upon request.

8.05 The minutes and records of the Commission, books of account, and the seal of the Commission shall be kept in the office of the Secretary and shall be open to public inspection.

8.06 The Commission shall retain records in keeping with the requirements of § 24-80-101, *et seq.*, C.R.S.; however, with regard to the electronic recording of executive sessions, the records shall be kept for ninety days pursuant to § 24-6-402(2)(d.5)(I)(E), C.R.S. The audio files shall be kept permanently by the Secretary. 9.00 Compensation – Reimbursement of Expenditures

9.01 Pursuant to § 43-1-106 (6), C.R.S., each member of the Commission shall receive seventy-five dollars per day for each regular or special meeting of the Commission actually attended and shall be reimbursed for his or her necessary expenses incurred in the discharge of such member's official duties and in accordance with Fiscal Rules and Commission policy.

9.02 Mileage rates for necessary travel shall be computed in accordance with § 24-9-104, C.R.S., as amended.

10.00 Standards of Conduct – Conflicts of Interest – Disclosure

10.01 A conflict of interest occurs whenever a Commissioner has privileged information or a financial interest which may influence or be reasonably perceived by the public as influencing the conduct of the Commissioner.

10.02 A Commissioner holds a position of public trust and has a fiduciary duty to carry out his or her duties for the benefit of the people of the state in a manner consistent with the applicable standards of conduct of § 24-18-101 through § 24-18-206, C.R.S. Each Commissioner shall comply with such standards, as follows:

10.02.1 A Commissioner shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which he has a direct or substantial financial interest.

10.02.2 "Financial interest" means a substantial interest held by an individual which is:

(1) An ownership interest in a business;

(2) A creditor interest in an insolvent business;

(3) An employment or a prospective employment for which negotiations have begun;

(4) An ownership interest in real or personal property;

(5) A loan or any other debtor interest; or

(6) A directorship or officership in a business.

10.03 However, a Commissioner may, prior to acting in a manner described above which may impinge on his or her fiduciary duty and the public trust, disclose the nature of his or her private interest in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his or her services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his or her interest. If he or she then performs the official act involved, he or she shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.

11.00 Adoption of Rules and Regulations

11.01 All rulemaking proceedings authorized by law to be conducted by the Commission, or by a designee on behalf of the Commission, shall be conducted in accordance with the State Administrative Procedure Act ("APA"),§ 24-4-101 *et seq.*, C.R.S.

12.00 Commission Adjudicatory Hearings

12.01 Adjudicatory hearings may be conducted by the Commission on any issues within the Commission's jurisdiction or the hearing may be delegated by the Commission either to an Administrative Law Judge, in the Division of Administrative Hearings, Department of Administration, or to the Department of Transportation's Executive Director to act as the Hearing Officer. Hearings shall be conducted in accordance with the State Administrative Procedure Act ("APA") § 24-4-101, *et seq.* C.R.S., unless the Commission's or the Department of Transportation's enabling legislation provides otherwise.

12.02 In cases where the Department conducts adjudicatory hearings, either through the Executive Director or his designee, which may be but shall not be limited to the Chief Engineer or an Administrative Law Judge. The Executive Director, or his or her designee, shall file a written report with the Commission for review setting forth the evidence and the findings and the application of the findings to statutes and rules. Upon review, the Commission may then sustain findings or make new findings based upon the record.

DEPARTMENT OF TRANSPORTATION

Transportation Commission

Rules Governing Practice and Procedures of the Transportation Commission of Colorado

2 CCR 601-11

Statement of Basis, Purpose, and Statutory Authority

The purpose of these rules is to set forth provisions governing the Transportation Commission's actions, administrative practices, and transaction of business. In 2014, ~~T~~the rules ~~are being~~were updated to make one substantive change to rule 2.06 (changing the annual election of officers from the August regular meeting to July) and to otherwise make numbering and other non-substantive changes. In 2016, the rules were updated to change the name of the Disadvantaged Business Enterprises ("DBE") Committee to Small Business and Diversity ("SBD") Committee, to clarify the timeline of the election of Commission officers, to clarify the role and expand the membership of the Efficiency and Accountability Committee pursuant to House Bill 16-1172, and to make other minor clarifying revisions. The authority under which the Transportation Commission of Colorado shall establish these rules is set forth in § 43-1-106(6) and § 43-1-106(8)(k), C.R.S.

1.00 Definitions

1.01 "Ad Hoc Committee" shall mean a committee created by the Commission for the purpose of addressing a specific need of a non-continuous nature.

1.02 "Bridge Enterprise Board of Directors" shall mean a type 1 board as defined in § 24-1-105, C.R.S., and shall be comprised of the members of the Transportation Commission of Colorado pursuant to § 43-4-805(2) C.R.S.

1.03 "Commission" shall mean the Transportation Commission of Colorado.

1.04 "Department" shall mean the Colorado Department of Transportation.

1.05 "Executive Director" shall mean the Executive Director of the Colorado Department of Transportation.

1.06 "Headquarters" shall mean ~~4201 East Arkansas Avenue, Denver, Colorado 80222~~the Colorado Department of Transportation's headquarters building, the address for which is provided on the Colorado Department of Transportation's website.

1.07 "HPTE Board" shall mean the Board of Directors of the High Performance Transportation Enterprise pursuant to § 43-4-806(2)(a), C.R.S., which shall be a type 1 board as defined in § 24-1-105, C.R.S., and shall include three members of the Transportation Commission appointed by resolution of the Commission.

1.08 "Meeting" shall mean any kind of gathering convened to discuss public business, in person, by telephone, electronically, or by other means of communication pursuant to § 24-6-402(1)(b), C.R.S.

1.09 "Secretary" shall mean the Secretary of the Transportation Commission of Colorado.

1.10 "Standing Committee" shall mean a committee created by the Commission to address a general need of a continuous nature.

1.11 "State" shall mean the State of Colorado.

2.00 Commission Members – Elections – Appointments - Successions

2.01 The Commission consists of eleven members, appointed by the Governor with the consent of the Senate for terms of four years. Each Commissioner shall reside in the district the Commissioner represents.

2.02 All members of the Commission shall take an oath of office prescribed by the constitution of the state for state officers and the oath shall be filed by the Secretary in the Office of the Secretary of State.

2.0.3 The members of the Commission and their successors shall constitute a body corporate to be known as the "Transportation Commission of Colorado"; shall have the power to adopt and use a common seal and to change and alter such seal at will; and shall have and exercise all powers necessarily incident to a body corporate.

2.04 All members of the Commission shall also serve as members of the Bridge Enterprise Board of Directors.

2.05 Three members of the Commission shall be appointed by Commission ratifying resolution to serve on the Board of Directors of the High Performance Transportation Enterprise.

2.06 Annual election of officers shall be the ~~first~~ last order of business at the Commission's regular ~~July~~ June meeting. The elected officers' terms shall begin on July 1, and expire on June 30 of the following year.

2.07 The Commission shall elect a Chairman, Vice Chairman and Secretary to serve for one year or until successors are elected.

2.08 The Chairman shall preside at all regular meetings of the Commission. The Chairman shall be a member of the Commission.

2.09 The Vice Chairman, in the absence or disability of the Chairman shall perform the duties of the Chairman. The Vice Chairman shall be a member of the Commission.

2.10 In the absence or disability of the Chairman or Vice Chairman, the Commission shall elect from its members present a Chairman pro tempore who shall perform the duties of the Chairman for that meeting.

2.11 The Secretary shall assist the Chairman in conducting the meetings of the Commission and shall keep the books and records of the Commission. The Secretary shall be a member of the Department staff.

3.00 Committees of the Commission

3.01 The Commission may create Standing Committees by full consent of the Commission as it deems necessary. ~~As part of the annual election of officers, m~~Members shall be appointed by the Chairman, with the consent of the full Commission, to all existing Standing Committees.~~;~~ ~~m~~Members so appointed shall begin serving by the July regular meeting on the respective Committees and serve for one year or until their successors are appointed. The Commission shall ratify the appointments of members to Standing Committees by resolution. The Commission has

created the following Standing Committees:

3.01.1 The Audit Review Committee ("ARC"), which shall be comprised of at least three but no more than five members of the Commission who shall meet periodically with executive management and the Audit Director to review audits, reports and activities of the internal Audit Division. ~~Any Commissioner may refer an audit or a report to the full Commission for consideration.~~

3.01.2 The Small Business and Diversity (“SBD”) ~~Disadvantaged Business Enterprises ("DBE")~~ Committee, which shall be comprised of at least ~~four~~ three but no more than five members of the Commission who shall meet periodically with executive management and the ~~DBE~~ Director of the Civil Rights and Business Resource Center ~~program administrator~~ to review the ~~DBE~~ civil rights and small business programs.

3.01.3 The Safety Committee, which shall be comprised of at least ~~four~~ three but no more than five members of the Commission who shall meet periodically with executive management to review the safety program.

3.01.4 The Transit and Intermodal Committee ("T&I Committee"), which shall be comprised of at least ~~four~~ three but no more than five members of the Commission who shall meet periodically with executive management and the Division of Transit and Rail Director to review transit and rail policies and practices.

3.01.5 The Efficiency and Accountability Committee, which is reestablished pursuant to § 43-1-106(17)(a), C.R.S., ~~which~~ shall seek ways to maximize the efficiency and accountability of the Department and the Transportation Commission to allow increased investment in the transportation system over the short, medium, and long term, in compliance with § 43-1-106(17)(a), C.R.S.

A. Membership shall include, from the Executive Branch of the state government:

1. One member of the Commission designated by the Commission;

2. One member of the Office of the Executive Director designated by the Executive Director;

3. One member from each of the divisions of the Department created in ~~section~~§ 43-1-104(1) C.R.S., designated by the Executive Director after consultation with the directors of each division; and

4. Any other employees of the Department the Executive Director may designate.

B. Membership shall include, from the Legislative Branch of the state government:

1. Two members of the House of Representatives, one appointed from the majority party by the speaker of the House of Representatives and one appointed from the minority party by the minority leader of the House of Representatives, pursuant to § 43-1-106(17); and

2. Two members of the Senate, one appointed from the majority party by the president of the Senate and one appointed from the minority party by the senate minority leader, pursuant to § 43-1-106(17).

~~B.~~C. Membership shall include, from outside state government, representatives of:

1. The construction Industry;

2. The engineering industry;

3. The environmental community;

4. Transportation planning organizations;

5. Public transportation providers; ~~and~~

6. Counties;

7. Municipalities;

8. Nonpartisan good governance organizations;

9. Any other industries or groups that the Commission determines should be represented on the committee; and~~.~~

10. Any individuals or representatives of informally constituted groups of individuals that the Commission determines should be represented on the Committee.

D~~C~~. The Efficiency and Accountability Committee shall periodically report to the Commission and the Executive Director regarding means by which the Commission and the Department may execute their duties more efficiently. The Executive Director or the Director's designee shall report at least once per calendar year to either the committees of the House of Representatives and the Senate that have jurisdiction over transportation or the Transportation Legislation Review Committee regarding their activities and recommendations and any actions taken by the Commission or Department to implement recommendations of the committee.

E. A member of the Efficiency and Accountability Committee who has a personal or private interest that could reasonably be expected to be affected if the Commission or the Department implements a proposed Committee recommendation shall disclose the interest to the Committee and shall abstain from any Committee vote to adopt or reject the recommendation.

3.02 The Chairman, with the consent of a majority of the Commission members, may appoint Ad Hoc Committees as deemed necessary to provide for the efficient conduct of the Commission's business; such committees shall serve at the pleasure of the Chairman.

4.00 Commission Attendance and Notice to Commission of Scheduled Meetings

4.01 Each Commissioner is encouraged to attend the following:

4.01.1 All meetings and hearings of the Commission.

4.01.2 All meetings or gatherings of private groups or associations at which Commission representation is requested.

4.01.3 All organized official field trips of the Commission.

4.01.4 All meetings of the Department and private companies, groups or governmental entities

which the Commissioner attends at the request of the Chairman or the Executive Director.

4.01.5 All Commission meetings with Legislators, the Joint Budget Committee, the House Transportation and Energy Committee, and the Senate Transportation Committee.

4.01.6 All meetings of any standing or Ad Hoc Committee to which a Commissioner is appointed.

4.01.7 All meetings a Commissioner is assigned to attend as a representative of the Commission.

4.02 All absences of Commissioners at a meeting or hearing of the Commission shall be noted by the Secretary in the minutes of any meeting or hearing of the Commission. Commissioners are encouraged to notify the Secretary or Chairman in advance of any meeting or hearing if they will be unable to attend or if they will be absent from a portion of the meeting or hearing.

4.03 If a Commissioner does not answer roll call at the beginning of the meeting, that Commissioner shall be deemed absent unless excused by the Chairman or his or her subsequent arrival is noted in the minutes.

4.04 Except under special or emergency circumstances, the Secretary will provide to the Commission copies of material pertaining to items that require action within seven days of the meeting.

4.05 Special meetings may be called by the Governor, the Executive Director, the Chairman or a majority of the members of the Commission. The Secretary shall provide notice of any special meeting to the Commission by mail or electronic mail no less than three days prior to the date of any special meeting. However, in case of emergency, a 24-hour notice shall be given by telephone or electronic mail. *See* § 43-1-106(6) C.R.S.

5.00 Schedule of Meetings – Meeting Location

5.01 Except as provided in this section, regular meetings of the Commission shall be held on the third Thursday of each month and no less than eight times a year.

5.02 A schedule of regular meetings of the Commission shall be established and adopted each ~~December~~ July for ~~the upcoming~~ such fiscal year. ~~By Commission action any such scheduled meeting may be canceled or rescheduled.~~

5.03 The Chairman of the Commission may propose postponement or advancement of the time and date of any regular meeting for Commission action and the Chairman may remove items from the agenda or rearrange the order of the agenda items.

5.04 The Commission meetings shall be held at Headquarters or at other locations throughout the state. The Commission will consider holding ~~one-third~~ at least two of its meetings per 12-month period outside the Denver area to enable persons throughout the state to attend its meetings and express their opinions to the Commission.

6.00 Public Notice of Meetings

6.01 Public Notice of Commission meetings will be given as provided for in the Colorado Sunshine Act of 1972 (§ 24-6-401, *et seq.* C.R.S.).

6.02 All meetings of two or more members of the Commission at which public business is discussed or at which any formal action may be taken are declared to be public meetings and shall be open to

the public at all times, excluding the convening of an executive session pursuant to Rule 7.098. *See* 24-6-402(2)(a), C.R.S.

6.03 Any meetings at which the adoption of any proposed policy, position resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the Commission is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. *See* § 24-6-402(2)(c), C.R.S.

6.04 The Commission shall be deemed to have given full and timely notice if the notice of the meeting is posted in the lobby of CDOT Headquarters and on CDOT's website, no less than twenty-four hours prior to the holding of the meeting.

6.05 In addition to the provisions of 6.04 of this rule, public notice of the regular meeting date and proposed agenda shall be posted by the Secretary in the lobby of the Headquarters and on CDOT's website at least five days prior to the meeting, or as soon as practicable.

7.00 Conduct of Meetings – Matters Coming Before the Commission

7.01 In any lawsuit or proceedings, all meetings of the Commission shall be presumed to have been duly called and regularly held.

7.02 Except for matters to be considered by the Commission in Executive Session pursuant to § 24-6-402(3)(a) or § 24-6-402(3)(b), C.R.S. ,all meetings of the Commission shall be open to the public and shall be conducted by the Chairman generally under Robert's Rules of Order, but may proceed on an informal basis.

7.03 A quorum of the Commission shall be six members. If a quorum of the Commission is present, a majority vote of the members present shall be required to carry any motion, order, regulation or other action of the Commission.

7.04 All formal action of the Commission shall be by resolution adopted at a regular or special meeting of the Commission as required by statute.

7.05 All resolutions originated by Department staff which require a legal determination must be approved as to legality and form by the Office of the Attorney General or its designee before being accepted as an action item on a Commission meeting agenda.

7.06 Persons or groups wishing to make a presentation at a Commission meeting or hearing may make a request to be placed on the agenda by contacting the Secretary in writing at CDOT Headquarters~~4201 East Arkansas Avenue, Room 270, Denver, Colorado 80222~~ at least 17 days prior to the meeting. The public is encouraged to participate at these meetings.

7.07 The Secretary will furnish sign-in sheets for public comment at all meetings of the Commission. They will be available at the door of the meeting room.

7.08~~7~~ Items which are not included or identified as action items in the public notice of the Commission meeting agenda may, nonetheless, be considered by the Commission for action at the noticed meeting on an emergency basis, provided that the items must be approved for action by either the Chairman or a majority of the Commissioners and that the Secretary must post public notice of such additional action items in accordance with the provisions of Section 6.00 of this rule.

7.09~~8~~ Upon the announcement by the Commission to the public of the topic for discussion and after providing as much detail as possible without compromising the purpose for which the executive session is authorized, and by the affirmative vote of two-thirds of its members, the Commission may hold an Executive Session at a regular or special meeting for the sole purpose of

considering any of the matters described in § 24-6-402(3)(a) or § 24-6-402(3)(b), C.R.S.. No adoption of any proposed policy, position, resolution, rule, regulations, or formal action, except the review, approval, and amendment of the minutes of an executive session shall occur at any executive session that is not open to the public.

8.00 Records - Minutes

8.01 All meetings of the Commission shall be electronically recorded. ~~The audio files shall be kept permanently by the Secretary.~~

8.02 The Secretary shall make and maintain minutes of all Commission meetings. Minutes shall be written in the order in which the issues were considered at the meeting, shall be prepared promptly, and shall be open to public inspection. Minutes of each meeting shall state, by name, the Commissioners that are either present or absent and all Department executive management that are present.

8.03 Minutes shall include all matters considered and action taken, if any, but need not be a verbatim transcript. The minutes shall reflect the number of yea and nay votes on each action item and shall state by name the Commissioners voting yea or nay, if there is a division of the vote.

8.04 Minutes of any meeting shall be approved, rejected or modified at the next regular meeting. After approval or modification, minutes shall be signed by the Secretary and made a part of the Commission's records. A copy of the signed minutes of any Commission meeting shall be available to the public upon request.

8.05 The minutes and records of the Commission, books of account, and the seal of the Commission shall be kept in the office of the Secretary and shall be open to public inspection.

~~8.06 The Secretary will furnish sign-in sheets for all meetings of the Commission. They will be available at the door of the meeting room.~~

8.06 The Commission shall retain records in keeping with the requirements of § 24-80-101, *et seq.*, C.R.S.; however, with regard to the electronic recording of executive sessions, the records shall be kept for ninety days pursuant to § 24-6-402(2)(d.5)(I)(E), C.R.S. The audio files shall be kept permanently by the Secretary.

9.00 Compensation – Reimbursement of Expenditures

9.01 Pursuant to § 43-1-106 (6), C.R.S., each member of the Commission shall receive seventy-five dollars per day for each regular or special meeting of the Commission actually attended and shall be reimbursed for his or her necessary expenses incurred in the discharge of such member's official duties and in accordance with Fiscal Rules and Commission policy.

9.02 Mileage rates for necessary travel shall be computed in accordance with § 24-9-104, C.R.S., as amended.

10.00 Standards of Conduct – Conflicts of Interest – Disclosure

10.01 A conflict of interest occurs whenever a Commissioner has privileged information or a financial interest which may influence or be reasonably perceived by the public as influencing the conduct of the Commissioner.

10.02 A Commissioner holds a position of public trust and has a fiduciary duty to carry out his or her duties for the benefit of the people of the state in a manner consistent with the applicable standards of conduct of § 24-18-101 through § 24-18-206, C.R.S. Each Commissioner shall

comply with such standards, as follows:

10.02.1 A Commissioner shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which he has a direct or substantial financial interest.

10.02.2 "Financial interest" means a substantial interest held by an individual which is:

(1) An ownership interest in a business;

(2) A creditor interest in an insolvent business;

(3) An employment or a prospective employment for which negotiations have begun;

(4) An ownership interest in real or personal property;

(5) A loan or any other debtor interest; or

(6) A directorship or officership in a business.

10.03 However, a Commissioner may, prior to acting in a manner described above which may impinge on his or her fiduciary duty and the public trust, disclose the nature of his or her private interest in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his or her services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his or her interest. If he or she then performs the official act involved, he or she shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.

11.00 Adoption of Rules and Regulations

11.01 All rulemaking proceedings authorized by law to be conducted by the Commission, or by a designee on behalf of the Commission, shall be conducted in accordance with the State Administrative Procedure Act ("APA"),§ 24-4-101 *et seq.*, C.R.S.

12.00 Commission Adjudicatory Hearings

12.01 Adjudicatory hearings may be conducted by the Commission on any issues within the Commission's jurisdiction or the hearing may be delegated by the Commission either to an Administrative Law Judge, in the Division of Administrative Hearings, Department of Administration, or to the Department of Transportation's Executive Director to act as the Hearing Officer. Hearings shall be conducted in accordance with the State Administrative Procedure Act ("APA") § 24-4-101, *et seq.* C.R.S., unless the Commission's or the Department of Transportation's enabling legislation provides otherwise.

12.02 In cases where the Department conducts adjudicatory hearings, either through the Executive Director or his designee, which may be but shall not be limited to the Chief Engineer or an Administrative Law Judge. The Executive Director, or his or her designee, shall file a written report with the Commission for review setting forth the evidence and the findings and the application of the findings to statutes and rules. Upon review, the Commission may then sustain findings or make new findings based upon the record.

Notice of Proposed Rulemaking

Tracking number

2016-00369

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

LIFE, ACCIDENT AND HEALTH, Series 4-2

Rulemaking Hearing

Date

09/01/2016

Time

01:00 PM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

The purpose of this regulation is to provide carriers offering health benefit plans with standards and guidance on Colorado filing requirements for health benefit plan network adequacy filings. These standards shall serve as the measurable requirements used by the Division to evaluate the adequacy of carrier networks.

Statutory authority

10-1-109(1), 10-16-109, and 10-16-708

Contact information

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Proposed New Regulation 4-2-53

NETWORK ADEQUACY STANDARDS AND REPORTING REQUIREMENTS FOR HEALTH BENEFIT PLANS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109(1), 10-16-109, and 10-16-708, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to provide carriers offering health benefit plans with standards and guidance on Colorado filing requirements for health benefit plan network adequacy filings. These standards shall serve as the measurable requirements used by the Division to evaluate the adequacy of carrier networks.

Section 3 Applicability

This regulation applies to all carriers marketing and issuing individual or group health benefit plans on or after January 1, 2017 subject to the individual, small group, and large group laws of Colorado. This regulation excludes individual short-term policies as defined in § 10-16-102(60), C.R.S.

Section 4 Definitions

A. “Counties with Extreme Access Considerations” or “CEAC” means, for the purposes of this regulation, counties with a population density of less than ten (10) people per square mile, based on U.S. Census Bureau population and density estimates.

B. “Community emergency center” means, for the purposes of this regulation, a community clinic that delivers emergency services. The care shall be provided 24 hours per day, 7 days per week every day of the year, unless otherwise authorized herein. A community emergency center may provide primary care services and operate inpatient beds.

C. “Covered person” means, for the purposes of this regulation, a person entitled to receive benefits or services under a health benefit plan.

D. “Emergency services” means, for the purposes of this regulation:

1. A medical or mental health screening examination that is within the capability of the emergency department of a hospital or community emergency center, including ancillary services routinely available to the emergency department to evaluate the emergency medical or mental health condition; and

2. Within the capabilities of the staff and facilities available at the hospital, further medical or mental health examination and treatment as required to stabilize the patient to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or with respect to an emergency medical condition.

E. “Enrollment” means, for the purposes of this regulation, the number of covered persons enrolled in a specific health plan or network.

F. “Essential community provider” or “ECP” means, for the purposes of this regulation, a provider that serves predominantly low-income, medically underserved individuals, including health care providers defined in part 4 of article 4 of title 25.5, C.R.S.

G. “Health benefit plan” shall, for the purposes of this regulation, have the same meaning as found in Section 10-16-102(32), C.R.S.

H. “Home health” shall, for the purposes of this regulation, have the same meaning as found in § 25.5-4-103(7), C.R.S., which are provided by a home health agency certified by the Colorado Department of Public Health and Environment.

I. “Mental health, behavioral health, and substance abuse disorder care” means, for the purposes of this regulation, health care services for a range of common mental or behavioral health conditions, or substance abuse disorders provided by a physician or non-physician professionals.

J. “Mental health, behavioral health, and substance abuse disorder care providers” for the purposes of this regulation, and for the purposes of network adequacy measurements, includes psychiatrists, psychologists, psychotherapists, licensed clinical social workers, psychiatric practice nurses, licensed addiction counselors, licensed marriage and family counselors, and licensed professional counselors.

K. “Network” means, for the purposes of this regulation, a group of participating providers providing services under a managed care plan. Any subdivision or subgrouping of a network is considered a network if covered individuals are restricted to the subdivision or subgrouping for covered benefits under the managed care plan as defined in § 10-16-102(43), C.R.S.

L. “Primary care” means, for the purposes of this regulation, health care services for a range of common physical, mental or behavioral health conditions provided by a physician or non-physician primary care provider.

M. “Primary care provider” or “PCP” means, for the purposes of this regulation, a participating health care professional designated by the carrier to supervise, coordinate or provide initial care or continuing care to a covered person, and who may be required by the carrier to initiate a referral

for specialty care and maintain supervision of health care services rendered to the covered person. For the purposes of network adequacy measurements, PCPs for adults and children includes physicians (pediatrics, general practice, family medicine, internal medicine, geriatrics, obstetrician/gynecologist); and physician assistants and nurse practitioners supervised by, or collaborating with, a primary care physician.

N. "Specialist" means, for the purposes of this regulation, a physician or non-physician health care professional who:

1. Focuses on a specific area of physical, mental or behavioral health or a group of patients; and

2. Has successfully completed required training and is recognized by the state in which he or she practices to provide specialty care.

"Specialist" includes a subspecialist who has additional training and recognition above and beyond his or her specialty training.

O. "Telemedicine" or "telehealth" means, for the purposes of this regulation, a mode of delivery of health care services through telecommunications systems, including information, electronic and communication technologies, to facilitate the assessment, diagnosis, consultation, treatment, education, care management, or self-management of a covered person's health care while the covered person is located at an originating site and the provider is located at a distant site. The terms include synchronous interactions and store-and-forward transfers. The terms do not include the delivery of health care services via telephone, facsimile machine or electronic mail systems.

P. "Urgent care facility" means, for the purposes of this regulation, a facility or office that generally has extended hours, may or may not have a physician on the premises at all times, and is only able to treat minor illnesses and injuries. Urgent care does not typically have the facilities to handle an emergency condition, which includes life or limb threatening injuries or illnesses, as defined under emergency services.

Section 5 Reporting Requirements

A. Network adequacy filings for a health benefit plan shall be filed with the Division through the System for Electronic Rate and Form Filing ("SERFF") prior to use.

B. The following four (4) measurement standards shall be used to evaluate a carrier's network adequacy:

1. Compliance with network adequacy instructions published by the Division;

2. Compliance with network adequacy definitions contained in this regulation;

3. Compliance with the measurement details contained in this regulation; and

4. Compliance with the reporting methodologies contained in this regulation.

C. Attestations and certifications that adequate networks shall be provided by plan and group type on the "Colorado Network Adequacy Carrier Attestation Form" submitted with the Binder filing.

Section 6 Network Adequacy Standards

The following access to service and waiting time standards shall be met by all carriers filing ACA-compliant health benefit plans in order to comply with network adequacy requirements:

Service Type	Time Frame	Time Frame Goal
Emergency Care – Medical, Behavioral, Substance Abuse	24 hours a day, 7 days a week	Met 100% of the time
Urgent Care – Medical, Behavioral, Mental Health and Substance Abuse	Within 24 hours	Met 100% of the time
Primary Care – Routine, non-urgent symptoms	Within 7 calendar days	Met ≥ 90% of the time
Behavioral Health, Mental Health and Substance Abuse Care – Routine, non-urgent, non-emergency	Within 7 calendar days	Met ≥ 90% of the time
Prenatal Care	Within 7 calendar days	Met ≥ 90% of the time
Primary Care Access to after-hours care	Office number answered 24 hrs./ 7 days a week by answering service or instructions on how to reach a physician	Met ≥ 90% of the time
Preventive visit/well visits	Within 30 calendar days	Met ≥ 90% of the time
Specialty Care - non urgent	Within 60 calendar days	Met ≥ 90% of the time

Section 7 Availability Standards

A. "Provider to Enrollee" ratios for different provider types shall be reported in the filed "Enrollment Document". The groupings/categories for the specific providers are listed in Appendix B.

B. The standards listed below shall be used to measure network adequacy, along with geographic access standards, in counties with "large metro, metro and micro" status, as defined in Appendix A, for the specific provider types listed in Section 7.D. of this regulation.

C. The carrier shall attest that it is compliant with the "provider to enrollee" ratios standards in Section 7.D. of this regulation

D. The following availability standards shall be met by all carriers filing ACA-compliant health benefit plans in order to comply with network adequacy requirements:

Provider/Facility Type	Large Metro	Metro	Micro
Primary Care	1:1000	1:1000	1:1000
Pediatrics	1:1000	1:1000	1:1000

OB/GYN	1:1000	1:1000	1:1000
Mental health, behavioral health and substance abuse disorder care providers	1:1000	1:1000	1:1000

Section 8 Geographic Access Standards

A. The carrier shall attest that at least one (1) of each of the providers listed below is available within the maximum road travel distance of any enrollee in each specific carrier's network.

B. Access standards may require that a policyholder cross county or state lines to reach a provider.

C. Network Adequacy Geographic Access Standards by Provider Type:

Specialty	Geographic Type				
	Large Metro	**Metro**	**Micro**	**Rural**	**CEAC**
	Maximum Distance (miles)	**Maximum Distance** (miles)	**Maximum Distance** (miles)	**Maximum Distance** (miles)	**Maximum Distance** (miles)
Primary Care	5	10	20	30	60
Gynecology, OB/GYN	5	10	20	30	60
Pediatrics - Routine/Primary Care	5	10	20	30	60
Allergy and Immunology	15	30	60	75	110
Cardiothoracic Surgery	15	40	75	90	130
Cardiovascular Disease	10	20	35	60	85
Chiropracty	15	30	60	75	110
Dermatology	10	30	45	60	100
Endocrinology	15	40	75	90	130
ENT/Otolaryngology	15	30	60	75	110
Gastroenterology	10	30	45	60	100
General Surgery	10	20	35	60	85
Gynecology only	15	30	60	75	110
Infectious Diseases	15	40	75	90	130

Licensed Clinical Social Worker	10	30	45	60	100
Nephrology	15	30	60	75	110
Neurology	10	30	45	60	100
Neurological Surgery	15	40	75	90	130
Oncology - Medical, Surgical	10	30	45	60	100
Oncology - Radiation/Radiation Oncology	15	40	75	90	130
Ophthalmology	10	20	35	60	85
Orthopedic Surgery	10	20	35	60	85
Physiatry, Rehabilitative Medicine	15	30	60	75	110
Plastic Surgery	15	40	75	90	130
Podiatry	10	30	45	60	100
Psychiatry	10	30	45	60	100
Psychology	10	30	45	60	100
Pulmonology	10	30	45	60	100
Rheumatology	15	40	75	90	130
Urology	10	30	45	60	100
Vascular Surgery	15	40	75	90	130
OTHER MEDICAL PROVIDER	15	40	75	90	130
Dental	15	30	60	75	110
Pharmacy	5	10	20	30	60
Acute Inpatient Hospitals	10	30	60	60	100
Cardiac Surgery Program	15	40	120	120	140
Cardiac Catheterization Services	15	40	120	120	140
Critical Care Services – Intensive Care Units (ICU)	10	30	120	120	140

Outpatient Dialysis	10	30	50	50	90
Surgical Services (Outpatient or ASC)	10	30	60	60	100
Skilled Nursing Facilities	10	30	60	60	85
Diagnostic Radiology	10	30	60	60	100
Mammography	10	30	60	60	100
Physical Therapy	10	30	60	60	100
Occupational Therapy	10	30	60	60	100
Speech Therapy	10	30	60	60	100
Inpatient Psychiatric Facility	15	45	75	75	140
Orthotics and Prosthetics	15	30	120	120	140
Outpatient Infusion/Chemotherapy	10	30	60	60	100
OTHER FACILITIES	15	40	120	120	140

Section 9 Essential Community Provider Standards

A. Qualified Health Plan (QHP), Stand Alone Dental Plan (SADP), and dual (both medical and dental) carriers are required to have a sufficient number and geographic distribution of essential community providers (ECPs), where available.

B. Carriers shall ensure the inclusion of a sufficient number of ECPs to ensure reasonable and timely access to a broad range of ECP providers for low-income, medically underserved individuals in their service areas.

C. There are two ECP standards for carrier ECP submissions:

1. General ECP Standard. Carriers utilizing this standard shall demonstrate in their "ECP/Network Adequacy Template" that at least 30 percent (30%) of available ECPs in each plan's service area participate in the plan's network. This standard applies to all carriers except those who qualify for the alternate ECP standard.

2. Alternate ECP Standard. Carriers utilizing this standard shall demonstrate in their "ECP/Network Adequacy Template" and justifications, that they have the same number of ECPs as defined in the general ECP standard (calculated as 30 percent (30%) of the ECPs in the carrier's service area), but the ECPs should be located within Health Professional Shortage Areas (HPSAs) or five-digit ZIP codes in which 30 percent (30%) or more of the population falls below 200 percent (200%) of the federal poverty level (FPL). An alternate ECP standard carrier is one that provides a majority of covered professional services through physicians it employs or through a single contracted medical group.

Section 10 Requirements for Annual Network Adequacy Reporting

A. Annual network adequacy filings shall consist of two (2) sections, both attached to the Binder filings. All network adequacy documents must be filed by carrier network, rather than by plan type or group size.

1. The first section of the filing shall consist of the submittal of the "ECP/Network Adequacy Templates" in each applicable binder.

2. The second section shall consist of the filing of "Network Access Plans", "Enrollment Documents", and maps for each network in the carrier's system.

B. Each network that is included on the network templates filed in any of a carrier's Binder filings shall be included in the carrier's "ECP/Network Adequacy Template" filing.

C. The data provided in the documents specified in Section 10.D., paragraphs 1. through 5., must apply to each network (i.e. HMO, PPO, EPO, etc.) in the carrier's service area. Networks that are not service area specific may be rejected.

D. The following documents shall be provided for each network that is included on the network templates filed in any of a carrier's Binder filings. Templates and instructions specified by the Insurance Commissioner must be used, and will be provided to carriers annually.

1. All carriers shall submit network provider and facility listings on the "ECP/Network Adequacy Template" in the Binder filing. All essential community providers (ECPs) in each network must be included in this template. The templates must be completed and filed as described in the annual QHP application instructions. Templates will require validation before submittal to the Division. The Division will require carriers to submit a justification if any of the requirements are not met. The justification shall include the reason that the requirement was not met and any corrective action(s) that will be taken by the carrier. The Division will review the justification and provide feedback on a case-by-case basis.

2. All carriers shall submit network access plans for each network, pursuant to § 10-16-704(9), C.R.S. Carriers shall also submit a copy of the "Network Access Plan Cover Sheet" with the access plan for each network, as described in the instructions for filing network access plans. These must be attached as "Supporting Documentation" on the Binder filing.

3. All carriers shall submit a separate "Enrollment Document" for each network. Enrollment document instructions will be provided to carriers by the Division. Enrollment documents must be submitted in an Excel format using the "DOI Enrollment Document Template". Counts used for this document must be based on the projected enrollment of all members in the carrier's individual, small group and large group plans utilizing that specific network.

4. All carriers shall submit maps showing geographic access standards for selected providers and facilities for each network. Instructions for required maps and map requirements will be provided to each carrier by the Division.

5. All carriers shall submit a copy of the federal "Supplementary Response: Inclusion of Essential Community Providers" form as part of their annual network adequacy filing. Specific requirements for submitting the "Supplementary Response: Inclusion of Essential Community Providers" will be provided to carriers by the Division.

Section 11 Required Attestations

A. A carrier shall attest that each of its health benefit plans will maintain a provider network(s) that meets the standards contained in this regulation, and that each provider network is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that the services will be accessible without unreasonable delay.

B. A carrier shall attest that each of its health benefit plans include in its provider network(s) a sufficient number and geographic distribution of essential community providers (ECPs), where available, to ensure reasonable and timely access to a broad range of such providers for low-income, medically underserved individuals in its service areas.

C. Each attestation shall be made on the "Colorado Network Adequacy Carrier Attestation Form" submitted with each binder filing.

Section 12 Incorporated Materials

The "Supplementary Response: Inclusion of Essential Community Providers" published by the Centers for Medicare and Medicaid Services shall mean "Supplementary Response: Inclusion of Essential Community Providers" as published on the effective date of this regulation and does not include later amendments to or editions of the "Supplementary Response: Inclusion of Essential Community Providers". A copy of the "Supplementary Response: Inclusion of Essential Community Providers" can be found at the following link: https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Chapter07aSuppResponseEssentialCommunityProvider_Version2_em_508_040816.pdf, and may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A Certified copy of the "Supplementary Response: Inclusion of Essential Community Providers" may be requested from the Division of Insurance. A charge for certification or copies may apply.

Section 13 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 14 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 15 Effective Date

This new regulation shall be effective on January 1, 2017.

Section 16 History

New regulation effective January 1, 2017

APPENDIX A – DESIGNATING COUNTY TYPES

The county type, Large Metro, Metro, Micro, Rural, or Counties with Extreme Access Considerations (CEAC), is a significant component of the network access criteria. CMS uses a county type designation methodology that is based upon the population size and density parameters of individual counties.

Density parameters are foundationally based on approaches taken by the U.S. Census Bureau in its delineation of "urbanized areas" and "urban clusters", and the Office of Management and Budget (OMB) in its delineation of "metropolitan" and "micropolitan". A county must meet both the population and density thresholds for inclusion in a given designation. For example, a county with population greater than one million and a density greater than or equal to 1,000 persons per square mile (sq. mile) is designated Large Metro. Any of the population-density combinations listed for a given county type may be met for inclusion within that county type (i.e., a county would be designated "Large Metro" if any of the three Large Metro population-density combinations listed in the following table are met; a county is designated as "Metro" if any of the five Metro population-density combinations listed in the table are met; etc.).

Population and Density Parameters

County Type	Population	Density
Large Metro	≥ 1,000,000	≥ 1,000/sq. mile
---	500,000 – 999,999	≥ 1,500/ sq. mile
---	Any	≥ 5,000/ sq. mile
Metro	≥ 1,000,000	10 – 999.9/sq. mile
---	500,000 – 999,999	10 – 1,499.9/sq. mile
---	200,000 – 499,999	10 – 4,999.9/sq. mile
---	50,000 – 199,999	100 – 4,999.9/sq. mile
---	10,000 – 49,999	1,000 – 4,999.9/sq. mile
Micro	50,000 – 199,999	10 – 99.9 /sq. mile
---	10,000 – 49,999	50 – 999.9/sq. mile
Rural	10,000 – 49,999	10 – 49.9/sq. mile
---	<10,000	10 – 4,999.9/sq. mile
CEAC	Any	<10/sq. mile

COLORADO COUNTY DESIGNATIONS

County	Classification
Adams	Metro
Alamosa	Rural
Arapahoe	Metro
Archuleta	CEAC
Baca	CEAC
Bent	CEAC
Boulder	Metro
Broomfield	Metro
Chaffee	Rural
Cheyenne	CEAC
Clear Creek	Rural
Conejos	CEAC
Costilla	CEAC
Crowley	CEAC
Custer	CEAC
Delta	Rural
Denver	Large Metro
Dolores	CEAC
Douglas	Metro
Eagle	Micro
Elbert	Rural
El Paso	Metro

County	Classification
Fremont	Rural
Garfield	Micro
Gilpin	Rural
Grand	CEAC
Gunnison	CEAC
Hinsdale	CEAC
Huerfano	CEAC
Jackson	CEAC
Jefferson	Metro
Kiowa	CEAC
Kit Carson	CEAC
Lake	Rural
La Plata	Micro
Larimer	Metro
Las Animas	CEAC
Lincoln	CEAC
Logan	Rural
Mesa	Micro
Mineral	CEAC
Moffat	CEAC
Montezuma	Rural
Montrose	Rural

County	Classification
Morgan	Rural
Otero	Rural
Ouray	CEAC
Park	CEAC
Phillips	CEAC
Pitkin	Rural
Prowers	CEAC
Pueblo	Micro
Rio Blanco	CEAC
Rio Grande	Rural
Routt	CEAC
Saguache	CEAC
San Juan	CEAC
San Miguel	CEAC
Sedgwick	CEAC
Summit	Rural
Teller	Rural
Washington	CEAC
Weld	Metro
Yuma	CEAC

APPENDIX B – DESIGNATING PROVIDER/FACILITY TYPES

Provider Types – For ECP/Network Adequacy Template and Enrollment Document
Primary Care (including General Practice, Family Medicine, Internal Medicine, and Geriatric physicians, and Primary Care Physician Assistants and Nurse Practitioners)
Gynecology, OB/GYN
Pediatrics - Routine/Primary Care
Allergy and Immunology
Cardiovascular Disease
Chiropracty
Dermatology
Endocrinology
ENT/Otolaryngology
Gastroenterology
General Surgery
Infectious Diseases
Nephrology
Neurology
Neurological Surgery
Medical Oncology & Surgical Oncology
Radiation Oncology
Ophthalmology
Orthopedic Surgery
Physiatry, Rehabilitative Medicine (including physiatrist, physical medicine and rehabilitation specialist)
Plastic Surgery
Podiatry
Psychiatry
Pulmonology
Rheumatology
Urology
Vascular Surgery
Cardiothoracic Surgery
Licensed Clinical Social Worker
Psychology
OTHER MEDICAL PROVIDER
Dental

Facility Types – For ECP/Network Adequacy Template and Enrollment Document
Pharmacy
General Acute Care Hospital
Cardiac Surgery Program
Cardiac Catheterization Services
Critical Care Services - Intensive Care Units (ICU)
Outpatient Dialysis
Surgical Services (Ambulatory Surgical Centers and Outpatient Hospital)
Skilled Nursing Facilities
Diagnostic Radiology (free-standing; hospital outpatient; ambulatory health facilities with Dx Radiology)
Mammography
Physical Therapy (individual physical therapists providing care in Free-standing; hospital outpatient and ambulatory health care facilities)
Occupational Therapist
Speech Therapy
Inpatient Psychiatry (Free-standing inpatient psychiatric facility and psychiatric beds within an Acute Care Hospital)
Orthotics and Prosthetics
Home Health
Durable Medical Equipment
Ambulatory Health Care Facilities – Infusion Therapy/Oncology/ Radiology
Heart Transplant Program
Heart/Lung Transplant Program
Kidney Transplant Program

Liver Transplant Program

Lung Transplant Program

Pancreas Transplant Program

OTHER FACILITIES

Notice of Proposed Rulemaking

Tracking number

2016-00363

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

LIFE, ACCIDENT AND HEALTH, Series 4-2

Rulemaking Hearing

Date

09/01/2016

Time

01:00 PM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

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

Statutory authority

10-1-108(7), 10-1-109, 10-16-103.4 and 10-16-109

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Proposed Amended Regulation 4-2-42

CONCERNING ESSENTIAL HEALTH BENEFITS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109, 10-16-103.4 and 10-16-109, C.R.S.

Section 2 Scope and Purpose

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

Section 3 Applicability

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

Section 4 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

Section 5 Essential Health Benefits

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

1. Carriers must provide benefits that are substantially equal to Colorado's EHB-benchmark plan in the following ~~fourteen~~ thirteen (1~~4~~3) categories:

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

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

(2) Specialist visits;

(3) Outpatient surgery;

(4) Chemotherapy services;

(5) Radiation therapy;

(6) Home infusion therapy;

(7) Home health care;

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

(9) Sterilization;

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

(11) Oral anti-cancer medications.

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

(1) Emergency room – facility and professional services;

(2) Ambulance services; and

(3) Urgent care treatment services.

c. Hospitalization services, which must include:

(1) Inpatient medical and surgical care;

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

(3) Chemotherapy services;

(4) Radiation services;

(5) Anesthesia services; and

(6) Hospice care.

d. Laboratory and radiology services, which must include:

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

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

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

(1) Pre-natal and postnatal care;

(2) Delivery and inpatient maternity services; and

(3) Newborn well child care.

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

(1) Benefits for treating alcoholism and drug dependency, including partial hospitalization and/or inpatient treatment outside of a hospital to the extent provided under the medical or surgical benefit;

(2) Benefits for mental health services, including partial hospitalization and/or inpatient treatment outside of a hospital to the extent provided under the medical or surgical benefit;

(3) Behavioral health treatment;

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

(5) Outpatient hospital and physician services.

g. Pediatric services, which must include:

(1) Preventive care services;

(2) Immunizations;

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

(4) Prescribed vision hardware, such as eyeglasses, lenses, or contact lenses, no less than one pair or one set every two (2) years for plans issued and renewed on or after January 1, 2017, to age nineteen (19);

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

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

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

h. Prescription drugs, which must include:

(1) Retail services;

(2) Mail services (home delivery);

(3) All contraceptive methods approved by the Food and Drug Administration (FDA); and

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

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

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

i. All preventive services required by state and/or federal mandate, which are not subject to deductibles, copayments, or coinsurance, include, but are not limited to:

(1) Services related to contraception, including, but not limited to FDA-approved methods, and including the services related to follow-up and management of side effects, counseling for continued adherence, and device removal; and

(2) Age-appropriate immunizations and vaccines for children, adolescents, and adults in accordance with the recommendations of the Advisory Committee on Immunization Practices (ACIP).

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

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

(a) Habilitative services; and

(b) Rehabilitative services.

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

(2) Cardiac rehabilitation services;

(3) Pulmonary rehabilitation services;

(4) Durable medical equipment;

(5) Arm and leg prosthetics;

(6) Inpatient and outpatient habilitative services;

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

(8) No less than two (2) months of inpatient rehabilitation annually, and no less than sixty (60) days;

(9) Autism spectrum disorder services; and

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

k. Medically necessary bariatric surgery services, for plans issued and renewed on or after January 1, 2017.

l. Infertility services, for plans issued and renewed on or after January 1, 2017, which must include:

(1) X-ray and laboratory procedures;

(2) Services for diagnosis and treatment of involuntary infertility; and

(3) Artificial insemination.

m. Chiropractic care, up to twenty (20) visits per year, at a minimum, for plans issued and renewed on or after January 1, 2017, which must include:

(1) Diagnosis and evaluation; and

(2) Medically necessary lab and x-ray services required for chiropractic services and musculoskeletal disorders.

~~n. Adult hearing aids, one pair every 36 months, for plans issued and renewed on or after January 1, 2017.~~

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

   a. Diagnostic and preventive procedures, which must include:

      (1) Oral exams and evaluations;

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

      (3) Bitewing x-rays;

      (4) Routine cleanings;

      (5) Fluoride treatments;

      (6) Space maintainers;

      (7) Sealants; and

      (8) Palliative treatment.

   b. Basic restorative services, which must include:

      (1) Amalgam fillings;

      (2) Resin and composite filings;

      (3) Crowns;

      (4) Pin retention; and

      (5) Sedative fillings.

   c. Oral surgery, consisting of extractions.

   d. Endodontics, consisting of:

      (1) Surgical services; and

      (2) Root canal therapy.

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

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

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

a. Cost-sharing (or maximum out-of-pocket limits) for individual and small group plans must not exceed the annual out-of-pocket limit set by federal law. For managed care plans, out-of-network deductibles and out-of-pocket maximums do not count toward these cost sharing limits.

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

c. Cost-sharing (or maximum out-of-pocket limits) for stand-alone pediatric dental plans must not exceed the annual out-of-pocket limit set by federal law. For managed care plans, out-of-network deductibles and out-of-pocket maximums do not count toward these cost sharing limits.

d. The Division will annually publish the federally established annual premium adjustment percentages and annual out-of-pocket limits for medical and dental plans, as determined by HHS.

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

a. In order to be a qualified health plan for purposes of sale on the Exchange, a carrier must meet the federal standards found in 45 CFR § 156.200(c)(1), which require a carrier to offer at least one (1) silver plan and at least one (1) gold plan for purchase in each region in which it offers health benefit plans.

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

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

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

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

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

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

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

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

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

a. Routine non-pediatric dental services;

b. Routine non-pediatric eye exam services;

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

d. Non-medically necessary orthodontia.

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

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

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

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

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

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

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

C. Substitution of Benefits

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

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

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

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

(3) Based on a standardized population; and

(4) Determined regardless of cost-sharing.

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

c. Prescription drug benefits cannot be substituted.

D. Prohibition on Discrimination

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

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

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

E. Drug/Formulary Review

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

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

Section 6 Preventive Services Requirements

A. Carriers must provide coverage for any new preventive service receiving a USPSTF A or B recommendation, changes adopted by the ACIP, and/or changes published by the Health Resources and Services Administration (HRSA) no later than the plan year that begins on or after one (1) year after the date the recommendation or change is issued, adopted or published.

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

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

2. The preventive services mandated by Colorado statute; and

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

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

1. New preventive services added to Colorado statute;

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

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

Section 7 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.

Section 8 Severability

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

Section 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 become effective on ~~April~~November 1, 2016.

Section 11 History

Regulation effective October 1, 2013.
Amended regulation effective March 15, 2015.
Amended regulation effective April 1, 2016.
Amended regulation effective November 1, 2016.

Notice of Proposed Rulemaking

Tracking number

2016-00359

Department

700 - Department of Regulatory Agencies

Agency

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

CCR number

4 CCR 732-1

Rule title

PHYSICAL THERAPIST LICENSURE AND PHYSICAL THERAPIST ASSISTANT CERTIFICATION

Rulemaking Hearing

Date

09/16/2016

Time

09:00 AM

Location

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

Subjects and issues involved

The basis and purpose of these proposed changes include a review and update of current Board Rules 101, 209, 210, 214, and 301 in response to a scheduled mandatory review of all Board rules; to amend the remaining rules for purposes of clarification in order to improve upon the understanding of requirements and processes, including the creation of a new Board Rule 101 out of the definitions provided in Board Rule 201 and re-numbering Board Rules 101 through 103 as a result; to repeal Board Rule 209 concerning declaratory orders and re-establish it as Board Rule 105 in order to be applicable to both physical therapists and physical therapist assistants; to repeal Board Rule 214 concerning the reporting of criminal convictions, judgments, and administrative proceedings and re-establish it as Board Rule 106 in order to be applicable to both physical therapists and physical therapist assistants; and to create a new Board Rule 107 to clarify notification requirements with regard to a mental or physical illness or condition.

Statutory authority

Sections 12-41-103.6(2)(b), 12-41-109(3)(c)(I), 12-41-112.5, 12-41-113(1), 12-41-114(1)(f), 12-41-114.6(1)(b), 12-41-201(3), 12-41-206(3)(c), 24-4-103, 24-4-103.3, 24-4-105(11), 24-34-102(8)(d), and 24-34-102(8.5), C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

STATE PHYSICAL THERAPY BOARD

PHYSICAL THERAPIST LICENSURE & PHYSICAL THERAPIST ASSISTANT CERTIFICATION

4 CCR 732-1

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

GENERAL RULE PROVISIONS

101. Definitions

The purpose of this rule is to address the requirement under section 12-41-113(1), C.R.S., regarding supervision of persons not licensed as a physical therapist, and to clarify the types/levels of supervision utilized throughout the Physical Therapy Practice Act and these Board rules.

A. "General supervision" means the physical therapist is not required to be on site for direction and supervision, but must be available at least by telecommunications.

B. "Direct supervision" means the physical therapist is physically present on the premises and in the same building.

C. "Immediate supervision" means the physical therapist is physically present or immediately available to support the individual being supervised.

~~101~~102. Licensure & Certification Requirements: Credit for Military Experience

The purpose of this rule is to outline the conditions and procedures governing the evaluation of an applicant's military training and experience under ~~§~~ section 24-34-102(8.5), C.R.S.

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

~~102~~103. Recognized Accrediting Agency

The purpose of this rule is to designate a nationally recognized accrediting agency for accrediting physical therapy and physical therapist assistant programs pursuant to sections 12-41-103(1), 12-41-107, 12-41-109, 12-41-111, 12-41-114, 12-41-205, 12-41-206, and 12-41-207, C.R.S.

A. The Commission on Accreditation in Physical Therapy Education (CAPTE) is recognized as the accrediting agency for accrediting both physical therapy and physical therapist assistant programs.

~~103~~104. Approved Examinations for Licensing

The purpose of this rule is to designate a nationally-recognized examination approved by the Board pursuant to sections 12-41-107, 12-41-109, 12-41-111, 12-41-205, 12-41-206, and 12-41-207, C.R.S.

A. The examination developed by the Federation of State Boards of Physical Therapy (FSBPT) entitled the National Physical Therapy Examination (NPTE) for physical therapists is approved as the required examination in the licensure process. An applicant must achieve a passing score as determined by FSBPT in order to be eligible for licensure as a physical therapist.

B. The examination developed by FSBPT entitled the National Physical Therapy Examination (NPTE) for physical therapist assistants is approved as the required examination in the ~~licensure~~ certification process. An applicant must achieve a passing score as determined by FSBPT in order to be eligible for certification as a physical therapist assistant.

105. Declaratory Orders

The purpose of this rule is to establish procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedures Act at section 24-4-105(11), C.R.S.

A. Any person or entity may petition the Board for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Board.

B. The Board will determine, at its discretion and without notice to petitioner, whether to rule upon such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such decision.

C. In determining whether to rule upon a petition filed pursuant to this rule, the Board will consider the following matters, among others:

1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the Board;

2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more petitioners;

3. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Board or a court but not involving any petitioner;

4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion; and

5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to CRCP 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule, or order in question.

D. Any petition filed pursuant to this rule shall set forth the following:

1. The name and address of the petitioner and whether the petitioner is licensed or certified pursuant to Title 12, Article 41.

2. The statute, rule, or order to which the petition relates.

3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.

E. If the Board determines that it will rule on the petition, the following procedures shall apply:

1. The Board may rule upon the petition based solely upon the facts presented in the petition. In such a case:

a. Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.

b. The Board may order the petitioner to file a written brief, memorandum, or statement of position.

c. The Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.

d. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.

e. The Board may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.

f. The Board may take administrative notice of facts pursuant to the Colorado Administrative Procedures Act at section 24-4-105(8), C.R.S., and may utilize its experience, technical competence, and specialized knowledge in the disposition of the petition.

2. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

3. The Board may, at its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The hearing notice to the petitioner shall set forth, to the extent known, the factual or other matters that the Board intends to inquire.

4. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all the facts stated in the petition; all of the facts necessary to show the nature of the controversy or uncertainty; and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Board to consider.

F. The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as are required by section D of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.

G. Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to the Colorado Administrative Procedures Act at section 24-4-106, C.R.S.

106. Reporting Criminal Convictions, Judgments, and Administrative Proceedings

The purpose of this rule is to delineate the procedures a licensee or a certificate holder must adhere to when an act enumerated in sections12-41-115 or 12-41-210, C.R.S., has occurred.

A. A licensee or certificate holder must inform the Board within 90 days of any of the following events:

1. The conviction of a felony under the laws of any state or of the United States, or of any level of crime related to the practice of physical therapy. A guilty verdict, a plea of guilty, a plea of nolo contendere, or the imposition of a deferred sentence accepted by the court is considered a conviction.

2. A disciplinary action imposed by another jurisdiction that licenses, certifies, or registers physical therapists or physical therapist assistants including, but not limited to, a citation, sanction, probation, civil penalty, or a denial, suspension, revocation, or modification of a license, certification, or registration, whether it is imposed by consent decree, order, or in some other manner, for any cause other than failure to pay a license, certification, or registration fee by the due date.

3. Revocation or suspension by another state board, municipality, federal or state agency of any health services related license, certification, or registration, other than a license, certification, or registration as a physical therapist or physical therapist assistant.

B. Any award, judgment, or settlement of a civil action or arbitration in which there was a final judgment or settlement for malpractice of physical therapy.

C. The notice to the Board must include the following information:

1. If the event is an action by a governmental agency:

a. The name of the agency;

b. Its jurisdiction;

c. The case name;

d. The docket, proceeding, or case number by which the event is designated; and

e. A copy of the consent decree, order, or decision.

2. If the event is a conviction of a crime described above:

a. The court;

b. Its jurisdiction;

c. The case name;

d. The case number;

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

f. Any plea or verdict accepted or entered by the court; and

g. A copy of the imposition of sentence related to the conviction and the completion of all terms of the sentence.

3. If the event concerns a civil action or arbitration proceeding:

a. The court or arbitrator;

b. The jurisdiction;

c. The case name;

d. The case number;

e. A description of the matter or a copy of the complaint or demand for arbitration; and

f. A copy of the verdict, the court decision or arbitration award, or, if settled, the settlement agreement and court's order of dismissal.

4. The licensee or certificate holder notifying the Board may submit a written statement with the notice to be included with the licensee's or certificate holder's records.

107. Reporting Physical or Mental Illness or Condition

The purpose of this rule is to clarify the notification requirements of sections 12-41-118.5 and 12-41-214, C.R.S.

A. A licensed physical therapist or certified physical therapist assistant must notify the Board if he/she suffers from any of the following:

1. A long-term (more than 90 days) physical illness/condition that renders the licensee or certificate holder unable, or limits his/her ability, to practice physical therapy with reasonable skill and patient safety; or

2. A debilitating mental illness/condition that renders the licensee or certificate holder unable, or limits his/her ability, to practice physical therapy with reasonable skill and patient safety.

B. The physical therapist or physical therapist assistant must notify the Board in writing of the illness or condition within 30 days and submit, within 60 days, a letter from his/her treating medical or mental health provider describing:

1. The condition(s);

2. The impact on the licensee's or certificate holder's ability to practice safely; and

3. Any applicable limitation(s) to his/her practice.

C. Pursuant to sections 12-41-118 and 12-41-213, C.R.S., the Board may require the licensee or certificate holder to submit to an examination to evaluate the extent of the illness or condition and its impact on his/her ability to practice with reasonable skill and safety.

D. Pursuant to sections 12-41-118.5 and 12-41-214, C.R.S., the Board may enter into a non-disciplinary confidential agreement with the physical therapist or physical therapist assistant in which he/she agrees to limit his/her practice based on any restriction(s) imposed by the illness or condition, as determined by the Board. A licensee or certificate holder subject to discipline for habitually abusing or excessively using or abusing alcohol, a habit-forming drug, or a controlled substance is not eligible to enter into a confidential agreement.

201. Supervision and/or Direction of Persons Not Licensed as a Physical Therapist

Pursuant to section 12-41-113(1), C.R.S., the purpose of this rule is to clarify supervision and/or direction provisions for persons not licensed as a physical therapist, which include a physical therapist assistant, certified nurse aide, provisional physical therapist, physical therapy aide, athletic trainer, massage therapist, student physical therapist, or student physical therapist assistant. A therapist of record must be established if physical therapy services are being provided by any of the persons not licensed as a physical therapist listed above. A physical therapist who performs an initial examination and evaluation, and develops an appropriate plan of care, shall be the therapist of record for that patient, unless that physical therapist transfers the responsibility to another licensed physical therapist, or a provisional physical therapist under supervision of a physical therapist or a student physical therapist under supervision of a clinical instructor, experienced and skilled enough to take on such responsibility through documentation in the patient records, including the transfer of the procedures and responsibilities provided in ~~sections B, C, and D of~~ this rule.

~~A. Definitions:~~

~~1. "General supervision" means the physical therapist is not required to be on site for direction and supervision, but must be available at least by telecommunications.~~

~~2. "Direct supervision" means the physical therapist is physically present on the premises and in the same building.~~

~~3. "Immediate supervision" means the physical therapist is physically present or immediately available to support the individual being supervised.~~

~~B~~A. Delegation of duties is determined by the education and training of the individual being delegated responsibilities as allowed pursuant to Article 41 of Title 12, C.R.S., and these Board rules. If a task cannot be delegated, then a physical therapist must personally attend to the task in-person and not through a patient chart review.

1. A physical therapist shall determine if the individual not licensed as a physical therapist who is being delegated responsibility has the appropriate education, training, and/or experience to perform duties as allowed by statute and/or rule.

2. A physical therapist shall rely on his ~~or~~/ her expertise and clinical reasoning when determining the most appropriate utilization of a person not licensed as a physical therapist to provide for the delivery of service that is safe, effective, and efficient.

3. A physical therapist must personally perform and cannot delegate to a person not licensed as a physical therapist the initial clinical contact, interpretation of referrals, initial examinations and evaluations, diagnosis and prognosis, development and modification of plans of care, determination of discharge criteria, and supervision of physical therapy services rendered to the patient/client, except for a provisional physical therapist under supervision of a physical therapist or a student physical therapist under supervision of a clinical instructor, experienced and skilled enough to take on such responsibility.

4. A physical therapist shall not delegate wound debridement to a person not licensed as a physical therapist, except to a provisional physical therapist under supervision of a physical therapist or a student physical therapist under supervision of a clinical instructor, experienced and skilled enough to take on such responsibility, but may delegate non-selective wound care to a physical therapist assistant.

~~C~~B. A physical therapist is responsible for providing adequate or proper supervision and/or direction to a person not licensed as a physical therapist pursuant to section 12-41-115(1)(e), C.R.S.

1. A physical therapist may supervise up to ~~four (~~4~~)~~ individuals at one time who are not physical therapists to assist in the physical therapist's clinical practice. This limit does not include student physical therapists and student physical therapist assistants supervised by a physical therapist for educational purposes.

2. A physical therapist shall regularly evaluate and observe the performance of any person under his ~~or/~~ her supervision and/or direction to ensure that all physical therapy services rendered meet the standard of care for delegation to be continued.

~~D~~C. A physical therapist shall provide:

1. General supervision to a physical therapist assistant. However, pursuant to section 12-41-113(2), C.R.S., direct supervision is required if the physical therapist assistant is administering topical and aerosol medications when they are consistent with in the scope of physical therapy practice and when any such medication is prescribed by a licensed health care practitioner who is authorized to prescribe such medication. A prescription or order shall be required for each such administration within a plan of care.

2. General supervision to a certified nurse aide in a home health care setting, as part of a physical therapist plan of care.

3. Direct supervision to a provisional physical therapist. In addition, the supervising physical therapist must perform records review and co-signature of notes.

4. Direct supervision to a physical therapy aide.

5. Direct supervision to an athletic trainer providing athletic training within a physical therapist plan of care.

6. Direct supervision to a massage therapist providing massage therapy within a physical therapist plan of care.

7. Immediate supervision to a student physical therapist or a student physical therapist assistant. However, the clinical instructor supervising the student may gradually decrease the level of supervision over time as the student becomes more experienced and skilled.

202. Supervision of Physical Therapist Assistants and Physical Therapy Aides

The purpose of this rule is to specify supervisory provisions required by section 12-41-113(1), C.R.S., for physical therapist assistants certified in accordance with section 12-41-204, C.R.S., and physical therapy aides. This rule applies to all physical therapists who utilize physical therapist assistants and/or aides in their practice. The physical therapist shall establish a patient relationship with the client prior to any delegation that has been deemed as allowable and appropriate pursuant to Article 41, Title 12, C.R.S., and Board rules.

Physical Therapist Assistants

A. For the purposes of these rules, physical therapists may supervise physical therapist assistants performing physical therapy services as defined in section 12-41-103(6), C.R.S., and pursuant to Rule 201 as determined by the physical therapist of record, except for interventions or services that are otherwise prohibited by law.

1. Physical therapist assistants may perform non-selective wound care, but may not perform wound debridement.

2. Physical therapist assistants may not perform dry needling.

3. Physical therapist assistants may not perform joint mobilization, unless the supervising physical therapist has determined that the physical therapist assistant has the necessary degree of education, training and skill for safe patient care. Entry-level education is inadequate; additional formal continuing education (psychomotor and didactic) is required to perform joint mobilization. Thrust, high-velocity techniques are not within the scope of the physical therapist assistants' practice.

4. Physical therapist assistants may not perform or assist a physical therapist in providing physical therapy of animals.

B. The following condition must be met before a physical therapist can utilize a physical therapist assistant: a physical therapist must be designated and recorded in the patient/client records as responsible for supervising the care and interventions provided by the physical therapist assistant. The designated physical therapist must consistently provide for the planning, evaluating, and supervising of all care rendered to the patient/client.

C. The physical therapist is responsible for the performance of all services performed by the physical therapist assistant. This responsibility requires the physical therapist to assure ~~those~~ services are performed with a degree of care and skill appropriate to the physical therapist assistant's education and training.

D. The physical therapist assumes accountability for the acts delegated to or performed by a physical therapist assistant. Before delegating performance of physical therapy services to a physical therapist assistant working under general supervision, the supervising physical therapist shall ensure that the physical therapist assistant is qualified by education and training to perform the physical therapy services in a safe, effective, and efficient manner.

E. A physical therapist assistant may not supervise other personnel in the provision of physical therapy services to a patient.

F. A physical therapist assistant under the general supervision of a physical therapist may act as a clinical instructor for a physical therapist assistant student. However, immediate supervision of the student physical therapist assistant by the physical therapist is required if the physical therapist assistant student is providing physical therapy services. The supervising physical therapist may gradually decrease the level of supervision over time as the student becomes more experienced and skilled.

Physical Therapy Aides

G. All individuals not licensed as a physical therapist, not licensed as a provisional physical therapist, not certified as a physical therapist assistant, not authorized to practice as a student physical therapist or physical therapist assistant, and not otherwise regulated as a health care professional, shall be considered an aide for the purposes of this rule.

H. A physical therapy aide may participate in limited designated tasks, as assigned by a physical therapist. The supervising physical therapist must participate in patient care on each date of service when a physical therapy aide is involved in care.

I. As to recordkeeping, a physical therapy aide may participate only in basic data recording in the medical record.

J. Wound care/debridement, dry needling, administration of medications, joint mobilization, and treatment on animals shall not be delegated to a physical therapy aide. The supervising physical therapist

shall ensure that the physical therapy aide is qualified by education and training to participate in limited designated tasks as assigned by the physical therapist.

203. Authorized Practice of Physical Therapy by a Person Not Licensed In Colorado

The purpose of this rule is to clarify the following conditions under which a physical therapist not licensed in Colorado may practice for a temporary period of time pursuant to section 12-41-114(1)(f), C.R.S., which allows the practice of physical therapy in Colorado for no more than 4 consecutive weeks or more than once in any 12-month period by a physical therapist licensed, certified, or registered in another state or country when providing services in the absence of a physical therapist licensed in Colorado. This provision is not available for a person applying for a license in Colorado whose application is pending review and potential approval. Additional requirements for eligibility including the following:

A. The entity wishing to employ or engage the services of a visiting, physical therapist who is not otherwise licensed in Colorado must notify the Board at least one week prior to the start date and must document the need for employing or engaging the services of a visiting physical therapist.

B. The visiting physical therapist must possess a current and active license, certification, or registration in good standing in another state or country and provide a copy of the license, certification, or registration to the Board at least one week prior to practicing in Colorado.

C. The visiting physical therapist must have been engaged in the active, clinical practice of physical therapy for 2 of the last 5 years in order to be eligible.

204. Licensure by Examination for Physical Therapists

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

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

1. Accredited by a nationally recognized accrediting agency pursuant to Rule ~~102~~103~~,~~ ; or

2. Substantially equivalent pursuant to Rule 205.

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

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

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

C. An applicant ~~must meet one of the following current practice competency requirements in order to be eligible~~ for licensure by examination~~:~~ must graduate from a physical therapy program pursuant to section A of this rule and pass the NPTE within the 2 years immediately preceding the date of the application.

~~1. Graduate from a physical therapy program pursuant to section A of this rule above and pass the NPTE within the 2 years immediately preceding the date of the application, or~~

~~2. Complete the Federation of State Boards of Physical Therapy's (FSBPT) Practice Review Tool (PRT), or its equivalency as determined by the Board, and~~

~~a. Submit a Candidate Feedback Report, or its equivalency as determined by the Board, with an overall performance reporting of "sufficiently qualified" to be considered and accepted by the Board; or~~

~~b. Successfully complete a Board approved plan to overcome deficiencies in any area(s) rated "needs improvement" in the Candidate Feedback Report. This includes submitting an appropriate plan to address the deficiencies noted in the attached report for Board consideration and approval before proceeding, and the plan must include only Category I activities.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

206. Licensure by Endorsement for Physical Therapists

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

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

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

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

1. Complete 60 points of Professional Development Activities (PDA) pursuant to Rule 213~~.~~(C~~.~~)(2~~.~~)(a-c) during the 2 years immediately preceding the application. ~~All 60 points must be Category I, and directly related to the physical therapist's clinical practice.~~

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

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

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

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

~~2. Complete the Federation of State Boards of Physical Therapy's (FSBPT) Practice Review Tool (PRT), or its equivalency as determined by the Board, and~~

~~a. Submit a Candidate Feedback Report, or its equivalency as determined by the Board, with an overall performance reporting of "sufficiently qualified" to be considered and accepted by the Board; or~~

~~b. Successfully complete a Board approved plan to overcome deficiencies in any area(s) rated "needs improvement" in the Candidate Feedback Report. This includes submitting an appropriate plan to address the deficiencies noted in the attached report for Board consideration and approval before proceeding, and the plan must include only Category I activities.~~

~~3~~2. Successfully complete a Board authorized internship.

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

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

ii. Ensure that the supervising physical therapist immediately notifies the Board in writing of the establishment of the internship and submits for the Board's approval a plan for supervision using the most current version of the "Physical Therapist Clinical Performance Instrument" (CPI).

b. The internship shall not commence without the Board's written approval of the supervising physical therapist's plan for supervision specified in subparagraph (~~3~~2)(c) of this rule.

c. The internship shall consist of:

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

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

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

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

D. An applicant who is unable to demonstrate competency under sections A, B, or C of this rule may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall

consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a license under this section D, the Board may subject said license to such lawful conditions as the Board finds are necessary to protect the public.

207. Reinstatement or Reactivation of an Expired or Inactive Physical Therapist License

The purpose of this rule is to establish the qualifications and procedures for applicants seeking reinstatement of an expired physical therapist license or reactivation of an inactive physical therapist license pursuant to sections 12-41-112 and 12-41-112.5, C.R.S.

A. An applicant seeking reinstatement or reactivation of a physical therapist license shall complete a reinstatement or reactivation application and pay a fee as established by the Director.

B. If the license has been expired or inactive for ~~two~~ 2 years or less:

1. Effective November 1, 2016, and if:

a. The licensee was practicing in Colorado until his/her license expired or was placed on inactive status ~~on~~ during the renewal period ending October 31, 2016, the applicant shall demonstrate continuing professional competency pursuant to section 12-41-114.6, C.R.S., and Rule 213~~, ;~~ ; or

b. The licensee was practicing outside of Colorado until his/her license expired or was placed on inactive status ~~on~~ during the renewal period ending October 31, 2016, the applicant may demonstrate continuing professional competency through an option listed in section C below.

2. Effective November 1, 2018, all applicants must demonstrate continuing professional competency pursuant to section 12-41-114.6, C.R.S., and Rule 213 for the ~~two~~ 2 years immediately preceding the date the application is received.

C. If the license has been expired or inactive for more than ~~two~~ 2 years~~, but less than five years~~, an applicant must establish "competency to practice" pursuant to section 24-34-102(8)(d)(II), C.R.S., by submitting ~~one~~ 1 of the following:

1. Verification of an active, valid physical therapist license in good standing from another state or jurisdiction, along with proof of clinical physical therapy practice in that state or jurisdiction which includes a minimum of an average of 400 hours per year for the ~~two~~ 2 years immediately preceding the date of application. The work experience must be attested as to the number of hours.

2. If an applicant has not practiced as a licensed physical therapist within the last 10 years in another state or jurisdiction, then:

a. Evidence of completing the Federation of State Boards of Physical Therapy's (FSBPT) online continuing competence learning and assessment tool (oPTion) or a comparable objective third-party assessment that compares a licensee's knowledge, skills, and abilities to the standards for entry-level practice accepted by the Board and an average of 15 points of Professional Development Activities (PDA) pursuant to Rule 213(C)(2)(a-c) for each year the license has been expired or inactive.

i. The applicant must submit the results of the objective third-party assessment and the corresponding PDA points for Board consideration within 1 year of completing the objective third-party assessment.

ii. All points must be Category I, and directly related to the physical therapist's clinical practice and address any areas of deficiencies identified in the objective third-party assessment.

iii. The Board may accept 1.25 points for each month the license is expired or inactive.

b. Completion of a 240-hour internship within 6 consecutive months using the most current version of the "Physical Therapist Clinical Performance Instrument" (CPI) as the professional standard and measure of continued competency as required in Rule 206(C)(2) Satisfactory completion of the internship shall require both 240 hours of internship practice and successful demonstration of entry-level performance on all skills on the CPI on electronic or paper form.

c. Practice for 6 months on probationary status with a practice monitor subject to the terms established by the Board.

3. If an applicant has not practiced as a licensed physical therapist for the last 10 or more years in another state or jurisdiction, then he or she is required to re-take and pass the National Physical Therapy Examination (NPTE).

~~Evidence of completing an average of 15 points of Professional Development Activities (PDA) pursuant to Rule 213.C.2.a-c for each year the license has been expired or inactive.~~

~~a. The Board may accept 1.25 points for each month the license is expired or inactive, and~~

~~b. All points must be Category I, and directly related to the physical therapist's clinical practice.~~

~~3. Completion of the Federation of State Boards of Physical Therapy's (FSBPT) Practice Review Tool (PRT), or its equivalency as determined by the Board, and~~

~~a. Submitting a Candidate Feedback Report, or its equivalency as determined by the Board, with an overall performance reporting of "sufficiently qualified" to be considered and accepted by the Board; or~~

~~b. Successfully completing a Board approved plan to overcome deficiencies in any area(s) rated "needs improvement" in the Candidate Feedback Report. This includes submitting an appropriate plan to address the deficiencies noted in the attached report for Board consideration and approval before proceeding, and the plan must include only Category I activities.~~

4. An~~y~~ applicant who is unable to demonstrate competency under paragraphs (1), (2), or (3) of this section may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a license under this paragraph (4), the Board may subject

said license to such lawful conditions as the Board finds are necessary to protect the public.other means as approved by the Board.

D. An applicant seeking to reinstate or reactivate a license that has been expired or inactive for more than five years must demonstrate "competency to practice" as required in section 24-34-102(8)(d)(II), C.R.S., by submitting one of the following:

1. Verification of an active, valid physical therapist license in good standing from another state, along with proof of clinical physical therapy practice in that state which includes a minimum of an average of 400 hours per year for the two years immediately preceding the date of application. The work experience must be attested as to the number of hours.

2. Evidence of completing an average of 15 points of Professional Development Activities (PDA) pursuant to Rule 213.C.2.a-c for each year the license has been expired or inactive.

a. The Board may accept 1.25 points for each month the license is expired or inactive, and

b. All points must be Category I, and directly related to physical therapy clinical practice.

3. Completion of the Federation of State Boards of Physical Therapy's (FSBPT) Practice Review Tool (PRT), or its equivalency as determined by the Board, and

a. Submitting a Candidate Feedback Report, or its equivalency as determined by the Board, with an overall performance reporting of "sufficiently qualified" to be considered and accepted by the Board; or

b. Successfully completing a Board approved plan to overcome deficiencies in any area(s) rated "needs improvement" in the Candidate Feedback Report. This includes submitting an appropriate plan to address the deficiencies noted in the attached report for Board consideration and approval before proceeding, and the plan must include only Category I activities.

4. Practice for six months on probationary status with a practice monitor subject to the terms established by the Board.

5. Completion of a 240-hour internship within 6 consecutive months using the Physical Therapist Clinical Performance Instrument ("CPI) as the professional standard and measure of continued competency. Satisfactory completion of the internship shall require both 240 hours of internship practice and successful demonstration of entry-level performance on all skills on the CPI on electronic or paper form.

6. Any other means as approved by the Board.

ED. An applicant for reinstatement or reactivation who has actively practiced in Colorado on an expired or inactive license in violation of section 12-41-106, C.R.S., is subject to denial of application, disciplinary action, and/or other penalties as authorized in the Physical Therapy Practice Act at section 12-41-101, *et seq.*, C.R.S., and in accordance with section 24-34-102, *et seq.*, C.R.S.

208. Use of Titles Restricted

The purpose of this rule is to clarify the use of titles and educational degrees pursuant to section 12-41-104, C.R.S.

A. Obtaining a physical therapy license does not automatically entitle or confer upon the licensee the right to use the title “Dr.” or “Doctor”.

B. A licensed physical therapist can use the title “Doctor” or “Dr.” only when such licensee has, in fact, been awarded a physical therapy doctorate degree (D.P.T.), or another academic or clinical doctorate degree (e.g., Ph.D., Sc.D.) from an accredited program by a nationally recognized accrediting agency as required pursuant to section 6-1-707, C.R.S., pertaining to the use of titles and degrees.

C. A physical therapist holding a doctorate degree may include the title “Doctor” or “Dr.” only when accompanied by the words of the conferred degree following his/her legal name and after the title “P.T.”, for example: “Dr. Jane/John Doe, P.T., D.P.T.” or “Dr. Jane/John Doe, P.T., Ph.D.”

D. A physical therapist not holding a physical therapy doctorate or transitional doctorate degree may not use the title D.P.T.

~~**209. Declaratory Orders**~~

~~The purpose of this rule is to establish procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedures Act at § 24-4-105(11), C.R.S.~~

~~A. Any person or entity may petition the Board for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Board.~~

~~B. The Board will determine, at its discretion and without notice to petitioner, whether to rule upon such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such decision.~~

~~C. In determining whether to rule upon a petition filed pursuant to this rule, the Board will consider the following matters, among others:~~

~~1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the Board;~~

~~2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more petitioners;~~

~~3. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Board or a court but not involving any petitioner;~~

~~4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion; and~~

~~5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to CRCP 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule, or order in question.~~

~~D. Any petition filed pursuant to this rule shall set forth the following:~~

~~1. The name and address of the petitioner and whether the petitioner is licensed pursuant to Title 12, Article 41.~~

2. The statute, rule, or order to which the petition relates.

3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.

E. If the Board determines that it will rule on the petition, the following procedures shall apply:

1. The Board may rule upon the petition based solely upon the facts presented in the petition. In such a case:

a. Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.

b. The Board may order the petitioner to file a written brief, memorandum, or statement of position.

c. The Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.

d. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.

e. The Board may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.

f. The Board may take administrative notice of facts pursuant to the Colorado Administrative Procedures Act at § 24-4-105(8), C.R.S., and may utilize its experience, technical competence, and specialized knowledge in the disposition of the petition.

2. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

3. The Board may, at its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The hearing notice to the petitioner shall set forth, to the extent known, the factual or other matters that the Board intends to inquire.

4. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all the facts stated in the petition; all of the facts necessary to show the nature of the controversy or uncertainty; and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Board to consider.

F. The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as are required by Section D of this Rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.

G. Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to the Colorado Administrative Procedures Act at § 24-4-106, C.R.S.

210. Requirements for Physical Therapists to Perform Physical Therapy ~~on~~ of Animals

The purpose of this rule is to implement the requirements of ~~§~~sections 12-41-103.6(2)(b)(II) and 12-41-113(4), C.R.S., ~~–~~regarding the authority of ~~Physical~~ physical ~~Therapists~~ therapists to treat animals.

A. A ~~Physical~~ physical ~~Therapist~~ therapist must have the knowledge, skill, ability, and documented competency to perform an act that is within the scope of practice for ~~Physical~~ physical ~~Therapists~~therapists.

B. The ~~Director~~ Division of Professions and Occupations shall maintain a data base of all ~~Physical~~ physical ~~Therapists~~ therapists that are qualified pursuant to this rule to practice physical therapy ~~on~~ of animals in this state.

C. All ~~Physical~~ physical ~~Therapists~~ therapists that choose to practice physical therapy ~~on~~ of animals shall provide the Board with such therapist's name, current address, education, and qualifications to perform physical therapy ~~on~~ of animals for inclusion in the data base referenced in ~~part~~ section B of this rule. ~~—~~Information in the data base shall be open to public inspection at all times. ~~—~~Forms for ~~Physical~~ physical ~~Therapists~~ therapists to provide such information shall be provided by the Board.

D. A ~~Physical~~ physical ~~Therapist~~ therapist that desires to perform physical therapy ~~on~~ of animals must comply with the following ~~–~~educational ~~–~~requirements:

1. Minimum of 80 contact hours over and above entry-level human physical therapy program course work for non-human animals, to include:

   a. FOUNDATION/CLINICAL SCIENCES

      i. Gross and applied non-human animal anatomy/physiology;

      ii. Wound healing and response of tissues to disuse and remobilization in the non-human animal;

      iii. Animal behavior;

      iv. Animal restraint; and

      v. Zoonotic and infectious diseases.

   b. EXAMINATION/EVALUATION/PROGNOSIS/PT DIAGNOSIS

      i. Medical and surgical management of orthopedic, neurological, critically injured, geriatric, arthritic, and obese non-human animals; and

      ii. Gait and other movement analyses.

   c. INTERVENTION/PLAN OF CARE/OUTCOME

      i. Therapeutic exercise applied to non-human animals;

      ii. Therapeutic modalities; and

      iii. Outcome assessment and documentation.

   d. CLINICAL EXPERIENCE

i. Documented successful completion of a minimum of 120 hours under the supervision of a licensed physical therapist listed in the data base maintained by ~~DORA~~ the Division of Professions and Occupations to perform physical therapy of animals or a licensed veterinarian.

E. Prior to performing physical therapy ~~on~~ of an animal, the ~~Physical~~ physical ~~Therapist~~ therapist shall obtain veterinary medical clearance of the animal by a Colorado-licensed ~~Veterinarian~~ veterinarian and must document such clearance in the animal patient's record.

F. Veterinary medical clearance means:

1. The ~~Veterinarian~~ veterinarian has previously examined the animal patient and has provided a differential diagnosis, if appropriate~~.~~; and

2. The ~~Veterinarian~~ veterinarian has cleared the animal for physical therapy.

G. It is expected that the ~~Physical~~ physical ~~Therapist~~ therapist and the ~~Veterinarian~~ veterinarian will continue professional collaboration as necessary for the well-being of the animal patient.

H. Once veterinary medical clearance has been received~~, ~~; the ~~Physical~~ physical ~~Therapist~~ therapist is responsible for developing the plan of care for the animal patient's physical therapy.

I. The animal patient's record must include the verbal or written veterinary medical clearance. ~~—~~If verbal clearance is received, the ~~Physical~~ physical ~~Therapist~~ therapist must document the verbal clearance in the animal patient's record, including the name of the veterinarian, date, and time clearance was received.

J. Complaints against ~~Physical~~ physical ~~Therapists~~ therapists alleging a violation related to animal physical therapy will be forwarded to the ~~Colorado~~ State Board of Veterinary Medicine for its review and advisory recommendation to the State Physical Therapy Board. ~~—~~The State Physical Therapy Board retains the final authority by statute for decisions related to discipline of any physical therapist.

211. Requirements for Physical Therapists to Perform Dry Needling

A. Dry needling (also known as Trigger Point Dry Needling) is a physical intervention that uses a filiform needle to stimulate trigger points, diagnose and treat neuromuscular pain and functional movement deficits; is based upon Western medical concepts; requires an examination and diagnosis, and treats specific anatomic entities selected according to physical signs. Dry needling does not include the stimulation of auricular or distal points.

B. Dry needling as defined pursuant to this rule is within the scope of practice of physical therapy.

C. A Physical Therapist must have the knowledge, skill, ability, and documented competency to perform an act that is within the Physical Therapist's scope of practice. Except as part of a course of study on dry needling pursuant to paragraph D.2 of this Rule, a Physical Therapist shall not perform dry needling unless competent to do so.

D. To be deemed competent to perform dry needling, a Physical Therapist must:

1. have practiced for at least two years as a licensed Physical Therapist; and

2. have successfully completed a dry needling course of study that consists of a minimum of 46 hours of in-person (i.e. not online) dry needling training.

E. A provider of a dry needling course of study must meet the educational and clinical prerequisites as defined in this rule, paragraph D above and demonstrate a minimum of two years of dry needling practice techniques. The provider is not required to be a Physical Therapist.

F. Physical Therapists performing dry needling in their practice must have written informed consent for each patient where this technique is used. The patient must sign and receive a copy of the informed consent form. The consent form must, at a minimum, clearly state the following information:

1. Risks and benefits of dry needling; and

2. Physical Therapist's level of education and training in dry needling; and

3. The Physical Therapist will not stimulate any distal or auricular points during dry needling.

G. When dry needling is performed, it must be clearly documented in the procedure notes and must indicate how the patient tolerated the technique, as well as the outcome after the procedure.

H. Dry needling shall not be delegated and must be directly performed by a qualified, licensed Physical Therapist.

I. Dry needling must be performed in a manner consistent with generally accepted standards of practice, including clean needle techniques, and the guidelines and recommendations of the Centers for Disease Control and Prevention ("CDC").

J. The Physical Therapist shall supply written documentation, upon request by the Board, which substantiates appropriate training as required by this Rule. Failure to provide written documentation, upon request, is a violation of this Rule, and is prima facie evidence that the Physical Therapist is not competent and not permitted to perform dry needling

212. Inactive License Status for Physical Therapists

The purpose of this rule is to outline the conditions and procedures governing inactive licensure status pursuant to section 12-41-112.5, C.R.S.

A. A physical therapist with an inactive license must not engage in any act or conduct that constitutes the practice of physical therapy while the physical therapist's license is inactive.

B. A physical therapist with an inactive license is exempt from the professional liability insurance requirements of section 12-41-114.5, C.R.S.

C. A physical therapist with an inactive license is exempt from the continuing professional competency requirements of section 12-41-114.6, C.R.S., and Rule 213.

~~C~~D. A physical therapist may apply for reactivation of an inactive license by successfully meeting the requirements of Rule 207.

213. Continuing Professional Competency

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

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

A. Definitions

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

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

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

~~3.~~4. Deemed Status: A method to satisfy continuing professional competency requirements. A licensee who satisfies the continuing professional competency requirements of a Colorado state agency or department pursuant to section 12-41-114.6(1)(c), C.R.S., may qualify under this method in lieu of completing the Board's CPD program.

5. Learning Plan: a Board approved form through which a licensee documents his/her goals and plans of learning that were developed from his/her Reflective Self-Assessment (RSAT), which is defined below, and AKS (when appropriately applied).

~~4.~~6. Military Exemption: A method to satisfy continuing professional competency requirements. A licensee who has been approved for this exemption will not be required to meet continuing professional competency requirements during the renewal period in which he/she was approved by the Division of Professions and Occupations.

~~5.~~7. Professional Development Activities (PDA): learning activities undertaken to increase the licensee's knowledge and skill or hone existing knowledge and skill for the purpose of continuing professional development.

~~6.~~8. Reflective Self-Assessment Tool (RSAT): a reflective practice tool in which a licensee can reflect upon his/her knowledge and skills pertaining to the foundational areas of physical therapy practice taking into account the licensee's current level and area of practice.

B. Continuing Professional Competency Requirements

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

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

   b. Participation in a program of continuing professional competency through a Colorado state agency or department, including continuing competency requirements imposed through a contractual arrangement with a provider as set forth in section 12-41-114.6(1)(c), C.R.S. This status is ~~hereafter known as~~defined as "Deemed

Status" in section A(4) of this rule ~~as~~ and further described in section D of this rule; or

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

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

C. Continuing Professional Development Program

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

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

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

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

~~b. The completion of an Assessment of Knowledge and Skills (AKS) once every 10 years.~~

2. Professional Development Activities (PDA)

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

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

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

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

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

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

~~a. The ten year cycle will commence upon the renewal of a license in 2014 or upon the first renewal of a license thereafter.~~

~~b. The ten year cycle will not be changed by the expiration or inactivation of a license that is expired or inactive for less than five years. Physical therapists with licenses expired or inactive for more than five years shall commence a new ten year cycle upon the first renewal of a license in active status.~~

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

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

ii. Be comprised of evidence based practice;

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

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

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

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

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

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

~~f. Credit for a maximum of two AKSs may be applied to the requisite PDA points during a single ten-year cycle.~~

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

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

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

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

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

D. Deemed Status. ~~A licensee who satisfies the continuing professional competency requirements of a Colorado state agency or department pursuant to section 12-41-114.6(1)(c), C.R.S., shall meet the following criteria~~The following criteria must be met in order to claim this status:

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

2. To qualify, the ~~program continuing professional competency must be substantially equivalent to the CPD program administered by the Board and must include, at a minimum, every two years the following components:~~licensee must be in full compliance with the requirements of his/her state agency or department during the entire 2-year renewal period of his/her physical therapist license and on track to successfully complete that program or have successfully completed it.

   ~~a. An assessment of knowledge and skills;~~

   ~~b. Thirty (30) contact hours of learning activities; and~~

   ~~c. Demonstration of completion of continuing competency activities.~~

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

   a. ~~A letter~~Proof from the Colorado state agency or department or contractual entity ~~specifying~~ verifying that the licensee ~~has completed the continuing professional competency program~~ is in compliance with its continuing professional competency program~~,~~; and

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

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

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

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

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

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

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

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

~~**214. Reporting Criminal Convictions, Judgments, and Administrative Proceedings**~~

~~The purpose of this rule is to delineate the procedures a licensee must adhere to when an act enumerated in §12-41-115, C.R.S. has occurred.~~

~~A. A licensee must inform the Board, in a manner prescribed by the Board, within 90 days of any of the following events:~~

~~1. The conviction of a felony under the laws of any state or of the United States, or of any level of crime related to the practice of physical therapy. A guilty verdict, a plea of guilty, a plea of nolo contendere, or the imposition of a deferred sentence accepted by the court is considered a conviction.~~

~~2. A disciplinary action imposed by another jurisdiction that licenses physical therapists including, but not limited to, a citation, sanction, probation, civil penalty, or a denial, suspension, revocation, or modification of a license, whether it is imposed by consent decree, order, or in some other manner, for any cause other than failure to pay a license fee by the due date.~~

~~3. Revocation or suspension by another state board, municipality, federal or state agency of any health services related license, other than a license as a Physical Therapist.~~

~~B. Any award, judgment, or settlement of a civil action or arbitration in which there was a final judgment or settlement for malpractice of physical therapy.~~

~~C. The notice to the Board must include the following information:~~

~~1. If the event is an action by a governmental agency:~~

~~a. the name of the agency,~~

~~b. its jurisdiction,~~

~~c. the case name,~~

~~d. the docket, proceeding, or case number by which the event is designated, and~~

~~e. a copy of the consent decree, order, or decision.~~

~~2. If the event is a conviction of a crime described above:~~

~~a. the court,~~

~~b. its jurisdiction,~~

~~c. the case name,~~

~~d. the case number,~~

~~e. a description of the matter or a copy of the indictment or charges,~~

~~f. any plea or verdict accepted or entered by the court, and~~

~~g. a copy of the imposition of sentence related to the conviction and the completion of all terms of the sentence;~~

~~3. If the event concerns a civil action or arbitration proceeding:~~

~~a. the court or arbitrator,~~

~~b. the jurisdiction,~~

~~c. the case name,~~

~~d. the case number,~~

~~e. a description of the matter or a copy of the complaint or demand for arbitration, and~~

~~f. a copy of the verdict, the court decision or arbitration award, or, if settled, the settlement agreement and court's order of dismissal.~~

~~4. The licensee notifying the Board may submit a written statement with the notice to be included with the licensee's records.~~

215. Provisional Physical Therapist License

The purpose of this rule is to establish the qualifications and procedures for applicants seeking a provisional license to practice as a physical therapist pursuant to section 12-41-107.5, C.R.S.

A. A provisional license may be issued only one time and cannot be renewed or reinstated.

B. An applicant is not eligible to be issued a provisional physical therapist license if he ~~or /~~she has failed or passed the National Physical Therapy Examination (NPTE).

C. Pursuant to section 12-41-107.5, C.R.S., a provisional physical therapist license expires no later than 120 days after it is issued. If the individual passes the NPTE after the license was issued, then the license will expire no later than the 120 days after the date it was issued, or a regular license to practice as a physical therapist is issued to the licensee. However, if the individual issued a provisional license fails the NPTE after the license was issued, then the license expires within ~~three (~~3~~)~~ business days of his/her failing results being sent to the candidate.

D. A provisional physical therapist shall purchase and maintain professional liability insurance, or be insured under a supervising physical therapist, for the amounts specified in section 12-41-114.5(1), C.R.S., unless the provisional physical therapist is exempted pursuant to section 12-41-114.5(3), C.R.S.

PHYSICAL THERAPIST ASSISTANT RULES

301. Supervision Required for Physical Therapist Assistant Practice

The purpose of this rule is to clarify supervision parameters pursuant to ~~§~~section 12-41-203(2), C.R.S.

Physical ~~Therapist~~ therapist ~~Assistants~~ assistants ("P.T.A."~~.~~) shall not provide physical therapy services unless the ~~Physical~~ physical ~~Therapist~~ therapist ~~Assistant~~ assistant works under the general supervision of a licensed ~~Physical~~ physical ~~Therapist~~therapist.

302. Supervision of Others by Physical Therapist Assistants Prohibited

The purpose of this rule is to clarify supervisory parameters pursuant to section 12-41-103.6(2)(b), C.R.S.

A. A physical therapist assistant may not supervise other personnel in the provision of physical therapy services to a patient.

B. A physical therapist assistant under the general supervision of a physical therapist may act as a clinical instructor for a physical therapist assistant student. However, immediate supervision of the student physical therapist assistant remains with the physical therapist if the physical therapist assistant student is providing physical therapy services; the supervising physical therapist may gradually decrease the level of supervision over time as the student becomes more experienced and skilled.

303. Certification by Examination for Physical Therapist Assistants

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

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

1. Accredited by a nationally recognized accrediting agency pursuant to Rule ~~102~~103~~,~~ ; or

2. Substantially equivalent pursuant to Rule 304.

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

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

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

C. An applicant ~~must meet the following current practice competency requirements in order to be eligible~~ for certification by examination must graduate from a physical therapy program pursuant to section A of this rule and pass the NPTE within the 2 years immediately preceding the date of the application. ~~:~~

~~1. Graduate from a program pursuant to section A of this rule above and pass the NPTE within the 2 years immediately preceding the date of the application.~~

D. An applicant who is unable to demonstrate current practice competency under section C of this rule may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole

discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a certification under this section D, the Board may subject said certification to such lawful conditions as the Board finds are necessary to protect the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

305. Certification by Endorsement for Physical Therapist Assistants

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

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

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

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

1. Completion of 60 hours of continuing education related to the practice of physical therapy during the 2 years immediately preceding the application~~, provided that the continuing education meets the approval of the Board as Category I.~~.

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

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

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

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

2. Successful completion of a Board authorized internship.

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

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

ii. Ensure that the supervising physical therapist immediately notifies the Board in writing of the establishment of the internship and submits for the Board's approval a plan for supervision using the ~~physical~~ most current version of the "Physical ~~therapist~~ Therapist ~~assistant~~ Assistant Clinical Performance Instrument" (CPI).

b. The internship shall not commence without the Board's written approval of the supervising physical therapist's plan for supervision specified in subparagraph (~~3~~2)(c) of this rule.

c. The internship shall consist of:

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

ii. Direct supervision of the applicant at all times by the Board approved Colorado-licensed, practicing physical therapist; and

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

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

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

306. Reinstatement of an Expired Certification for Physical Therapist Assistants

The purpose of this rule is to establish the qualifications and procedures for applicants seeking reinstatement of an expired physical therapist assistant certification pursuant to section 12-41-208, C.R.S.

A. An applicant seeking reinstatement of an expired physical therapist assistant certification shall complete a reinstatement application and pay a reinstatement fee as established by the Director.

B. If the certification has been expired for more than 2 years~~, but less than 5 years~~, an applicant must establish "competency to practice" pursuant to 24-34-102(8)(d)(II)(A) & (D), C.R.S., by submitting ~~one~~ 1 of the following:

1. Verification of an active, valid physical therapist assistant license, certification, or registration in good standing from another state or jurisdiction, along with proof of clinical physical therapy practice in that state or jurisdiction which includes a minimum of an average of 400 hours per year for the 2 years immediately preceding the date of application. The work experience must be attested as to the number of hours.

2. If an applicant has not practiced as a licensed, certified, or registered physical therapist assistant within the last 10 years in another state or jurisdiction, then:

a. Evidence of completing an objective third-party assessment that compares a certificate holder's knowledge, skills, and abilities to the standards for entry-level practice accepted by the Board and an average of 30 hours per year in physical therapy continuing education courses since the date the certification expired.

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

ii. All continuing education hours must be Category I in compliance with the "Physical Therapy Board Standards for Continuing Education Activities", and directly related to the physical therapist assistant's clinical practice and address any areas of deficiencies identified in the objective third-party assessment.

iii. The Board may accept 2.5 hours for each month the certification is expired.

b. Completion of a 240-hour internship within 6 consecutive months using the most current version of the "Physical Therapist Assistant Clinical Performance Instrument" (CPI) as the professional standard and measure of continued competency as required in Rule 305(C)(2). Satisfactory completion of the internship shall require both 240 hours of internship practice and successful demonstration of entry-level performance on all skills on the CPI on electronic or paper form.

c. Practice for six months on probationary status with a practice monitor subject to the terms established by the Board.

3. If an applicant has not practiced as a licensed, certified, or registered physical therapist for the last 10 or more years in another state or jurisdiction, then he/she is required to re-take and pass the National Physical Therapy Examination (NPTE).

4. An applicant who is unable to demonstrate competency under paragraphs (1), (2), or (3) of this section may request to demonstrate competency by any other means. The Board shall consider such a request on a case-by-case basis. The decision to approve such a request shall be at the sole discretion of the Board. In considering whether to approve such a request, the Board shall consider public safety, the particular circumstances and hardships faced by the applicant, and such other factors as the Board deems appropriate. If the Board grants a certification under this paragraph (4), the Board may subject said certification to such lawful conditions as the Board finds are necessary to protect the public.

~~Evidence of completing an average of 30 hours per year in physical therapy continuing education courses since the date the certification expired, provided that the continuing education meets the approval of the Board as Category I.~~

~~3. Any other means as approved by the Board.~~

~~C. An applicant seeking to reinstate a certification that has been expired for more than 5 years must demonstrate "competency to practice" as required in section 24-34-102(8)(d)(II)(B) & (F), C.R.S., by submitting one of the following:~~

~~1. Verification of an active, valid physical therapist assistant license, certification or registration in good standing from another state, along with proof of clinical physical therapy practice in that state which includes a minimum an average of 400 hours per year for the 2 years immediately preceding the date of application. The work experience shall be attested as to the number of hours.~~

~~2. Evidence of completing an average of 30 hours per year in physical therapy continuing education courses since the date the certification expired, provided that the continuing education meets the approval of the Board as Category I.~~

~~3. Practice for six months on probationary status with a practice monitor subject to the terms established by the Board.~~

~~4. Completion of a 240-hour internship within 6 months using the physical therapist assistant Clinical Performance Instrument (CPI) as the professional standard and measure of continued competency. Satisfactory completion of the internship shall require both 240 hours of internship practice and successful demonstration of entry-level performance on all skills on the CPI on electronic or paper form.~~

~~5. Any other means as approved by the Board.~~

~~D~~C. An applicant for reinstatement who has actively practiced in Colorado on an expired certification in violation of section 12-41-204, C.R.S., is subject to denial of application, disciplinary action, and/or other penalties as authorized in the Physical Therapy Practice Act at section 12-41-201 et seq., C.R.S., and in accordance with section 24-34-102 et seq., C.R.S.

Editor's Notes

History

Rules 7, 10, 11 eff. 11/30/2007.

Rule 6 eff. 03/30/2011.

Rules 1 - 11 emer. rule repealed eff. 03/09/2012.

Rules 1 - 11 emer. rule eff. 03/09/2012.

Rules 1 - 11, 303, 304 emer. rule eff. 04/02/2012.

Rules 301, 302, 305, 306 emer. rule eff. 06/01/2012.

Rules 1 - 11 repealed eff. 06/30/2012.

Rules 201 - 211, 301 - 305 eff. 06/30/2012.

Rules 101 – 102, 212, 214 eff. 01/30/2013.

Rules 207 and 213, eff. 11/01/2014.

Rule 215 emer. rule eff. 06/02/2014.

Rules 202, 203, 205, 215, 303 eff. 09/14/2014.

COLORADO
Department of
Regulatory Agencies
Division of Professions and Occupations

Healthcare Branch
State Physical Therapy Board

Permanent Rulemaking Hearing on September 16, 2016

Proposed Changes with Statement of Basis, Purpose, and Authority

Basis and Purpose:

A review and update of current Board Rules 101, 209, 210, 214, and 301 in response to a scheduled mandatory review of all Board rules; to amend the remaining rules for purposes of clarification in order to improve upon the understanding of requirements and processes, including the creation of a new Board Rule 101 out of the definitions provided in Board Rule 201 and re-numbering Board Rules 101 through 103 as a result; to repeal Board Rule 209 concerning declaratory orders and re-establish it as Board Rule 105 in order to be applicable to both physical therapists and physical therapist assistants; to repeal Board Rule 214 concerning the reporting of criminal convictions, judgments, and administrative proceedings and re-establish it as Board Rule 106 in order to be applicable to both physical therapists and physical therapist assistants; and to create a new Board Rule 107 to clarify notification requirements with regard to a mental or physical illness or condition.

Statement of Authority:

Pursuant to section 12-41-103.6(2)(b), C.R.S., the State Physical Therapy Board has the power and duty "[t]o adopt all reasonable and necessary rules for the administration and enforcement of" Article 41 of Title 12.

Pursuant to section 12-41-109(3)(c)(I), C.R.S., "…demonstrated competency through successful completion of an internship or demonstrated competency as a physical therapist by fulfilling the requirements established by rules of the board."

Pursuant to section 12-41-112.5, C.R.S., "[t]he board shall promulgate rules governing the activation and inactivation of licenses."

Pursuant to section 12-41-113(1), C.R.S., "[t]he board shall promulgate rules governing the required supervision."

Pursuant to section 12-41-114(1)(f), C.R.S., "…so long as the unlicensed physical therapist is acting in accordance with rules established by the board."

Pursuant to section 12-41-114.6(1)(b), C.R.S., "[t]he board shall adopt rules establishing a continuing professional competency program…".

Pursuant to section 12-41-201(3), C.R.S., "[t]he board may promulgate rules necessary to implement, administer, and enforce…".

Pursuant to section 12-41-206(3)(c), C.R.S., "…demonstrated competency through successful completion of an internship or demonstrated competency as a physical therapist assistant by fulfilling the requirements established by rules of the board."

Pursuant to section 24-4-103, C.R.S., titled "Rule-making – procedure – definitions – repeal."

Pursuant to section 24-4-103.3, C.R.S., titled "Mandatory review of rules by agencies – report on results of review in department regulatory agendas."

Pursuant to section 24-4-105(11), C.R.S., "[e]very agency shall provide by rule for the entertaining, in its sound discretion, and prompt disposition of petitions for declaratory orders to terminate controversies or to remove uncertainties as to the applicability to the petitioners of any statutory provision or of any rule or order of the agency."

Pursuant to section 24-34-102(8)(d), C.R.S., "[a]n expired license, registration, or certificate of any other person may be reinstated at the discretion and pursuant to the authority of the director, licensing board, or commission…"

Pursuant to section 24-34-102(8.5), C.R.S., "[t]he director and each appropriate examining and licensing board shall promulgate rules to implement this section."

Notice of Proposed Rulemaking

Tracking number

2016-00364

Department

1000 - Department of Public Health and Environment

Agency

1001 - Air Quality Control Commission

CCR number

5 CCR 1001-5

Rule title

REGULATION NUMBER 3 STATIONARY SOURCE PERMITTING AND AIR POLLUTANT EMISSION NOTICE REQUIREMENTS

Rulemaking Hearing

Date

10/20/2016

Time

09:00 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246

Subjects and issues involved

To consider revisions that amend certain defined terms related to stationary source permitting and air pollutant emission notice requirements to be consistent with federal definitions.

Statutory authority

Sections 25-7-105(1)(a), 25-7-301, and 25-7-302, 25-7-105(12), 25-7-106, 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended.

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 3

Stationary Source Permitting and Air Pollutant Emission Notice Requirements

5 CCR 1001-5

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

>>>>>>

PART D CONCERNING MAJOR STATIONARY SOURCE NEW SOURCE REVIEW AND PREVENTION OF SIGNIFICANT DETERIORATION

>>>>>>

II. Definitions

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II.A.22. Major Emissions Unit

II.A.22.a. Any emissions unit that emits or has the potential to emit one hundred tons per year or more of the PAL pollutant in an attainment area; or

II.A.22.b. Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major stationary source threshold (as defined in Section II.A.25. of this part) for the PAL pollutant for nonattainment areas. ~~For example, in accordance with the definition of a major stationary source (as defined in Section II.A.25.of this part), an emissions unit would be a major emissions unit for volatile organic compounds if the emissions unit is located in an ozone nonattainment area and emits or has the potential to emit one hundred or more tons of voc per year.~~

II.A.22.c. For a GHG PAL issued on a CO2e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO2e basis that would be sufficient for a new source to trigger permitting requirements under paragraph Part A, Section I.B.44. at the time the PAL permit is being issued.

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II.A.25. Major Stationary Source

II.A.25.a. For the purpose of determining whether a source in an attainment or unclassifiable area is subject to the requirements of this Part D, major stationary source means:

II.A.25.a.(i) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant:

II.A.25.a.(i)(A) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input

II.A.25.a.(i)(B) Coal cleaning plants (with thermal dryers)

II.A.25.a.(i)(C) Kraft pulp mills

II.A.25.a.(i)(D) Portland cement plants

II.A.25.a.(i)(E) Primary zinc smelters

II.A.25.a.(i)(F) Iron and steel mill plants

II.A.25.a.(i)(G) Primary aluminum ore reduction plants

II.A.25.a.(i)(H) Primary copper smelters

II.A.25.a.(i)(I) Municipal incinerators capable of charging more than 250 tons of refuse per day

II.A.25.a.(i)(J) Hydrofluoric, sulfuric, and nitric acid plants

II.A.25.a.(i)(K) Petroleum refineries

II.A.25.a.(i)(L) Lime plants

II.A.25.a.(i)(M) Phosphate rock processing plants

II.A.25.a.(i)(N) Coke oven batteries

II.A.25.a.(i)(O) Sulfur recovery plants

II.A.25.a.(i)(P) Carbon black plants (furnace process)

II.A.25.a.(i)(Q) Primary lead smelters

II.A.25.a.(i)(R) Fuel conversion plants

II.A.25.a.(i)(S) Sintering plants

II.A.25.a.(i)(T) Secondary metal production plants

II.A.25.a.(i)(U) Chemical process plants

II.A.25.a.(i)(V) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input

II.A.25.a.(i)(W) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels

II.A.25.a.(i)(X) Taconite ore processing plants

II.A.25.a.(i)(Y) Glass fiber processing plants

II.A.25.a.(i)(Z) Charcoal production plants

II.A.25.a.(ii) Notwithstanding the stationary source size specified in Section II.A.25.a.(i), any stationary source that emits, or has the potential to emit, two hundred and fifty tons per year or more of any regulated NSR pollutant.

II.A.25.b.For the purpose of determining whether a source in a nonattainment area is subject to the requirements of Section V. of this part, and whether a source in an attainment area affecting a nonattainment area is subject to the requirements of Section VI.D. of this part, major stationary source means any stationary source of air pollutants that emits, or has the potential to emit 100 tons per year or more of any regulated NSR pollutant for which the area is nonattainment, except where the lower emissions thresholds in Sections II.A.25.b.(i)-(vi) apply. Additionally, a source causing or contributing to a violation of a national ambient air quality standard for any pollutant regulated under Section 110 of the Federal Act shall be considered a major stationary source when it has the potential to emit one hundred tons per year or more of that pollutant. The source will be considered to cause or contribute to a violation where the source exceeds the significance levels in the table under Section VI.D.2. of this Part D. Such source is subject to the requirements of Section VI. of this Part D.

II.A.25.b.(i) Fifty tons per year or more of volatile organic compounds or nitrogen oxides in any serious ozone nonattainment area.

II.A.25.b.(ii) Fifty tons per year or more of volatile organic compounds in any ozone transport region, except for any severe or extreme ozone nonattainment area.

II.A.25.b.(iii) Twenty five tons per year or more of volatile organic compounds or nitrogen oxides in any severe ozone nonattainment area.

II.A.25.b.(iv) Ten tons per year or more of volatile organic compounds or nitrogen oxides in any extreme ozone nonattainment area.

II.A.25.b.(v) Fifty tons per year or more of carbon monoxide in any serious carbon monoxide nonattainment area, where stationary sources significantly contribute to carbon monoxide levels.

II.A.25.b.(vi) Seventy tons per year or more of PM10 in any serious PM10 nonattainment area.

II.A.25.c.Major stationary source includes any physical change that would occur at a stationary source not otherwise qualifying as a major stationary source under Sections II.A.25.a and II.A.25.b. of this part, if the change would constitute a major stationary source by itself.

II.A.25.d.A major stationary source that is major for volatile organic compounds or NOx shall be considered major for ozone, except that emissions of negligibly reactive volatile organic compounds, as defined in the Common Provisions, shall not be included in the determination of major stationary source status for ozone.

II.A.25.e.The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in Section II.A.25.a.(i) or any other stationary source category which, as of August 7, 1980, is regulated under Section 111 or 112 of the Federal Act.

II.A.25.f.Emissions caused by indirect air pollution sources (as defined in Section I.B.24. of Part A of this regulation), emissions from internal combustion engines on any vehicle, and emissions resulting from temporary activities, such as construction or exploration, shall be excluded in determining whether a source is a major stationary source. Emissions from ongoing construction are not considered to be temporary emissions and are included in determining whether a major modification will occur.

II.A.25.g.A major stationary source in the Denver Metro PM10 attainment/maintenance area that is major for sulfur dioxide or nitrogen oxides shall be considered major for PM10.

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II.A.44. Significant

II.A.44.a. Unless the context otherwise requires, , a significant rate of emissions in tons per year is defined as a value that would equal or exceed any of the following:

Carbon monoxide: 100 tons per year

Nitrogen Oxides: 40 (nitric oxide + nitrogen dioxide) tons per year

Sulfur dioxide: 40 tons per year

Particulate matter: 25 tons per year particulate matter emissions or, 15 tons per year of PM10 emissions

PM10 - Precursors in the Denver Metropolitan PM10 attainment/maintenance area: 40 tons per year for each individual precursor (nitrogen oxides or sulfur oxides)

PM2.5: 10 tons per year of direct PM2.5 emissions; 40 tons per year of sulfur dioxide emissions; or 40 tons per year of nitrogen dioxide emissions

Ozone: 40 tons per year of volatile organic compounds or nitrogen oxides

Lead: 0.6 tons per year

Fluorides: 3 tons per year

Sulfuric acid mist: 7 tons per year

Hydrogen sulfide: 10 tons per year

Total reduced sulfur (including hydrogen sulfide): 10 tons per year

Reduced sulfur compounds (including hydrogen sulfide): 10 tons per year

Municipal Waste Combustor Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2 x 10-6 megagrams per year (3.5 x 10-6 tons per year)

Municipal Waste Combustor Metals (measured as particulate matter): 14 megagrams per year (15 tons per year)

Municipal Waste Combustor Acid Gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)

Municipal Solid Waste Landfill Gases (measured as non-methane organic compounds): 45 megagrams per year (50 tons per year)

In a serious or severe ozone nonattainment area: 25 tons per year of volatile organic compounds or nitrogen oxides

In an extreme ozone nonattainment area: any increase of volatile organic compounds or nitrogen oxides

II.A.44.b. Significant means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that this definition does not list, any emissions rate, except that this definition shall not apply to hazardous air pollutants listed in or pursuant to Section 112 of the Federal Act.

II.A.44.c. Notwithstanding the significant emission rates above, significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification, that would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than one microgram/cubic meter ((g/m3) (twenty-four hour average).

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PART G STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

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I.AAA. Adopted October 20 & 21, 2016

Regulation 3, Part D, Sections II.A.22.b., II.A.25.b., and II.A.44.a.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act Sections 25-7-110 and 25-7-110.5, C.R.S. (“the Act”).

Basis

The Commission revised the definition of “major stationary source” contained in Part D, Section II. to include the ozone nonattainment area major source thresholds, consistent with federal requirements. The Commission also revised the definitions of “major emission unit” and “significant” in Part D, Section II.

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, Sections 25-7-105(1)(a), 25-7-201 though 25-7-206, 25-7-210, 25-7-301, and 25-7-302, C.R.S. authorize the Commission to promulgate a comprehensive State Implementation Plan (“SIP”) which will assure attainment and maintenance of

national ambient air quality standards ("NAAQS") and prevent significant deterioration ("PSD") of air quality in conformance with the Federal and Colorado Acts. Section 25-7-105(12) authorizes the Commission to promulgate regulations necessary to implement the provisions of the emission notice, construction permit, and Title V programs. Pursuant to Section 25-7-106, C.R.S., the Commission has the maximum flexibility in establishing an air quality control program and may promulgate regulations as necessary or desirable to carry out that program.

Purpose

Major Stationary Source Definition

Regulation 3, Part D, concerning Major Stationary Source New Source Review ("NSR") and Prevention of Significant Deterioration ("PSD"), applies statewide to any new or existing major stationary source (Section I.) and it has been fully incorporated into Colorado's SIP. If a source is a "major stationary source" as defined in Section II.A.25.b., then it will need to comply with Sections V. (Requirements Applicable to Nonattainment Areas) and VI. (Requirements Applicable to Attainment and Unclassifiable Areas and Pollutants Implemented under Section 110 of the Federal Act (PSD Program)) of Part D, as applicable.

A major stationary source is defined as, "Any stationary source of air pollutants that emits, or has the potential to emit 100 tons per year or more of any regulated NSR pollutant for which the area is nonattainment." Unlike the federal definition, Colorado's definition of "major stationary source" does not step-down the thresholds for determining what is a major source based on ozone nonattainment area classification. *See* 40 C.F.R. § 51.165(a)(1)(iv)(A)(1) and 40 C.F.R. Part 51, Appendix S. Thus, if an ozone nonattainment area were ever classified or reclassified as serious or severe, in order to maintain permitting authority, Colorado would need to adopt the same lower major stationary source thresholds that would apply on a federal basis before permitting new or modified sources. Therefore, in order to ensure consistency with federal definitions and to provide regulatory certainty by avoiding any disruption to the permitting process should Colorado's ozone nonattainment area ever be reclassified to a more stringent classification beyond a moderate nonattainment area, the Commission has revised the definition of "major stationary source" contained in Part D, Section II.A.25.b. to include the ozone nonattainment area major source thresholds.

Major Emissions Unit Definition

Currently, Section II.A.22.b. defines a major emissions unit as, "Any emissions unit that emits or has the potential to emit an amount that is equal to or greater than the major stationary source threshold (as defined in Section II.A.25. of this part) for the [plant-wide applicability limitation (PAL)] pollutant for nonattainment areas." The definition of major emissions unit in Section II.A.22.b. then goes on to provide an example of when an emissions unit would be a major emissions unit for volatile organic compounds. This example is not required to maintain consistency with federal definitions and it does not provide additional clarity to the regulation. Therefore, the Commission is removing this example.

Significant Definition

Currently, the definition of significant contained in Section II.A.44.a. (in reference to a net emissions increase or the potential of a source to emit air pollutants) contains emission rates in tons per year, but it does not contain emission rates pertaining to serious, severe or extreme ozone nonattainment areas. In order to ensure consistency with federal definitions and provide certainty by avoiding any disruption in the permitting process, the Commission is adding emission rates for serious, severe and extreme ozone nonattainment areas.

Further, the Commission corrected any typographical, grammatical and formatting errors found within the regulation.

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

NOTICE OF RULEMAKING HEARING

Regarding proposed revisions to:

Regulation Number 3

SUBJECT:
The Air Quality Control Commission will hold a rulemaking hearing to consider revisions that amend certain defined terms related to stationary source permitting and air pollutant emission notice requirements to be consistent with federal definitions.

All required documents for this rulemaking can be found on the Commission website at: https://www.colorado.gov/pacific/cdphe/aqcc

HEARING SCHEDULE:

DATE: October 20 & 21, 2016
TIME: 9:00 AM
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, Sabin Conference Room
Denver, CO 80246

PUBLIC COMMENT:
The Commission encourages all interested persons to provide their views either orally at the hearing or in writing prior to or at the hearing. The Commission encourages that written comments be submitted by **October 7, 2016** so that Commissioners have the opportunity to review the information prior to the hearing.

Information should be printed and include: your name, address, phone number, email address, and the name of the group that you may be representing (if applicable).

Written submissions should 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

Electronic submissions should be emailed to: cdphe.aqcc-comments@state.co.us

Public testimony will be taken on October 20 & 21, 2016. An approximate time for public comment will be posted in the meeting agenda.

PARTY STATUS:

Any person may obtain party status for the purpose of this hearing by complying with the requirements of the Commission's Procedural Rules. A petition for party status must be filed by electronic mail with the Office of the Air Quality Control Commission no later than close of business on **August 19, 2016.** The petition must: *1) identify the applicant; 2) provide the name, address, telephone and facsimile numbers, and email address of the applicants representative; and 3) briefly summarize what, if any, policy, factual, and legal issues the applicant has with the proposal(s) as of the time of filing the application.* Electronically mailed copies must also be received, by this same date, by the Division staff person and the Assistant Attorneys General representing the Division and the Commission identified below.

Theresa L. Martin
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Requests received beyond the stated deadline shall only be considered upon a written motion for good cause shown. The Commission reserves the right to deny party status to anyone that does not comply with the Commission's Procedural Rules.

ALTERNATE PROPOSAL:

The submittal of an alternate proposal must be accompanied by an electronic copy of the alternate proposed rule and all other associated documents as required by the Commission's Procedural Rules, and must be filed by electronic mail with the Office of the Commission by **close of business September 9, 2016**. Alternate proposals must also be filed by electronic mail with the Division staff person and with each of the Assistant Attorneys General.

STATUS CONFERENCE:

A status conference will be held **August 26, 2016 at 10:30 a.m.,** at the Department of Public Health and Environment, Carson Conference Room to ascertain and discuss the issues involved, and to ensure that parties are making all necessary efforts to discuss and resolve such issues prior to the submission of prehearing statements. Attendance at this status conference is mandatory for anyone who has requested party status.

PREHEARING CONFERENCE/PREHEARING STATEMENTS:

Attendance at the prehearing conference is mandatory for all parties to this hearing. A prehearing conference will be held **September 16, 2016 at 8:30 a.m.** at the Department of Public Health and Environment, Sabin/Cleere Conference Room. All parties must submit by electronic mail a prehearing statement to the Commission Office by close of business **September 9, 2016.** In addition, any exhibits to the prehearing statements or alternate proposals must be submitted in a separate electronic transmission to the Commission Office by close of business **September 9, 2016.** Electronically mailed copies of these documents must be delivered by that date to all persons who have been granted party status and to the Division point of contact and each of the Assistant Attorneys General identified above by close of business **September 9, 2016**. Rebuttals to the prehearing statement, and any exhibits thereto, may be submitted to the Commission Office and all other parties by close of business **September 23, 2016**.

EXCEPTIONS TO FILE DOCUMENTS BY ELECTRONIC MAIL:

The Commission's Procedural Rules provide for an exception to file documents by electronic mail. Any person may petition the Commission to file documents in paper copy format if they are unable for any reason to comply with the requirements of the Commission's Procedural Rules. If granted an exception to electronic filing pursuant to the provisions of Subsection III.I.3. of the Commissions Procedural Rules, the applicant for party status shall file an original and fifteen copies in the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246., and shall also deliver copies to each party, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings by electronic mail or as otherwise provided by the exception granted under Subsection III.I.3.

STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:

The Colorado Air Pollution Prevention and Control Act, Sections 25-7-105(1)(a), 25-7-301, and 25-7-302, C.R.S. authorize the Commission to promulgate a comprehensive State Implementation Plan ("SIP") which will assure attainment and maintenance of national ambient air quality standards ("NAAQS") in conformance with the Federal and Colorado Acts. Section 25-7-105(12) authorizes the Commission to promulgate regulations necessary to implement the provisions of the emission notice, construction permit, and Title V programs. Pursuant to Section 25-7-106, C.R.S., the Commission has the maximum flexibility in establishing an air quality control program and may promulgate regulations as necessary or desirable to carry out that program. The rulemaking hearing will be conducted in accordance with Sections 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended, the Commission's Procedural Rules, and as otherwise stated in this notice. This list of statutory authority is not intended as an exhaustive list of the Commission's statutory authority to act in this matter.

Dated this 29th day of July 2016 at Denver, Colorado

Colorado Air Quality Control Commission

Michael Silverstein

Michael Silverstein, Administrator

Notice of Proposed Rulemaking

Tracking number

2016-00365

Department

1000 - Department of Public Health and Environment

Agency

1001 - Air Quality Control Commission

CCR number

5 CCR 1001-9

Rule title

REGULATION NUMBER 7 CONTROL OF OZONE VIA OZONE PRECURSORS AND CONTROL OF HYDROCARBONS VIA OIL AND GAS EMISSIONS

Rulemaking Hearing

Date

10/20/2016

Time

09:00 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246

Subjects and issues involved

To consider proposed revisions associated with the moderate ozone nonattainment classification and separate revisions to address EPA concerns with previous SIP rule language submittals. The proposed revisions 1) incorporate State-only requirements for combustion device auto-igniters into the SIP; 2) establish condensate storage tank audio, visual and olfactory inspection requirements; 3) establish Reasonably Available Control Technology (RACT) requirements for both printing operations and general industrial cleaning solvent use; 4) provide for the implementation of RACT for major sources of VOC and NOx; 5) establish RACT for combustion sources; and 6) adjust the applicability of Regulation Number 7 accordingly. The proposed revisions also address EPAs concerns with previous SIP submittals that 1) establish monitoring, recordkeeping and reporting requirements for glycol natural gas dehydrators and natural gas processing plants; 2) remove references to EPA approval of emission factors; and 3) renumber, revise or revert to previously approved SIP language in other provisions. Finally, the proposed revisions make other typographical, grammatical and formatting changes.

Statutory authority

Sections 25-7-101, 25-7-105(1)(a), 25-7-301, 25-7-106, 25-7-106(1)(c) and (2), 109(1)(a), 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended.

Contact information

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 7

Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions

(Emissions of Volatile Organic Compounds and Nitrogen Oxides)

5 CCR 1001-9

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

Outline of Regulation

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

XVIII. (State Only) Natural Gas-Actuated Pneumatic Controllers Associated with Oil and Gas Operations

XIX. 2008 Ozone State Implementation Plan Reasonably Available Control Technology Limits

XX. Statements of Basis, Specific Statutory Authority and Purpose

Appendix A Colorado Ozone Nonattainment or Attainment Maintenance Areas

Appendix B Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks

Appendix C Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants (Vapor Balance System)

Appendix D Minimum Cooling Capacities for Refrigerated Freeboard Chillers on Vapor Degreasers

Appendix E Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Tanks

Appendix F Emission Limit Conversion Procedure

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, ~~and~~ to any nonattainment area for the 1-hour ozone standard, and to the 8-hour Ozone Control Area.

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 Sections I.A.1.c. and d., below. 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 Sections V., VI.B.1. and 2., VII.C., and XVII. apply statewide. The Provisions of Sections XVII., XVIII. and any other sections marked by (State Only) are not federally enforceable, unless otherwise identified.

~~I.A.1.d. The provisions of Sections XII. and XVI. apply in the 8-hour Ozone Control Area.~~

I.A.2. REPEALED

I.A.3. REPEALED

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X. Use of Cleaning Solvents ~~for Degreasing and Cleaning~~

X.A. General Provisions

X.A.1. Applicability

The provisions of this section apply to cold cleaners, non-conveyorized vapor degreasers, ~~and~~ conveyorized degreasers, and industrial cleaning solvent operations. Open top vapor degreasers are a subset of non-conveyorized vapor degreasers. The owner or operator of a unit subject to this section shall ensure that no such unit is used unless the requirements of this section are satisfied. Section X.E. does not take effect until January 1, 2017.

X.A.2. Definitions

X.A.2.a. "Cold-Cleaner" means a container of non-aqueous liquid solvent held below its boiling point, which is designed, used, or intended for cleaning solid objects in a batch-loaded process. A "cold-cleaner" may have provisions for heating the solvent. It does not include vapor degreasers or continuously loaded conveyorized degreasers.

X.A.2.b. "Composite Partial Vapor Pressure" means the sum of the partial pressures of the VOC compounds in a solvent.

X.A.2.~~b~~c. "Conveyorized Degreaser" means an apparatus that performs degreasing or other cleaning functions through the use of non-aqueous liquid solvent and/or solvent vapors within a container, and which has a conveyor mechanism allowing continuous loading of items conveyed into and out of the solvent.

X.A.2.~~c~~d. "Freeboard" in a vapor degreaser means the vertical distance from the top of the vapor zone (as established by normal operations within the specifications of the degreaser manufacturer) to the top of the degreaser.

For cold-cleaners "freeboard" means the vertical distance from the surface of the solvent liquid to the top of the degreaser.

If all sides are not even, the vertical distance to the top of the lowest side shall be used to make the determination of freeboard.

X.A.2.~~d~~e. "Freeboard Ratio" means the ratio of the freeboard to the width of the solvent surface.

X.A.2.f. "Industrial Cleaning Solvent" means a VOC-containing liquid used to perform industrial cleaning solvent operations.

X.A.2.g. "Industrial Cleaning Solvent Operation" means the use of an industrial cleaning solvent for cleaning industrial operations such as spray gun cleaning, spray booth cleaning, large manufactured parts cleaning, equipment cleaning, floor cleaning, line cleaning, parts cleaning, tank cleaning, and small manufactured parts cleaning. Residential and janitorial cleaning are not considered industrial cleaning solvent operations.

X.A.2.~~e~~h. "Non-Conveyorized Vapor Degreaser" means an apparatus, which uses non-aqueous solvent vapors within some type of container to degrease or otherwise clean solid objects in a batch-loaded process. It excludes continuously loaded conveyorized degreasers.

X.A.2.i. “Residential and Janitorial Cleaning” means the cleaning of a building or building components including, but not limited to, floors, ceilings, wall, windows, doors, stairs, bathrooms, furnishings, and exterior surfaces of office equipment, excluding the cleaning of work areas where manufacturing or repair activity is performed.

X.A.2.fj."Solvent Metal Cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, conveyorized degreasing, or non-conveyorized vapor degreasing.

X.A.3. Transfer of waste solvent and used solvent

In any disposal or transfer of waste or used solvent, at least 80 percent by weight of the solvent/waste liquid shall be retained (i.e., no more than 20 percent of the liquid solvent/solute mixture shall evaporate or otherwise be lost during transfers).

X.A.4. Storage of waste solvent and used solvent

Waste or used solvent shall be stored in closed containers unless otherwise required by law.

X.A.5. Any control device shall meet the applicable requirements of Subsections IX.A.3.a, b, c, e and IX.A.8.a. and b.

X.B. Control of Solvent Cold-Cleaners

X.B.1. Control Equipment

X.B.1.a. Covers

X.B.1.a.(i) All cold-cleaners shall have a properly fitting cover.

X.B.1.a.(ii) Covers shall be designed to be easily operable with one hand under any of the following conditions:

X.B.1.a.(ii)(A) Solvent true vapor pressure is greater than 15 torr (0.3 psia) at 38°C (100°F).

X.B.1.a.(ii)(B) The solvent is agitated by an agitating mechanism.

X.B.1.a.(ii)(C) The solvent is heated.

X.B.1.b. Drainage Facility

X.B.1.b.(i) All cold-cleaners shall have a drainage facility that captures the drained liquid solvent from the cleaned parts.

X.B.1.b.(ii) For cold-cleaners using solvent which has a vapor pressure greater than 32 torr (0.62 psia) measured at 38°C (100°F) either:

X.B.1.b.(ii)(A) There shall be an internal drainage facility within the confines of the cold-cleaner, so that parts are enclosed under the (closed) cover to drain after cleaning, or if such a facility will not fit within;

X.B.1.b.(ii)(B) An enclosed, external drainage facility that captures the drained solvent liquid from the cleaned parts.

X.B.1.c. A permanent, clearly visible sign shall be mounted on or next to the cold-cleaner. The sign shall list the operating requirements.

X.B.1.d. Solvent spray apparatus shall not have a splashing, fine atomizing, or shower type action but rather should produce a solid, cohesive stream. Solvent spray shall be used at a pressure that does not cause excessive splashing.

For solvents with a true vapor pressure above 32 torr (0.62 psia) at 38°C (100°F), or, for solvents heated above 50°C (120°F), one of the following techniques shall be used:

X.B.1.d.(i) A freeboard ratio greater than or equal to 0.7.

X.B.1.d.(ii) A water or a non-volatile liquid cover. The cover liquid shall not be soluble in the solvent and shall not be more dense than the solvent and the depth of the cover liquid shall be sufficient to prevent the escape of solvent vapors.

X.B.2. Operating requirements

X.B.2.a. The cold-cleaner cover shall be closed whenever parts are not being handled within the cleaner confines.

X.B.2.b. Cleaned parts shall be drained for at least 15 seconds and/or until dripping ceases. Any pools of solvent shall be tipped out on the clean part back into the tank.

X.C. Control of Non-Conveyorized Vapor Degreasers

X.C.1. Control Equipment

X.C.1.a. The non-conveyorized vapor degreaser shall have a cover which shall be designed and operated so that it can be easily opened and closed through the use of mechanical assists such as spring loading, counterweights, etc.; opening and closing the cover shall not disturb the vapor zone.

X.C.1.b. Safety Switches

The following two types of switches shall be installed on vapor degreasers:

X.C.1.b.(i) Condenser flow switch and thermostat - (shuts off sump heat if the condenser coolant is either not circulating or is too warm); and

X.C.1.b.(ii) Spray safety switch - (shuts off spray pump if the vapor level drops more than four (4) inches).

X.C.1.c. Control Device

X.C.1.c.(i) For non-conveyorized vapor degreasers with an open area (with the cover open) of one square meter (10.8 ft_2) or less, either the freeboard ratio shall be greater than or equal to 0.75, or one of the control devices in (ii) below shall be used.

X.C.1.c.(ii) For non-conveyorized vapor degreasers with an open area (with the cover open) greater than one (1) square meter, (10.8 ft_2), at least one of the following control systems shall be used:

X.C.1.c.(ii)(A) Both a powered cover and a freeboard ratio greater than or equal to 0.75.

X.C.1.c.(ii)(B) A refrigerated chiller with a cooling capacity equivalent to or greater than the applicable specifications in Appendix C.

X.C.1.c.(ii)(C) An enclosed design: A system where the cover(s) or door(s) opens only when a dry part is entering or exiting the degreaser.

X.C.1.c.(ii)(D) A carbon adsorption system with ventilation greater than or equal to 15 cubic meters each minute per square meter (50 cfm/ft_2) of air/vapor area (when the cover(s) is [are] open), exhausting less than 25 parts per million (by volume) of solvent averaged over one complete adsorption cycle.

X.C.1.d. A permanent, clearly visible sign shall be mounted on or next to the degreaser. The sign shall list the operating requirements.

X.C.2. Operating Requirements

X.C.2.a. Keep cover closed at all times except when processing work loads into or out of the degreaser.

X.C.2.b. The following operations shall be performed to minimize solvent carry-out:

X.C.2.b.(i) Rack parts to allow full drainage.

X.C.2.b.(ii) Move parts as slowly as is practicable in and out of the degreaser. A maximum of one foot every five seconds by hand or a maximum of 5.5 cm/sec. (10.8ft/min) for a mechanically operated system.

X.C.2.b.(iii) Allow the workload to clean in the vapor zone at least 30 seconds or until condensation ceases.

X.C.2.b.(iv) Tip out any pools of solvent that remain on the cleaned parts before removal from the vapor zone.

X.C.2.b.(v) Allow parts to dry within the degreaser at least 15 seconds and/or until visually dry.

X.C.2.c. Solvents shall not be used to clean porous or absorbent materials; for example, cloth, leather, wood, rope, etc.

X.C.2.d. Work loads shall not occupy more than half of the degreaser's open top area.

X.C.2.e. Spraying shall not be done above the vapor level.

X.C.2.f. Solvent leaks shall be repaired immediately, or the degreaser shall be shut down.

X.C.2.g. Exhaust ventilation shall not exceed twenty (20) cubic meters per minute per square meter (65.6 cfm per sq. ft.) of degreaser open area, unless greater exhaust rates are necessary to meet Occupational and Safety Health Act requirements. Ventilation fans shall not be used near the degreaser opening, unless necessary to meet Occupational and Safety Health Act requirements.

X.C.2.h. The water separator shall function so that no visible water is present in the solvent exiting the separator.

X.D. Control of Conveyorized Degreasers

X.D.1. Control Equipment

X.D.1.a. Control Device

For all conveyorized degreasers with a solvent surface area greater than two (2) square meters (21.5 square feet), the degreasing shall be controlled by at least one of the following:

X.D.1.a.(i) Carbon adsorption system, with ventilation greater or equal to 15 cubic meters per minute per square meter (49.2 cf/m ft_2) of air/vapor interface for vapor degreasers (of air/liquid interface for non-vapor types) when down-time covers are open, and exhausting less than 25 parts per million of solvent (by volume) averaged over a complete adsorption cycle.

X.D.1.a.(ii) For vapor degreasers only: a refrigerated chiller with a cooling capacity equivalent to or greater than the applicable specifications in Appendix D.

X.D.1.b. Prevention of Carry-out

A drying tunnel, tumbling basket(s), or other demonstrably effective method(s) shall be employed to prevent cleaned parts from carrying out solvent liquid or vapor.

X.D.1.c. Safety Switches

X.D.1.c.(i) The following two (2) switch-circuits (or equivalent) shall be installed.

X.D.1.c.(i)(A) A spray safety switch shall shut off the spray pump and/or the conveyor if the vapor level drops more than four (4) inches.

X.D.1.c.(i)(B) A vapor level control thermostat shall shut off sump heat when the vapor level rises too high.

X.D.1.c.(ii) All conveyorized degreasers shall have a condenser thermostat and flow-detector switch (or equivalent) which shuts off sump heat if coolant is too warm or is not circulating.

X.D.1.d. Minimized Openings: Degreaser entrance and exit openings shall silhouette workloads so that the average clearance between parts (or parts-and the edge of the degreaser opening) is either:

X.D.1.d.(i) less than 10 centimeters (4 inches) or;

X.D.1.d.(ii) less than 10 percent of the width of the opening

X.D.1.e. Covers shall be provided to close off all the entrance(s) and exit(s) when the conveyor is not in use.

X.D.1.f. A permanent, clearly visible sign shall be mounted on or next to the degreaser. The sign shall list the operating requirements.

X.D.2. Operating Requirements

X.D.2.a. Exhaust ventilation shall not exceed 20 m^3/minute per square meter of degreaser opening (65.6 cf/m per square foot), unless necessary to meet OSHA requirements. Work place fans shall not be located near, nor directed at degreaser openings, unless necessary to meet OSHA requirements. Exhaust flow shall be measured by EPA reference methods 1 and 2 of 40 CFR Part 60.

X.D.2.b. Carry-out emissions shall be minimized by:

X.D.2.b.(i) Racking parts in such a manner to achieve best drainage.

X.D.2.b.(ii) Maintaining the vertical component of conveyor speed at less than 3.3 meters per minute (10.8 feet per minute).

X.D.2.c. Repair solvent leaks immediately, or shut down the degreaser.

X.D.2.d. The water separator shall function with an efficiency sufficient to prevent water from being visible in the solvent exiting the separator.

X.D.2.e. Down-time cover(s) shall be placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down. Covers shall be retained in position until immediately before start-up.

X.E. Control of Industrial Cleaning Solvent Operations

X.E.1. Control Requirements

The owner or operator of an industrial cleaning solvent operation whose total combined uncontrolled actual VOC emissions from the use of industrial cleaning solvents are equal to or greater than three (3) tons per year (excluding VOC emissions from solvents used for cleaning operations that are exempt under Section X.E.4.) must:

X.E.1.a. Limit the VOC content of cleaning solvents to less than or equal to 0.42 lb of VOC/gal (50 grams VOC/liter); or

X.E.1.b. Limit the composite partial vapor pressure of the cleaning solvent to 8 millimeters of mercury (mmHg) at 20 degrees Celsius (68 degrees Fahrenheit); or

X.E.1.c. Reduce emissions with an emission control system having an overall control efficiency of 90% or greater.

X.E.2. Operating Requirements

The owner or operator of an industrial cleaning solvent operation must implement the following operating requirements at all times to reduce VOC emissions from fugitive sources:

X.E.2.a. Cover open containers and used applicators;

X.E.2.b. Minimize air circulation around cleaning operations;

X.E.2.c. Properly dispose of used solvent and shop towels; and

X.E.2.d. Implement good air pollution control practices that minimize emissions, including, but not limited to, using only volumes necessary for cleaning and maintaining cleaning equipment to repair solvent leaks.

X.E.3. Recordkeeping Requirements

X.E.3.a. Keep annual records such as safety data sheets or other analytical data from the industrial cleaning solvent manufacturer showing the VOC type and VOC content and total amount of VOC-containing solvent used in solvent cleaning operations to demonstrate compliance with the control requirements of Section X.E.1.; and

X.E.3.b. Retain records for a period of two (2) years and make records available for inspection by the Division upon request.

X.E.4. Exemptions

Industrial cleaning solvent operations that are subject to an emissions requirement in a federally enforceable New Source Performance Standard in 40 CFR Part 60, National Emission Standard for Hazardous Air Pollutants in 40 CFR Part 63, a Best Available Control Technology requirement of Regulation 3 Part B, a Lowest Achievable Emissions Reduction requirement of Regulation 3 Part D, or another federally enforceable requirement of Regulation 7 are not subject to Section X.E.

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XII. Volatile Organic Compound Emissions from Oil and Gas Operations

XII.A. Applicability

XII.A.1. Except as provided in Section XII.A.2. through 5., this Section applies to oil and gas exploration and production operations, natural gas compressor stations and natural gas drip stations:

XII.A.1.a. that collect, store, or handle condensate in the 8-hour Ozone Control Area (State Only: or any ozone nonattainment or attainment/maintenance area),

XII.A.1.b. that are located upstream of a natural gas plant,

XII.A.1.c. for which the owner or operator filed, or was required to file, an APEN pursuant to Regulation Number 3, and

XII.A.1.d. (State Only) that emit any amount of uncontrolled actual volatile organic compound emissions with the following exceptions.

XII.A.1.d.(i) (State Only) Volatile organic compounds emitted during the first 90 days from the date of first production for new and modified condensate storage tanks as defined in Section XII.B. shall be equipped with a control device pursuant to Sections XII.D., and comply with applicable monitoring, recordkeeping, and reporting requirements; and

XII.A.1.d.(ii) All dehydrators regardless of uncontrolled actual emissions are subject to XII.H.

XII.A.2. Oil refineries are not subject to this Section XII.

XII.A.3. Natural gas-processing plants and qualifying natural gas compressor stations located in an ozone nonattainment or attainment maintenance area are subject to Section XII.G.

XII.A.4. Glycol natural gas dehydrators located at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas processing plant in an ozone nonattainment or attainment maintenance area are only subject to Sections XII.B. and XII.H.

XII.A.5. The requirements of this section XII.A shall not apply to any owner or operator in any calendar year in which the APENs for all of the atmospheric condensate storage tanks associated with the affected operations owned or operated by such person reflect a total of less than 30 tons-per-year of actual uncontrolled emissions of VOCs in the 8-Hour Ozone Control Area. Such requirements shall, however, apply to such owner or operator in any subsequent calendar year in which the APENs for atmospheric condensate storage tanks associated with such affected operations reflect a total of 30 tons per year or more of actual uncontrolled emissions of VOCs in the 8-Hour Ozone Control Area.

XII.B. Definitions Specific to Section XII

XII.B.1. “Affected Operations” means oil and gas exploration and production operations, natural gas compressor stations and natural gas drip stations to which this Section XII applies.

XII.B.2. “Air Pollution Control Equipment”, as used in this Section XII, 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 XII.D.2.b. that are approved by the Division.

XII.B.3. “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.

XII.B.4. “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.

XII.B.5. “Calendar Week” shall mean a week beginning with Sunday and ending with Saturday.

XII.B.6. “Condensate Storage Tank” shall mean any tank or series of tanks that store condensate and are either manifolded together or are located at the same well pad.

XII.B.7. “Downtime” shall mean the period of time when a well is producing and the air pollution control equipment is not in operation.

XII.B.8. “Existing” shall mean any atmospheric condensate storage tank that began operation before February 1, 2009, and has not since been modified.

XII.B.9. “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.

XII.B.10. “Modified or Modification” shall mean 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, a physical change or change in operation includes but is not limited to drilling new wells and recompleting, refracturing or otherwise stimulating existing wells.

XII.B.11. “New” shall mean any atmospheric condensate storage tank that began operation on or after February 1, 2009.

XII.B.12. “Stabilized” when used to refer to stored condensate, means that the condensate has 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”.

XII.B.13. (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.

XII.B.14. “System-Wide” when used to refer to emissions and emission reductions in Section XII.D., shall mean collective emissions and emission reductions from all atmospheric condensate storage tanks under common ownership within the 8-hour Ozone Control Area or other specific Ozone Nonattainment or Attainment Maintenance Area for which uncontrolled actual volatile organic compound emissions are equal to or greater than two tons per year.

XII.C. General Provisions to Section XII

XII.C.1. General Requirements for Air Pollution Control Equipment – Prevention of Leakage

XII.C.1.a. All air pollution control equipment used to demonstrate compliance with this Section XII. shall be operated and maintained consistent with manufacturer specifications and good engineering and maintenance practices. The owner or operator shall keep manufacturer specifications on file. In addition, all such air pollution control equipment shall be adequately designed and sized to achieve the control efficiency rates required by this Section XII 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.

XII.C.1.b. All condensate collection, storage, processing and handling operations, regardless of size, shall be designed, operated and maintained so as to minimize leakage of volatile organic compounds to the atmosphere to the maximum extent practicable.

XII.C.1.c. All air pollution control equipment used to demonstrate compliance with ~~this~~ Section XII.D. must meet a control efficiency of at least 95% ~~unless otherwise provided in Section XII.D.2.B~~. Failure to properly install, operate, and maintain air pollution control equipment at the locations indicated in the Division-approved spreadsheet shall be a violation of this regulation.

XII.C.1.d. If a flare or other combustion device is used to control emissions of volatile organic compounds to comply with Section XII.D., it shall 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.

XII.C.1.e. ~~(State Only)~~ All combustion devices used to control emissions of volatile organic compounds to comply with Section XII.D. shall be equipped with and operate an auto-igniter as follows:

XII.C.1.e.(i) (State Only) For ~~all new and modified~~ 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 shall be installed and operational, beginning the date of first production after any new tank installation or tank modification.

XII.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~~s~~ XII.D.2., auto-igniters shall 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.

XII.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.

XII.C.1.f. (State Only) If a combustion device is used to control emissions of volatile organic compounds, surveillance systems shall be employed and operational as follows:

XII.C.1.~~F~~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.

XII.C.1.~~F~~f.(ii) (State Only) For all new and modified condensate storage tanks controlled by a combustion device for the first 90 days surveillance systems shall be employed and operational beginning 180 days from the date of first production 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.

XII.C.2. The emission estimates and emission reductions required by ~~this~~ Section XII.D. shall be demonstrated using one of the following emission factors:

XII.C.2.a. In the 8-Hour Ozone Control Area

XII.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 shall be used unless a more specific emission factor has been established pursuant to Section XII.C.2.a.(ii)(B). The Division may require a more specific emission factor that complies with Section XII.C.2.a.(ii)(B).

XII.C.2.a.(ii) For atmospheric condensate storage tanks at natural gas compressor stations and natural gas drip stations, a specific emission factor established pursuant to this Section XII.c.2.a.(ii) shall be used. A specific emission factor developed pursuant to Section XII.C.2.a.(ii)(B) may also be used for atmospheric storage tanks at oil and gas exploration and production operations and, once established, or required by the Division, shall be used for such operations.

XII.C.2.a.(ii)(A) 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 XII.C.2.a.(ii)(B) if such a more recent emission factor would be more reliable or accurate.

XII.C.2.a.(ii)(B) Except as otherwise provided in XII.C.2.a.(i), a specific emission~~s~~ factor shall be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate pursuant to a test method approved by the Division ~~and EPA. The Division shall consult with and provide EPA 30 days in which to comment on the test method. EPA shall be deemed to have approved the test method for purposes of this Section XII.C.2.a.(ii) if it does not object during such 30-day period~~.

XII.C.2.b. (State Only) For any other Ozone Nonattainment Area or Attainment/Maintenance Areas

XII.C.2.b.(i) (State Only) For atmospheric condensate storage tanks at oil and gas exploration and production operations, the source shall use a default basin-specific uncontrolled volatile organic compound emission factor established by the Division unless a source-specific emission factor has been established pursuant to Section XII.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 XII.C.2.b.(iii).

XII.C.2.b.(ii) (State Only) For atmospheric condensate storage tanks at natural gas compressor stations and natural gas drip stations, the source shall use a source-specific volatile organic compound emission factor established pursuant to Section XII.C.2.b.(iii). If the Division has reason to believe that the source-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 XII.C.2.b.(iii).

XII.C.2.b.(iii) (State Only) Establishment of or Updating Approved Emission Factors

XII.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 source-specific volatile organic compound emission factor pursuant to Section XII.C.2.b., if such emission factor would be more reliable or accurate.

XII.C.2.b.(iii)(B) (State Only) For atmospheric condensate storage tanks at oil and gas exploration and production operations, the source may use a source-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 condensate pursuant to a test method approved by the Division.

XII.C.2.b(iii)(C) (State Only) For atmospheric 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 source-specific volatile organic compound emission factor established pursuant to Section XII.C.2.b.

XII.C.2.b.(iii)(D) (State Only) A default basin-specific volatile organic compound emissions factor shall be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate or an alternative method, pursuant to a test method approved by the Division, except as otherwise provided in XII.C.2.b.(i).

XII.C.2.b.(iii)(E) (State Only) A source-specific volatile organic compound emissions factor shall be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate pursuant to a test method approved by the Division.

XII.D. Emission Controls

The owners and operators of affected operations shall employ air pollution control equipment to reduce emissions of volatile organic compounds from atmospheric condensate storage tanks associated with affected operations by the dates and amounts listed below. Emission reductions shall not be required for each and every unit, but instead shall be based on overall reductions in uncontrolled actual emissions from all the atmospheric storage tanks associated with the affected operations for which the owner or operator filed, or was required to file, an APEN pursuant to Regulation Number 3, due to either having exceeded reporting thresholds or retrofitting with air pollution control equipment in order to comply with system-wide control requirements.

XII.D.1. (State Only) New and Modified Condensate Tanks

Beginning February 1, 2009, owners or operators of any new or modified atmospheric condensate storage tank at exploration and production sites shall collect and control emissions by

routing emissions to and operating air pollution control equipment pursuant to Section XII.D. The air pollution control equipment shall have a control efficiency of at least 95%, and shall control volatile organic compounds during the first 90 calendar days after the date of first production after the tank was newly installed, or after the well was newly drilled, re-completed, re-fractured or otherwise stimulated. The air pollution control equipment and associated monitoring equipment required pursuant to XII.C.1. may be removed after the first 90 calendar days as long as the source can demonstrate compliance with the applicable system-wide standard.

XII.D.2. System-Wide Control Strategy

XII.D.2.a. The owners and operators of all atmospheric condensate storage tanks that emit greater than two tons per year of actual uncontrolled volatile organic compounds and are subject to this Section XII.D.2.a. in the 8-hour Ozone Control Area (State Only: or any other specific Ozone Nonattainment area or Attainment/Maintenance Area) shall employ air pollution control equipment to reduce emissions of volatile organic compounds from atmospheric condensate storage tanks by the dates and amounts listed below. The dates and requisite reductions are as follows:

XII.D.2.a.(i) For the period May 1 through September 30, 2005 such emissions shall be reduced by 37.5% from uncontrolled actual emissions on a daily basis.

XII.D.2.a.(ii) For the period of May 1 through September 30 of 2006, such emissions shall be reduced by 47.5% from uncontrolled actual emissions on a daily basis.

XII. D.2.a.(iii) For the period of May 1 through September 30 of each year from 2007 through 2008, such emissions shall be reduced by 75% from uncontrolled actual emissions on a weekly basis.

XII.D.2.a.(iv) Emission reductions achieved between January 1 and April 30, 2005 shall be averaged with emission reductions achieved between October 1 and December 31, 2005. For these two time periods, emissions shall be reduced by 30% from uncontrolled actual emissions and shall be calculated as an average of the emission reductions achieved during the seven months covered by the two periods.

XII.D.2.a.(v) Emission reductions achieved between January 1 and April 30, 2006 shall be averaged with emission reductions achieved between October 1 and December 31, 2006. Emissions shall be reduced by 38% from uncontrolled actual emissions, calculated as an average of the emission reduction achieved during the seven months covered by the two periods.

XII.D.2.a.(vi) For the period between January 1, 2007 and April 30, 2007, such emissions shall be reduced by 38% from uncontrolled actual emissions , For the period between October 1, 2007, and December 31, 2007, such emissions shall be reduced by 60% from uncontrolled actual emissions, calculated for each period as an average of the emission reduction achieved during the months covered by each period.

XII.D.2.a.(vii) Beginning with the year 2008, and each year thereafter, emission reductions achieved between January 1 and April 30 shall be averaged with emission reductions achieved between October 1 and

December 31. Emissions shall be reduced by 70% from uncontrolled actual emissions, calculated as an average of the emission reduction achieved during the seven months covered by the two periods with the exception of XII.D.2.a.(viii) - XII.D.2.a.(x).

XII.D.2.a.(viii) For the calendar weeks that include May 1, 2009 through April 30, 2010, such emissions shall be reduced by 81% from uncontrolled actual emissions on a calendar weekly basis from May 1 through September 30 and 70% from uncontrolled actual emissions on a calendar monthly basis during October 1 through April 30.

XII.D.2.a.(ix) For the calendar weeks that include May 1, 2010 through April 30, 2011, such emissions shall be reduced by 85% from uncontrolled actual emissions on a calendar weekly basis in the May 1 through September 30 and 70% from uncontrolled actual emissions on a calendar monthly basis during October 1 through April 30.

XII.D.2.a.(x) Beginning May 1, 2011 and each thereafter, such emissions shall be reduced by 90% from uncontrolled actual emissions on a calendar weekly basis in the May 1 through September 30 and 70% from uncontrolled actual emissions on a calendar monthly basis during October 1 through April 30.

XII.D.2.b. 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 XII.D.2.a., if the following conditions are met:

XII.D.2.b.(i) 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:

XII.D.2.b.(i)(A) A description of the equipment, device or process;

XII.D.2.b.(i)(~~b~~B) A description of where, when and how the equipment, device or process will be used;

XII.D.2.b.(i)(C) The claimed control efficiency and supporting documentation adequate to demonstrate such control efficiency;

XII.D.2.b.(i)(D) An adequate method for measuring actual control efficiency; and

XII.D.2.b.(i)(E) 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 spreadsheet and annual report required by Sections XII.F.3.~~4~~ and XII.F.~~45~~.

XII.D.2.b.(ii) Public notice of the application is provided pursuant to Regulation Number 3, Part B, Section III.C.4.

XII.D.2.b.(iii) 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.

XII.E. Monitoring

The owner or operator of any condensate storage tank that is being controlled pursuant to this Section XII shall inspect or monitor the Air Pollution Control Equipment at least weekly to ensure that it is operating properly.

XII.E.1. Tanks controlled by Air Pollution Control Equipment other than a combustion device shall follow manufacturer's recommended maintenance. Air Pollution Control Equipment shall be periodically inspected to ensure proper maintenance and operation according to the Division-approved operation and maintenance plan.

~~XII.E.2. (State Only) New and modified tanks controlled by a combustion device shall be inspected on a weekly basis to document that the required auto-igniter is properly functioning by either visible observation or other means approved by the Division and check and document that the valves for piping of gas to the pilot light are open.~~

XII.E.~~3~~2. The owner or operator of any condensate storage tank~~s~~ that is being controlled pursuant to ~~subject to the system-wide control strategy under~~ Section XII.~~D.2.a. that have installed combustion devices~~ shall inspect or monitor the Air Pollution Control Equipment at least weekly to ensure that it is operating. The inspection shall include the following:

XII.E.~~3~~2.a. ~~Check~~ For combustion devices, a check ~~for and document on a weekly basis~~ 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; ~~and;~~

XII.E.2.b. For combustion devices, a check ~~for and document~~ that the valves for piping of gas to the pilot light are open;

~~–~~XII.E.~~3~~2.~~b~~c. (State Only) In addition to complying with Sections XII.E.~~3~~2.a. and XII.E.2.b., the owner or operator or tanks subject to the system-wide control strategy under Section XII.D.2.a. that have installed combustion devices may use a surveillance system to maintain records on combustion device operation.

XII.E.4. The owner or operator of all tanks subject to Section XII.D. shall document the time and date of each inspection, the person conducting the inspection, a notation that each of the checks required under this Section XII.E. were completed, description of any problems observed during the inspection, description and date of any corrective actions taken, and name of individual performing corrective actions. Further, all tanks subject to Section XII.D. shall comply with the following:

XII.E.4.a. For combustion devices, ~~-~~the owner or operator shall visually check for and document, on a weekly basis, the presence or absence of smoke;

XII.E.4.b. For vapor recovery units, the owner or operator shall check for and document on a weekly basis that the unit is operating and that vapors from the condensate tank are being routed to the unit;

XII.E.4.c. For all control devices, the owner or operator shall check for and document on a weekly basis that the valves for the piping from the condensate tank to the air pollution control equipment are open;

XII.E.4.d. For all atmospheric condensate storage tanks, the owner or operator shall check for and document on a weekly basis that the thief hatch is closed and latched.

XII.E.4.e. Beginning January 1, 2017, owners or operators of atmospheric condensate 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 conduct and document audio, visual, olfactory ("AVO") inspections of the storage tank 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.

XII.E.5. (State Only) For atmospheric condensate storage tanks equipped with an surveillance system or other Division-approved monitoring system, the owner or operator shall 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.

XII.F. Recordkeeping and Reporting

The owner or operator of any atmospheric condensate storage tank subject to control pursuant to Section XII.D.2. shall maintain records and submit reports to the Division as required:

XII.F.1. The AIRS number assigned by the Division shall be marked on all condensate storage tanks required to file an APEN.

XII.F.2. If air pollution control equipment is required to comply with Section XII.D.2. visible signage shall be located with the control equipment identifying the AIRS number for each atmospheric condensate storage tank that is being controlled by that equipment.

XII.F.3. Recordkeeping for Tanks Subject to the System-Wide Control Strategy under Section XII.D.2.

The owner or operator shall, at all times, track the emissions and specifically volatile organic compound emissions reductions on a calendar weekly and calendar monthly basis to demonstrate compliance with the applicable emission reduction requirements of Section XII.D.2. This shall be done by maintaining a Division-approved spreadsheet of information describing the affected operations, the air pollution control equipment being used, and the emission reductions achieved, as follows.

XII.F.3.a. The Division-approved spreadsheet shall:

XII.F.3.a(i) List all atmospheric condensate storage tanks subject to this Section XII by name and AIRS number, or if no AIRS number has been assigned the site location. The spreadsheet also shall list the monthly production volumes for each tank. The spreadsheet shall list the most recent measurement of such production at each tank, and the time period covered by such measurement of production.

XII.F.3.a(ii) List the emission factor used for each atmospheric condensate storage tank. The emission factors shall comply with Section XII.C.2.

XII.F.3.a(iii) List the location and control efficiency value for each unit of air pollution control equipment. Each atmospheric condensate storage tank being controlled shall be identified by name and an AIRS number.

XII.F.3.a(iv) List the production volume for each tank, expressed as a weekly and monthly average based on the most recent measurement available. The weekly and monthly average shall be calculated by averaging the most recent measurement of such production, which may be the amount shown on the receipt from the refinery purchaser for delivery of condensate from such tank, over the time such delivered condensate was collected. The weekly and monthly average from the most recent measurement will be used to estimate weekly and monthly volumes of controlled and uncontrolled actual emissions for all weeks and months following the measurement until the next measurement is taken.

XII.F.3.a(v) Show the calendar weekly and calendar monthly-uncontrolled actual emissions and the calendar weekly and calendar monthly controlled actual emissions for each atmospheric condensate storage tank.

XII.F.3.a(vi) Show the total system-wide calendar weekly and calendar monthly-uncontrolled actual emissions and the total system-wide calendar weekly and calendar monthly controlled actual emissions.

XII.F.3.a(vii) Show the total system-wide calendar weekly and calendar monthly percentage reduction of emissions.

XII.F.3.a(viii) Note any downtime of air pollution control equipment, and shall account for such downtime in the weekly control efficiency value and emission reduction totals. The notations shall include the date, time and duration of any scheduled downtime. For any unscheduled downtime, the spreadsheet shall record the date and time the downtime was discovered and the date and time the air pollution control equipment was last observed to be operating.

XII.F.3.a(ix) Be maintained in a manner approved by the Division and shall include any other information requested by the Division that is reasonably necessary to determine compliance with this Section XII.

XII.F.3.a(x) Be updated on a calendar weekly and calendar monthly basis and shall be promptly provided by e-mail or fax to the Division upon its request. The U.S. mail may also be used if acceptable to the Division.

XII.F.3.b. Failure to properly install, operate, and maintain air pollution control equipment at the locations indicated in the spreadsheet shall be a violation of this regulation.

XII.F.3.c. A copy of each calendar weekly and calendar monthly spreadsheet shall be retained for five years. 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.

XII.F.3.d. Each owner or operator shall maintain records of the inspections required pursuant to Section XII.E. and retain those records for five years. 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 Section XII.C. and XII.E. were completed and a description of any problems observed during the inspection, and a description and date of any corrective actions taken.

XII.F.3.e. (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.

XII.F.3.f. (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.

XII.F.4. Reporting for Tanks Subject to the System-Wide Control Strategy under Section XII.D.2.a.

On or before April 30, 2006, and semi-annually by April 30 and November 30 of each year thereafter, each owner or operator shall submit a report using Division-approved format describing the air pollution control equipment used during the preceding calendar year (for the April 30 report) and during the preceding ozone season (for the November 30 report) and how each company complied with the emission reductions required by Section XII.D.2. during those periods for the 8-hour Ozone Control Area or other specific Ozone Non-attainment or Attainment-Maintenance area. Such reports shall be submitted to the Division on a Division-approved form provided for that purpose.

XII.F.4.a. The report shall list all condensate storage tanks subject or used to comply with Section XII.D.2. and the production volumes for each tank. Production volumes may be estimated by the amounts shown on the receipt from refinery purchasers for delivery of condensate from such tanks.

XII.F.4.b. The report shall list the emission factor used for each tank. The emission factors shall comply with Section XII.C.2.

XII.F.4.c. The report shall list the location and control efficiency value for each piece of air pollution control equipment, and shall identify the atmospheric condensate storage tanks being controlled by each.

XII.F.4.d. The April 30 report shall show the calendar monthly-uncontrolled actual emissions and the controlled actual emissions for each atmospheric condensate storage tank for January 1 through April 30, May 1 through September 30 and October 1 through December 31 of the previous year. The November 30 report shall show such calendar weekly information for the weeks including May 1st through September 30th only.

XII.F.4.e. The April 30 report shall show the calendar monthly total system-wide uncontrolled actual emissions and the total system-wide controlled actual emissions for January 1 through April 30, May 1 through September 30 and October 1 through December 31 of the previous year. The November 30 report shall show such calendar weekly information for the weeks including May 1st through September 30th only.

XII.F.4.f. The April 30 report shall show the calendar monthly total system-wide percentage reduction of emissions for May 1 through September 30 of the previous year, and for the combined periods of January 1 through April 30 and October 1 through December 31 of the previous year. The November 30 report shall show such calendar weekly information for the weeks including May 1 through September 30 period only.

XII.F.4.g. The report shall note any downtime of air pollution control equipment, and shall account for such downtime in the weekly control efficiency value and emission reduction totals. The notations shall include 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 should be recorded in the report.

XII.F.4.h. The report shall state whether the required emission reductions were achieved on a weekly basis during the preceding ozone season (calendar weeks including May 1 through September 30) for the November 30 report, and whether the required emission reductions were achieved on a calendar monthly basis during the preceding year for the April 30 report. If the required emission reductions were not achieved, the report shall state why not, and shall identify steps being taken to ensure subsequent compliance.

XII.F.4.i. The report shall include any other information requested by the Division that is reasonably necessary to determine compliance with this Section XII.

XII.F.4.j. A copy of each semi-annual report shall be retained for five years.

XII.F.4.k. In addition to submitting the semi-annual reports, on or before the 30th of each month commencing in June 2007, the owner or operator of any condensate storage tank that is required to control volatile organic compound emissions pursuant to Sections XII.A. and XII.D. shall notify the Division of any instances where the air pollution control equipment was not properly functioning during the previous month. The report shall include the time and date that the equipment was not properly operating, the time and date that the equipment was last observed operating properly, and the date and time that the problem was corrected. The report shall also include the specific nature of the problem, the specific steps taken to correct the problem, the AIRS number of each of the condensate tanks being controlled by the equipment or if no AIRS number has been assigned the site name, and the estimated production from those tanks during the period of non-operation.

XII.F.4.l. Commencing in 2007, on or before April 30 of each year, the owner or operator shall submit a list identifying by name and AIRS number or if no AIRS number has been assigned the site name, each condensate storage tank that is being controlled to meet the requirements set forth in ~~this~~ Section XII.D.2. On the 30th of each month during ozone season (May through September) and on November 30 and February 28, the owner or operator shall submit a list identifying any condensate storage tank whose control status has changed since submission of the previous list.

XII.F.4.m. (State Only) Semi-annual report submittals shall be signed by a responsible official who shall also sign the Division-approved compliance certification form for atmospheric condensate storage tanks. The compliance certification shall include both a certification of compliance with all applicable requirements of ~~this~~ Section XII. If any non-compliance is identified, citation, dates and durations of deviations from this Section XII., associated reasoning,

and compliance plan and schedule to achieve compliance. Compliance certifications for state only conditions shall be identified separately from compliance certifications required under the State Implementation Plan.

XII.F.4.n. (State Only) Each Division-approved self-certification form, and compliance certification submitted pursuant to ~~this~~ Section XII. shall contain a certification by a responsible official of the truth, accuracy and completeness of such form, report or certification stating that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

XII.F.5. The record-keeping and reporting required in Section~~s~~ XII. above shall not apply to the owner or operator of any natural gas compressor station or natural gas drip station that is authorized to operate pursuant to a construction permit or Title V operating permit issued by the Division if the following criteria are met:

XII.F.5.a. Such permits are obtained by the owner or operator on or after the effective date of this provision and contain the provisions necessary to ensure the emissions reductions required by ~~this~~ Section XII.~~A~~D;

XII.F.5.b. The owners and operators of such natural gas compressor stations or natural gas drip stations do not own or operate any exploration and production operation(s); and

XII.F.5.c. Total emissions from atmospheric condensate storage tanks associated with such natural gas compressor stations or drip stations subject to APEN reporting requirements under Regulation Number 3 owned or operated by the same person do not exceed 30 tons per year in the 8-hour Ozone Control Area.

XII.G. Gas-processing plants located in the 8-hour Ozone Control Area (State Only: or any specific Ozone Nonattainment or Attainment/Maintenance Area) shall comply with requirements of this Section~~s~~ XII.G., as well as the requirements of Sections XII.B., XII.C.1.a., XII.C.1.b., XII.H.~~,~~ and XVI.

XII.G.1. For fugitive VOC emissions from leaking equipment, the leak detection and repair (LDAR) program as provided at 40 C~~.~~F~~.~~R~~.~~ Part 60, Subpart KKK (~~-~~see Regulation Number 6, Part A, Subpart KKK) shall apply, regardless of the date of construction of the affected facility~~,~~ unless subject to applicable LDAR program as provided at 40 CFR Part 60, Subparts OOOO or OOOOa (see Regulation Number 6, Part A, Subparts OOOO and OOOOa).

XII.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%.

XII.G.3. Existing natural gas processing plants within the 8-hour Ozone Control Area shall comply with the requirements of this Section XII.G. by May 1, 2005. (State Only: Existing natural gas processing plants within any new Ozone Nonattainment or Attainment/Maintenance Area shall comply with this regulation within three years after the nonattainment designation.)

XII.G.4. The provisions of ~~this Section XII.B., and~~ Sections XII.B., XII.C., XII.G., and XVI., shall apply upon the commencement of operations to any natural gas processing plant that

commences operation in the 8-Hour Ozone Control Area or Ozone Nonattainment (State Only: or Attainment/Maintenance Area) after the effective date of this subsection.

~~XII.G.5. The requirements of this Section XII. shall 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:~~

~~XII.G.5.a. 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;~~

~~XII.G.5.b. 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 XII.C.1.A. and XII.C.1.B;~~

~~XII.G.5.c. 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~~

~~XII.G.5.d. 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:~~

~~XII.G.5.d.(i) documents the maintenance of the air pollution control equipment according to manufacturer specifications;~~

~~XII.G.5.d.(ii) conducts an annual opacity observation once each year on the air pollution control equipment to verify opacity does not exceed 20% during normal operations;~~

~~XII.G.5.d.(iii) maintains records of the monthly stabilized condensate throughput and monthly actual VOC emissions; and~~

~~XII.G.5.d.(iv) reports compliance with these requirements to the Division annually.~~

~~XII.G.6. A natural gas compressor station or natural gas drip station subject to this Section XII.G. at which a glycol natural gas dehydrator and/or natural gas-fired stationary or portable engine is operated shall be subject to Sections XII.H. and/or XVI.~~

XII.H. Emission Reductions from glycol natural gas dehydrators

XII.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 XII.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.

XII.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 any Ozone Nonattainment or Attainment/Maintenance Area and subject to control

requirements pursuant to Section XII.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.

XII.H.3. The control requirements ~~above~~ of Sections XII.H.1. and XII.H.2. shall apply where:

XII.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

XII.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.

XII.H.4. For purposes of Section XII.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 EPA and~~ the Division. ~~The Division shall consult with and provide EPA 30 days in which to comment on the test method. EPA shall be deemed to have approved the test method for purposes of this Section XII.H if it does not object during such 30-day period.~~

XII.H.5. Monitoring and recordkeeping

XII.H.5.a. Beginning January 1, 2017, owners or operators of glycol natural gas dehydrators subject to the control requirements of Sections XII.H.1. or XII.H.2. 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:

XII.H.5.a.(i) The date of each inspection;

XII.H.5.a.(ii) The person conducting the inspection;

XII.H.5.a.(iii) A description of any problems observed during the inspection;

XII.H.5.a.(iv) A description and date of any corrective actions taken; and

XII.H.5.a.(v) The name of the person performing the corrective action.

XII.H.5.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.

XII.H.5.c. The owner or operator must document the maintenance of the condenser or air pollution control equipment, consistent with manufacturer specifications and good engineering and maintenance practices.

XII.H.5.d. The owner or operator must retain records for a period of five years and make these records available to the Division upon request.

XII.H.6. Reporting

XII.H.6.a. On or before April 30, 2017, and semi-annually by April 30 and November 30 of each year thereafter, the owner or operator must submit the following information using Division approved format:

XII.H.6.a.(i) A list of the glycol natural gas dehydrator(s) subject to Section XII.H.;

XII.H.6.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

XII.H.6.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.

XII.I. The requirements of Section XII. shall 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:

XII.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;

XII.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 XII.C.1.a. and XII.C.1.b;

XII.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

XII.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:

XII.I.4.a. documents the maintenance of the air pollution control equipment according to manufacturer specifications;

XII.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;

XII.I.4.c. maintains records of the monthly stabilized condensate throughput and monthly actual VOC emissions; and

XII.I.4.d. reports compliance with these requirements to the Division annually.

XII.I.5. A natural gas compressor station or natural gas drip station subject to this Section XII.G. at which a glycol natural gas dehydrator and/or natural gas-fired stationary or portable engine is operated shall be subject to Sections XII.H. and/or XVI.

XIII. Graphic Arts and Printing

XIII.A. ~~General Provisions~~Packaging Rotogravure, Publication Rotogravure, and Flexographic Printing

XIII.A.1. Definitions

For the purpose of this section, the following definitions apply:

XIII.A.1.a. "Flexographic Printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastometric materials.

XIII.A.1.b. "Packaging Rotogravure Printing" means rotogravure printing upon paper, paperboard, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

XIII.A.1.c. "Publication Rotogravure Printing" means rotogravure printing upon paper, which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

XIII.A.1.d. "Roll Printing" means the application of words, designs, and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

XIII.A.1.e. "Rotogravure Printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique, which involves an intaglio or recessed image areas in the form of cells.

XIII.A.2. Applicability

XIII.A.2.a. This section applies to all packaging rotogravure, publication rotogravure, and flexographic printing facilities whose potential emissions of volatile organic compounds before control (determined at design capacity and 8760 hrs/year, or at maximum production, and accounting for any capacity or production limitations in a federally-enforceable permit) are equal to or more than 90,000 Kg per year (100 tons/year). Potential emissions are to be estimated by extrapolating historical records of actual consumption of solvent and ink. (e.g., the historical use of 20 gallons of ink for 4,000 annual hours would be extrapolated to 43.8 gallons for 8760 hours.)The before-control volatile organic compound emissions calculations shall be the summation of all volatile organic compounds in the inks and solvents (including cleaning liquids) used.

XIII.~~B~~A.3. Provisions for Specific Processes

XIII.~~B~~A.~~1~~3.a. No owner or operator of a facility subject to this section and employing VOC-containing ink shall operate, cause, allow, or permit the operation of the facility unless:

XIII.~~B~~A.~~1~~3.a.(i) The volatile fraction of ink, as it is applied to the substrate, contains 25.0 percent or less (by volume) of VOC and 75.0 percent or more (by volume) of water; or

XIII.~~B~~A.~~1~~3.~~b~~a.(ii) The ink (minus water) as it is applied to the substrate, contains 60.0 percent or more (by volume) non-volatile material; or

XIII.~~B~~A.~~1~~3.~~c~~a.(iii) The owner or operator installs and operates a control device and capture system in accordance with ~~Paragraphs~~ Sections XIII.~~A~~B.3.b.~~2~~. and XII.A.3.c.; or

XIII.~~B~~A.~~1~~3.~~d~~a.(iv) A combination of solvent-borne inks and low solvent inks that achieve a 70% (volume) overall reduction of solvent usage (compared to an all solvent borne ink usage) is used; or

XIII.~~B~~A.~~1~~3.~~e~~a. (v) Flexographic and packaging rotogravure printing facilities limit emissions to 0.5 pounds of VOC per pound of solids in the ink. The limit includes all solvent added to the ink: solvent in the purchased ink, solvent added to cut the ink to achieve desired press viscosity, and solvent added to ink on the press to maintain viscosity during the press run. (Publication rotogravure facilities shall not use this option); or

XIII.~~B~~A.~~1~~3.~~f~~a. (vi) Crossline averaging is used. The requirements of Section IX.A.5.d apply.

XIII.~~B~~A.~~2~~3.b. A capture system shall be used in conjunction with the emission control system in ~~Subparagraph~~ Section XIII.~~B~~A.~~1~~3.a. ~~(above)~~. ~~-~~The design and operation of a capture system shall be consistent with good engineering practice, and in conjunction with control equipment shall be required to provide for an overall reduction in volatile organic compound emissions of at least:

XIII.~~B~~A.~~2~~3.~~a~~b.(i) 75.0 percent where a publication rotogravure process is employed;

XIII.~~B~~A.~~2~~3.b.(ii) 65.0 percent where a packaging rotogravure process is employed; or

XIII.~~B~~A.~~2~~3.~~c~~b.(iii) 60.0 percent where a flexographic printing process is employed.

XIII.~~B~~A.3.c. The design, operation, and efficiency of any capture system used in conjunction with any emission control system shall be certified in writing by the source owner or operator and approved by the Division. Testing of any capture system may be required by the Division on a case-by-case basis, in cases where a total enclosure is not used or when material balance results are questionable. Testing of capture system efficiency shall meet the requirements of Subsection IX.A.5.e.

XIII.~~B~~A.~~4~~3.d. The overall reduction in VOC emissions specified in ~~Subsection~~ Section XII.A~~B~~.~~2~~3.b. above shall be calculated by material balance methods approved by the Division, or by determination of capture and control device efficiencies. The overall VOC emission reduction rate equals the (percent capture efficiency X percent control device efficiency)/100.

XIII.~~C~~A.4. Testing and Monitoring

The owner or operator of a source subject to the requirements of this section is also subject to the requirements of Section IX.A.3., IX.A.7, IX.A.9, and IX.A.10. In Section IX.A.3., EPA reference method 24A shall be the test method used for publication rotogravure inks, while EPA Reference

method 24 data is acceptable for all other inks. Test methods as set forth in Appendix A, Part 60, Chapter I, Title 40, of the Code of Federal Regulations (CFR), in effect July 1, 1993.

XIII.~~D~~A.5. The owner or operator of a source subject to the requirements of this section is also subject to the requirements of Section IX.A.8. "A Guideline for Graphic Arts Calculations" shall be used for compliance determination.

XIII.B. Lithographic and Letterpress Printing

XIII.B.1. General Provisions

XIII.B.1.a. Definitions

XIII.B.1.a.(i) “Alcohol” means any of the hydroxyl-containing organic compounds with a molecular weight equal to or less than 74.12, which includes methanol, ethanol, propanol, and butanol.

XIII.B.1.a.(ii) “Alcohol substitute” means nonalcohol additives that contain VOCs and are used in the fountain solution to reduce the surface tension of water or prevent ink piling.

XIII.B.1.a.(iii) “Cleaning material” means a VOC-containing material used to remove ink and debris from the printing press area, operating surfaces of the printing press and, printing press parts. Blanket wash is a type of cleaning material.

XIII.B.1.a.(iv) “Fountain solution” means a mixture of water, nonvolatile printing chemicals, and a liquid additive that reduces the surface tension of the water so that it spreads easily across the printing plate surface. The fountain solution wets the non-image areas so that the ink is maintained within the image areas.

XIII.B.1.a.(v) “Heatset” means any printing operation where heat is required to evaporate ink oil from the printing ink.

XIII.B.1.a.(vi) “Lithographic printing” means a printing process where the image and non-image areas are chemically differentiated (the image area is oil receptive and the non-image area is water receptive). This printing process differs from other printing methods, where the image is a raised or recessed surface.

XIII.B.1.a.(vii) “Letterpress printing” means a printing process in which the image area is raised relative to the non-image area and the paste ink is transferred to the substrate directly from the image surface.

XIII.B.1.a.(viii) “Non-heatset” means any printing operation where the printing inks are set without the use of heat. For the purpose of Section XIII.B., ultraviolet-cured and electron beam-cured inks are considered non-heatset.

XIII.B.1.a.(ix) “Offset lithographic printing” means a printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket), which in turn transfers the ink film to the substrate.

XIII.B.1.a.(x) “Sheet-fed printing” means a printing process where individual sheets of paper or substrate are fed into the printing press.

XIII.B.1.a.(xi) “Web printing” means a printing process where continuous rolls of substrate material are fed to the press and rewound or cut to size after printing.

XIII.B.1.b. Applicability

XIII.B.1.b.(i) The work practice requirements in Section XIII.B.1.c. apply to all lithographic and letterpress printing operations.

XIII.B.1.b.(ii) The VOC content limit for inks in Section XIII.B.1.d. applies to lithographic and letterpress printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than three (3) tons per year, excluding heatset web offset and heatset web letterpress printing operations that comply with the control requirements in Section XIII.B.4.

XIII.B.1.b.(iii) The cleaning material requirements in Section XIII.B.2. apply to letterpress printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than three (3) tons per year.

XIII.B.1.b.(iv) The cleaning material and fountain solution requirements in Sections XIII.B.2. and XIII.B.3. apply to offset lithographic printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than three (3) tons per year.

XIII.B.1.b.(v) The control requirements in Section XIII.B.4. apply to heatset web offset lithographic and heatset web letterpress printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than 25 tons per year.

XIII.B.1.c. Work Practice Requirements

Lithographic and letterpress printing operations must implement the following work practices at all times to reduce VOC emissions from fugitive sources:

XIII.B.1.c.(i) Cover open containers and keep cleaning materials in closed containers when not in use;

XIII.B.1.c.(ii) Minimize evaporation loss where cleaning materials, fountain solutions, and inks are being used;

XIII.B.1.c.(iii) Properly dispose of used cleaning materials, fountain solutions, and used shop towels; and

XIII.B.1.c.(iv) Implement good air pollution control practices that minimize emissions, including, but not limited to, using only volumes necessary for

cleaning and maintain cleaning equipment to repair cleaning materials leaks.

XIII.B.1.d. VOC Content Limit for Inks

All lithographic and letterpress printing operations, excluding heatset web offset and heatset web letterpress printing operations that comply with the control requirement in Section XIII.B.4., must use low-VOC inks, which average less than 30% (by weight) VOC on a monthly basis.

XIII.B.2. Offset lithographic printing and letterpress printing operations must comply with the following cleaning materials requirements;

XIII.B.2.a. All cleaning materials must contain less than 70% (by weight) VOC or have a VOC composite vapor pressure less than 10 mmHg at 20˚C.

XIII.B.2.b. Exemptions

The following materials and operations are exempt from the cleaning material requirements in Section XIII.B.2.a.:

XIII.B.2.b.(i) Printing operations that use less than or equal to 110 gallons per year of non-compliant cleaning materials.

XIII.B.2.b.(ii) Cleaners used on electronic components of a press.

XIII.B.2.c.(iii) Pre-press cleaning operations.

XIII.B.2.c.(iv) Post-press cleaning operations.

XIII.B.2.c.(v) Floor cleaning supplies (other than those used to clean dried ink).

XIII.B.2.c.(vi) Cleaning performed in parts washers or cold cleaners that are subject to Section V.

XIII.B.3. Offset lithographic printing operations must comply with the following fountain solution requirements:

XIII.B.3.a. Heatset web offset lithographic printing operations must:

XIII.B.3.a.(i) Use a fountain solution containing 1.6% alcohol (by weight) or less;

XIII.B.3.a.(ii) Use a fountain solution containing 3% alcohol (by weight) or less if the fountain solution is refrigerated to below 60˚F (15.5˚C); or

XIII.B.3.a.(iii) Use a fountain solution containing 5% alcohol substitute (by weight) or less and no alcohol.

XIII.B.3.b. Sheet-fed printing operations must

XIII.B.3.b.(i) Use a fountain solution containing 5% alcohol (by weight) or less;

XIII.B.3.b.(ii) Use a fountain solution containing 8.5% alcohol (by weight) or less if the fountain solution is refrigerated to below 60˚F (15.5˚C); or

XIII.B.3.b.(iii) Use a fountain solution containing 5% alcohol substitute (by weight) or less and no alcohol.

XIII.B.3.b.(iv) The following are exempt from the fountain solution requirements in Section XIII.B.3.b.:

XIII.B.3.b.(iv)(A) Fountain solution use associated with a sheet-fed printing press with maximum sheet size 11x17 inches or smaller.

XIII.B.3.b.(iv)(B) Fountain solution use associated with a sheet-fed printing press having a total fountain solution reservoir less than one (1) gallon.

XIII.B.3.c. Non-heatset web printing must use a fountain solution containing 5% alcohol substitute (by weight) or less and no alcohol.

XIII.B.4. Heatset web offset lithographic and heatset web letterpress printing operations must comply with the following control requirements:

XIII.B.4.a. Heatset web offset lithographic and heatset web letterpress printing operations must control VOC emissions from heatset dryers by 90%.

XIII.B.4.b. If the control device was first installed on or after January 1, 2017, heatset web offset lithographic and heatset web letterpress printing operations must control VOC emissions from heatset dryers by 95%.

XIII.B.4.c. Where inlet VOC concentration is low and a 90 or 95% control efficiency is not achievable, heatset web offset lithographic and heatset web letterpress printing operations may reduce the control device outlet concentration to 20 ppmv (as hexane on a dry basis).

XIII.B.4.d. The following are exempt from the control requirements in Section XIII.B.4.:

XIII.B.4.d.(i) Heatset presses used for book printing.

XIII.B.4.d.(ii) Heatset presses with maximum web width of 22 inches or less.

XIII.B.4.d.(iii) Waterborne or radiation (ultra-violet or electron beam) cured materials that are not heatset.

XIII.B.5. Monitoring

The owner or operator of a heatset web offset lithographic or heatset web letterpress printing operation required to demonstrate compliance with Section XIII.B.4. must install, calibrate, maintain, and operate a temperature monitoring device, according to the manufacturer's specifications, at the outlet of the control device.

XIII.B.6. Recordkeeping

Owners and operators of lithographic and letterpress printing operations subject to Sections XIII.B.1.d. and XIII.B.2.-.5. must keep the following records for two (2) years and make them available for inspection by the Division upon request.

XIII.B.6.a. Records demonstrating that a listed exemption to this Section XIII.B. applies.

XIII.B.6.b. If applicable, monthly records of the type, alcohol content or alcohol substitute content, and total volume of fountain solution used in printing operations.

XIII.B.6.c. If applicable, monthly records of the type, VOC content or composite vapor pressure, and total volume of the cleaning materials used in printing operations.

XIII.B.6.d. If applicable, monthly records of the type, VOC content, and total volume of inks used in printing operations.

XIII.B.6.e. Monthly records demonstrating compliance with the control requirements in Section XIII.B.4.

>>>>>>>

XVI. Control of Emissions from Stationary and Portable Engines and Other Combustion Equipment in the 8-~~hour~~ Hour Ozone Control Area

XVI.A. Requirements for new and existing engines.

XVI.A.1 The owner or operator of any natural gas-fired stationary or portable reciprocating internal combustion engine with a manufacturer's design rate greater than 500 horsepower commencing operations in the 8-hour Ozone Control Area on or after June 1, 2004 shall employ air pollution control technology to control emissions, as provided in Section XVI.B.

XVI.A.2 Any existing natural gas-fired stationary or portable reciprocating internal combustion engine with a manufacturer's design rate greater than 500 horsepower, which existing engine was operating in the 8-hour Ozone Control Area prior to June 1, 2004, shall employ air pollution control technology on and after May 1, 2005, as provided in Section XVI.B.

XVI.B. Air pollution control technology requirements

XVI.B.1 For rich burn reciprocating internal combustion engines, a non-selective catalyst reduction and an air fuel controller shall be required. A rich burn reciprocating internal combustion engine is one with a normal exhaust oxygen concentration of less than 2% by volume.

XVI.B.2 For lean burn reciprocating internal combustion engines, an oxidation catalyst shall be required. A lean burn reciprocating internal combustion engine is one with a normal exhaust oxygen concentration of 2% by volume, or greater.

XVI.B.3 The emission control equipment required by this Section XVI.B shall be appropriately sized for the engine and shall be operated and maintained according to manufacturer specifications.

XVI.C. The air pollution control technology requirements in ~~this~~ Sections XVI.A. and XVI.B. shall not apply to:

XVI.C.1 Non-road engines, as defined in Regulation Number 3.

XVI.C.2 Reciprocating internal combustion engines that the Division has determined will be permanently removed from service or replaced by electric units on or before May 1, 2007. The owner or operator of such an engine shall provide notice to the Division of such

intent by May 1, 2005 and shall not operate the engine identified for removal or replacement in the 8-hour Ozone Control Area after May 1, 2007.

XVI.C.3 Any emergency power generator exempt from APEN requirements pursuant to Regulation Number 3.

XVI.C.4 Any lean burn reciprocating internal combustion engine operating in the 8-hour Ozone Control Area prior to June 1, 2004, for which the owner or operator demonstrates to the Division that retrofit technology cannot be installed at a cost of less than $ 5,000 per ton of VOC emission reduction. Installation costs and the best information available for determining control efficiency shall be considered in determining such costs. In order to qualify for such exemption, the owner or operator must submit an application making such a demonstration, together with all supporting documents, to the Division by May 1, 2005. Any reciprocating internal combustion engine qualifying for this exemption shall not be moved to any other location within the 8-hour Ozone Control Area.

XVI.D. Combustion process adjustment

XVI.D.1. As of January 1, 2017, this Section XVI.D. applies to the following combustion equipment with uncontrolled actual emissions of NOx equal to or greater than one (1) ton per year, and that are located at existing major sources of NOx, as listed in Section XIX.A.

XVI.D.1.a. Boiler: an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water.

XVI.D.1.b. Process heater: an enclosed device using controlled flame and a primary purpose to transfer heat indirectly to a process material or to a heat transfer material for use in a process.

XVI.D.1.c. Stationary combustion turbine: a simple cycle stationary combustion turbine, regenerative/recuperative cycle stationary combustion turbine, stationary cogeneration cycle combustion system, or combined cycle steam/electric generating system.

XVI.D.1.d. Duct burner: a device that combusts fuel and is placed in the exhaust duct from another source (e.g., stationary combustion turbine, internal combustion engine, kiln) to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

XVI.D.1.e. Engine: a stationary reciprocating internal combustion engine (internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile), stationary compression ignition internal combustion engine (non-spark ignition internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile), stationary spark ignition internal combustion engine (engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle).

XVI.D.2. Combustion process adjustment

XVI.D.2.a. When burning the fuel that provides the majority of the heat input since the last combustion process adjustment and when operating at a firing rate typical of normal operation, the owner or operator must conduct the following

inspections and adjustments of boilers, process heaters, stationary combustion turbines, and duct burners as applicable:

XVI.D.2.a.(i) Inspect the burner and combustion controls and clean or replace components as necessary.

XVI.D.2.a.(ii) Inspect the flame pattern and adjust the burner or combustion controls as necessary to optimize the flame pattern.

XVI.D.2.a.(iii) Inspect the system controlling the air-to-fuel ratio and ensure that it is correctly calibrated and functioning properly.

XVI.D.2.a.(iv) Measure the concentration in the effluent stream of carbon monoxide and nitrogen oxide in ppm, by volume, before and after the adjustments in Sections XVI.D.2.a.(i)-(iii).

XVI.D.2.b. When burning the fuel that provides the majority of the heat input since the last combustion process adjustment and when operating at a firing rate typical of normal operation, the owner or operator must conduct the following inspections and adjustments of engines as applicable:

XVI.D.2.b.(i) Change oil and filters as necessary.

XVI.D.2.b.(ii) Inspect air cleaners, fuel filters, hoses, and belts and clean or replace as necessary.

XVI.D.2.b.(iii) Inspect spark plugs and replace as necessary.

XVI.D.2.c. The owner or operator must optimize combustion to minimize generation of carbon monoxide and nitrogen oxide consistent with manufacturer's specifications, if available, or best combustion engineering practice.

XVI.D.2.d. As an alternative to the requirements described in Sections XVI.D.2.a.-c.:

XVI.D.2.d.(i) The owner or operator may conduct the combustion process adjustment according to the manufacturer recommended procedures; or

XVI.D.2.d.(ii) The owner or operator of combustion equipment that is subject to and required to conduct a period tune-up or combustion adjustment by the applicable requirements of a New Source Performance Standard in 40 CFR Part 60 or National Emission Standard for Hazardous Air Pollutants in 40 CFR Part 63 may conduct tune-ups or adjustments according to the schedule and procedures of the applicable requirements of 40 CFR Part 60 or 40 CFR Part 63.

XVI.D.2.e. Frequency

XVI.D.2.b.(i) The owner or operator must conduct the initial combustion process adjustment by April 1, 2017.

XVI.D.2.b.(ii) The owner or operator must conduct subsequent combustion process adjustments at least once every twelve (12) months after the initial combustion adjustment, or on the applicable schedule according to Section XVI.D.2.d.(ii).

XVI.D.3. Recordkeeping

XVI.D.3.a. The owner or operator must create a report once every calendar year, including

XVI.D.3.a.(i) The date of the adjustment(s);

XVI.D.3.a.(ii) Whether the combustion adjustment process under Sections XVI.D.2.a.-c. was followed, and what procedures were performed;

XVI.D.3.a.(iii) Whether a combustion adjustment process under XVI.D.2.d. was followed, and what procedures were performed; and

XVI.D.3.a.(iv) A description of any corrective action taken.

XVI.D.2.a.(v) If multiple fuels are used, record the type of fuel burned and heat input provided by each fuel.

XVI.D.3.b. The owner or operator must retain manufacturer recommended procedures, specifications, and maintenance schedule if utilized under Section XVI.D.2.d. for the life of the equipment, and make available to the Division upon request.

XVI.D.3.c. The owner or operator must retain annual reports for at least 5 years, and make available to the Division upon request.

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XIX. 2008 Ozone State Implementation Plan Reasonably Available Control Technology Limits

XIX.A. The following major sources, that emit or have the potential to emit 100 tons per year of VOC or NOx as of January 1, 2017, and are located in the 8-hour Ozone Control Area, were analyzed in Colorado's Moderate Area SIP for the 2008 8-Hour Ozone NAAQS.

XIX.A.1. Anheuser-Busch, Fort Collins Brewery (069-0060) and Nutri-Turf (123-0497) (major for VOC and NOx)

XIX.A.2. Ball Metal Beverage Container Corporation (059-0010 major for VOC)

XIX.A.3. Buckley Air Force Base (005-0028 major for NOx)

XIX.A.4. Carestream Health (123-6250 major for NOx)

XIX.A.5. Cemex Construction Materials (013-0003 major for VOC and NOx)

XIX.A.6. Colorado Interstate Gas, Latigo (005-0055 major for NOx)

XIX.A.7. Colorado Interstate Gas, Watkins (001-0036 major for VOC and NOx)

XIX.A.8. Colorado State University (069-0011 major for NOx)

XIX.A.9. CoorsTek (059-0066 major for VOC)

XIX.A.10. CordenPharma (013-0025 major for VOC)

XIX.A.11. DCP Midstream, Enterprise (123-0277 major for VOC and NOx)

XIX.A.12. DCP Midstream, Greeley (123-0099 major for VOC and NOx)

XIX.A.13. DCP Midstream, Lucerne (123-0107 major for VOC and NOx)

XIX.A.14. DCP Midstream, Marla (123-0243 major for VOC and NOx)

XIX.A.15. DCP Midstream, Platteville (123-0595 major for VOC and NOx)

XIX.A.16. DCP Midstream, Roggen (123-0049 major for VOC and NOx)

XIX.A.17. DCP Midstream, Spindle (123-0015 major for VOC and NOx)

XIX.A.18. DCP Midstream, Kersey/Mewbourn (123-0090 major for VOC and NOx)

XIX.A.19. Denver Regional Landfill, Front Range Landfill, Timberline Energy (123-0079 major for NOx)

XIX.A.20. Elkay Wood Products (001-1602 major for VOC)

XIX.A.21. IBM Corporation (013-0006 major for NOx)

XIX.A.22. Kerr-McGee Gathering, Frederick (123-0184 major for VOC and NOx)

XIX.A.23. Kerr-McGee Gathering, Hudson (123-0049 major for VOC and NOx)

XIX.A.24. Kerr-McGee Gathering, Fort Lupton/Platte Valley/Lancaster (123-0057 major for VOC and NOx)

XIX.A.25. Kodak Alaris (123-0003 major for VOC)

XIX.A.26. Metal Container Corporation (123-0134 major for VOC)

XIX.A.27. Metro Wastewater Reclamation District, Suez Denver Metro (001-0097 major for NOx)

XIX.A.28. MillerCoors Golden Brewery, Rocky Mountain Metal Container (059-0006), MMI/EtOH (059-0828), and Trigen Colorado Golden Energy Corporation (059-0820) (major for VOC and NOx)

XIX.A.29. Owens-Brockway Glass (123-4406 major for NOx)

XIX.A.30. Phillips 66 Pipeline, Denver Terminal (001-0015 major for VOC)

XIX.A.31. Plains End (059-0864 major for VOC and NOx)

XIX.A.32. Public Service, Cherokee (001-0001 major for NOx)

XIX.A.33. Public Service, Denver Steam Plant (031-0041 major for NOx)

XIX.A.34. Public Service, Fort Lupton (123-0014 major for NOx)

XIX.A.35. Public Service, Fort Saint Vrain (123-0023 major for NOx)

XIX.A.36. Public Service, Rocky Mountain Energy Center (123-1342 major for NOx)

XIX.A.37. Public Service, Valmont (013-0001 major for NOx)

XIX.A.38. Public Service, Yosemite (123-0141 major for NOx)

XIX.A.39. Public Service, Zuni (031-0007 major for NOx)

XIX.A.40. Rocky Mountain Bottle Company (059-0008 major for NOx)

XIX.A.41. Sinclair Transportation Company, Denver Terminal (001-0019 major for VOC)

XIX.A.42. Spindle Hill Energy (123-5468 major for NOx)

XIX.A.43. Suncor Energy, Denver Refinery Plants 1 and 2 (001-0003 major for VOC and NOx)

XIX.A.44. Thermo Cogeneration, JM Shafer (123-0250 major for NOx)

XIX.A.45. Thermo Power and Electric (123-0126 major for NOx)

XIX.A.46. Tri-State Generation, Frank Knutson (001-1349 major for NOx)

XIX.A.47. TXI Operations (059-0409 major for NOx)

XIX.A.48. University of Colorado Boulder (013-0553 major for NOx)

XIX.A.49. WGR Asset Holding, Wattenberg (001-0025 major for VOC and NOx)

XIX.B. This Section B. establishes specific RACT requirements for the following major sources. The sources must comply with the following specific limits and monitoring/recordkeeping requirements as expeditiously as practicable, but no later than January 1, 2017.

Table 6 – Ozone RACT Determinations *

Facility	Emission Limit or Standard	Monitoring/recordkeeping
Anheuser-Busch – facility, boilers (pt 001, 002)	Facility: 213.27 tpy VOC	Maintain records of VOC emissions on a rolling 12-month total
	Boilers (pt 001, 002): 520.3 tpy NOx	Monitor NOx using a continuous emission monitor
Buckley Air Force – engines	Bldg 416 (pt 102), Bldg 433 (pt 103), Bldg 465 (pt 104), Bldg	Maintain records of NOx emissions on a rolling 12-month

	1201 (pt 105): 198.6 tpy NOx Engine (pt 120): 1.56 tpy NOx Engine (pt 118): 3.44 tpy NOx Engine (pt 119): 2.84 tpy NOx Engine test cell (pt 101): 6.79 tpy NOx Engine (pt 124): 2.02 tpy NOx Building 494 (pt 128): 3 tpy NOx Engines (pt 138): 8.6 tpy NOx Engines (pt 139): 2.4 tpy NOx	total
Carestream Health – boilers (pt 004)	Boilers (pt 004): 133.4 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
Cemex – dryer (pt 002), kiln (pt 007)	Dryer (pt 002): 144.8 tpy VOC Kiln (pt 007): 138 tpy VOC	Maintain records of VOC emissions on a rolling 12-month total
Colorado State University – boilers (pt 003, 005, 007, 013)	Boilers (pt 003, 005, 007): 127.7 tpy NOx Boiler (pt 013): 5.4 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
CoorsTek – facility	Facility: 101.16 tpy VOC	Maintain records of VOC emissions on a rolling 12-month total
DCP Midstream, Greeley – engine (pt 102)	Engine (pt 102): 3.02 tpy NOx, 0.6 tpy VOC	Maintain records of NOx and VOC emissions on a rolling 12-month total

DCP Midstream, Kersey/Mewbourn – engine (pt 101), turbines (pt 111, 112, 118, 119)	Engine (pt 101): 5.1 tpy NOx, 3.19 tpy VOC Turbines (pt 111, 112) each: 13.14 tpy NOx Turbines (pt 118, 119): 17.49 tpy NOx	Maintain records of NOx and VOC emissions on a rolling 12-month total
DCP Midstream, Lucerne – turbines (pt 044, 045)	Turbines (pt 044, 045) each: 15 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
DCP Midstream, Spindle – engines (pt 059, 075)	Engine (pt 059): 5 tpy NOx, 2.2 tpy VOC Engine (pt 075): 22.9 tpy NOx, 4.9 tpy VOC	Maintain records of NOx and VOC emissions on a rolling 12-month total
Denver Regional Landfill, Front Range Landfill, Timberline Energy – flare (pt 007 and 013, engines (010, 011)	Flare (pt 007): 39.4 tpy NOx Flare (pt 013): 17.87 tpy NOx Engines (pt 010, 022): 76.32 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
Elkay Wood (pt 001)	Average VHAP across finishing material coatings (stains, sealers and topcoats, thinners): 0.8 lbs VHAP/lb solids Foam adhesives: 0.2 lbs VHAP/lb solids Other contact adhesives: 0.2 lbs VHAP/lb solids Strippable spray booth coatings: 0.8 lbs VOC/lb solids	Maintain monthly records demonstrating compliant coatings
IBM – engines (pt 088, 090, 092), boilers (pt 001, 011, 095)	Engines (pt 088): 41.6 tpy NOx	Maintain records of NOx emissions on a rolling 12-month

	Engines (pt 090): 20.7 tpy NOx Engines (pt 092): 21.65 tpy NOx Engine (pt 094): 3 tpy NOx Boilers (pt 001, 011): 50.6 tpy NOx Boiler (pt 095): 5.1 tpy NOx	total
Kerr-McGee, Fort Lupton/Platte Valley/Lancaster – gas turbine (pt 052)	Turbine (pt 052): 49 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
Metro Wastewater & Suez Denver Metro – Suez turbines (pt 001), engines and flares (pt 009 and 017), boilers (pt 010), Metro engines (pt 012, 018, 021)	Suez turbines, engines, flares (pt 001, 009, 010, 017): 86.85 tpy NOx Metro engine (pt 012): 19.27 tpy NOx Metro engines (pt 018, 021): 4.77 g/hp-hr NOx+NMHC	Maintain records of NOx emissions on a rolling 12-month total
MillerCoors Golden Brewery – facility	Facility: 469.6 tpy VOC	Maintain records of VOC emissions on a rolling 13-4 week block total
MMI/EtOH – facility	Facility: 10.7 tpy VOC	Maintain records of VOC emissions on a rolling 12-month total
Nutri-Turf – facility	Facility: 236 tpy VOC	Maintain records of VOC emissions on a rolling 12-month total
Owens-Brockway – furnaces (pt 001, 002)	Furnaces (pt 001, 002): 220.67 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total

Public Service Company, Cherokee – boiler 4 (pt 004), turbines (pt 028, 029)	Boiler (pt 004): 0.12 lb/mmBtu NOx Turbines (pt 028, 029) each: 148.1 tpy NOx	Monitor NOx using a continuous emission monitor
Public Service Company, Denver Steam – boilers (pt 001, 002)	Boilers (pt 001, 002): 544.7 tpy NOx (100% natural gas) or 341.1 tpy NOx (100% No. 2 fuel oil)	Maintain records of fuel use and NOx emissions on an annual basis
Public Service Company, Fort Lupton – turbines (pt 001, 002)	Turbines (pt 001, 002): 2,032 tpy NOx (100% natural gas) or 5,057 tpy NOx (100% Nos. 1 and/or 2 fuel oil)	Maintain records of fuel use and NOx emissions on an annual basis
Public Service Company, Fort Saint Vrain – turbines (pt 004, 005, 008, 010, 011), boiler (pt 001)	Turbines (pt 004, 005): 496.1 tpy NOx Turbine (pt 008): 199.1 tpy NOx Turbines (pt 010, 011): 39.9 tpy NOx	Monitor NOx using a continuous emission monitoring system
	Boiler (pt 001): 32.6 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
Public Service Company, Rocky Mountain Energy Center – turbines (pt 001, 002)	Turbines (pt 001, 002): 240.4 tpy NOx	Monitor NOx using a continuous emission monitoring system
Public Service Company, Valmont – turbine (pt 002)	Turbine (pt 002): 2,197 tpy NOx	Maintain records of fuel use and NOx emissions on an annual basis
Public Service Company, Zuni – boilers (pt 001-003)	Boilers (pt 001-003): 2,074 tpy NOx (100% natural gas) or 2,536 tpy NOx (100% No. 6 fuel oil)	Maintain records of fuel use and NOx emissions on an annual basis

Rocky Mountain Bottle – furnaces (pt 001)	Furnaces (pt 001): 424 tpy NOx	Monitor NOx using a continuous emission monitoring system
Spindle Hill – turbines (pt 001, 002)	Turbines (pt 001, 002): 223.3 tpy NOx	Monitor NOx using a continuous emission monitoring system
Suncor – boilers (pt 309, 019, 021, 023), engines (pt 150, 151)	Boilers (pt 309): 24.8 tpy NOx Boiler (pt 021): 19.45 tpy NOx, 2.6 tpy VOC Boiler (pt 023: 28.21 tpy NOx, 3.77 tpy VOC	Monitor NOx using a continuous emission monitoring system
	Boiler (pt 019): 154.8 tpy NOx, 3.1 tpy VOC Engines (pt 150, 151): 2.7 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
Thermo Cogeneration, JM Shafer – turbines (pt 001-005)	Turbines (pt 001-005): 589 tpy NOx	Monitor NOx using a continuous emission monitoring system
Thermo Power and Electric – turbines (pt 001, 002)	Turbines (pt 001, 002) each: 535.5 tpy NOx	Monitor NOx using a continuous parametric monitoring system
Trigen Colorado Energy Corporation – boilers (pt 001, 002)	Boilers (pt 001, 002) each: 346 tpy NOx (100% natural gas) or 216 tpy NOx (100% No. 2 fuel oil)	Maintain records of fuel use, heat input, and NOx emission estimate on an annual basis
Tri-State Generation and Transmission, Frank Knutson – turbines (pt 001, 003)	Turbines (pt 001, 003): 244.1 tpy NOx	Monitor NOx using a continuous emission monitor
TXI – kiln (pt 001)	Kiln (pt 001): 248 tpy NOx	Maintain records of NOx emissions on a rolling 12-month

		total
University of Colorado – Powerhouse turbines (pt 003, 005), Powerhouse boilers (pt 001, 002), Williams boilers (pt 001, 002), East boilers (012, 013)	Powerhouse turbines (pt 003, 005) each: 75 ppmvd NOx Powerhouse (pt 001, 002, 003, 005): 250 tpy NOx	Monitor NOx using a continuous emission monitor
	Williams boilers (pt 001, 002): 43 tpy NOx East boilers (pt 012, 013): 29.7 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
WGR Wattenberg – turbines (pt 021, 022)	Turbines (pt 021, 022): 17.7 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total

* RACT for major sources listed in Section XIX.A. that are not also listed in Section XIX.B. was determined to be existing regulatory requirements, see the [RACT SIP, TSD] for more detail.

XIX.C. Major sources listed in Table 6 must comply with the following recordkeeping and reporting requirements:

XIX.C.1. Maintain compliance monitoring records for at least 5 years, and make available to the Division upon request.

XIX.C.2. Submit a compliance report once every calendar year, including:

XIX.C.2.a. Identify the emission limit or standard that is the basis of the compliance certification;

XIX.C.2.b. Identify the compliance status of the source; and

XIX.C.2.c. Identify whether compliance was continuous or intermittent.

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~~XIX~~XX. Statements of Basis, Specific Statutory Authority and Purpose

~~XIX~~XX.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, Section 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, Section 25-7-110.5, C.R.S.

Basis

Regulations 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted consolidate the list of NRVOCs into the Common Provisions, assuring that the same list of NRVOCs apply to all the Colorado Regulations. This provides more consistency in those chemicals regulated as VOCs.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify Regulations pertaining to organic solvents and photochemical substances. Section 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to Organic solvents and photochemical substances. The Commission's action is taken pursuant to authority granted and procedures set forth in Sections 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulations Number 3, 7, and the Common Provisions are intended to clarify substances that are negligibly reactive VOCs, which are reflected in the EPA list of non-photochemically reactive VOCs. By consolidating the list (which consists 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 industries will be able to take advantage of and benefit from this possible shift in product contents.

~~XIX~~XX.B. March 21, 1996 (Sections I.A.1-4; 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 Section 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 rule-making 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 Paragraph 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.

~~XIX~~XX.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, Section 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, Section 25-7-110.5, C.R.S.

Basis

Regulations 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted update the list of NRVOCs so that the state list remains consistent with the federal list. Additionally because perchloroethylene will no longer be listed as a VOC in Regulation Number 7, Section XII, Control of VOC Emissions from Dry Cleaning Facilities using Perchloroethylene as a Solvent, is being deleted.

Regulation Number 8 and 3 list the federal Hazardous Air Pollutants (HAPs). In the June 8, 1996 Federal Register the EPA removed Caprolactam (CAS 105-60-2) from the federal list of Hazardous Air Pollutants. The conforming changes in Regulation Number 3 Appendices B, C and D have been made to keep the list of federal HAPs in Regulation Number 3 consistent with the federal list. The list of HAPs in Regulation Number 8 has been removed and a reference to the list in Regulation Number 3 has been added.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify Regulations pertaining to organic solvents and photochemical substances. Section 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to organic solvents and photochemical substances. Sections 25-7-105(1)(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 Sections 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulations Number 3, 7, 8 and the Common Provisions are intended to update the state lists of NRVOCs, the Ozone SIP, and HAPs for consistency with the federal lists.

~~XIX~~XX.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:

Methanol0.16
m-Pyrol0.57

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 above, 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 emission 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.

~~XIX~~XX.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), Sections 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, above."

2. Section IX.L2.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.

Authority

Sections 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.

~~XIX~~XX.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.

Sections 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.

~~XIX~~XX.G. (March 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 C.F.R. 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 C.F.R. 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 Sections 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.

~~XIX~~XX.H (December 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 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 Sections 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 Section 25-7-110.8 C.R.S. do not apply.

~~XIX~~XX.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 Sections 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, Section 25-7-106(1)(c) authorizes the Commission to adopt emission control regulations that are applicable to specified areas within the state. Section 25-7-109(1)(a) authorizes the Commission to adopt emission control regulations. Section 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 more timely 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.

~~XIX~~XX.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 Sections 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 Sections 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 Section 25-7-105.1, which allows the Commission to adopt state-only

standards. Specifically, Section 25-7-106(1)(c) authorizes the Commission to adopt emission control regulations that are applicable to the entire state. Section 25-7-109(1)(a) authorizes the Commission to adopt emission control regulations. Section 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.

~~XIX~~XX.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 Sections 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 Regulations 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 above, 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 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 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 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 ton 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 an 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 above, 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 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 more costly 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.

~~XIX~~XX.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, Section 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S (the Act).

Specific Statutory Authority

The Colorado Air Quality Control Commission (Commission) promulgates this regulation pursuant to the authority granted in Sections 25-7-105(1)(c), C.R.S. (authority to adopt a prevention of significant deterioration program); 25-7-109(1)(a) (authority to require the use of air pollution controls); 25-7-109(2)(a) (authority to adopt emission control regulations pertaining to visible pollutants); 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 Section 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.

~~XI~~XX.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 Sections 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. Section 25-7-105(1)(a), emission control regulations addressed in C.R.S. Section 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. Section 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. Section 25-7-101, et seq., specifically, C.R.S. Section 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 Section 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 ton 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 above 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.

~~XIX~~XX.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 Sections 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 C.F.R. 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 Section 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. Section 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. Section 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. Sections 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. Section 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 below.

"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, as discussed more fully below. 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.

<u>Additional Considerations</u>

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 more costly 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, see further discussion above. 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.

(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.

XX.O. October 20 & 21, 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 Sections 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 Colorado's Marginal ozone nonattainment 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"), C.R.S. § 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. Section 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. Section 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. Section 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 Colorado Department of Public Health and Environment, Air Pollution Control Division ("Division") have conducted a public process to develop the associated SIP and supporting rule revisions. Separately, EPA has 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; 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"). 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. 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.; 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.; 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.; 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.

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

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.

8-hour ozone control area

All provisions of Regulation 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.

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 addresses VOC emissions from the use of fountain solutions, cleaning materials, and inks at lithographic and letterpress printing operations. The 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 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 CTG also recommends work practices. Colorado has sources in the ozone nonattainment area in this CTG VOC source category but did not have regulatory RACT requirements. Therefore, the Commission included these requirements in Section XIII.B. as RACT. However, rather than an applicability threshold of 15 lbs/day, the Commission adopted an applicability threshold of 3 tpy. The Commission further included a printing ink VOC content limit, work practices, and monitoring and recordkeeping requirements that are not specified as presumptive RACT in the CTG but are intended to correspond to current permit requirements. With respect to the work practice requirement that sources minimize evaporation loss where cleaning materials, fountain solutions, and inks are being used, the Commission notes that this requirement is not intended to prevent sources from using cleaning materials, fountain solutions, and inks in well-ventilated areas when necessary to protect employee health and safety.

Industrial cleaning solvents RACT

EPA's Industrial 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 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 CTG recommends a cleaning solvent VOC content limit and work practices. Colorado has sources in the ozone nonattainment area in this CTG VOC source category but did not have regulatory RACT requirements. Therefore, the Commission included these 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. 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 subject to a federally enforceable emissions requirement. Lastly, the Commission included minimal recordkeeping requirements that are not specified as presumptive RACT in the CTG but are intended to align with current permit recordkeeping requirements.

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, 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 must specifically identify the major source RACT requirements in the SIP.

Specifically, the Commission adopted a combustion adjustment process for combustion equipment at major sources of NOx in Section XVI.E., expanding on work practices currently required in federal NSPS and NESHAP. The combustion adjustment process 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. The combustion adjustment is intended to apply to some equipment that is not subject to work practices under the NESHAPs. The Commission acknowledges that not all equipment subject to Section XVI.D. will be subject to every combustion adjustment process requirement provided in Section XVI.D.2.a.

The Commission also established source specific RACT requirements for major sources of VOC or NOx in the ozone nonattainment area as of January 1, 2017, in Section XIX. In Section XIX.A., the Commission listed all major sources of VOC or NOx subject to the Moderate nonattainment area RACT SIP. The Commission determined that little, if any, additional controls could be implemented by January 1, 2017, as RACT for the major sources of VOC and NOx. The Commission also determined that not all major sources, or major source emission points (using AIRS ID points), were subject to existing regulatory RACT requirements in Regulation Number 7 or federally enforceable emission limits in Colorado's Regional Haze SIP. Therefore, in Section XIX.B., the Commission established source specific requirements for some sources to further satisfy Colorado's RACT obligation for Colorado's major VOC and NOx sources. Sources not specifically included in Section XIX.B., were determined to be subject to other, existing regulatory RACT requirements (see Moderate ozone SIP revision, RACT chapter 6 for additional detail). In establishing RACT for the sources in Section XIX.B. Table 6, the Commission relied on current, federally enforceable requirements in permits or applicable NSPS or NESHAP. Similarly, the Commission relied on federally enforceable permits and applicable NSPS or NESHAP to establish monitoring, recordkeeping, and reporting requirements for sources in Table 6. The Commission intended these monitoring, recordkeeping, and reporting requirements to align with the current, federally enforceable monitoring, recordkeeping, and reporting requirements in source permits.

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 7 revisions. In 2013, the Commission submitted revisions to Regulation 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 to Moderate Nonattainment.

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. includes a 90% control requirement for glycol natural gas dehydrators. This is a SIP requirement. During the review of the 2013 submittal, EPA noted additional 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.

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.

Additional Considerations

Colorado must revise Colorado's ozone SIP to address the ozone Moderate Nonattainment area requirements. The CAA does not expressly require all of the provisions adopted by the Commission. Rather, federal law establishes the 8-hour ozone NAAQS and requires the State 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 RACT obligations. 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.

(II) 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 applicability, Regulation Number 7 RACT requirements, or RACT/beyond RACT analyses. However, while these requirements are included in federally enforceable permits and federally enforceable NSPS and NESHAP, some of the requirements are not currently included in Colorado's SIP, as is required for a moderate nonattainment area. The Commission revised Regulation Number 7 to include regulatory RACT requirements for Colorado's major sources of VOC and NOx. Specifically, the Commission revised Regulation Number 7 to include source specific regulatory RACT requirements and a combustion adjustment process 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.

(III) 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.

(IV) The CAA establishes the 8-hour ozone NAAQS and requires the State 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 RACT into its SIP directly, as the Commission has done here.

(V) 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.

(VI) 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.

(VII) 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 cleaning 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.

(VIII) 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.

(IX) 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.

(X) 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.

(XI) 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 reflect current emission controls and work practices.

(XII) 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.

(XIII) 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.

The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

NOTICE OF RULEMAKING HEARING

Regarding proposed revisions to:

COLORADO'S STATE IMPLEMENTATION PLAN AND ASSOCIATED REGULATIONS

SUBJECT:
The Air Quality Control Commission will hold a rulemaking hearing to consider a proposed element to Colorado's State Implementation Plan (SIP) and revisions to associated regulations. There are four segments to this rulemaking hearing which will be addressed by the Commission individually:

Moderate Ozone Nonattainment Area SIP Element: proposed SIP Element for the Denver Metro and North Front Range Moderate Ozone Nonattainment Area.

Air Quality Standards, Designations and Emission Budgets: proposed revisions that incorporate new emission budgets for the Denver Metro and North Front Range Ozone Nonattainment Area, and other clarifying revisions.

Regulation Number 7: proposed revisions associated with the moderate ozone nonattainment classification and separate revisions to address EPA concerns with previous SIP rule language submittals. The proposed revisions 1) incorporate State-only requirements for combustion device auto-igniters into the SIP; 2) establish condensate storage tank audio, visual and olfactory inspection requirements; 3) establish Reasonably Available Control Technology (RACT) requirements for both printing operations and general industrial cleaning solvent use; 4) provide for the implementation of RACT for major sources of VOC and NOx; 5) establish RACT for combustion sources; and 6) adjust the applicability of Regulation Number 7 accordingly. The proposed revisions also address EPA's concerns with previous SIP submittals that 1) establish monitoring, recordkeeping and reporting requirements for glycol natural gas dehydrators and natural gas processing plants; 2) remove references to EPA approval of emission factors; and 3) renumber, revise or revert to previously approved SIP language in other provisions. Finally, the proposed revisions make other typographical, grammatical and formatting changes.

Regulation Number 11: proposed revisions associated with the moderate ozone nonattainment classification that remove State-only references in Part A, making the Automobile Inspection and Readjustment (AIR) program currently operating in those portions of Larimer and Weld county that are part of the Denver Metro and North Front Range ozone nonattainment area a federally enforceable requirement of Colorado's SIP .

All required documents for this hearing can be found on the Commission website at: https://www.colorado.gov/pacific/cdphe/aqcc or on the Commission FTP site at: ftp:ft.dphe.state.co.us/apc/aqcc

HEARING SCHEDULE:

DATE: October 20 & 21, 2016
TIME: 9:00 AM
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, Sabin Conference Room
Denver, CO 80246

PUBLIC COMMENT:

The Commission encourages all interested persons to provide their views either orally at the hearing or in writing prior to or at the hearing. The Commission encourages that written comments be submitted by **October 7, 2016** so that Commissioners have the opportunity to review the information prior to the hearing.

Information should be printed and include: your name, address, phone number, email address, and the name of the group that you may be representing (if applicable).

Written submissions should 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

Electronic submissions should be emailed to: cdphe.aqcc-comments@state.co.us

Public testimony will be taken on October 20 & 21, 2016. An approximate time for public comment will be posted in the meeting agenda.

PARTY STATUS:

Any person may obtain party status for the purpose of this hearing by complying with the requirements of the Commission's Procedural Rules. A petition for party status must be filed by electronic mail with the Office of the Air Quality Control Commission no later than close of business on **August 19, 2016.** The petition must: *1) identify the applicant; 2) provide the name, address, telephone and facsimile numbers, and email address of the applicants representative; and 3) briefly summarize what, if any, policy, factual, and legal issues the applicant has with the proposal(s) as of the time of filing the application.* Electronically mailed copies must also be received, by this same date, by the Division staff person and the Assistant Attorneys General representing the Division and the Commission as identified.

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Requests received beyond the stated deadline shall only be considered upon a written motion for good cause shown. The Commission reserves the right to deny party status to anyone that does not comply with the Commission's Procedural Rules.

ALTERNATE PROPOSAL:
The submittal of an alternate proposal must be accompanied by an electronic copy of the alternate proposed rule and all other associated documents as required by the Commission's Procedural Rules, and must be filed by electronic mail with the Office of the Commission by **close of business September 9, 2016**. Alternate proposals must also be filed by electronic mail with the Division staff person and with each of the Assistant Attorneys General.

STATUS CONFERENCE:
A status conference will be held **August 26, 2016 at 1:00 p.m.,** at the Department of Public Health and Environment, Sabin/Cleere Conference Room to ascertain and discuss the issues involved, and to ensure that parties are making all necessary efforts to discuss and resolve such issues prior to the submission of prehearing statements. Attendance at this status conference is mandatory for anyone who has requested party status.

PREHEARING CONFERENCE/PREHEARING STATEMENTS:

Attendance at the prehearing conference is mandatory for all parties to this hearing. A prehearing conference will be held **September 16, 2016 at 11:30 a.m.** at the Department of Public Health and Environment, Sabin/Cleere Conference Room. All parties must submit by electronic mail a prehearing statement to the Commission Office by close of business **September 9, 2016.** In addition, any exhibits to the prehearing statements or alternate proposals must be submitted in a separate electronic transmission to the Commission Office by close of business **September 9, 2016.** Electronically mailed copies of these documents must be delivered by that date to all persons who have been granted party status and to the Division point of contact and each of the Assistant Attorneys General identified above by close of business **September 9, 2016**. Rebuttals to the prehearing statement, and any exhibits thereto, may be submitted to the Commission Office and all other parties by close of business **September 23, 2016**.

EXCEPTIONS TO FILE DOCUMENTS BY ELECTRONIC MAIL:

The Commission's Procedural Rules provide for an exception to file documents by electronic mail. Any person may petition the Commission to file documents in paper copy format if they are unable for any reason to comply with the requirements of the Commission's Procedural Rules. If granted an exception to electronic filing pursuant to the provisions of Subsection III.I.3. of the Commissions Procedural Rules, the applicant for party status shall file an original and fifteen copies in the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246., and shall also deliver copies to each party, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings by electronic mail or as otherwise provided by the exception granted under Subsection III.I.3.

STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:

The rulemaking hearing will be conducted in accordance with Sections 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended, the Commission's Procedural Rules, and as otherwise stated in this notice. This list of statutory authority is not intended as an exhaustive list of the Commission's statutory authority to act in this matter.

Moderate Ozone Nonattainment Area SIP Element: C.R.S. § 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. Section 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.

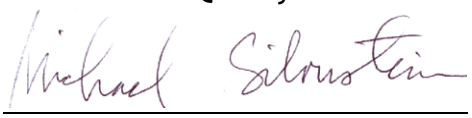
Air Quality Standards, Designations and Emission Budgets: The authority to establish emissions budgets and to establish criteria for transportation conformity determinations is included in the general authority to adopt a SIP set out in Section 25-7-105(1), C.R.S.

Regulation Number 7: The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), C.R.S. § 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. Section 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. Section 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. Section 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.

Regulation Number 11: The Commission has the duty and authority to adopt the revisions. 40 C.F.R. § 51.350(4) provides that "Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area." Further, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., C.R.S. § 25-7-105(1)(a), 25-7-301, and 25-7-302 direct 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. Section 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.

Dated this 29th day of July 2016 at Denver, Colorado

Colorado Air Quality Control Commission



Michael Silverstein, Administrator

Notice of Proposed Rulemaking

Tracking number

2016-00366

Department

1000 - Department of Public Health and Environment

Agency

1001 - Air Quality Control Commission

CCR number

5 CCR 1001-13

Rule title

REGULATION NUMBER 11 MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM

Rulemaking Hearing

Date

10/20/2016

Time

09:00 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246

Subjects and issues involved

To consider proposed revisions associated with the moderate ozone nonattainment classification that remove State-only references in Part A, making the Automobile Inspection and Readjustment (AIR) program currently operating in those portions of Larimer and Weld county that are part of the Denver Metro and North Front Range ozone nonattainment area a federally enforceable requirement of Colorados SIP.

Statutory authority

Sections 51.350(4), 25-7-101, 25-7-105(1)(a), 25-7-301, and 25-7-302, 25-7-106, 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended.

Contact information

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Title

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 11

Motor Vehicle Emissions Inspection Program

5 CCR 1001-13

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

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PART A General Provisions, Area of Applicability, Schedules for Obtaining Certification of Emissions Control, Definitions, Exemptions, and Clean Screening/Remote Sensing

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II. DEFINITIONS

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43. "North Front Range Area" is the portion of the Program Area located in Larimer and Weld Counties as set forth in Section 42-4-304(20) as amended by Senate Bill 09-003. ~~The North Front Range area is a State-Only program and is not part of any State Implementation Plan with the US EPA.~~

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V. EXPANSION OF THE ENHANCED EMISSIONS PROGRAM TO THE NORTH FRONT RANGE AREA

V.A. Program Commencement

Beginning November 1, 2010, unless the Division comes back to the Commission and the Commission agrees to a later date, motor vehicles registered in the North Front Range Area, and vehicles operating in the North Front Range Area that meet the requirements of Section 42-4-310(1)(c)(I), C.R.S. shall be subject to an Enhanced emissions inspection as defined in Section 42-4-304(8.5). Notwithstanding the above, the Estes Park Area, located west of Range Seventy-one (71) West, shall be excluded from the Enhanced Emissions Program. Such inspection shall be the same as the inspection required in the Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson county portions of the Program Area ~~The Vehicle Emissions Inspection program in the North Front Range area is a State-Only program and is not part of any state implementation plan with the US EPA~~.

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PART H Statements of Basis, Specific Statutory Authority and Purpose

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XXXII. AMENDMENTS

ADOPTED OCTOBER 16, 2014

Basis and Purpose

These revisions to Regulation Number 11 are intended to clarify and make more transparent existing provisions, delete obsolete language, delete certain qualifying criteria and standards, and introduce more flexibility to the Automobile Inspection and Readjustment (AIR) Program. The changes primarily relate to recent changes the Air Quality Control Commission (Commission) made to the program that resulted in new requirements that will become effective starting January 1, 2015.

Seven changes were made in this rule making. 1) Changes that removed incomplete and obsolete qualifying criteria for certain vehicles that are unable to be tested on the IM240 chassis dynamometer; 2) modified the use of the roadside remote sensing clean screen 'Low Emitter Index' to allow for greater utilization of this customer convenience element; 3) permitted self-inspecting gasoline vehicle fleets to utilize the more effective and convenient OBD II testing procedure on all 1996 model year and newer vehicles; 4) revised Appendix A and deleted Appendix B that removed obsolete specifications and procedures for inspection analyzer calibration gases; 5) established a definition for Tampering and revised language to clarify and modernize provisions for issuance or repair waivers; 6) corrected certain typographical, grammatical, and formatting errors; and 7) allowed for the use of two remote sensing readings collected at the same location on the same day to qualify vehicles for clean screening, and delegated authority to the Division to authorize or deny the use of same-day observations from a single unit at any given location.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S., and the statutory authority provided in Sections 42-4-301 through 42-4-316, C.R.S.

Federal Requirements

The current inspection and maintenance program, except in the North Front Range is contained in Colorado's ozone State Implementation Plan (SIP). Any revision to the program requires that air quality credits achieved from the program are not lost.

In general, EPA rules require certain nonattainment areas implement Inspection and Maintenance programs as part of a SIP. Under the Clean Air Amendments of 1990, the Denver metropolitan area was required to implement an "Enhanced" Inspection and Maintenance Program, specifically for carbon monoxide. Since that time, the state has come into attainment with carbon monoxide, but the program remains a necessary element of Colorado's ozone SIP. The North Front Range area of the program operates as a state-only program

Specific Statutory Authority

Sections 42-4-306 (1) and (3)(b)(V)(B) authorize the Commission to remove incomplete and obsolescent qualifying criteria for certain vehicles that are unable to be tested on the IM240. Sections 42-4-307.7 (4) and (6) authorize the Commission to modify roadside remote sensing clean screen 'Low Emitter Index criteria. Section 42-4-306 (14)(b) authorizes the Commission to permit self-inspecting gasoline vehicle fleets to utilize the more effective and more convenient OBD II testing procedures. Section 42-4-306 (3)(a)(1)(A) authorizes the Commission to remove obsolete specifications and procedures for inspection analyzer calibration gases. And, Section 42-4-306 (16)(a)(1) authorizes the Commission to clarify and modernize provisions for issuance of repair waivers.

Findings Pursuant to 25-7-110.8, C. R. S.

Revisions are being made to clarify provisions in the rule and to provide increased program flexibility and convenience. These changes do not increase the regulatory burden on the motoring public, while maintaining the current air quality benefits received from the program, in a cost effective manner, at similar or minimally reduced costs to the current program

The rule is based on reasonably available, validated, reviewed, and sound scientific methodologies. All validated, reviewed, and sound scientific methodologies and information made available by interested parties have been considered. Evidence in the record supports the finding that the rule shall result in a continued demonstrable reduction in air pollution. The rule revision is the most cost-effective alternative, provides the regulated community flexibility, and reduces risks to human health and the environment by achieving necessary reductions in air pollution. The revised rule will maximize the air quality benefits of the regulation in the most cost-effective manner.

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XXXIII. AMENDMENTS

ADOPTED OCTOBER 20 & 21, 2016

Basis and Purpose

The Denver Metro/North Front Range ozone nonattainment area ("DMNFR") did not attain the 2008 ozone NAAQS by the attainment deadline of July 20, 2015; therefore, on May 4, 2016, EPA reclassified the DMNFR as a Moderate Nonattainment area with an attainment date of July 20, 2018. As a Moderate Nonattainment area, Colorado must revise the SIP to include, among other things, an attainment demonstration, baseline year and attainment year inventories, reasonably available control technology ("RACT") and reasonably available control measures ("RACM") requirements, and nitrogen oxides (NOx) and volatile organic compound (VOC) emission offsets ratios for major source permits.

To comply with the Clean Air Act (CAA), the Commission has incorporated the state-only area of the Automobile Inspection and Readjustment (AIR) Program into the State Implementation Plan (SIP). The state-only portions of the AIR Program are those areas located in Larimer and Weld counties. Incorporation of the state-only portions of the AIR Program permits Colorado to take credit for the motor vehicle emissions reductions received from operation of the AIR program in these areas.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S., the statutory authority provided in Sections 42-4-301 through 42-4-316, C.R.S., and the Commission's Procedural Rules.

Federal Requirements

As a "Moderate" ozone nonattainment area, Colorado is required to operate and maintain a gasoline motor vehicle inspection program. Including the North Front Range area into the ozone SIP allows Colorado to claim full program benefits in Colorado's SIP. The current inspection and maintenance program, except in the North Front Range, is presently contained in Colorado's ozone element of the State Implementation Plan (SIP).

Specific Statutory Authority

The Commission has the duty and authority to adopt the revisions. 40 C.F.R. § 51.350(4) provides that "Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area."

Further, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., C.R.S. § 25-7-105(1)(a), 25-7-301, and 25-7-302 direct 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. Section 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.

Findings pursuant to 25-7-110.5(5), C.R.S.

The Commission finds that the revisions adopted do not exceed the requirements of the federal Clean Air Act or differ from the federal act or rules thereunder.

Findings pursuant to § 25-7-110.8, C.R.S.

Colorado must revise its 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:

a. These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and a technical review of the AIR Program was undertaken that utilized sound scientific principles. The Commission has considered all information submitted by interested parties.

b. Evidence in the record demonstrates the AIR Program areas in Larimer and Weld counties produce demonstrable emission reductions. Extending AIR Program covered by the SIP into these areas will allow the state to take emissions credit in the SIP for these areas.

c. Modifications to Regulation Number 11 will result in benefits to public health and to the environment by making the AIR Program federally enforceable.

d. This action is cost effective and provides flexibility. No program costs are associated with this action.

e. The rule change maximizes benefits to air quality in a cost-effective manner. The rule change ensures keeping the air quality benefits generated in Larimer and Weld counties as part of a federally enforceable SIP, with no additional program costs.

Further, the Commission corrected any typographical, grammatical and formatting errors found within the regulation.

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

NOTICE OF RULEMAKING HEARING

Regarding proposed revisions to:

COLORADO'S STATE IMPLEMENTATION PLAN AND ASSOCIATED REGULATIONS

SUBJECT:
The Air Quality Control Commission will hold a rulemaking hearing to consider a proposed element to Colorado's State Implementation Plan (SIP) and revisions to associated regulations. There are four segments to this rulemaking hearing which will be addressed by the Commission individually:

Moderate Ozone Nonattainment Area SIP Element: proposed SIP Element for the Denver Metro and North Front Range Moderate Ozone Nonattainment Area.

Air Quality Standards, Designations and Emission Budgets: proposed revisions that incorporate new emission budgets for the Denver Metro and North Front Range Ozone Nonattainment Area, and other clarifying revisions.

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Regulation Number 11: proposed revisions associated with the moderate ozone nonattainment classification that remove State-only references in Part A, making the Automobile Inspection and Readjustment (AIR) program currently operating in those portions of Larimer and Weld county that are part of the Denver Metro and North Front Range ozone nonattainment area a federally enforceable requirement of Colorado's SIP.

All required documents for this hearing can be found on the Commission website at: https://www.colorado.gov/pacific/cdphe/aqcc or on the Commission FTP site at: ftp:ft.dphe.state.co.us/apc/aqcc

HEARING SCHEDULE:

DATE: October 20 & 21, 2016
TIME: 9:00 AM
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, Sabin Conference Room
Denver, CO 80246

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Moderate Ozone Nonattainment Area SIP Element: C.R.S. § 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. Section 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.

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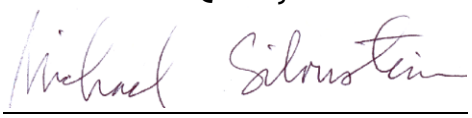
Dated this 29th day of July 2016 at Denver, Colorado

Colorado Air Quality Control Commission



Michael Silverstein, Administrator

Notice of Proposed Rulemaking

Tracking number

2016-00367

Department

1000 - Department of Public Health and Environment

Agency

1001 - Air Quality Control Commission

CCR number

5 CCR 1001-14

Rule title

AIR QUALITY STANDARDS, DESIGNATIONS AND EMISSION BUDGETS

Rulemaking Hearing

Date

10/20/2016

Time

09:00 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246

Subjects and issues involved

To consider proposed revisions that incorporate new emission budgets for the Denver Metro and North Front Range Ozone Nonattainment Area, and other clarifying revisions.

Statutory authority

Sections 25-7-105(1), 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended.

Contact information

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

AIR QUALITY STANDARDS, DESIGNATIONS AND EMISSION BUDGETS

5 CCR 1001-14

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

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V. Emission Budgets for Attainment/Maintenance Areas in the State of Colorado

V.A. Budgets

V.A.1. The following Motor Vehicle Emission Budgets shall be utilized to assess the conformity of Transportation Plans, TIPs, and where appropriate, Projects, for the applicable periods and geographic areas indicated:

Denver Attainment/Maintenance Area (Modeling Domain)	PM10: 2015 through 2021: 54 tons/day; 2022 and beyond: 55 tons/day. Nitrogen Oxides: 2015 through 2021: 70 tons/day; 2022 and beyond: 56 tons/day Trading provisions: Trading of PM10 for NOx, or NOx for PM10 to adjust emission budgets for purposes of demonstrating transportation conformity shall be allowed using the emission trading formula as follows: For trades necessary to increase a primary PM10 budget, 15.0 tons/day of NOx will be taken from the NOx budget to increase the primary PM10 budget by 1.0 tons/day, a ration of 15 to 1. For trades necessary to increase a NOx budget, 1.0 tons/day of primary PM10 will be taken from the primary PM10 budget to increase the NOx budget by 12.0 tons/day, a ratio of 1 to 12. Implementation of trading provisions: In the event the MPO cannot demonstrate consistency with the specific PM10 and NOx mobile source emission budgets, the trading provisions may be utilized only after the MPO has considered all reasonably available local control measures to meet the budgets. The MPO must demonstrate the need for trading through the usual consultation procedures for state implementation plan development delineated in Section IV (F) of AQCC Regulation Number 10, Criteria for

	Analysis of Conformity. If trading is utilized, the MPO shall include the following information in the transportation conformity determination: (1) The budget for primary PM10 and NOx for each required year of the conformity determination, before trading is employed; (2) The portion of the original budget to be used to supplement a wanting budget, for each required year for the conformity determination; (3) The increased budget that results from trading, along with relevant calculations, and (4) the resulting primary PM10 and NOx budgets for each required year of the conformity demonstration. The MPO shall then compare projected emissions to the adjusted PM10 and NOx motor vehicle emission budgets to demonstrate conformity.
Denver Attainment Maintenance Area	Ozone Precursors (attainment/maintenance area boundary) NOx 2002 and beyond 134 tpsd VOC 2002 and beyond 119 tpsd (tpsd = tons per summer day) Carbon Monoxide (attainment/maintenance area boundary) 2013 through 2020: 1625 tons/day; 2021 and beyond: 1600 tons/day.
Denver Metro Area/North Front Range 8-Hour Ozone Nonattainment Area (for the 1997 8-Hour Ozone NAAQS; to be superseded by the emissions budgets associated with the 2008 8-Hour Ozone NAAQS upon the effective date of EPA's determination of adequacy for transportation conformity purposes)	Regional Emissions Budgets NOx: 122.9 tons/day VOCs: 109.2 tons/day Southern Sub-Regional Emissions Budgets NOx: 102.4 tons/day VOCs: 89.7 tons/day Northern Sub-Regional Emissions Budgets NOx: 20.5 tons/day VOCs: 19.5 tons/day
Denver Metro Area/North Front Range 8-Hour Ozone Nonattainment Area (for the 2008 8-Hour Ozone NAAQS; these emissions budgets will supersede the previous	Regional Emissions Budgets NOx: 73 tons/day VOCs: 55 tons/day Southern Sub-Regional Emissions Budgets NOx: 61 tons/day

emissions budgets upon the effective date of EPA's determination of adequacy for transportation conformity purposes)	VOCs: 47 tons/day Northern Sub-Regional Emissions Budgets NOx: 12 tons/day VOCs: 8 tons/day
Aspen Attainment/Maintenance Area	PM10 2023 and Beyond: 1,146 lbs./day
Cañon City	PM10 2020 and Beyond: 1,613 lbs./day
Lamar (Modeling Area)	PM10 2025 and Beyond: 764 lbs./day
Pagosa Springs (Modeling Area)	PM10 2021 and Beyond: 946 lbs./day
Steamboat Springs (Modeling Area)	PM10 2015 through 2023: 21,773 lbs./day PM10 2024 and Beyond: 1,103.2 lbs./day
Telluride (Modeling Area)	PM10 2021 and Beyond: 1,008 lbs./day
Longmont Attainment/Maintenance Area	Carbon Monoxide 2010 through 2014: 43 tons/day 2015-2019: 43 tons/day 2020 and Beyond: 43 tons/day
Colorado Springs Attainment/Maintenance Area	Carbon Monoxide 2010 and Beyond: 531 tons/day
Ft. Collins Attainment/Maintenance Area	Carbon Monoxide 2005 through 2009: 99 tons/day2010 through 2014: 98 tons/day2015 and Beyond: 94 tons/day
Greeley Area Attainment/Maintenance Area	Carbon Monoxide 2005 through 2009: 63 tons/day2010 through 2014: 62 tons/day2015 and Beyond: 60 tons/day

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VIII. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

VIII.DD. Revision to Emission Budgets for Nonattainment Areas in the State of Colorado

Adopted: October 20 & 21, 2016

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act Sections 25-7-110 and 25-7-110.5, C.R.S. ("the Act").

Basis

The Commission revised the emission budgets contained in the Air Quality Standards, Designations and Emission Budgets Regulation to reflect emission budgets used in the 2008 Ozone SIP for the "Moderate" classification, consistent with federal requirements.

Statutory Authority

The authority to establish emissions budgets and to establish criteria for transportation conformity determinations is included in the general authority to adopt a State Implementation Plan ("SIP") set out in Section 25-7-105(1), C.R.S.

Purpose

Ozone Reclassification

In 2008, the U.S. Environmental Protection Agency ("EPA") revised the 8-Hour Ozone NAAQS. The Clean Air Act requires areas designated nonattainment a NAAQS to adopt or revise their Ozone SIP to make reasonable further progress towards attainment and attain the NAAQS. The Denver Metro/North Front Range nonattainment area ("DM/NFR") was classified as a Marginal Nonattainment Area for the 2008 8-Hour Ozone NAAQS in 2012, with an attainment date of July 20, 2015. The DM/NFR did not attain the 2008 8-Hour- Ozone NAAQS in 2015; therefore, effective June 3, 2016, EPA reclassified the DM/NFR as a Moderate Nonattainment Area with an attainment date of July 20, 2018. *See* 81 Fed. Reg. 26714 (May 4, 2016). A Moderate Nonattainment Area classification requires that the associated SIP include an attainment demonstration, reasonably available control technology ("RACT") and reasonably available control measures ("RACM") requirements, reasonable further progress reductions in volatile organic compound ("VOC") and/or nitrogen oxides ("NOx") emissions in the area, contingency measures should the area fail to meet a milestone or to attain the standard, a vehicle inspection and maintenance program, and NOx and VOC emission offsets ratios for major source permits. As discussed more fully below, the proposed revisions to Section V. of the Air Quality Standards Regulation are necessary to meet reasonable further progress milestones and demonstrate attainment of the 2008 8-Hour Ozone NAAQS.

Motor Vehicle Emission Budgets

Section V. of the Air Quality Standards Regulation contains motor vehicle emission budgets for attainment/maintenance areas in Colorado. Motor vehicle emission budgets are utilized to assess conformity with Colorado's Ozone SIP. Section 176(c) of the Clean Air Act requires that transportation plans, transportation improvement programs ("TIPs"), and projects adopted by a metropolitan planning organization[6] are consistent with ("conform to") the appropriate SIP. Conformity with the appropriate SIP means that the transportation activities will not cause new violations of the NAAQS, worsen existing violations, or delay timely attainment of the NAAQS. Pursuant to EPA regulations implementing Section 176(c) (40 CFR Parts 51 and 93), mobile source emissions resulting from such plans and programs ultimately must be demonstrated to be consistent with the motor vehicle emission budgets set forth in the applicable SIP. *See* 40 CFR Part 93. Motor vehicle emission budgets are required by federal regulations which afford the State flexibility in determining what the budgets should be. *See* 40 CFR 51.390.

The Commission revised the motor vehicle emission budgets to reflect budgets used in the 2008 Ozone SIP for the "Moderate" classification. These emission budgets will supersede the emission budgets associated with the 1997 8-Hour Ozone NAAQS upon the effective date of EPA's determination of adequacy for transportation conformity purposes.

[6] In the DM/NFR Nonattainment Area, the metropolitan planning organization responsible for such projects is the Denver Regional Council of Governments or "DRCOG" and the North Front Range Metropolitan Planning Organization or "NFRMPO."

Specifically, the DM/NFR Nonattainment Area emissions budgets were revised as follows: the regional emissions budget for NOx was changed from 122.9 to 73 tons per day; the regional emissions budget for VOCs was changed from 109.2 to 55 tons per day; the southern sub-regional emissions budget for NOx was changed from 102.4 to 61 tons per day; the southern sub-regional emissions budget for VOCs was changed from 89.7 to 47 tons per day; the northern sub-regional emissions budget for NOx was changed from 20.5 to 12 tons per day, and; the northern sub-regional emissions budget for VOCs was changed from 19.5 to 8 tons per day.

Federal Requirements

The emission budgets established in this rule support the attainment demonstration for the 2008 8-Hour Ozone NAAQS and therefore comply with, and do not exceed, federal requirements.

Findings pursuant to Section 25-7-110.8

The motor vehicle emission budgets are based on EPA-approved methods for calculating VOC and NOx emissions as required by federal regulations. They reduce the potential for air pollution by capping emissions from mobile sources. All methodologies and information made available by interested parties have been considered. In proposing these revisions, the Division chose the most-cost-effective alternative.

Further, the Commission corrected any typographical, grammatical and formatting errors found within the regulation.

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

NOTICE OF RULEMAKING HEARING

Regarding proposed revisions to:

COLORADO'S STATE IMPLEMENTATION PLAN AND ASSOCIATED REGULATIONS

SUBJECT:
The Air Quality Control Commission will hold a rulemaking hearing to consider a proposed element to Colorado's State Implementation Plan (SIP) and revisions to associated regulations. There are four segments to this rulemaking hearing which will be addressed by the Commission individually:

Moderate Ozone Nonattainment Area SIP Element: proposed SIP Element for the Denver Metro and North Front Range Moderate Ozone Nonattainment Area.

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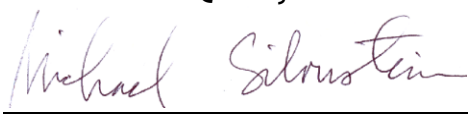
Dated this 29th day of July 2016 at Denver, Colorado

Colorado Air Quality Control Commission



Michael Silverstein, Administrator

Notice of Proposed Rulemaking

Tracking number

2016-00360

Department

1000 - Department of Public Health and Environment

Agency

1011 - Health Facilities and Emergency Medical Services Division (1011, 1015 Series)

CCR number

6 CCR 1015-1

Rule title

EMERGENCY MEDICAL SERVICES ACCOUNT

Rulemaking Hearing

Date

09/21/2016

Time

10:00 AM

Location

Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246

Subjects and issues involved

To consider revisions to 6 CCR 1015-1, Emergency Medical Services Account rules. The proposed revisions clarify the rule and remove the appeals process currently located in rule.

Statutory authority

§25-3.5-603 and §25-3.5-604(1), C.R.S.

Contact information

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Title

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COLORADO
Department of Public Health & Environment

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

To: Members of the State Board of Health

From: Eric Schmidt, EMTS Funding Section Manager

Through: D. Randy Kuykendall, Division Director, D.R.K

Date: July 20, 2016

Subject: **Request for Rulemaking Hearing**
Proposed Amendments to 6 CCR 1015-1, Emergency Medical Services Account with a request for the rulemaking hearing to occur in September of 2016

The department has distributed grant funds to improve emergency medical and trauma services (EMTS) systems across the state of Colorado since the program was created by the legislature in 1989. For the fiscal year running from July 1, 2015 to June 30, 2016, the department awarded approximately $6.7 million in grant funding, resulting in 116 projects being funded. This money comes from the Emergency Medical Services Account created under Section 25-3.5-603, C.R.S. and is used for grants that fall into four major categories: (1) EMTS education grants, (2) emergency grants for EMTS providers experiencing an unexpected emergency that seriously degrades the provision of emergency medical and trauma services, (3) system improvement funding requests, and (4) EMTS provider grants to assist EMTS providers with the purchase of ambulances/EMTS vehicles, communications, data collection, EMTS equipment, injury prevention projects, personnel/services, and recruitment/retention.

The rules governing the Emergency Medical Services Account have not been updated since 2002. In the proposed amendments to the rules, the department is seeking to clarify and update language used throughout the rule. The most substantive change is the removal of an appeals process. This change will bring the Emergency Medical Services Account in line with other grant processes in the department. This appeal process has only been used twice in the history of the grant program, and there has been no negative feedback from stakeholders concerning its removal.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for Amendments to
6 CCR 1015-1, Emergency Medical Services Account

Basis and Purpose.

The proposed amendments modify rules that have not been revised since 2002. The vast majority of changes are to clarify the existing process by improving and cleaning up language, improving formatting, and ensuring consistency throughout the rules. The only substantive change being proposed is the removal of an appeals process. This removal will ensure that the Emergency Medical Services Account grant process is in line with other grant issuing programs within the department.

Specific Statutory Authority.

These rules are promulgated pursuant to the following statutes:

Section 25-3.5-603, C.R.S

Section 25-3.5-604(1), C.R.S.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

_____ Yes, the bill number is _____; rules are ___ authorized ___ required.
X_____No

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

_____ Yes
X_____No

Does this rule incorporate materials by reference?

_____ Yes
X_____No

Does this rule create or modify fines or fees?

_____ Yes
X_____No

REGULATORY ANALYSIS
for Amendments to
6 CCR 1015-1, Emergency Medical Services Account

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

Grant funds from the Emergency Medical Services Account are available to any organization whose primary purpose is providing emergency medical and trauma services. This includes:

- EMS agencies,
- Hospitals
- Fire agencies,
- Training centers,
- Community colleges, and
- Other public and private providers of emergency medical and trauma services.

There is no cost associated with the proposed amendments. Administration and the Emergency Medical Services Account grants are funded through the Highway Users Tax Fund (43-4-201, C.R.S). The changes being proposed are to ensure that language is consistent and clear as to the grant process, as well as remove the appeals process currently in place. Since the inception of the grant process in 1989, the appeals process has only been invoked twice. In both instances, the department has been found to have acted properly and the original decision has held.

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

There will be no impact upon affected classes. The changes being proposed do not affect the amount of funds available for distribution or how the funds are distributed through the department. The changes are to clarify language and ensure consistency throughout the chapter. The only substantive change will be the removal of the appeals process, which has only been used twice since the grants process was introduced in 1989. Currently, grants obtained through the Emergency Medical Services Account are the only grants administered through the department with an appeal process. This change will bring the Emergency Medical Service Account grants program in line with other department offered grants.

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

There will be no additional cost to the department to implement this rule change.

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

The Emergency Medical Services Account rules have not been updated since they were adopted in 2002. The proposed amendments seek to clean up and clarify language to provide consistency throughout the rule. These changes will ensure the grant program is consistent with current practices. The removal of the appeals process will also bring certainty to the annual distribution of funds and align the Emergency Medical Services Account grants with other department grant programs.

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

The proposed rules are the least costly and least intrusive methods. There is no change to the grant application process. However, clearer language and a consistent format with other rules make the rules easier to understand and reduce the time required for interpretation. Removal of the appeals process reduces the potential for lengthy delays in the award process and decreases the potential costs borne by other applicants for projects that may be put on hold awaiting a final decision on the appeal.

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

The changes being proposed are predominately administrative in nature and were undertaken by the department over several months. The appeals process was determined to be unnecessary as it has been only used twice in the history of the Emergency Medical Services Account grant program, and is out of step with other department grant programs.

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

The appeals process has only been used twice in the history of the Emergency Medical Services Account grants program. The appeals process was written so that any decision that was adverse to the applicant could be appealed, by citing the statute, rule or written guideline that was not followed in the review of the application. The actual outcome of a non-funded grant application is not appealable. This broad language and the several steps involved in which the department is making decisions regarding the applicant could result in the grant process being mired in second guessing. The long term consequences of keeping the appeals process in place are unknown, while the removal of the appeals process gives certainty to the whole process.

STAKEHOLDER COMMENTS
for Amendments to
6 CCR 1015-1, Emergency Medical Services Account

The following individuals and/or entities were included in the development of these proposed rules:

As the amendments being proposed are primarily administrative in nature, providing clarity and structure, the department developed these rules internally and then notified interested and relevant parties. The removal of the appeal process was determined to be appropriate after discussion with department senior management.

The department presented to the Public Policy and Finance (PP&F) committee of the State Emergency Medical and Trauma Services Advisory Council (SEMTAC) on January 13, 2016 and April 13, 2016. PP&F is made up of the following individuals:

- Thomas Davidson, county commissioner from a rural county
- David Dreitlein, licensed physician who is a prehospital medical director
- Jim Felmlee, county emergency manager
- Lew Gaiter, county commissioner from an urban county
- Thomas Gronow, administrator of an urban trauma center
- John Hall, regional council chair
- Rob Hudgens, member of the public from an urban area
- Randy Lesher, government provider of prehospital care
- Fred Morrison, officer or employee of a public provider of prehospital care
- Kim Muramoto, trauma nurse coordinator
- Buddy Schmaltz, county commissioner from a rural county
- Carl Smith, member of the public from a rural area

The department also presented this information to Regional Emergency Medical and Trauma Advisory Councils (RETAC) on September 2, 2015, December 7, 2015, and June 1, 2016. RETACs are responsible for creating a regional plan for emergency medical and trauma services care in the five or more counties that participate together. The following RETAC coordinators and council members participated when the department presented the proposed amendments for discussion:

- Central Mountains RETAC: Anne Montera, Coordinator, Jamie Woodworth (Summit County Ambulance Service), Chairman, Josh Hadley (Chaffee County EMS), Vice Chairman, Chris Montera (Eagle County Health Services District), Treasurer
- Foothills RETAC: Linda Underbrink, Coordinator, Tom Candlin (St. Anthony Institute for EMS Education), Chairman
- Mile-High RETAC: Shirley Terry, Coordinator
- Northeast Colorado RETAC: Jeff Schanhals, Coordinator, Marci Dowis (Sterling Regional Medical Center), Council Member, Lorraine Speicher (East Phillips County Hospital District), Council member
- Northwest RETAC: Addy Marantino, Coordinator, John Hall (Grand Junction Fire Department), Chairman
- Plains to Peaks RETAC: Kim Schallenberger, Coordinator, Rob Handley (Limon Ambulance Service), Chairman, Tim Dienst (Ute Pass Regional Health Services District), Vice Chairman

- San Luis Valley RETAC: Jon Montano, Coordinator, Jeff Babcock, Chair, Rodney King (Conejos County EMS), Treasurer, Jim Felmlee(Saguache County Emergency Management), Council member
- Southeast Colorado RETAC: Josh Eveatt, Coordinator
- Southern Colorado RETAC: Brandon Chambers, Coordinator
- Southwest RETAC: Amy Allen, Coordinator
- Western RETAC: Terri Foechterle, Coordinator, Jerry Gray, (Hinsdale County EMS) Chairman

The department also notified the general emergency medical and trauma services community through the EMTS on the Go weekly email starting on May 18, 2016 regarding the rule change. This notice continues to be part of the weekly email to date. There are more than 1,200 interested parties on this email distribution list

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

See discussion above.

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

There have been no major factual or policy issues encountered through the stakeholder process. The amendments being proposed do not result in a change in the grant distribution process and will not affect applicants in a substantive way.

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

The proposed amendments do not have health equity or environmental justice impacts.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health Facilities and Emergency Medical Services Division

EMERGENCY MEDICAL SERVICES ACCOUNT

6 CCR 1015-1

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Section 1 - Statement of Basis and Purpose

The General Assembly of the State of Colorado in Section 25-3.5-102, CRS, recognized the importance of an efficient and reliable statewide emergency medical and trauma network for the promotion of health, safety, and welfare of Colorado residents and visitors. The assembly further amended the statute to include the creation of an Emergency Medical Services Account (Section 25-3.5-601, CRS) and specified that funds from said account shall be utilized by local emergency medical and trauma service providers in order to improve the statewide emergency medical and trauma network.

Section 2 - Definitions

As used in these regulations, the words and terms in this section shall have the meaning as set forth herein unless the context clearly requires a different meaning.

2.1 All definitions that apply to Section 25-3.5-602, C.R.S. apply to these rules.

2.2 "Contract" - The document between the Department and applicant chosen as a recipient of funds from the Emergency Medical Service Account. The contract describes the terms and conditions of the award agreement.

2.3 "Council" - the State Emergency Medical and Trauma Services Advisory Council created in Section 25-3.5-104, C.R.S.

2.4 "Emergency Account" - funds set aside pursuant to Section 25-3.5-603(3)(a)(II)(A), C.R.S. for unexpected emergencies that arise after the deadline for grant applications has passed or those circumstances that require immediate attention or action.

2.5 "Emergency Medical and Trauma Services" - planning, training and services needed to prevent, respond to and treat an injury or sudden illness particularly when there is a threat to life or long-term functional abilities.

Section 3 - Emergency Medical and Trauma Service Funding

3.1 In order to be eligible for emergency medical and trauma service funding, an applicant must be able to demonstrate:

A) That the funds requested are for the provision of emergency medical and trauma services, and

B) Will be used to maintain or upgrade the access to and/or quality of emergency medical and trauma services within the state.

3.2 Applications must be submitted in the format required by the Department prior to the announced deadlines.

3.3 To be considered, applications must

A) Be complete and

B) Be submitted in the manner specified in the announcement.

3.4 All applications will be subject to verification by the Department.

3.4.1 Verification shall include:

A) A review of the application for completeness and compliance with the requirements specified in the application, and

B) A review of the applicant's eligibility as set forth in these regulations.

3.4.2 Any application found to be inconsistent with the requirements specified in paragraphs A) and B) will be rejected and the applicant will be notified of the rejection.

3.5 The Department, in consultation with the Council, shall establish requirements for matching funds from applicants prior to the opening of each grant cycle. These requirements will be provided in the application process.

3.6 Any application received that does not meet the matching funds requirement specified in the application will be rejected unless the applicant requests a waiver of the matching funds.

3.6.1 The Council shall establish a committee to review all applications requesting a waiver of the matching funds requirement. The committee will evaluate each application requesting a waiver to determine whether the applicant has successfully demonstrated that local matching funds are not available.

3.6.2 Any application that does not receive a waiver from the Council will not be eligible for funding.

3.7 To provide a fair and impartial review and evaluation of the applications, the Council shall establish review committees of members designated by the Council. Each committee will review and evaluate applications and submit recommendations to the Department.

3.8 The Department shall provide final review and prioritization of the applications and make awards based upon:

A) Priorities established by statute,

B) Recommendations from the Council,

C) Substantiated need of the applicant, and

D) Effect upon the emergency medical and trauma system should funds not be awarded.

3.9 The Department, in consultation with the Council, may, within statutory limitations, reestablish funding priorities for the Emergency Medical and Trauma Services Funding Program to address specific needs related to the maintaining and upgrading of the Colorado emergency medical and trauma services system.

3.10 A letter of intent to award funds to an applicant is only an offer to enter into a funding contract, and not an actual funding obligation on the part of the Department. Only when a contract listing conditions of the award is accepted and, if applicable signed by all parties, will any formal obligation be recognized or funds disbursed.

Section 4 - Emergency Medical and Trauma Services Emergency Funding

4.1 Application for funds from the Emergency Account may be submitted to the Department at any time. Unless waived by the Department because of extreme emergency or need for immediate action, the application must be submitted in the format approved by the Department and shall contain:

A) Evidence of financial need or hardship;

B) A detailed description of the emergency, to include causation, resolution, and the effect on local delivery of emergency medical and trauma services if funding is not provided; and

C) The methods explored by the applicant to resolve the crisis other than funding from the Emergency Account.

4.2 In addition to meeting the standard grant eligibility requirements, the emergency fund applicant must be able to demonstrate:

A) That the request for funds is for an unexpected emergency and

B) If the funds are not received, access to and/or quality of local emergency medical services will be seriously hindered or eliminated.

~~**Section 1 - Statement of Basis and Purpose**~~

~~The General Assembly of the State of Colorado in Section 25-3.5-102, CRS, recognized the importance of an efficient and reliable statewide emergency medical and trauma network for the promotion of health, safety, and welfare of Colorado residents and visitors. The assembly further amended the statute to include the creation of an Emergency Medical Services Account (Section 25-3.5-601, CRS) and specified that funds from said account shall be utilized by local emergency medical and trauma service providers in order to improve the statewide emergency medical and trauma network.~~

~~**Section 2 - Definitions**~~

~~As used in these regulations, the words and terms in this section shall have the meaning as set forth herein unless the context clearly requires a different meaning.~~

~~2.1 All definitions that apply to Section 25-3.5-602, CRS Apply to these rules.~~

~~2.2 "Contract" means the document between the Department and the emergency medical and trauma service provider chosen as a recipient of funds from the EMS Account. The contract describes the terms and conditions of the award agreement.~~

~~2.3 "Council" means the State Emergency Medical and Trauma Advisory Council created in Section 25-3.5-104, CRS.~~

~~2.4 "Emergency Account" means those funds that have been set aside pursuant to Section 25-3.5-603, CRS for those unforeseen, involuntary circumstances resulting in the need for immediate attention and or action.~~

~~2.5 "Emergency Medical and Trauma Services" are the services, planning or the training therein, utilized in a pre-hospital environment in response to the perceived individual needs for prevention of: loss of life, further aggravation to physiological and/or psychological injury, and/or inherent harm to an individual or group of individuals.~~

~~**Section 3 - Emergency Medical and Trauma Service Provider Grants**~~

~~**3.1 Eligibility for Grant Funds**~~

~~In order to be eligible for emergency medical and trauma service grant funds, the applicant must be able to demonstrate that their purpose is for the provision of emergency medical and trauma services and their intent must be to maintain or upgrade the access to and/or quality of emergency medical and trauma services within the community/county/region/state.~~

~~**3.2 Applications for Emergency Medical and Trauma Service Provider Grant Funds**~~

All applications must be submitted on forms provided by the Department. In addition, all applications must:

1) be complete and contain any additional information deemed necessary by the Department, and

2) be submitted to the address specified in the announcement before the deadline specified at the announcement of the application for funds.

3.3 Application Verification Process

All applications will be verified by the Department. This verification process shall include:

1) a review of the application for completeness and compliance with the requirements specified in the application, and

2) a review of the applicant's eligibility as set forth in these regulations. Any application found to be inconsistent with the requirements specified in paragraphs 1) and 2) will be rejected and the applicant will be notified of the rejection.

3.4 Matching Fund Requirement/Waiver

1) The Department, in consultation with the Council, shall establish the matching funds requirements prior to the opening of each grant cycle. These requirements will be provided in the application process. Any application received that does not meet the matching funds requirement specified in the application will be rejected unless the applicant requests a waiver of the matching funds.

2) The Council shall establish a committee to review all applications requesting a waiver of the matching funds. The committee will evaluate each application requesting a waiver to determine whether the applicant has successfully demonstrated that local matching funds are not available. Any application that does not receive a waiver from the council will not be eligible for funding.

3.5 Application Review and Evaluation

To provide a fair and impartial review and evaluation of the applications, the Council shall:

1) Establish review committees of members designated by the Council. Each committee will review and evaluate applications and submit recommendations to the Council, and

2) The Council will review the recommendations from each committee and provide recommendations to the Department.

The Department shall:

1) Provide final review and prioritization of the applications and make awards based upon priorities established by statute, recommendations from the council, substantiated need, and impact upon the emergency medical and trauma service programs should funds not be awarded.

3.6 Awarding of Funds

1) The Department, in consultation with the Council, may, within statutory limitations, reestablish funding priorities for the Emergency Medical and Trauma Services Grant Program to address specific needs related to the maintaining and upgrading of the Colorado Emergency Medical and Trauma Care System.

2) A letter of intent to award funds to an applicant is only an offer to enter into a grant contract, and not an actual funding obligation on the part of the Department. Only when a contract listing conditions of the grant is accepted and signed by all parties will any formal obligation be recognized or funds disbursed.

~~3.7 Appeal Process~~

~~Applicants who wish to appeal an adverse action with respect to their grant application shall:~~

~~1) Make the request in writing to the Department within 60 days of notification of a denial of an award~~

~~2) Include the statute, rule or written application guideline that was not followed in the review of their grant application.~~

~~The Department shall:~~

~~3) Review requests for appeals to substantiate a violation of statute, rule or application guideline~~

~~4) Notify the applicant and the Council of their findings~~

~~The Council shall:~~

~~5) Review appeals where there is a substantiated violation of statute, rule or application guideline and make recommendations to the Department for corrective action.~~

~~Section 4 - Emergency Medical and Trauma Services Emergency Grants~~

~~4.1 Emergency Grant Funds Application Requirements~~

~~Application for funds from the Emergency Account may be submitted to the Department at any time. Unless waived by the Department because of extreme emergency or need for immediate action, the application must be submitted on forms provided by the Department and shall contain:~~

~~1) Evidence of financial need or hardship~~

~~2) A detailed description of the emergency, to include causation, resolution, and the impact on local delivery of emergency medical services if funding is not provided, and~~

~~3) The methods explored by the applicant to resolve the crisis other than funding from the Emergency Account.~~

~~4.2 Eligibility for Emergency Medical and Trauma Service Grant Funds within the Emergency Fund~~

~~In addition to meeting the standard grant eligibility requirements, the emergency fund applicant must be able to demonstrate that the request for funds is a true emergency in which, if the funds are not received, access to and/or quality of local emergency medical services will be seriously hindered or eliminated.~~

COLORADO
Board of Health
Department of Public Health & Environment

Notice of Public Rule-Making Hearing Scheduled for September 21, 2016

NOTICE is hereby given pursuant to the provisions of Section 24-4-103, C.R.S., that the Colorado Board of Health will conduct a public rule-making hearing on September 21, 2016 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider revisions to 6 CCR 1015-1, Emergency Medical Services Account rules. The proposed revisions clarify the rule and remove the appeals process currently located in rule. The proposed rules have been developed by the Health Facilities & Emergency Medical Division of the Colorado Department of Public Health and Environment pursuant to §25-3.5-603 and §25-3.5-604(1), C.R.S.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, https://www.colorado.gov/pacific/cdphe/boh at least seven (7) days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Health Facilities & Emergency Medical Services Division EMS 8300, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-6339.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Written testimony is due by 5:00 p.m., Thursday, **September 15, 2016.** Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: cdphe.bohrequests@state.co.us

Dated this 26th day of July, 2016.

Deborah Nelson
Board of Health Administrator

Notice of Proposed Rulemaking

Tracking number

2016-00346

Department

2505,1305 - Department of Health Care Policy and Financing

Agency

2505 - Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

Rulemaking Hearing

Date

09/09/2016

Time

09:00 AM

Location

11th floor Conference Room, 303 E 17th Ave, Denver, CO, 80203

Subjects and issues involved

see attached

Statutory authority

25.5.1-301 through 303 (CRS 2015)

Contact information

Name

Chris Sykes

Title

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3038664416

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COLORADO
Department of Health Care Policy & Financing
Medical Services Board

NOTICE OF PROPOSED RULES

The Medical Services Board of the Colorado Department of Health Care Policy and Financing will hold a public meeting on Friday, September 9, 2016, beginning at 9:00 a.m., in the eleventh floor conference room at 303 East 17th Avenue, Denver, CO 80203. Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Board Coordinator at 303-866-4416 or chris.sykes@state.co.us or the 504/ADA Coordinator hcpf504ada@state.co.us at least one week prior to the meeting.

A copy of the full text of these proposed rule changes is available for review from the Medical Services Board Office, 1570 Grant Street, Denver, Colorado 80203, (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Medical Services Board Office on or before close of business the Wednesday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the Department's website at www.colorado.gov/hcpf/medical-services-board.

This notice is submitted to you for publication, pursuant to § 24-4-103(3)(a) and (11)(a), C.R.S.

MSB 16-06-28-A, Revision to the Medical Assistance Program Rule Concerning Pediatric Personal Care Services, Section 8.535

Medical Assistance. Pediatric Personal Care Services. This proposed revision removes Section 8.535, Appendix A: Pediatric Personal Care Services Benefit Coverage Standard, and inserts its contents into the body of the rule at Section 8.535. The proposed rule revision is purely technical and makes no changes to the language nor substance of the Pediatric Personal Care Services benefit.

The authority for this rule is contained in sections 25.5-1-301 through 25.5-1-303 C.R.S. (2015), C.R.S. § 25.5-4-105, and 42 U.S.C. § 1396d; 42 C.F.R. § 441, Subpart B; C.R.S. § 25.5-5-102(1)(g)

MSB 16-06-28-B, Revision to the Medical Assistance Program Rule Concerning Outpatient Fee-For-Service Substance Use Disorder Treatment Services, Section 8.746

Medical Assistance. Outpatient Fee-for-Service Substance Use Disorder Treatment. This proposed revision removes Section 8.746, Appendix A: Outpatient Fee-For-Service Substance Use Disorder Treatment Benefit Coverage Standard, and inserts its content into the body of the rule at Section 8.746. The proposed rule revision is purely technical and makes no changes to the language nor substance of the Outpatient Fee-For-Service Substance Use Disorder Treatment benefit.

The authority for this rule is contained in sections 25.5-1-301 through 25.5-1-303, C.R.S (2015), C.R.S. 25.5-5-202(1)(s)(I) and 42 U.S.C. § 1396d(a)(2)(A); 42 C.F.R. § 440.230

MSB 16-06-20-A, Revision to the Medical Assistance Rates Section Rule Concerning the Adding Definitions of Hospital Services, Section 8.300.1; and Payments For Outpatient Hospital Services, Section 8.300.6

Medical Assistance. The proposed rule will allow the Department to pay hospitals for outpatient services provided to Medicaid clients under a prospective payment methodology. Currently, the rule describes a methodology which relies on the Medicare cost reports that are made available years after services are provided. As such, interim payments are made and are later reconciled based on the Department's contracted cost report auditor's findings. This methodology presents difficulties in budget planning and payment consistency for both the Department and its hospital providers. The proposed rule allows a methodology to be used which is based on fixed payments calculated using state-wide average costs and payment will no longer require reconciliation. Additionally, the proposed rule allows payment under a methodology which provides incentives for efficiency and minimization of upcoding to generate higher payments. In order to accommodate the implementation of this methodology, updates will also be required to the rule's definitions

The authority for this rule is contained in sections 25.5-1-301 through 25.5-1-303, C.R.S. (2015) and 25.5-4-402.3(4)(B)(I) C.R.S (2014); 10 CCR 2505-10 8.300.6; Patient Protection and Affordable Care Act of 2010 (ACA) and 42 CFR §435.119(c)(1)(2), 42 U.S.C. 1396a(a)(30)(A) and 42 C.F.R. 447.321

MSB 16-05-31-A, Revision to the Medical Assistance Pharmacy Rule Concerning Medicaid Option for Prescribed Drugs by Mail, Section 8.800

Medical Assistance. Pharmaceuticals. The statute authorizing the Medicaid Option For Prescribed Drugs By Mail, Section 25.5-5-505, C.R.S. was revised pursuant to Senate Bill 16-027. Therefore, the rules governing mail-order delivery of maintenance medications, 10 C.C.R. 2505-10, Section 8.800, are being revised. Medicaid members may now obtain maintenance medications through the mail from pharmacies enrolled with the Colorado Medicaid program. The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, 25.5-1-104, and 25.5-2.5-102 through 25.5-2.5-103 C.R.S. (2015).

The authority for this rule is contained in sections 25.5-1-301 through 25.5-1-303, C.R.S (2015) and 25.5-2.5-102 through 25.5-2.5-103, C.R.S. (2015); and 25.5-1-104, C.R.S. (2015); and Senate Bill 16-027

MSB 16-04-28-A, Revision to the Medical Assistance Nursing Facility Rule Concerning Fair Rental Allowance For Capital-Related Assets, 10 CCR 2505-10, Section 8.443.9

Medical Assistance. Long Term Services and Support. The statute defining Fair Rental Value "Index", Section 25.5-6-201 C.R.S., states that Index means the RSMeans construction systems cost index or an equivalent index that is based upon a survey of prices of common building materials and wage rates for nursing home construction. Therefore, the rules implementing Fair Rental Value, 10 CCR 2505-10, section 8.443.9.A.1.h will be modified to define "Index" as R.S. Means Square Foot Cost Book.

The authority for this rule is contained in sections 25.5-1-301 through 25.5-1-303, C.R.S (2015) and 25.5-6-201, CRS (2015)

MSB 16-07-14-A, Revision to the Medical Assistance Home and Community Based Services for Elderly Blind and Disabled Rule Concerning Non-Medical Transportation Section 8.494

Medical Assistance. Non-Medical Transportation. The Medical Assistance Home and Community Based Services for Elderly, Blind, and Disabled Rule Concerning Non-Medical Transportation C.C.R. 2505-10, Section 8.494 is being revised Transportation service. The rule is found at 10 CCR 2505-10 §8.494. This rule change is in response to a statutory change. The legislature passed HB16-1097, which created a new category of transportation permits administered by the Public Utilities Commission. This rule change is needed to come into compliance with the legislative mandate.

The authority for this rule is contained in sections 25.5-1-301 through 25.5-1-303, C.R.S (2015) and 25.5-6-303 through 25.5-1-307, C.R.S. (2015).

Notice of Proposed Rulemaking

Tracking number

2016-00368

Department

500,1008,2500 - Department of Human Services

Agency

2518 - Adult Protective Services

CCR number

12 CCR 2518-1

Rule title

ADULT PROTECTIVE SERVICES

Rulemaking Hearing

Date

09/09/2016

Time

10:00 AM

Location

522 Lincoln Avenue, Steamboat Springs, CO

Subjects and issues involved

"To update all Adult Protective Services (APS) rules to:

Align the rules with changes being made to statute through SB15-109 and HB16-1394,
Remove redundant rules and requirements,
Better align with current practice and the Colorado APS data system (CAPS),
Better align with child protective services rules in areas that do not negatively impact services to at-risk adults, and
Make technical corrections.
"

Statutory authority

26-1-107, C.R.S. (2015); 26-1-109, C.R.S. (2015); 26-1-111, C.R.S. (2015); 26-3.1-108, C.R.S. (2015)

Contact information

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Title of Proposed Rule:	Adult Protective Services Program Revisions	
CDHS Tracking #:	15-5-8-1	
Revising official Rule #s:	12 CCR 2518-1, Volume 30	
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829 E-Mail: peggy.rogers@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)

The rules at 12 CCR 2518-1 are the program rules for the Adult Protective Services (APS) program, as authorized by Title 26, Article 3.1, C.R.S. The APS program provides protective services for at-risk adults who are experiencing mistreatment or are self-neglecting. The purpose of this proposed rule change is to update all Adult Protective Services (APS) rules to:

- Align the rules with changes made to statute as a result of SB15-109 and HB16-1394,
- Remove redundant rules and requirements,
- Better align rules with current practice and the Colorado APS data system (CAPS),
- Better align rules with child protective services rules, as deemed appropriate,
- Improve APS practices that impact services for at-risk adults, and
- Make technical corrections.

Several legislative changes have occurred over the past few years that make updates to the rules necessary. In July 2014, significant changes were made to the Adult Protective Services (APS) program. SB13-111 created mandatory reporting for at-risk elders and established a new Colorado APS data system (CAPS). Mandatory reporting for at-risk elders and the CAPS data system were implemented starting on July 1, 2014. SB15-109 expanded mandatory reporting to include adults with intellectual and developmental disabilities effective July 1, 2016. HB16-1394 made changes to definitions and other areas of the APS statute, in conjunction with SB15-109. In addition, in September 2015, Colorado APS was awarded a Federal Grant through the Administration for Community Living (ACL) that changed the APS intake and assessment processes, which must be incorporated into rule.

The last update to the APS Rules was in the Fall of 2014. Since that time, there have been a number of issues that have surfaced that were unanticipated when the last rule changes were implemented. Many of these issues have been identified during data analysis for C-Stat, through formal quality assurance case and program reviews, through conversations and training sessions with county departments, and in conversations with collaborating agencies that work with at-risk adults. SB15-109 and HB16-1394 are also driving additional changes. The APS Task Group, formed by the PAC and the Economic Security Sub-PAC, met monthly from November 2015 to April 2016 to develop the recommended rule changes. Six webinars were held for county department directors and APS staff during the weeks of May 2, 2016 and May 9, 2016 to review the recommendations and solicit feedback and comments. The Task Group met in June 2016 to review the feedback from the webinars and received via email to make these final recommendations.

New rules and/or key changes to current rule include the following:

- HB16-1394 made minor changes to the definitions of various forms of mistreatment in the Adult Protective Services (APS) statute and are therefore being updated in rule. (30.100)

- The rule that requires the county departments to notify the state department of a change in APS staffing is being updated. The current rule allows county departments three working days from the staffing change to notify the state department. The rule is being updated so that notification must be made within

three working days but no later than the employee's last day of employment. This change is being made to ensure that access to the APS data system, CAPS, can be removed as soon as an APS staff person is no longer going to be working for the county department or in the APS program. CAPS documentation contains personal identifying information (PII) and HIPAA protected personal health information (PHI), which must be secured timely. (30.210,C)

- Proposed revisions to rules include expanding the types of college majors and degrees that would qualify a person for an APS caseworker position at the Professional Entry and Journey levels. (30.310)

- A proposed change is being made to rules related to the requirement for a "flagged" background check from "strongly urged" to "shall". A flagged background check ensures that the county department would be notified if an APS staff member with direct access to at-risk adults, were to be arrested after their original background check was completed. This may be critical information to client safety. However, several county departments indicated that they do not include a flagged check in their contract with the outside company that completes background checks for the county, therefore, they would be unable to meet this rule requirement without renegotiating the contract. The Department is therefore, withdrawing the requirement at this time. (30.320,C)

- Changes to rules related to training requirements for county APS staff are being proposed. (30.330) Training is a key component to ensuring that reports of mistreatment and self-neglect of at-risk adults are being investigated correctly and appropriate protective services identified and implemented. APS serves a varied population, including frail elderly, persons with traumatic brain injury or neurological impairments, persons with an intellectual or developmental disability, and persons with complex cognitive, medical, physical, or behavioral health limitations. Current training requirements are not very timely for new APS staff and are not very comprehensive related to continuing education requirements. The goal for the rule changes are to make gradual improvements to training requirements that can be readily met by county departments while ensuring that staff working with at-risk adults are better trained to provide those protective services. The changes are as follows:
    - Training requirements for new APS staff are being changed. (30.330,A) Currently, new APS staff have up to one year to complete some aspects of new worker training. The Task Group believes that this time needs to be shortened and recommends the following changes:
        - Time allowed to complete the Pre-Academy Workbook (PAW), which is the first basic introduction to the APS program requirements, is being shortened from the current three (3) months for full time APS staff or six (6) months for part time APS staff to one (1) month for all new APS staff. APS caseworkers will not be allowed to be assigned cases until the PAW has been completed.
        - Time allowed to attend APS Training Academy for APS staff who are less than 25% FTE in the APS program and are the only APS staff person for the county department, is being shortened from the current twelve (12) months to nine (9) months. All other APS staff would be required to attend the four-day training within six (6) months of employment in the APS program, rather than the current nine (9) months.
    - Continuing Education requirements for APS staff on the job longer than one year are being increased. (30.330,B) Currently the requirements are less than those required of Child Protective Services (CPS) staff. Increasing the requirements will begin to move training requirements to be more in line with CPS training requirements, and are as follows:

- Full time caseworkers would increase to 40 hours per year from the current 30 hours. This would align with continuing education requirements for full time CPS caseworkers.
- Full time APS supervisor's requirement would increase from the current 20 hours per year to 30 hours. This requirement is still 10 hours short of aligning with the CPS supervisor requirement.
- Full time APS case aides would increase from 15 hours per year to 20 hours per year. There is not a similar requirement for CPS case aides.
- Prorated hours for part-time staff would increase accordingly.

- Changes are being proposed related to the APS supervisor's responsibility for conducting reviews of the casework conducted by their caseworkers. Current rules require supervisors to formally review 15% of all cases each month using the case review scorecard in CAPS. The proposed rule change would allow supervisors to continue this method of review OR choose the new method developed for these rules that would mirror the supervisor requirements for case review in CPS, i.e., that the supervisor review and approve every case at certain key points in the case. For APS this would be at two or three key times in the case: 1) when the initial investigation, assessment, and case plan has been completed; 2) at the six month time in the case, if the case is still open (only about 2% of APS cases are open six months or longer); and 3) at case closure. These points of review mirror similar processes in CPS that require supervisory approval. (30.340,A)

- Rules are being added to the Intake rules that address the issue of which county has jurisdiction to respond to a new report of mistreatment. Currently, APS has rules related to this in the County Assignment section (30.710). The Task Group felt that these rules were better moved to the section of rules where those decisions are being made. So, for initial jurisdictional questions, the rules are being moved to the Intake section of rules (30.410). Additionally, there continues to be concerns voiced by the Task Group that even with the current rules, there are disputes of jurisdiction among the counties that sometimes slows down the response to the report. Task Group members who work in both APS and CPS recommended mirroring language recently implemented in the CPS rules that have helped to lessen these same types of disputes related to CPS reports; the Group agreed to that recommendation.

- A new rule is being added to require the county department to make a decision about a new intake within three working days following the date of the report. This is the time frame for responding to a new report and so the decision about the type of response should be made by this time. This fills a gap in rules. (30.420,F)

- Rules were changed to allow a law enforcement welfare check to substitute for one attempt at contact during non-business hours for emergency and non-emergency reports. Current rule does not allow the welfare check to substitute but with the changes to law enforcement's responsibilities related to mandatory reporting and responding to reports of mistreatment, this change provides additional flexibility for county departments. Rules were added to address follow up requirements when the initial response was a phone call to ascertain the client's safety rather than a face-to-face visit. These rules are filling a gap in the current rules. The rules reflect similar requirements as follow up visits for other types of responses. (30.430,B and 30.430,C)

- Rules are being added to the Investigation rules that address the issue of which county has jurisdiction to investigate a report of mistreatment. Currently, APS has rules related to this in the County Assignment

section (30.710). The Task Group felt that these rules were better moved to the section of rules where those decisions are being made. So, for jurisdictional questions that arise during the investigation, the rules are being moved to the Investigation section of rules (30.510, D) and section 30.710 is being repealed. Additionally, there continues to be concerns voiced by the Task Group that there even with current rules, there are disputes related to jurisdiction among the counties that sometimes slows down the investigation and subsequent provision of services. Task Group members who work in both APS and CPS recommended mirroring language recently implemented in the CPS rules that have helped to lessen these same types of disputes related to CPS; the Group agreed to that recommendation.

- Rules are being added to the Investigation section to ensure that thorough investigations are conducted in coordination with other agencies, when appropriate. Rules related to joint investigations are currently at section 30.820, Collaboration. These rules are being moved to the Investigation section where this collaboration process occurs and Section 30.820 is being repealed. The rules are being updated to reflect current processes related to joint investigations. The rules in this section are also being updated to reflect the requirements to thoroughly investigate the allegations and the client's strengths and needs, by interviewing persons with potential knowledge of the allegations or of the client's needs and gathering and documenting evidence to support or refute the allegations and client needs. When these steps are not completed when investigating a report, the problems and needs of that at-risk adult are not accurately identified so that they can be addressed through the provision of protective services, thus leaving the at-risk adult in continuing danger. (30.520)

- Rules related to the client's functional Assessment, specifically related to "assessment status areas" are being repealed; however, an assessment will still be required. The assessment is a required element in CAPS and therefore, the details of the individual assessment factors are not needed in rule. (30.530)

- Rules related to the Provision of Services, i.e., implementing the case plan developed as a result of the investigation and assessment findings, are being updated. Currently, rules related to the provision of services are found at Sections 30.620 (Provision of Services), 30.650 (also titled Provision of Services), and 30.720 (Courtesy Visits). Rules from sections 30.650 and 30.720 are being moved to section 30.620 and are being updated. Sections 30.650 and 30.720 are being repealed. The updates to the rules include the following:
    - Language is being cleaned up to be clearer and more concise. (30.620)
    - Rules are being added to reflect documentation necessary to determine that a client may not have the capacity to refuse protective services. (30.620,C)
    - Rules are being added to reflect the options for involuntary intervention when a client is at immediate risk of harm and likely does not have the capacity to understand the risks of refusing protective services. (30.620, D)
    - The requirement for ongoing client contact as long as the case remains open is being changed from the current requirement of a face-to-face contact with the client every 30 days to a requirement for a contact once a month, with no more than 35 days between contacts. For clients who live in a facility providing 24/7 supervision, there is a current allowance for a phone call to facility staff to check on the client every other month in lieu of the face-to-face visit. This rule is being modified to ensure that if the client has been alleged to have been mistreated at the facility, the phone call is not appropriate until the facility has put appropriate safety measures in place. Rules are being updated to better outline the requirements of the monthly contact visits. These rules ensure that the worker is continuing to assess any changes to the client's needs, are

monitoring services for appropriateness, are documenting any significant incidents experienced by the client, and are documenting their work towards implementing protective services. (30.620,F)
  - The rules related to courtesy visits are being updated to reflect current processes. (30.620,G)
  - The rules related to cases in which the client moves to a new county or to another state are being updated to reflect current processes. (30.620, H-K)
  - The rules related to the re-assessment process, required every six months as long as the case is opened, have been streamlined to reduce redundancy and reflect current processes. (30.620,L)

- Rules are being changed in the Case Closure section to reflect a more streamlined process for closing the case that reduces redundant documentation that was not beneficial to the outcome of the case. Rules are also being updated to reflect other current practices. (currently at 30.660; new section number will be 30.650)

Clarifying changes to current rule include the following:

- APS has always had a statutory mandate to investigate mistreatment in the community and in facilities; county department APS staff have asked that a definition of "Facility" be added to rule. (30.100)

- Rules related to the storage of documentation of APS reports and cases are being updated to provide additional clarification due to CAPS being a "paperless" system. (30.250)

- Rule is expanding those eligible for access to CAPS from only direct APS staff to APS staff and other county department staff with a business need, e.g., county director, unit/department administrator, or APS data analyst. (30.250)

- A rule is being proposed to add the current practice of annually signing the CAPS Security and Confidentiality agreement. This rule and the current practice will help to ensure that access to CAPS is limited to active CAPS users, another process to protect client PII and PHI. (30.250)

- A rule is being proposed to allow the State Department to remove access to CAPS if user is accessing information inappropriately. (30.250)

- Rules related to Documentation are being updated to provide clarity related to report and case documentation requirements. (30.260)

- Rules are being updated to "urge", though not require, counties to utilize the RED team process for evaluating reports to determine if the report should be screened in for investigation or screened out because it does not meet eligibility requirements for APS intervention. The current rule is "may use". Language is being added to ensure that either the RED team or a supervisor is reviewing and determining whether the report should be screened in or out and the type of response needed (emergency vs non-emergency) and urging, though not requiring, use of the RED team evaluation process. (30.340 and 30.420)

- Language is being added to ensure that reports are taken related to mistreatment of at-risk adults, whether the adult lives in the community or in a facility. (30.410)

- Language was updated to better reflect the requirements for follow up attempts at contact when the initial response to a report was not a face-to-face visit with the client. (30.430,C)

- Rules were clarified around those cases that are screened in for investigation but may not need a face-to-face response by APS. These rules do not change the requirement but make the requirement more easily understood. (30.430,E).

- Rules were clarified related to investigation and assessment, particularly related to the APS mandate to investigate reports or mistreatment or self-neglect of an at-risk adult no matter where the mistreatment occurred. (30.510, A-B)

- Rules related to Case Plan Development are being updated to reflect the current process in CAPS, which were implemented to reduce redundant documentation that did not improve the outcome of the case and was time consuming for the caseworkers. (30.610)

- Rules related to usage of the Client Services funds for purchasing needed goods and services for APS clients are being updated to provide additional clarification on the acceptable use of these funds. (30.610,F)

- Language in the rules related to Court Intervention (30.630) are being updated to be clearer.

Technical corrections to current rule include the following:

- The term “data system” is being replaced throughout with the name of the data system, CAPS, for simplicity and clarity. A new definition of CAPS is added and the definition of “Data System” is repealed. (30.100)

- The term “referral” is being replaced with the current terminology “report”. Most of these changes were completed with the rule changes approved in 2014, but a few instances of the old term were missed and are being corrected in this rule making.

- The phrase “mistreatment, exploitation, and self-neglect” is being replaced by “mistreatment and self-neglect” to reflect the change in statutory definitions as a result of HB16-1394.

- The term “imminent” is being replaced by “immediate” throughout. Task Group members indicated that this term was more easily understood and applied by APS staff and aligns with the terminology used by CPS.

- A rule is being repealed in the Eligibility section (30.230,B) as it is redundant to rules in the Report Categorization section (30.420)

- The term “hours” is being replaced by “days” in determining the response to an emergency report. This does not change the response time frame but Task Group members felt that “non-business days” was clearer than “non-business hours”. (30.430, B)

- The long-term care ombudsman is being removed from rule as a contact for ascertaining a client's immediate safety. The ombudsman cannot share information with APS unless they have explicit consent from the client and are not emergency responders, therefore, this option for ascertaining a client's safety is not a predictable no appropriate option. (30.430, B)

- A redundant rule was repealed at 30.430,B.

- Rule language was changed to be more concise and was brought into alignment with current practice of ensuring an initial response. (30.430,C)

- A rule was repealed related to a client who is competent and able to arrange their own services. Clients who are able to do this are not at-risk adults, by definition, and so would not continue to have an open case. (30.430,E)

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2015) - State Board to promulgate rules; 26-1-109, C.R.S. (2015) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2015) - state department to promulgate rules for public assistance and welfare activities.

Program Authority: 26-3.1-108, C.R.S. (2015) Rules. The state department shall promulgate appropriate rules for the implementation of this article.

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?	X	Yes		No

If yes, please explain.

Some definitions are repeated in rule from statute. Ensuring that the definitions are in rule provides APS staff the ability to easily understand their program requirements within one document.

The program has sent this proposed rule-making package to which stakeholders?

Policy Advisory Committee (PAC); Economic Security Sub-PAC; Child Welfare Sub-PAC; County Departments of Human/Social Services; Colorado Human Services Directors Association (CHSDA); Colorado Counties, Inc. (CCI); Colorado Commission on Aging (CCOA); Colorado Legal Services; Colorado Senior Lobby; Community Centered Boards; Colorado Department of Public Health and Environment, Health Facilities Division; Colorado Department of Health Care Policy and Financing, Division for Intellectual and Developmental Disabilities; Disability Law Colorado; Area Agencies on Aging; ARC of Colorado.

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

Title of Proposed Rule:	Adult Protective Services Program Revisions	
CDHS Tracking #:	15-5-8-1	
Revising official Rule #s:	12 CCR 2518-1, Volume 30	
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829 E-Mail: peggy.rogers@state.co.us

REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Groups that will benefit from these rules are at-risk adults and APS staff. County department APS staff will be responsible for implementing the program requirements for all at-risk adults. The State Department APS staff will be responsible for providing oversight of the counties through training and quality assurance activities.

The rules will lead to improved APS casework practice in many areas and the result will be to improve protective services provided to at-risk adults as the rules are fully implemented by county department APS staff.

2. Describe the qualitative and quantitative impact:

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

The APS program has experienced significant change in the past several years as a result of a number of legislative changes to the APS program requirements. With the implementation of mandatory reporting of mistreatment of at-risk elders in SFY 2014-15, APS is now receiving nearly 17,000 reports a year, a 41% increase from the prior year. Additional funding for APS staff and training has been received by county APS programs to be used to improve services for at-risk adults who are experiencing mistreatment or self-neglect. Additionally, with the implementation of the new APS data system (CAPS), it is possible to see the gaps in understanding of what a thorough investigation and appropriate implementation of protective services entails, due in large part to the deficit in training and quality assurance resources available for the APS program since the law was enacted in 1983. These rule changes are recommended in an effort to continue to improve services and outcomes for the vulnerable populations that the APS program serves. For example, the RED team process for reviewing, evaluating, and deciding (RED) how to respond to a report of suspected mistreatment has been proven over time to be a more precise process for making decisions about reports. These rule changes would further encourage the use of RED by every county, with the Task Group's agreement that ultimately in the years to come, this process would become a required process for every APS program.

3. Fiscal Impact:

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.

Answer should NEVER be just "no impact" answer should include "no impact because…."

State Fiscal Impact: There is no fiscal impact to the State because any required changes to the CAPS data system as a result of these new rules are currently funded through a contract with the vendor and/or through a Federal grant.

County Fiscal Impact: There is no fiscal impact to the County Departments as the removal of the flagged background check requirement removes any fiscal impact.

Federal Fiscal Impact: There are no new fiscal impacts. APS receives approximately $2 million dollars in federal Title XX funds that is provided to the county departments as part of the APS Administration Allocation. The State Department received a federal grant to make improvements to the APS data system (CAPS) in September 2015 and these funds are being used to make updates to the intake and assessment areas of the system, which will address the changes in these proposed rules.

Other Fiscal Impact *(such as providers, local governments, etc.)*: There is no other fiscal impact identified as the APS is a county department administered, State Department supervised program.

4. Data Description:

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

Research conducted by Hermann Ebbinghaus (1885), which has been subsequently verified by other research studies, identifies the "forgetting curve" for remembering details of a training or event over time. These studies were used to guide the decision to begin shortening the allowed time frame for documenting casework events from 14 days to 10 days. Based on stakeholder feedback the Department has decided to leave the time frame at 14 days at this time.

Quality assurance activities that include formal and informal case reviews, data integrity activities, and C-Stat activities that have included hundreds of informal case reviews provided insight into the need to add and clarify rules for county APS staff to ensure that quality investigation, client needs assessments, and appropriate and adequate case planning and service implementation was being conducted. In formal case reviews, only 19% of caseworkers met the compliance goal for quality casework of 90% or higher and 31% received scores of 75 to 89%. The remaining 50% of workers scored below 75%, with 15% of the total caseworkers reviewed scoring less than 50%. Informal reviews conducted through c-stat activities and other quality assurance and data integrity reviews also show that their investigations are not complete leading to incorrect findings and case planning, documentation in the case does not detail the client's strengths and needs or the caseworker's actions in the case, and services needed to improve safety and reduce risk are not accurately identified or implemented.

5. Alternatives to this Rule-making:

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative.

There is no alternative to these proposed changes:

- Updates due to changes in the statute for the APS program
- Those changes made to better reflect current processes in the APS data system (CAPS)
- Changes made to make some technical corrections, repeal duplicative rules, clarify language, and to move current rules to more appropriate sections of the APS rules

Title of Proposed Rule:	Adult Protective Services Program Revisions	
CDHS Tracking #:	15-5-8-1	
Revising official Rule #s:	12 CCR 2518-1, Volume 30	
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829 E-Mail: peggy.rogers@state.co.us

New rules are being added to address improved casework practices that are necessary for improved outcomes of intervention for at-risk adults served by the APS program. These practices might be addressed through training but those attempts have not been as successful as needed to ensure good outcomes for all vulnerable adults served by the APS program. Since the Fall of 2014, the State Department has provided training and technical assistance on these areas of improvement through regional training, quarterly training meetings, weekly email updates and reminders, webinar training, and through one-on-one technical assistance for supervisors and caseworkers on monthly basis. But, with half of all caseworkers still scoring below average on case reviews conducted in the past nine months, it is now necessary to ensure that minimum requirements are outlined clearly in rule.

Title of Proposed Rule:

Rule-making#:

Office/Division or Program: Rule Author: Phone:

OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.100 (Definitions) 30.430,B,4,e (Response Priority) 30.520,B,1 (Investigation) 30.830,A (Adult Protection Teams)	Definitions of "client" and "RED Team" and other rules cited have the outdated term "referral".	Update definitions and rules with current term of "report" in place of "referral".		X
30.100 30.210, F. 30.220, B, 1 30.220, B, 2 30.250, I, 2 30.250, I, 3 30.250, K 30.260, A 30.260, B 30.310, D 30.330, C 30.340, A, 4d 30.340, D, 1 30.410, C 30.410, D 30.420, C 30.420, C, 2 30.430, B, 4f 30.430, B, 5e 30.430, D, 2 30.530, C, 1 30.610, D 30.640, B, 4 30.830, F	Use of the term "the data system."	Update all rules to use "CAPS" in place of "the data system."		X
30.100	Definition of "Abuse"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	Definition of "At-risk Adult"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	None	Add definition of CAPS, Colorado Adult Protective Services data system		X
30.100	Definition of "Caretaker"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	Definition of "Caretaker Neglect"	Update definition to reflect statutory change, per HB16-1394.		X

Title of Proposed Rule:

Rule-making#:

Office/Division or Program: Rule Author: Phone:

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.100	Definition of "case planning" does not include "improving safety" as a purpose.	Update definition of "case planning" to include the term "and improve safety."		X
30.100	Definition of "Collateral Contact"	Update definition to add "facility staff" to the list of examples.		X
30.100	Definition of "data system".	Repeal definition. New CAPS definition replaces this definition.		X
30.100	Definition of "Exploitation"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	None	Add definition of "Facility" to provide clarification of what constitutes a facility.		X
30.100	Definition of "Mistreatment"	Update definition to reflect statutory change, per HB16-1394.		X
30.100 30.230,B,1 30.240,A 30.250,K 30.330,A,5 30.340,A,1 30.340,B,1 30.410,A 30.410,D,3 30.420,A,2 30.420,F 30.420,G 30.430,B 30.520,A 30.620,D,1 30.620,D,2 30.640,A,1 30.660,D,3 30.810,C,2 30.810,D,1 30.810,E,1 30.810,F,1	Phrase "mistreatment, exploitation, and self-neglect"	Replaces with new terminology of "mistreatment and self-neglect".		X
30.100	None	Add definition of "Undue Influence" to reflect statutory change, per HB16-1394.		X
30.210, B	Grammatical error regarding placement of the phrase "make reasonable efforts to."	Move the phrase "make reasonable effort to" from after "The county department shall" to make the sentence flow better and read "The county department shall utilize funding appropriated by the State Legislature to make reasonable efforts to…"		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.210, C.	Current rule states that county departments shall report changes of staffing to the state department within 3 working days of change.	Rule is rewritten to reflect need to protect PII and PHI in CAPS by notifying the State Department when a CAPS user leaves the APS program. Rule reflects how notification must be made. Changes the time frame for reporting changes from three working days to "…three working days…but no later than the CAPS user's last day of employment."	X	
30.230,B	Currently states under number one that protective services are provided to at-risk adults who need assessment for health, welfare, protection, and/or safety.	Remove "who need assessment…" to reduce redundancy. All screened in reports need assessment for health, safety, welfare, and protection.		X
30.250, I, 3	Currently states that only APS staff has access to CAPS.	Change to allow access for persons with a business need.		X
30.250, I, 6	None	Adds a rule regarding the need for CAPS users to sign the security confidentiality agreement.	X	
30.250, J	Rule regarding violating confidentiality.	Adds a rule that CAPS users shall not access information in CAPS that is not necessary to serve the client. Allows the State Department to remove access to CAPS for violations.		X
30.250, K	None	Adds clarifying language to include APS case information not in CAPS as confidential.		X
30.260, A	Rule regarding required documentation of reports and cases.	Add language that clarifies what elements are required to be thoroughly documented in CAPS.		X
30.260,B,1	Rule requiring a release of information signed by the client be attached to the case in CAPS.	Clarifies that a release is not mandatory, but should be completed when appropriate.		X
30.260,C	None	Adds a rule to require all documentation, notes, and evidence for the case be entered into CAPS and then destroyed. Provides exception for original legal documents, such as guardianship orders or birth certificates.		X
30.310, A	Rule regarding education and experience requirements for hire.	Add "criminal justice" to the list of fields that qualify for the education requirement. Changes the term "obtained" to "completed" to clarify experience requirement. Allows a Master's degree substitution for Journey Level to be in any field allowed in the list of degrees.		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.320, C, 3	Rule regarding background checks for prospective employees.	Change "strongly urged to require" to "shall" to require counties to flag background checks for future arrests and convictions. No change is being made per stakeholder feedback.	**X**	
30.320,C,5,a	Lists criminal offenses that disqualify an applicant from employment as an APS worker.	Technical correction to remove Title 18, Article 18.5 (drug taskforce) from the list.		X
30.330, A, 1	Rule regarding completion of the Pre-Academy Workbook for new hires and transfers.	Change from full-time caseworkers having 3 months and part-time caseworkers having 6 months to complete it to all new caseworkers shall complete it within 1 month of hire and not being assigned cases until it is complete.		X
30.330, A, 2	Rule regarding completion of the APS training academy.	Counties with only 1 caseworker that is less than 25%FTE shall complete the training academy in 9 months, instead of the current 12 months. All other counties with at least 1 caseworker 25% or higher FTE shall complete it in 6 months instead of the current 9 months.		X
30.330, A, 4	Rule regarding completion of the Pre- Academy Workbook by case aides.	Change to requiring new case aides to complete the workbook within 1 month of hire instead of the current 3 months.		X
30.330, B, 1	Rule regarding ongoing training hours requirements for caseworkers.	Increases requirement to 40 hours per fiscal year instead of the current 30 hour requirement. Remove reading reports and professional journals from the non-state provided training options.		X
30.330, B, 2	Rule regarding ongoing training hours requirements for supervisors.	Increases requirement to 30 hours per fiscal year instead of the current 20 hours. Change the number of state provided hours from 10 to 15 hours.		X
30.330, B, 3	Rule regarding ongoing training hours requirements for case aides.	Increases requirement to 20 hours per fiscal year instead of the current 15.		X
30.330, B, 4	Rule regarding ongoing training hours requirements for part time APS staff.	The required number of hours required is prorated for part-time APS staff. Those requirements are increased for each quartile of FTE, in relation to the increased requirements for full time staff.	X	
30.340, A	Rule regarding supervisor duties.	Add "or lead worker" to the rule to allow for lead workers to complete these duties in lieu of the supervisor.		X
30.340,A,1	Cites another section of rule.	Updates the citation.		X
30.340, A, 2	Rule regarding RED Team process.	Changes the language from "may" to "are urged to" for use of the RED team process. Updates rule citation.		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.340, A, 4	Rule regarding the case review requirement for supervisors.	Update rule A,4 to a phrase to "review cases to ensure". Clarifies language related to documentation. Moves 15% review requirement to A,5.		
30.340, A, 5	None	Moves 30.340,A,4 to this rule. Allows supervisor to continue to review 15% of all cases using the formal case review tool or choose a new option of reviewing and approving every case at three key points in the case.	X	
30.340,B,1	Cites another section of rule.	Updates the citation.		X
30.340, D	Rule regarding the role of screeners.	Change the term "call" to "intake" screeners to more accurately name the role. Change the location of the documentation of intake reports to include CAPS and the Web2Case form.		X
30.410, A	Rule regarding intake of reports.	Add clarifying language "occurring in the community or in a facility" to provide better guidance on APS jurisdiction to investigate.		X
30.410, C	Rule regarding intake of reports.	Change the language to include documenting the report in the Web2Case form or CAPS.		X
30.410, E and F	Rules regarding county assignment are currently found at 30.710.	Repeal 30.710. Adds rules relating to county assignment or jurisdiction for reports that have not yet been screened in/out to 30.410,E as this location better relates to the rules about Intake. New rules provide simpler method of determining jurisdiction.		X
30.410, G	Rule regarding the transfer of an intake that was reported to the wrong county within eight (8) hours.	Change the term "forward" to "transfer" to more accurately match the process in CAPS. Change the timeframe for transferring a report made to the wrong county to one (1) hour after determining the report was made to the wrong county.	X	
30.420, A and D	Rule regarding evaluating new reports.	Add the language "utilizing the RED team framework or supervisory review" for determining if a report meets APS criteria to clarify the two approved options for this process.		X
30.420,C	Technical correction	Changes "shall" to "will" for the CAPS system generation of a screen in/out recommendation.		X
30.420,E	None	Adds rule to provide guidance on the RED team framework should counties choose to utilize the RED team process.	X	
30.420, F	Rule regarding process for reports that do not meet criteria for APS response.	Add a 3 day timeframe to screen out reports when they do not meet APS criteria.		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.420, F, 2	Rule regarding providing information to reporting parties when the report is screened out.	Change the term "shall" to "may" provide information to reporting parties.		X
30.430, B	Rule regarding emergency response timeframes.	Change the term "imminent" to "immediate."	X	
30.430, B, 3	Rule regarding emergency response timeframes.	Change the term "hours" to "days" for clarity. Remove "long term care ombudsman" from other professionals to reach to ascertain immediate safety.	X	
30.430, B, 4	Technical correction.	Change "or" to "and"; change "hours" to "days" in rules on follow up contact attempts for emergency response reports.		X
30.430, B, 4,a	Rule regarding follow up on emergency response timeframes.	Change the current rule that allows for law enforcement to substitute for one attempt at contact to allow law enforcement to substitute for attempts at contact during non-business days. Add rule that counties shall follow up the next working day.		X
30.430, B, 4,b	Rule regarding follow up on emergency response timeframes.	Add "such as in the intensive care unit" for clarification.		X
30.430, B, 4,d	Rule regarding follow up on emergency response timeframes.	Technical correction - add "day of" and change "attempt" to "attempts" to provide clarity.		X
30.430, B, 4,e	Rule regarding closing case if contact is unsuccessful.	Change "referral" to "case" to update to current terminology. Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		X
30.430, B, 4,f	Rule regarding follow up on emergency response timeframes.	Remove "in the data system" to make it more concise.		X
30.430, B, 5	Rule regarding follow up on emergency response timeframes.	Add the language "If the initial response was not face-to-face contact with the client, but…" to provide clarity.		X
30.430, B, 5,a	Rule regarding follow up on emergency response timeframes.	Add "such as in the intensive care unit" for clarification.		X
30.430, B, 5,c	Rule regarding follow up on emergency response timeframes.	Technical correction - Add "day of" and change "attempt" to "attempts" to provide clarity.		X
30.430, B, 5,d	Rule regarding follow up on emergency response timeframes.	Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		
30.430, C	Rule regarding non-emergency response.	Updates language to provide clarity and approved supervisory or RED Team decision-making process.		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.430, C, 2	Rule regarding non-emergency response.	Change "a face-to-face contact" to "an initial response" to update to current terminology. Add rule to define an initial response, based on current process.		X
30.430, C, 3	Rule regarding non-emergency response.	Change the language to reflect the process for follow up when the initial response was not a face-to-face contact and the worker was unable to ascertain safety by phone to reflect the options for initial responses. Clarify the language that the county shall attempt face-to-face contact every other working day.		X
30.430, C, 3,a	Rule regarding non-emergency response.	Adds a rule that states a law enforcement welfare check can be substituted for one attempt at contact to allow for flexibility for the caseworker.		X
30.430, C, 3,e	Rule regarding non-emergency response.	Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		X
30.430, C, 4	None	Adds rules that define the follow up required when a worker is able to ascertain safety for the initial response, but has not yet had a face-to-face contact with the client.		X
30.430, E	Rule regarding re-evaluation of whether a face-to-face response is needed for a non-emergency response case.	Change "provide telephone response and assistance" to clarify what is an appropriate phone contact to make for phone collaboration. Change the term "telephone response and assistance" to "phone collaboration" in the second sentence to update to current terminology.		X
30.430, E,5	Rules regarding cases appropriate for "phone collaboration to resolve concerns.	Repeal #5 as clients that fit that description do not usually meet the criteria for "at-risk adult" and APS should not be involved.		X
30.510, A and B	Rule regarding conducting investigations and client assessments.	Update language related to the investigation. Adds clarifying language that the investigation must be completed regardless of the client's consent, as it is required by statute. Adds provision that if assessment confirms the client is not an at-risk adult, therefore not meeting criteria for APS intervention, the investigation does not need to be completed. Moves rules related to client assessment to new section "30.510,B".		X

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			Yes	***No***
30.510, D	Rules regarding county assignment are currently found at 30.710.	Repeal 30.710. Adds rules relating to county jurisdiction after reports have been screened in for investigation to 30.510, D as this location better relates to the rules about Investigation. New rules allow transfer of the case and require receiving county to investigate, unless they have new information that would allow them to close the case.		X
30.520, A, 1	Rule regarding the investigation process and requirements.	Change the term "imminent" to "immediate."		X
30.520, A, 2	Rules regarding collaboration with other investigative agencies are currently found at 30.820.	Repeal 30.820. Move rules related to entities to consider as part of a collaborative investigation to 30.520, as they better align with the Investigation, and update language.	X	
30.520, A, 3	Rule regarding client interview being unannounced and in private.	Add clarifying language that states if not unannounced or in private, worker will document the reason.		X
30.520, A, 5	Rule regarding the requirement to interview the alleged perpetrator, when appropriate and safe.	Add requirement to document why an alleged perp was not interviewed.		X
30.520, A, 6	Rule regarding collecting evidence.	Adds suggestions for evidence that can and should be collected, as appropriate.	X	
30.520, A, 8	Rule requiring identification of the perpetrator.	Repeal the term "self-neglect, as there is no perpetrator in self-neglect cases.		X
30.520, A, 9	Rule requiring investigation of mistreatment identified during investigation.	Adding the clarifying language that states new/additional allegations that are identified must be documented in CAPS.		X
30.520, B, 1	Rule regarding the time frame for completing the investigation.	Adds requirement to document in CAPS throughout the investigative process. Establishes a time frame to document interviews within ten (10) days of the interview. Moves rule related to being unable to complete an investigation in the timeframe to B,4. Repeals the rules at the current "B2" and moves them to the new "B 1-3" and updates language related to the elements of the investigation that must be documented. The change to 14 days to 10 days is no longer being made per stakeholder feedback. The time frame will remain at 14 days at this time.	X	
30.520, B, 2	Rule regarding documenting investigative information.	Repeal current rule. Added to 30.520, B, 1 through 3, above.		X
30.530 A	Rule regarding the assessment process and requirements.	Change "assess" to "complete a baseline assessment of" to reflect current practice. Change "imminent" to "immediate."		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.530, B	Rule regarding the assessment tool in CAPS.	Update language to make is clear that risk and safety need to be assessed, per current practice. Removes the five status areas that need to be assessed (B1-5, and C). The assessment tool is established in CAPS so naming areas of the assessment is not necessary.		X
30.530, C	Currently 30.530,D, 1 and 2. Rules regarding documentation of the assessment.	Updates the language to indicate what is required for the assessment to be completed timely. Moves rule related to being unable to complete an assessment in the timeframe to C,2. Repeal current rule C,2, as it is included in the new C,1.		X
30.610, C	Rule regarding the case plan process and requirements.	Rules in this section are being rewritten to reflect current practice, which was changed to reduce redundancy and put into place a more efficient and effective case plan requirement.		X
30.610, F	Rule regarding the use of client services funds.	Rules in this section are being rewritten to more clearly reflect when APS Client Services funds may and may not be utilized.		X
30.620, A	Rule regarding providing services in least restrictive manner.	Repeal section 30.650. Move current 30.650,B to 30.620 as the content is related to what takes place after the investigation and assessment. This move makes the rules easier to find and more cohesive.	X	
30.620, B	Rule regarding provision of services for adults with capacity to make decisions.	Removes redundant language and clarifies what steps are needed if it appears the client has capacity to make decisions and either refuses or consents to services.		X
30.620, C	Rules related to provision of services when the client appears to lack capacity.	Add clarification on what must be documented related to the client's suspected incapacity; adds possible interventions for ensuring the immediate safety and health of a client who is suspected to lack capacity. Repeal current rule 30.620,B,3 as it is redundant to rule 30.620,C,4.		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.620, E	Currently at 30.650 -Provision of services. Rules regarding ongoing contact with clients throughout the provision of services.	Repeal Section 30.650. Move rules from 30.650 to this section. Change the requirement for monthly contact with clients in the community from every 30 days to once a month, not to exceed 35 days since the previous monthly contact. For clients living in a facility, adds a requirement the contact every other month that can be by phone, cannot be a phone contact if there is concern with the facility providing adequate care. Reduces time frame to document monthly contact from 14 days to 10 days. Clarifies what is required in implementing a case plan. Adds requirement to update case information, as changes occur month to month. The change from 14 days to 10 days is no longer being made, per stakeholder feedback. The timeframe will remain at 14 days at this time.	X	
30.620, F	Currently 30.720 – Courtesy Visits. Rules regarding courtesy visits with a client for another county.	Repeal Section 30.720. Move those rules to this section to make rules more cohesive. Updates rules to reflect current practice. Changes time frame to document the courtesy visit from 14 days to 10 days. The change from 14 days to 10 days is no longer being made, per stakeholder feedback. The timeframe will remain at 14 days at this time.	X	
30.620, G through J	Currently at 30.710, rules related to a client relocating to another county while the case remains open.	Repeal Section 30.710. Move rules to this section to make rules more cohesive. Update rules to reflect current practice related to case transfers in CAPS. Shortens the length of time a case may remain with the former county department once a client has moved.		X
30.620, K	Currently at 30.650,D. Rules related to the six month reassessment requirement.	Repeal Section 30.650. Move reassessment rules to this section and update to reflect current practice, which is a simpler and more efficient process than current rule.		X
30.630, A	Rule regarding emergency court intervention.	Updates the rule to be specific to emergency situations in which the county may need to intervene through the courts.		X
30.630, A,1	Rule regarding steps to take prior to seeking court intervention.	Adds language to specify that the county ensures all factors are met and documented prior to petitioning the court. Adds a rule at (b) that the county should ensure that court intervention will resolve the safety concern. Moves current section “C” to “A,1,c”.	X	

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.630, B, 4	Rule regarding documentation requirements when the county department has been named the guardian or conservator.	Adds language that the client's case record must be updated with the fiduciary information.		X
30.630,E	Technical correction.	Change "provide" to "providing" to be grammatically correct.		X
30.640,A,1	Rule regarding appointment of the county as representative payee.	Technical correction to remove "the potential for" before "significant harm."		X
30.650	Section on the Provision of Protective Services.	Repeal Section. Rules have been recodified under 30.520 and 30.620.		X
30.660, A	Timeframe for closing a case.	Updates rule to require case closure within 35 days of last client contact, rather than current 30 days. Adds rule allowing the case to remain open longer if county is actively looking for the client.		X
30.660,B	Timeframe for closing a case for a client placed in a facility.	Updates rule to shorten the time from the current three (3) months to 35 days, unless there is good cause.		X
30.660,D	Case closure reasons.	Updates the rule to close the case when allegations are unsubstantiated and there are no other identified needs, per the client assessment. Updates the rule to allow closure of the case if the client refuses contact or refuses services. Adds additional closure reasons, including services unavailable, client incarcerated, and client moved out of state.		X
30.660,E	Case closure procedures	Updates rules to reflect current case closure practices, which were changed to reduce redundancy and create a more efficient closure process.		X
30.700 30.710 30.720	Rules section County Assignment and Courtesy Visits	Repeal. Rules have been recodified in Sections 30.410, 30.510, and 30.620		X
30.820	Rule regarding collaboration with other agencies.	Repeal to reduce redundancy. Rules have been recodified in Sections 30.500 and nearly the same rules were found in Section 30.810.		X
30.830	Rule related to which counties are required to have an AP Team.	Technical correction from "referrals" to the current term "screened in reports". Addition of the phrase "and improve safety."		X

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STAKEHOLDER COMMENT SUMMARY

DEVELOPMENT

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

APS Task Group created by the Economic Security Sub-PAC. This task group was moved under the Child Welfare Sub-PAC in May 2016. The APS task group consisted of representatives from the State Department APS unit and from sixteen (16) counties who were nominated by their county director and approved by the Colorado Human Services Directors Association. The county departments represented on the task group were: Adams, Arapahoe, Archuleta, Boulder, Denver, Douglas, Eagle, El Paso, Jefferson, Larimer, Mesa, Montrose, Morgan, Park, Pueblo, and Weld.

THIS RULE-MAKING PACKAGE

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

Policy Advisory Committee (PAC); Economic Security Sub-PAC; Child Welfare Sub-PAC; County Departments of Human/Social Services; Colorado Human Services Directors Association (CHSDA); Colorado Counties, Inc. (CCI); Colorado Commission on Aging (CCOA); Colorado Legal Services; Colorado Senior Lobby; Community Centered Boards; Colorado Department of Public Health and Environment, Health Facilities Division; Colorado Department of Health Care Policy and Financing, Division for Intellectual and Developmental Disabilities; Disability Law Colorado; Area Agencies on Aging; ARC of Colorado.

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[ ] Yes [X] No

If yes, who was contacted and what was their input?

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[X] Yes [ ] No

Date presented __June 2, 2016_____.

What issues were raised? Concerns related to shortening the time frame for documenting case actions from 14 to 10 calendar days. The rules have been revised to keep the 14 day time frame. Concerns for requiring a flagged background check. That proposed change has been removed.

If not presented, explain why.

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Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

The rules were emailed to county department directors and APS staff for review and feedback in late April 2016. The State held six webinar sessions between May 2 and May 12, 2016 for county directors, Adult Protective Services (APS) managers and supervisors, and APS caseworkers to go over the proposed rule changes in detail. Over eighty (80) APS staff and county directors representing more than 30 counties attended these webinars and provided feedback and suggestions for improvements and changes to the rules. In May 2016, the APS Task Group was provided the feedback from the webinars and the proposed changes as a result of the feedback. Per the APS Task Group request, the comments for the rules were initially reviewed and discussed via email among task group members. The State Department also met with the County Human Services Directors Association Steering Committee members on June 2, 2016 to discuss the rule process. A final meeting of the APS task group was held June 10, 2016 during which the task group members discussed and made final decisions related to the rules that had been commented upon by county departments. The APS task group supports the final rule recommendations, as drafted in this Initial Circulation.

Below is a summary of comments received via the rules webinar sessions and subsequent emails and the actions to address the comments.

30.330 Training Requirements; 30.530 Investigation; 30.620 Provision of Services; and 30.830 Adult Protection Teams: One proposed rule revision that received stakeholder feedback had to do with the timeframe for casework and other documentation to be entered into the CAPS data system that can be found in multiple sections of the rules, as listed. The proposed rule change was to decrease the amount of time caseworkers have to enter documentation to 10 calendar days from 14 calendar days. This change was proposed to improve the quality and accuracy of the documentation based on available scientific research on memory. However, representatives from counties identified this as a concern during the webinars and in meetings with Department staff, explaining that they felt this was an unnecessary change. They requested to keep the 14 day documentation requirement. The APS Task Group considered the request and developed a compromise to reduce the time allowed for documenting key casework related information to 10 days, including interviews of clients and alleged perpetrators and monthly contact visit notes. The Task Group determined that the time allowed for documentation of non-casework related information, such as continuing education hours completed, would remain at 14 days. Roughly 75% of task group members supported this compromise. However, after further discussion with the Child Welfare Sub-PAC, the sub-PAC members were strongly opposed to shortening the time frame to 10 days for casework practice, indicating that with an expected 30% increase in reports due to implementation of SB15-109, shortening the time frame at this time would impair the Department's ability to manage their workload. The Department has determined that it will leave the 14 day documentation time frame in place at this time.

30.210 APS Program Administration: A change to the rules to require counties to notify the State of change in staffing "immediately" as opposed to within "three working days" was proposed to ensure that persons no longer working in the APS program would have their access to the APS data system, CAPS, removed. CAPS contains a

great deal of personal identifying information (PII) and HIPAA protected personal health information (PHI) that must be protected and kept secure. Two counties felt that the change to require county departments to notify the state immediately upon learning of a change in staffing was an unnecessary time constraint to give to counties. These two counties felt that "one business day" to make the notification was more reasonable. Two other counties felt that the reduction of time to notify the State enhanced best practices and would result in a better outcome for protecting confidential information. One county noted a concern related to their IT department's inability to access CAPS to submit the change in staffing. A compromise was drafted, with unanimous support of the task group, to require notification "within three (3) working days upon learning of a change in APS staffing but no later than the CAPS user's last day of employment."

30.260 Documentation: Several counties voiced concern over including the language "preferably in the county attorney's office" regarding the secure housing of hard copy documents relating to case files due to the lack of a county attorney's office at their department. Compromise language was drafted during the email review by the task group to secure those documents "in a secured location."

30.320 Background Check Requirements. A proposed change related to the requirement for a "flagged" background check from "strongly urged" to "shall". A flagged background check ensures that the county department would be notified if an APS staff member with direct access to at-risk adults, were to be arrested after their original background check was completed. This may be critical information to client safety. However, a county department indicated that due to its current contract with a company performing the background checks for the county department, it and other counties with similar contracts, would be unable to conform to rule under their current contracts. The Department, therefore, decided to delay this rule change at this time.

30.330 Training Requirements: Initial rule recommendations for counties with only one caseworker who is less than 25% FTE in APS was to require all ten (10) hours of continuing education be state-provided training. One small county recommended that small counties be able to attend local training for a portion of their required training hours. Two counties were in support of the training being all state provided. Upon review by the APS task group, it was unanimously recommended that part of the training requirement could be met through local training opportunities.

30.340 Staff Duties and Responsibilities: During the initial task group meetings, there was discussion about the 15% case review requirement. At that time, the consensus of the APS Task Group was to continue with the 15% requirement, but also offer the option of utilizing the enhanced supervision profile for caseworkers which would allow for supervisors/lead workers to review cases at key junctures, reducing the amount that would be reviewed at each time, thus creating a more efficient process. Counties would have the option to choose their specific method of reviewing casework. During the webinars, one county suggested lowering the 15% supervisory case review requirement to 10%. The State Department has identified a need for increased quality assurance reviews of casework and therefore supports then initial recommendation of the task group to provide the county the option of reviewing 15% of all cases or reviewing each case at key casework process points. There were no further objections from the task group.

30.410 Intake: One county asked that the timeframe requirement for transferring reports to the correct county when they are received in the wrong county remain at eight (8) hours, or one business day, instead of reducing to one (1) hour, as was initially recommended by the Task Group. Another county was in support of this recommendation, while one county felt that one (1) hour was sufficient and addressed the concern of timeliness of initial response when reports are transferred. Upon further consideration by the Task Group, just over 60% support keeping the one hour requirement as the recommendation.

30.420 Report Categorization: Two counties recommended that the elements of the RED Team framework be removed from rule due to the possibility of these elements changing in the future and the thought that this was better defined in training, rather than rule. Because the RED Team framework is being added to CAPS, the task group unanimously determined it was not necessary to include in the rules.

30.430 Response Priority: During the webinars, three counties asked for the State to add a five (5) day response time frame to rule to mirror child protection practices. One of these counties wanted the increased time to allow for counties to do more research on the client if the report was going to be screened out for not meeting criteria of an at-risk adult or no mistreatment. One county noted support in keeping the APS response time frames as is. Counties statewide are meeting the initial response time frame 98% of the time. There does not appear to be a business need to add a five (5) working day response time for reports and it does not seem to be in the best interest of the population served by the APS program. Many APS clients are isolated with no contact with other people. A five working day response could mean that clients were not seen for nearly two weeks following receipt of the report. In addition, the child welfare time frame is to be used when there are no safety concerns identified in the report. In APS, if there is no identified mistreatment, the report is screened out. The State Department supports continuing the APS response time frames as is. There were no further objections from the task group.

30.430 Response Priority: The APS Task Group proposed to add to rule that attempts at client contact should be made at different times of the day, which was perceived by several caseworkers to mean there had to be multiple attempts in the same day, which was not the task group's intent. During email review of the comments, some task group members suggested removing the new rule from the recommendations while others thought it could remain if the language were clarified and moved to a different section of the rules. During the final meeting and discussion, the task group was split equally on this and so the rule was removed from the rule recommendations.

30.430 Response Priority: One county asked for clarification on why the Long Term Care Ombudsman (LTCO) was removed from the list of suggested professionals to reach out to and ascertain a client's immediate safety for an initial response. Two counties support the removal of the LTCO from this list. During email discussions, it was explained that the long-term care ombudsmen are unable to respond immediately to a situation, as law enforcement or hospital staff can, where determination of the client's immediate safety is necessary. Additionally, the ombudsman cannot share information with APS without expressed consent of the client. The removal remains the recommendation.

30.520 Investigation: APS Task Group recommended repealing rules at Section 30.820 related to collaborative/joint investigations, including a list of agencies that could work with APS on an investigation, and move them to the Investigation section of the rule as that's when a joint investigation determination would be made. The rule in the new location was updated to be more concise and lists the five key agencies that could partner with APS in investigating mistreatment. Two counties opposed including the list, citing that it is best practice and should be addressed in training rather than included in rule. Two counties supported the addition of this element and the suggested agencies, as it provides more clarity and guidance for caseworkers. Upon further discussion, the task group was unanimous in its recommendation to keep the list in rule.

30.520 Investigations: Rules were added to the current rules related to interviewing collaterals, to add guidance as to who a collateral might be. Other guidance was added to the rules related to the collection and documentation of evidence. One county suggested that all lists that help to define the expectation of the rule be removed and addressed through training. Two counties supported the additional guidance and clarification to assist caseworkers in ensuring their investigations are thorough and complete and they are meeting all required elements. Upon further discussion, it was determined that the definition of "collateral" already contained all of the new elements in the proposed rule with the exception of "facility staff". A unanimous decision was made to update the definition to add "facility staff" and remove the new list of collaterals from the rule in this section. The task group also discussed the additional lists related to the collection and documentation of evidence and agreed unanimously to include both lists in the rule recommendations.

30.620 Provision of Services: Rules from 30.650 were moved to this section related to the monthly client contact requirement for all open APS cases. Rules were proposed to change the current contact requirement of every 30 days to "once a month, but no more than 35 days from the last client contact." Counties were strongly in favor of this rule recommendation.

30.620 Provision of Services: Rules from 30.650 were moved to this section related to the monthly client contact requirement for all open APS cases. These rules detail the purpose of the monthly contact. The rules that were moved were updated related to the ongoing investigation and assessment of client needs to provide better clarity of that purpose and two new purposes was added related to monitoring of services in place and the continued pursuit of safety improvement and risk reduction. One county asked that all requirements for evaluation during monthly contacts and their documentation be removed from rule, describing them as "overly prescriptive." One county noted support in keeping the criteria. Upon further discussion and review, the task group unanimously agreed to keep the rule recommendations in place.

30.620 Provision of Services: Rules were added that detail appropriate options for involuntary case planning. These options apply to at-risk adults who are have immediate safety and health concerns but who are refusing services, but likely lack the capacity to refuse services. Two counties asked to remove the list of suggested interventions for coordinating for a client's immediate safety and provide training around these options, instead. One county noted support in keeping these suggested interventions in rule as additional guidance for caseworkers. Upon further consideration the more than 90% of the task group members agreed to leave the options in the rule recommendations.

30.620 Provision of Services: Rules from 30.710 were moved to this section related to case jurisdiction when a client moves to a new county during provision of services. One of these rules provides guidance for those clients who are wards of the county department. One county expressed concern that the rule would allow a county to go to the court and have the guardianship transferred to a new county without consent of the new county. The State clarified for this county that this is not a new rule and that, as the rule states, counties cannot transfer guardianships without the receiving county's acceptance and collaboration on petitioning the court. No other counties provided feedback on this item. The rule was left as is.

30.630 Court Intervention: The task group recommended the addition of a rule that guardianship or conservatorship would only be sought for APS clients who have a facility placement. One county felt that it was unnecessary to include that the county should secure placement for the client prior to pursuing court intervention. They expressed that they often will pursue court intervention to appoint a conservator for a client so that they may continue to live independently in the community as a least restrictive option. Another county thought that a home placement for a ward who could afford to pay for 24/7 care and supervision was appropriate. As the rule change was written, this would not be an option for counties moving forward. The State does not recommend that counties take on guardianship for clients living in the community due to the liability and increased difficulty in being able to ensure their safety. However, upon further discussion by the task group, nearly 70% agreed the rule should not be recommended going forward and so is not included in this Initial Circulation.

30.650 Case Closure: The closure reason related to the allegations being unsubstantiated was updated in the initial rule recommendations to add "…and there are no other identified needs." Two counties felt that the language of "no other identified needs" was too vague. One county was in support of leaving the language as is. Upon further input and suggestion from task group members, the rule was amended to read, "…there are no other identified needs as determined by the assessment."

[3/23/15 downloaded from SoS web site]

(12 CCR 2518-1)

30.000 ADULT PROTECTIVE SERVICES

30.100 DEFINITIONS [Rev. eff. 9/1/14]

The following definitions shall apply to these rules.

"Abuse", pursuant to Section 26-3.1-101~~(7)(a)~~(1), C.R.S., means ~~mistreatment that occurs where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation; or, where unreasonable confinement or restraint is imposed; or where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, Article 3, Part 4, C.R.S.~~ ANY OF THE FOLLOWING ACTS OR OMISSIONS COMMITTED AGAINST AN AT-RISK ADULT:

A. THE NONACCIDENTAL INFLICTION OF PHYSICAL PAIN OR INJURY, AS DEMONSTRATED BY, BUT NOT LIMITED TO, SUBSTANTIAL OR MULTIPLE SKIN BRUISING, BLEEDING, MALNUTRITION, DEHYDRATION, BURNS, BONE FRACTURES, POISONING, SUBDURAL HEMATOMA, SOFT TISSUE SWELLING, OR SUFFOCATION;

B. CONFINEMENT OR RESTRAINT THAT IS UNREASONABLE UNDER GENERALLY ACCEPTED CARETAKING STANDARDS; OR

C. SUBJECTION TO SEXUAL CONDUCT OR CONTACT CLASSIFIED AS A CRIME UNDER THE "COLORADO CRIMINAL CODE", TITLE 18, C.R.S.

"Adult Protective Services (APS) Program" means the State Department supervised, county department administered program that has the authority to investigate and/or assess allegations of mistreatment and self-neglect of at-risk adults. The APS Program offers protective services to prevent, reduce, or eliminate the current or potential risk of mistreatment or self-neglect to the at-risk adult using community based services and resources, health care services, family and friends when appropriate, and other support systems. The APS Program focuses on the at-risk adult and those services that may prevent, reduce, or eliminate further mistreatment or self-neglect. The APS Program refers possible criminal activities to law enforcement and/or the district attorney for criminal investigation and possible prosecution.

"Allegation" means a statement asserting an act or suspicion of mistreatment or self-neglect involving an at-risk adult.

"Assessment" means the process of evaluating a client's functional abilities to determine the client's level of risk and, in cooperation with the client whenever possible, to identify service needs for the case plan.

"Assumed responsibility", as used in the definition of caretaker, means a person who is providing or has provided recurring assistance to help meet the basic needs of an at-risk adult. The assumption of responsibility can attach by entering into a formal or informal agreement, whether paid or unpaid; by identifying oneself as a caretaker to others; or based on the nature of the situation or relationship between the caretaker and the at-risk adult.

"At-risk adult", pursuant to Section 26-3.1-101~~(1)~~(1.5), C.R.S., means an individual eighteen years of age or older~~:~~ WHO IS SUSCEPTIBLE TO MISTREATMENT OR SELF-NEGLECT BECAUSE THE INDIVIDUAL IS UNABLE TO PERFORM OR OBTAIN SERVICES NECESSARY FOR HIS OR HER HEALTH, SAFETY, OR WELFARE, OR LACKS SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE OR COMMUNICATE RESPONSIBLE DECISIONS CONCERNING HIS OR HER PERSON OR AFFAIRS.

~~A. Who is susceptible to mistreatment because he/she is unable to perform or obtain services necessary for his/her health, safety, or welfare; or,~~

~~B. Who lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person or affairs.~~

~~C. Persons are not considered "at-risk" solely because of age and/or disability.~~

"CAPS" MEANS THE COLORADO ADULT PROTECTIVE SERVICES (APS) STATE DEPARTMENT PRESCRIBED DATA SYSTEM THAT THE COUNTY DEPARTMENT SHALL USE TO DOCUMENT APS PROGRAM ACTIVITIES, INCLUDING ALL REPORTS AND CASEWORK, ADULT PROTECTION TEAM ACTIVITIES, APS STAFF QUALIFICATIONS, FTE, ONGOING TRAINING, COOPERATIVE AGREEMENTS, AND OTHER ACTIVITIES REQUIRED BY RULE.

"Caretaker", pursuant to Section 26-3.1-101(2), C.R.S., means a person who ~~is responsible for the care of an at-risk adult as a result of a family or legal relationship or a person who has assumed responsibility for the care of an at-risk adult or is paid to provide care or services to an at-risk adult.~~

A. IS RESPONSIBLE FOR THE CARE OF AN AT-RISK ADULT AS A RESULT OF A FAMILY OR LEGAL RELATIONSHIP;

B. HAS ASSUMED RESPONSIBILITY FOR THE CARE OF AN AT-RISK ADULT; OR,

C. IS PAID TO PROVIDE CARE, SERVICES, OR OVERSIGHT OF SERVICES TO AN AT-RISK ADULT.

"Caretaker neglect", pursuant to Section 26-3.1-101(2.3)**(a)**, C.R.S., means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, HABILITATION, ~~or~~ supervision, OR OTHER TREATMENT NECESSARY FOR THE HEALTH, SAFETY, OR WELFARE OF THE AT-RISK ADULT is not secured for an at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise,~~;~~ ~~except that the withholding, withdrawing, or refusing of any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, shall not be deemed caretaker neglect. As used in this subsection (2.3), "medical directive or order" includes, but is not limited to, a medical durable Power of Attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a Medical Order for Scope of Treatment form executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR Directive executed pursuant to Article 18.6 of Title 15, C.R.S.~~ OR A CARETAKER KNOWINGLY USES HARASSMENT, UNDUE INFLUENCE, OR INTIMIDATION TO CREATE A HOSTILE OR FEARFUL ENVIRONMENT FOR AN AT-RISK ADULT.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2.3), THE WITHHOLDING, WITHDRAWING, OR REFUSING OF ANY MEDICATION, ANY MEDICAL PROCEDURE OR DEVICE, OR ANY TREATMENT, INCLUDING BUT NOT LIMITED TO RESUSCITATION, CARDIAC PACING, MECHANICAL VENTILATION, DIALYSIS, ARTIFICIAL NUTRITION AND HYDRATION, ANY MEDICATION OR MEDICAL PROCEDURE OR DEVICE,

IN ACCORDANCE WITH ANY VALID MEDICAL DIRECTIVE OR ORDER, OR AS DESCRIBED IN A PALLIATIVE PLAN OF CARE, IS NOT DEEMED CARETAKER NEGLECT.

(c) AS USED IN THIS SUBSECTION (2.3), "MEDICAL DIRECTIVE OR ORDER" INCLUDES A MEDICAL DURABLE POWER OF ATTORNEY, A DECLARATION AS TO MEDICAL TREATMENT EXECUTED PURSUANT TO SECTION 15-18-104, C.R.S., A MEDICAL ORDER FOR SCOPE OF TREATMENT FORM EXECUTED PURSUANT TO ARTICLE 18.7 OF TITLE 15, C.R.S., AND A CPR DIRECTIVE EXECUTED PURSUANT TO ARTICLE 18.6 OF TITLE 15, C.R.S.

"Case" means a report that contains information indicating that there is an at-risk adult and a mistreatment category, and the report is screened in for investigation and/or further assessment.

"Caseload average" means the fiscal year monthly average sum of new reports plus ongoing cases per caseworker. The fiscal year caseload average is calculated as: [(fiscal year total of new reports/12) + (beginning cases on July 1 + ongoing cases on June 30/2)]/FTE on June 30 = caseload average.

"Case Planning" means using the information obtained from the investigation and/or assessment to identify, arrange, and coordinate protective services in order to reduce the client's level of risk for mistreatment AND IMPROVE SAFETY.

"Clergy member", pursuant to Section 26-3.1-101(2.5), C.R.S., means a priest; rabbi; duly ordained, commissioned, or licensed minister of a church; member of a religious order; or recognized leader of any religious body.

"Client" means an actual or possible at-risk adult for whom a ~~referral~~REPORT has been received and the county department has made a response, via telephone resolution or open case.

"Collateral contact" means a person who has knowledge about the client's situation that supports, refutes, or corroborates information provided by a client, reporter, or other person involved in the case. Examples of contacts include, but are not limited to, family members, law enforcement, health care professionals, service providers, FACILITY STAFF, neighbors, and friends.

"County Department" means a county department of human/social services.

~~"Data system" means the State Department prescribed data system that the county department shall use to document APS Program activities, including all reports and casework, Adult Protection Team activities, APS staff qualifications, FTE, ongoing training, cooperative agreements, and other activities required by rule.~~

"Enhanced supervision" means ~~the data system~~ CAPS security access that prevents a caseworker from finalizing an investigation, assessment, case plan, or case closure without supervisory approval.

"Exploitation" means an act or omission committed by a person that:

A. Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk adult of the use, benefit, or possession of ~~his or her money, assets, or property~~ ANYTHING OF VALUE;

~~B. In the absence of legal authority~~:

~~1~~B. Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk adult; ~~or,~~

~~2~~C. Forces, compels, coerces, or entices an at-risk adult to perform services for the profit or advantage of the person or another person against the will of the at-risk adult; or,

~~C~~D. Misuses the property of an at-risk adult in a manner that adversely affects the at-risk adult's ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

"FACILITY" MEANS MEDICAL AND LONG-TERM CARE FACILITIES THAT PROVIDE 24 HOUR CARE AND OVERSIGHT FOR RESIDENTS, AND INCLUDES GROUP AND HOST HOMES, ALTERNATIVE CARE FACILITIES, STATE REGIONAL CENTERS, AND STATE MENTAL HEALTH FACILITIES.

"Financial institution" means a state or federal bank, savings bank, savings and loan association or company, building and loan association, trust company, or credit union.

"Fiscal Year" means the State Department fiscal year, which begins July 1 and ends June 30.

"FTE" means Full Time Equivalent. The actual percentage of time a person works on the APS program shall be considered that person's FTE.

"Inconclusive finding" means that indicators of mistreatment, exploitation, or self-neglect may be present but the investigation could not confirm the evidence to a level necessary to substantiate the allegation.

"Investigation" means the process of determining if an allegation(s) of mistreatment involving an at-risk adult can be substantiated by a preponderance of evidence.

"Least restrictive intervention" means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent mistreatment.

"Minor impact" means the client may experience some difficultly with the assessment risk indicator, but there is very little impact on the client's overall health, safety, and/or welfare and no intervention is necessary to improve overall safety.

"Mistreatment", pursuant to Section 26-3.1-101(7), C.R.S., means ~~an act or omission that threatens the health, safety, or welfare of an at-risk adult or that exposes an at-risk adult to a situation or condition that poses imminent risk of death, serious bodily injury, or bodily injury to the at-risk adult. Mistreatment includes, but is not limited to:~~

A. Abuse; ~~that occurs:~~

~~1. Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;~~

~~2. Where unreasonable confinement or restraint is imposed; or,~~

~~3. Where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, C.R.S.~~

B. Caretaker neglect~~.~~;

C. EXPLOITATION;

D. AN ACT OR OMISSION THAT THREATENS THE HEALTH, SAFETY, OR WELFARE OF AN AT-RISK ADULT; OR,

E. AN ACT OR OMISSION THAT EXPOSES AN AT-RISK ADULT TO A SITUATION OR CONDITION THAT POSES AN IMMINENT RISK OF BODILY INJURY TO THE AT-RISK ADULT.

"Person(s)" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the State Department of Colorado, and all political subdivisions and agencies thereof.

"Protective Services" means services to prevent the mistreatment and self-neglect of an at-risk adult initiated and provided by the county department authorized to administer the Adult Protective Services Program. Such services include, but are not limited to:

A. Receipt and investigation of reports of mistreatment~~, exploitation,~~ and self-neglect;

B. Assessment of the at-risk adult's physical, environmental, resources and financial, medical, mental and behavioral, and support system needs;

C. Protection from mistreatment;

D. Coordination, implementation, delivery, and monitoring of services necessary to address the at-risk adult's safety, health, and welfare needs;

E. Assistance with applications for public benefits and other services; and,

F. Initiation of protective and probate proceedings under Colorado Revised Statutes.

"Reassessment" means the process of updating the assessment status areas and the case plan, including the status of any services implemented and any new services and/or goals identified since the last assessment.

"RED Team" is an acronym that stands for Review, Evaluate, and Direct. The RED Team is a decision making process that utilizes a structured framework to determine the county department's response to ~~referrals~~REPORTS.

"Report" means an oral or written report of suspected mistreatment or self-neglect of a suspected at-risk adult, received by the county department.

"Risk" means conditions and/or behaviors that create increased difficulty or impairment to the client's ability to ensure health, safety, and welfare.

"Safety" means the extent to which a client is free from harm or danger, or to which harm or danger is lessened.

"Self-Determination" means the right to decide for one's self; the ability or right to make one's own decisions without interference from others.

"Self-Neglect", pursuant to Section 26-3.1-101(10), C.R.S., means an act or failure to act whereby an at-risk adult substantially endangers his/her health, safety, welfare, or life by not seeking or obtaining services necessary to meet the adult's essential human needs. Refusal of medical treatment, medications, devices, or procedures by an adult or in accordance with a valid medical directive or order, or as described in a palliative plan of care, shall not be deemed self-neglect. Refusal of food and water in the context of a life-limiting illness shall not, by itself, be evidence of self-neglect. "Medical directive or order" includes, but is not limited to, a medical durable power of attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a medical orders for scope of treatment form

executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR directive executed pursuant to Article 18.6 of Title 15, C.R.S.

“Significant impact” means that the client’s impairment diminishes the client’s health, safety, and/or welfare and intervention is necessary to improve overall safety.

"Staffing a case" means the review of an APS case between the supervisor and caseworker to ensure the appropriateness of the investigation findings, client assessment, case plan, service provision, need for ongoing services, plans to terminate services, documentation, and overall intervention as it relates to APS rules and best practices. Staffing a case may include the county department APS unit, the State Department APS unit, and/or the APS Team in addition to the supervisor and caseworker.

"State Department" means the Colorado Department of Human Services.

"Substantiated finding" means that the investigation established by a preponderance of evidence that mistreatment, exploitation, or self-neglect has occurred.

“UNDUE INFLUENCE” MEANS THE USE OF INFLUENCE TO TAKE ADVANTAGE OF AN AT-RISK ADULT’S VULNERABLE STATE OF MIND, NEEDINESS, PAIN, OR EMOTIONAL DISTRESS.

"Unsubstantiated finding" means the investigation did not establish any evidence that mistreatment or self-neglect has occurred.

30.200 ADULT PROTECTIVE SERVICES PROGRAM ADMINISTRATION AND OVERVIEW

30.210 APS PROGRAM ADMINISTRATION [Rev. eff. 9/1/14]

A. The Adult Protective Services (APS) Program is mandated by Title 26, Article 3.1, of the Colorado Revised Statutes. The county department shall administer the APS Program in accordance with the statutes and rules governing the APS Program and in general State Department fiscal and program regulations.

B. The county department shall ~~make reasonable efforts to~~ utilize funding appropriated by the State Legislature to MAKE REASONABLE EFFORTS TO maintain a fiscal year caseload average of twenty-five to one (25:1), as intended by S.B. 13-111.

C. ~~The county department shall report to the State Department the active caseworker, case aide, and supervisory staff, including FTE, beginning July 1, 2014, and within three (3) working days whenever APS staff changes occur.~~IN ORDER TO ENSURE THE SECURITY OF CAPS AND THE PERSONAL IDENTIFYING INFORMATION (PII) AND PERSONAL HEALTH INFORMATION (PHI) CONTAINED WITHIN, THE COUNTY DEPARTMENT SHALL NOTIFY THE STATE DEPARTMENT THROUGH A CAPS SUPPORT REQUEST WITHIN THREE (3) WORKING DAYS UPON LEARNING OF A CHANGE IN APS STAFFING, BUT NO LATER THAN THE CAPS USER’S LAST DAY OF EMPLOYMENT. AN EMAIL TO THE STATE DEPARTMENT MAY SUBSTITUTE FOR A CAPS SUPPORT TICKET IN THE EVENT A CAPS SUPPORT TICKET CAN NOT BE SUBMITTED.

D. The county department shall make reasonable efforts to advise county residents of services available through the APS Program by such methods as Adult Protection Team mandated community education, as defined at Section 30.830, B, 4, press releases, presentations, pamphlets, and other mass media.

E. The county department shall handle responses to requests for services from other agencies, including the State Department, other county departments, or another state’s APS Program, in the same manner and time frames as requests received from within the county.

F. The county department shall report to the State Department at such times and in such manner and form as the State Department requires, including through ~~the data system~~CAPS, manually generated reports, quality improvement and assurance processes, and other forms of reporting.

30.220 APS PROGRAM REVIEW AND OVERSIGHT [Rev. eff. 9/1/14]

A. The county department shall be subject to the provisions outlined in Section 26-1-111, C.R.S., requiring the State Department to ensure that the county department complies with requirements provided by statute, State Board of Human Services and Executive Director rules, federal laws and regulations, and contract and grant terms.

B. The county department shall be subject to routine quality control and program monitoring, to minimally include:

1. Targeted review of ~~the data system~~CAPS documentation;

2. Review and analysis of data reports generated from ~~the data system~~CAPS;

3. Case review;

4. Targeted program review conducted via phone, email, or survey; and,

5. Onsite program review.

C. The focus of the monitoring shall be to identify:

1. Compliance with program statute and rules;

2. Best practices that can be shared with other county departments; and,

3. Training needs.

D. The county department shall be subject to a performance improvement plan to correct areas of identified non-compliance.

E. The county department shall be subject to corrective action and sanction, as outlined in 9 CCR 2501-1 if the county fails to make improvements required under the performance improvement plan.

30.230 ELIGIBILITY [Rev. eff. 9/1/14]

A. Protective services are provided to persons that meet the definition of “at-risk adult” as defined in Section 30.100. Persons shall not be considered “at-risk” solely because of age and/or disability.

B. Protective services are provided to at-risk adults:

~~1.~~ ~~Who need assessment for health, welfare, protection, and/or safety; and/or,~~

~~2~~1. Who need short term services due to a report of actual or ~~potential~~SUSPECTED mistreatment~~, exploitation,~~ or self-neglect; and/or,

~~3~~2. Who need ongoing protection as the result of substantiation of mistreatment or self-neglect; and/or,

43. For whom the county department has been appointed guardian and/or conservator, or has been designated as representative payee; and/or,

~~5~~4. Who are residents of long term care facilities, such as nursing homes and assisted living residences, who must relocate due to the closure of the facility and:

a. The county department has been appointed guardian and/or conservator; or,

b. They are in need of protective services due to a lack of case management and/or assistance from any other reliable source.

~~6~~5. Without regard to income, resources, or lawful presence.

30.240 APS PRINCIPLES – CONSENT, SELF DETERMINATION, AND LEAST RESTRICTIVE INTERVENTION [Rev. eff. 9/1/14]

A. The client's consent is not required for the county department to investigate or assess allegations of mistreatment~~, exploitation,~~ or self-neglect.

B. The final decision as to acceptance of protective services shall rest with the client unless the client has been adjudicated incapacitated by the court or as outlined in Section 30.600.

C. Protective services provided to and other services arranged for the client shall constitute the least restrictive intervention and be those services provided for the shortest duration and to the minimum extent necessary to meet the needs of the client.

D. It shall not be construed that a person is being mistreated when he or she is being furnished or is relying upon treatment or practices that:

1. Rely on the tenets and practices of that person's recognized church or religious denomination; or,

2. Do not violate local, state, or federal laws.

E. Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect.

30.250 CONFIDENTIALITY [Rev. eff. 9/1/14]

A. Information received as a result of a report to APS and subsequent investigation and casework services shall be confidential and shall not be released without a court order for good cause except in limited circumstances, as defined in Section 30.250, E.

B. The county department shall treat all information related to the report and the case, whether in written or electronic form, as confidential according to applicable statutes, including, but not limited to, the following:

1. Identifying information, such as the name, address, relationship to the at-risk adult, date of birth, or Social Security Number of the:

a. At-risk adult;

b. At-risk adult's family members;

c. Reporting party;

d. Alleged perpetrator; and,

e. Other persons involved in the case.

2. Allegations, assessment, and investigative findings, including, but not limited to:

a. Initial report of allegations and concerns;

b. The client's physical, environmental, resources and financial, medical, mental and behavioral, and social systems status;

c. Medical and behavioral diagnoses, past medical conditions, and disabilities;

d. Services provided to or arranged for the adult;

e. Information learned as a result of a criminal investigation;

f. Information obtained during the APS investigation and the substantiation or non-substantiation of the allegations; AND,

g. Legal protections in place including, but not limited to, wills, advance directives, powers of attorney, guardianship, conservatorship, representative payeeship, and protective orders.

C. Individuals or groups requesting information regarding APS reports and/or investigations shall be informed of the confidential nature of the information and shall be advised that a court order is required to release information held by the county department, except as provided at Section 30.250, E. These persons or groups include, but are not limited to:

1. Federal and state legislators;

2. Members of other governmental authorities or agencies, including county commissioners, city councils, school boards, and other city and county department boards, councils, officials, and employees;

3. Courts and law enforcement agencies;

4. Attorneys, guardians, conservators, agents under powers of attorney, representative payees, and other fiduciaries;

5. Family members, reporting parties, or other interested parties;

6. Any alleged perpetrator; and,

7. Media representatives.

D. In a criminal or civil proceeding or in any other circumstance in which the APS report and/or case record is subpoenaed or any request for disclosure has been made, or any county department or State Department representative is ordered to testify concerning an APS report or case, the court shall be advised, through proper channels, of the statutory provisions, rules, and policies concerning disclosure of information.

1. Confidential information shall not be released unless so ordered by the court for good cause.

2. Courts with competent jurisdiction may determine good cause. Although it is not an exhaustive list, the following are examples of court proceedings in which a court may determine that good cause exists for the release of confidential information:

   a. Guardianship or conservatorship proceeding in which either the county is the petitioner or has been ordered to testify;

   b. Review of Power of Attorney under the Uniform Power of Attorney Act, as outlined at Title 15, Article 14, Part 7, Colorado Revised Statutes (C.R.S.);

   c. Review of a fiduciary under Title 15, Article 10. Part 5, C.R.S.; and/or,

   d. Criminal trial.

E. Information held by the State Department or county department may be released without a court order only when:

1. Coordination with professionals and collateral contacts is necessary to investigate mistreatment, exploitation, or self-neglect and/or to resolve health and/or safety concerns.

2. It is essential for the provision of protective services, including establishing eligibility for, arrangement and implementation of services and benefits, and appointment of a guardian and/or conservator.

3. A review of a Power of Attorney is requested under the Uniform Power of Attorney Act, as outlined at C.R.S. Title 15, Article 14, Part 7 or review of a fiduciary under C.R.S. Title 15, Article 10, Part 5.

4. A case is reviewed with the adult protection team, in accordance with the adult protection teams by-laws, and when in executive session with members who have signed a confidentiality agreement.

5. A criminal complaint or indictment is filed based on the APS report and investigation.

6. There is a death of a suspected at-risk adult and formal charges or a grand jury indictment have been brought.

7. The coroner is investigating a death suspected to be a result of mistreatment or self-neglect.

8. The client requests his/her file and provides a written release of information, in accordance with the county department's policy. The county department shall review the request to determine whether the client has the ability to provide informed consent related to the release of the file.

F. Whenever there is a question about the legality of releasing information or the ability of the client to provide informed consent, the requestor, whether the client or another person, shall be advised to submit a written request to the appropriate court to order the county department to produce the desired records or information within the custody or control of the county department.

G. Information released under Section 30.250, D and E, shall be the minimum information necessary to secure the services, conduct the investigation, or otherwise respond to the court order or request for information. The county department shall:

1. Provide the information only to persons deemed essential to the court order, criminal investigation, Adult Protection team activities, the provision of services, or client request;

2. Edit the information prior to its release to physically remove or redact sensitive information not essential to the court order, criminal investigation, Adult Protection Team activities, provision of services and benefits, or client request;

3. Always redact the reporting party information and other documentation that could identify the reporting party unless specifically ordered by a court or the reporter has given written consent to release his/her information;

4. Always redact all HIPAA protected information and any other confidential information which is protected by law unless specifically ordered by a court; and,

5. Redact all other report and case information not directly related to the request.

H. When a court order or other written request for the release of information related to an APS report or case is received, as outlined in Sections 30.250, D and E, the county department shall:

1. Comply within the time frame ordered by the court, or in accordance with county department policy; and,

2. Provide a written notice with the information to be released regarding the legality of sharing confidential information.

I. All confidential APS information and data shall be processed, filed and stored using safeguards that prevent unauthorized personnel from acquiring, accessing, or retrieving the information.

1. Client files shall be kept in a secured area when not in use.

2. Passwords ~~to the APS data system~~ TO CAPS shall be kept secured.

3. The State Department shall ensure that only ~~APS~~ STATE AND COUNTY staff persons WITH A BUSINESS NEED TO DO SO SHALL have access to ~~the APS data system.~~CAPS.

4. Laptops and other mobile devices used to document in the field shall be protected and encrypted in compliance with HIPAA security requirements.

5. Email correspondence that contains APS confidential information shall be sent through secure encryption programs.

6. ALL CAPS USERS MUST ELECTRONICALLY SIGN THE CAPS SECURITY AND CONFIDENTIALITY AGREEMENT ANNUALLY.

J. COUNTY DEPARTMENTS SHALL NOT ACCESS INFORMATION IN CAPS THAT IS NOT NECESSARY TO SERVE THE CLIENT. VIOLATIONS MAY RESULT IN LOSS OF ACCESS TO CAPS, AT THE DISCRETION OF THE STATE DEPARTMENT.

~~J.~~K. Any person who willfully violates confidentiality or who encourages the release of information related to the mistreatment~~, exploitation,~~ and self-neglect of an at-risk adult from ~~the data system~~CAPS or THE APS case file, to persons not permitted access to such information, commits a Class 2 petty offense and shall be punished as provided in Section 26-3.1-102(7)(c), C.R.S.

~~K~~L. Clients shall be referred to the Colorado Address Confidentiality Program (ACP) as appropriate to determine their eligibility for services including the legal substitute mailing address and mail forwarding services. The State Department and county department shall comply with any applicable provisions for APS clients enrolled in the ACP.

30.260 DOCUMENTATION [Rev. eff. 9/1/14]

A. The county department shall THOROUGHLY document all Adult Protective Services (APS) reports and case information in ~~the data system~~CAPS. There shall be no parallel paper or electronic system used to enter APS documentation. DOCUMENTATION SHALL INCLUDE ALL ASPECTS OF THE APS CASE, INCLUDING:

1. INITIAL REPORT;

2. INVESTIGATION;

3. ASSESSMENT;

4. CASE PLAN;

5. CONTACT RECORDS FOR THE CLIENT, ALLEGED PERPETRATOR, REPORTER, AND ALL COLLATERALS AND SUPPORTS;

6. ONGOING CASE NOTES;

7. CASE CLOSURE; AND,

8. ANY OTHER PROCESSES RELATED TO THE CASE.

B. All documents and evidence critical to the APS case record shall be scanned into ~~the data system~~CAPS, to include:

1. ~~The~~A release of information form(s) signed by the client~~;~~, WHEN APPROPRIATE;

2. All of the client's Powers of Attorney(s), living will declaration, and/or other advance directives, as applicable;

3. All documents, reports, and correspondence related to guardianship, conservatorship, and representative payeeship, whether county department held or private, as applicable; and,

4. Other documentation, such as medical reports, results of psychiatric evaluations, photographic documentation, and other evidence collected during the investigation and assessment.

C. ALL DOCUMENTATION PERTAINING TO APS REPORTS AND CASES, INCLUDING INTERVIEW AND CASE NOTES, EVIDENCE GATHERED, SUCH AS PHOTOS, MEDICAL RECORDS, AND BANK STATEMENTS SHALL BE KEPT IN A SECURE LOCATION UNTIL DOCUMENTED IN CAPS AND THEN SHALL BE DESTROYED.

a. HARDCOPY AND ELECTRONIC APS FILES CREATED PRIOR TO JULY 1, 2014 SHALL BE KEPT IN A SECURED LOCATION.

b. ALL APS FILES CREATED JULY 1, 2014 OR LATER SHALL BE DOCUMENTED IN CAPS AND THE FILE/NOTES DESTROYED.

c. ORIGINAL LEGAL DOCUMENTS SUCH AS GUARDIANSHIP, REPRESENTATIVE PAYEESHIP, BIRTH CERTIFICATES, OR TAX DOCUMENTS MAY BE RETAINED IN A HARDCOPY FILE, IN ADDITION TO CAPS, THAT IS IN A SECURED LOCATION.

~~C~~.D. Case records shall be retained for a minimum of three (3) years, plus the current year, after the date of case closure.

30.300 STAFF QUALIFICATIONS, TRAINING, AND DUTIES

30.310 EDUCATION AND EXPERIENCE QUALIFICATIONS [Rev. eff. 9/1/14]

A. The county department shall ensure that all personnel who supervise or provide professional services in the APS program possess the following minimum qualifications for education and experience:

1. The Professional Entry (Training) Level position shall require a Bachelor's degree with an equivalent of thirty (30) semester or forty-five (45) quarter hours in human behavioral sciences or health care related courses, such as, social work, sociology, psychology, psychiatry, gerontology, nursing, special education, family intervention techniques, diagnostic measures, therapeutic techniques, guidance and counseling, CRIMINAL JUSTICE, ~~or~~ other human behavioral sciences, or A medical field relevant to the APS ~~P~~program and/or at-risk adults.

2. Professional Journey Level position shall meet the requirements for the Professional Entry (Training) Level position and shall have obtained the skills, knowledge, and abilities to perform duties at the fully independent working level, as follows:

   a. ~~The required degree plus o~~One (1) year of professional casework in a public or private social services agency ~~obtained~~ COMPLETED after the degree is obtained; or,

   b. A Master's degree in ~~social work.~~A FIELD AS LISTED IN 30.310, A, 1.

3. The Casework Supervisor position shall meet the requirements for the Professional Journey Level position plus have at least three years professional casework experience at the journey level obtained after the Bachelor's or Master's degree. County department managers, administrators, and directors with direct supervision shall meet this requirement.

4. The Case Aide and Intake Screener positions, if available in the county department, shall have obtained a high school diploma or a General Equivalency Diploma (GED) plus have at least six (6) months full time public contact in human services or a related field. Substitution for public contact is successful completion of a certificate program in gerontology and/or at least six, college level credit hours in a human behavioral sciences or health care field.

B. If proven recruitment difficulty exists or the APS staff person was hired to perform APS duties prior to November 1, 1998, the county department may request a waiver of these requirements by submitting a request to the State Department Adult Protective Services unit. The request shall include:

1. The position for which the county department is requesting a waiver, including the percentage of time the position will be performing the duties of the APS program (% FTE).

2. Justification of the need for a waiver, to include:

   a. Documentation of the recruiting effort;

   b. Educational background of the proposed candidate, including degrees and post degree training, such as completion of a gerontology certificate, post graduate coursework, or other relevant training courses;

   c. Years of direct experience working with at-risk adults or other vulnerable populations applicable to the APS Program and clients; and,

   d. Other relevant qualities and information that demonstrate the candidate would be acceptable as a training level caseworker.

3. A plan on how and when the candidate will meet the coursework requirement or will otherwise meet the educational requirements of the position.

4. If the waiver request is not approved and the county department disagrees with the decision, the county department may request review of the decision by the Executive Director of the State Department.

D. All APS staff education and experience shall be documented in ~~the data system~~CAPS.

30.320 BACKGROUND CHECK REQUIREMENTS [Eff. 8/1/12]

A. The county department shall complete a criminal background check on all prospective APS employees who, while in their employment, have direct, unsupervised contact with any actual or potential at-risk adult.

B. If the county department has not previously requested and received a criminal background check on a current employee hired on or after June 1, 2010, the county department shall immediately request a fingerprint criminal background check. The county department shall pay the fee.

C. The county department shall require a fingerprint background check for all prospective employees.

1. The county department shall submit to the Colorado Bureau of Investigation (CBI) a complete set of fingerprints taken by a qualified law enforcement agency to obtain any criminal record held by the CBI.

2. The background check shall include a check of the records at the Colorado Bureau of Investigation and the Federal Bureau of Investigation.

3. The county department is strongly urged to require the background check be flagged for future notification of arrest and/or conviction.

4. The prospective employee shall pay the fee for the criminal record check unless the county department chooses to pay the fee.

5. The prospective employee's employment shall be conditional upon a satisfactory criminal background check.

   a. The current employee or applicant shall be disqualified from employment, regardless of the length of time that may have passed since the discharge of the sentence imposed, for any felony criminal offenses as defined in Title 18, Articles

2-10, 12-13, 15-18~~.5~~, 20, 23 of the Colorado Revised Statutes, or any felony offense in any other state the elements of which are substantially similar to the elements of any of the offenses included herein.

b. At the county department's discretion, a person shall be disqualified from employment either as an employee or as a contracting employee if less than ten years have passed since the person was discharged from a sentence imposed for conviction of any of the following criminal offenses:

1) Third degree assault, as described in Section 18-3-204, C.R.S.;

2) Any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

3) Violation of a protection order, as described in Section 18-6-803.5, C.R.S.;

4) Any misdemeanor offense of child abuse, as defined in Section 18-6-401, C.R.S.;

5) Any misdemeanor offense of sexual assault on a client by a psychotherapist, as defined in Section 18-3-405.5, C.R.S.;

6) Any misdemeanor offense of arson, burglary and related offenses, robbery, or theft, as defined in Title 18, Articles 1-4, C.R.S.;

7) A pattern of misdemeanor convictions within the ten years immediately preceding the date of submission of the application, or;

8) Any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described above.

4. Prospective employees who are transferring from one county department to another are not required to be re-fingerprinted if they complete the following process:

a. New employees must obtain their CBI clearance letter or a photocopy of their processed fingerprint card from their former employer. They must attach it to a new fingerprint card, with the top portion completed.

b. The new fingerprint card must include the new employer's address. "Transfer – County Department" must be inserted in the "Reason Fingerprinted" block.

c. The CBI clearance letter (or photocopy of the old fingerprint card) and the new fingerprint card shall be sent with payment by the county department to the CBI.

d. County departments that have accounts with CBI are not required to send payment, but the county department shall enter its CBI account number in the OCA block of the new fingerprint card.

30.330 TRAINING REQUIREMENTS [Rev. eff. 9/1/14]

A. The county department shall ensure that all new APS staff completes required APS training, as follows:

1. New entry and journey level caseworkers shall successfully complete the Pre-Academy Workbook (PAW) WITHIN ONE (1) MONTH OF HIRE OR TRANSFER TO THE APS PROGRAM AND SHALL NOT BE ASSIGNED CASES UNTIL THE PAW HAS BEEN COMPLETED. THE CASEWORKER SHALL DOCUMENT COMPLETION OF THE PAW IN CAPS.

   ~~a. Full time APS caseworkers shall complete the PAW within three (3) months of hire or transfer to the APS Program.~~

   ~~b. Part time APS caseworkers shall complete the PAW within six (6) months of hire or transfer to the APS Program.~~

2. New entry and journey level caseworkers shall complete the APS training academy. ~~within nine months of hire or transfer to the APS Program.~~

   a. Small ~~counties~~ COUNTY DEPARTMENTS with only one (1) caseworker who is less than a twenty-five percent (25%) FTE in APS shall complete the training academy within ~~twelve (12~~)NINE (9) months of hire or transfer to the APS Program. Caseworkers are strongly urged to request support from the State Department on any cases opened prior to attending training academy.

   b. ALL OTHER COUNTY DEPARTMENTS WITH AT LEAST ONE (1) CASEWORKER~~Counties~~ with a twenty-five percent (25%) or higher FTE in APS shall complete the training academy within ~~nine (9)~~ SIX (6) months of hire or transfer to the APS Program.

3. New supervisors, managers, administrators, and/or county department directors with direct casework supervision duties shall successfully complete the web-based APS supervisor training within six (6) months of hire, transfer to the APS Program, or promotion from a caseworker position. The web-based training requirements shall be waived if the supervisor, manager, administrator, or director attends the APS training academy.

4. New case aides shall complete the Pre-Academy Workbook (PAW) within ~~three (3)~~ ONE (1) months of hire or transfer to the APS Program. Case aides may attend APS training academy, space permitting.

5. APS intake screeners or other county department staff designated to receive reports of alleged mistreatment~~, exploitation,~~ and self-neglect of at-risk adults ~~shall complete the web-based enhanced screening training within sixty (60) days of hire or transfer to their position. Intake screeners~~ may complete the Pre-Academy Workbook (PAW).

B. The county department shall ensure that any APS staff member on the job longer than twelve (12) months completes ongoing training relevant to the APS Program and client populations. Attendance at any specific training event is at the supervisor's discretion.

   1. Caseworkers shall successfully complete at least ~~thirty (30)~~ FORTY (40) hours of ongoing training per fiscal year related to the APS Program, target populations, and the provision of casework services, as follows:

      a. At least fifteen (15) hours shall be State Department provided training specifically related to the APS Program, which may include:

         1) Statewide or regional training;

2) Quarterly training meetings;

3) County department onsite training; and/or,

4) Live webinar or self-directed web-based training.

b. Additional training options relevant to the APS Program, target populations, and/or the provision of casework services shall include, but are not limited to:

1) National APS organizations' webinar training;

2) Child Welfare Training Academy coursework that has cross-over relevance and has been approved by the State Department APS unit;

3) Other state or national APS conferences; AND/OR,

4) Regional training or conference conducted by agencies or professionals that work with older adults or people with disabilities including, but not limited to, a community centered board, Alzheimer's association, Colorado legal assistance developer, Colorado Coalition for Elder Rights and Abuse Prevention (CCERAP), Colorado Long-Term Care Ombudsman, local law enforcement, AP team, APS supervisor or county department attorney.~~; and/or,~~.

~~5) Reading reports or professional journals provided or approved by the State Department APS unit about current APS best practices, research, and interventions.~~

2. Supervisors, managers, administrators, and/or county department directors with direct casework supervision duties shall successfully complete at least ~~twenty (20~~) THIRTY (30) hours of ongoing training per fiscal year related to the APS Program, target populations, the provision of casework services, or general supervision of employees, as follows:

a. At least ~~ten (10)~~ FIFTEEN (15) hours shall be State Department provided training specifically related to the APS Program, as outlined for caseworkers.

b. Additional training options include those outlined for caseworkers plus training options related to general employee supervision.

3. Case aides shall successfully complete at least ~~fifteen (15)~~ TWENTY (20) hours of ongoing training per fiscal year, as outlined for caseworkers. At least seven (7) hours shall be State Department provided training.

4. Required training hours as outlined in Section 30.330, B, 1-3, shall be prorated for part time APS staff.

a. Persons working less than twenty-five percent (25%) in APS shall complete a minimum of:

1) ~~Six (6)~~ TEN (10) hours for caseworkers, SIX (6) OF WHICH SHALL BE STATE PROVIDED; AND,

2) ~~Four (4)~~ FIVE (5) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, THREE (3) OF WHICH SHALL BE STATE PROVIDED; and,

3) ~~Three (3)~~ FOUR (4) hours for case aides, TWO (2) OF WHICH SHALL BE STATE PROVIDED.

b. Persons working twenty-five through forty nine percent (25-49%) in APS shall complete a minimum of:

1) ~~Fifteen (15)~~TWENTY (20) hours for caseworkers, AT LEAST TEN (10) SHALL BE STATE PROVIDED;

2) ~~Eight (8)~~TEN (10) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, AT LEAST SIX (6) SHALL BE STATE PROVIDED; and,

3) ~~Eight (8)~~TEN (10) hours for case aides, AT LEAST FIVE (5) SHALL BE STATE PROVIDED.

c. Persons working fifty through seventy-four percent (50-74%) in APS shall complete a minimum of:

1) ~~Twenty-two (22~~) THIRTY (30) hours for caseworkers, AT LEAST FIFTEEN (15) SHALL BE STATE PROVIDED;

2) ~~Fifteen (15)~~ TWENTY (20) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, AT LEAST FIFTEEN (15) SHALL BE STATE PROVIDED; and,

3) ~~Eleven (11)~~TWELVE (12) hours for case aides, AT LEAST SIX (6) SHALL BE STATE PROVIDED.

d. Persons working seventy-five through one hundred percent (75-100%) in APS shall complete the full training requirement outlined in 30.330, B, 1-3.

C. All training hours shall be documented in ~~the data system~~CAPS within fourteen (14) calendar days of completion of the training.

30.340 STAFF DUTIES AND RESPONSIBILITIES [Rev. eff. 9/1/14]

A. The direct supervisor OR LEAD WORKER shall, at a minimum:

1. Receive reports of mistreatment~~, exploitation,~~ and self-neglect as outlined in Section~~s~~ 30.400~~10 through 30.430~~.

2. Evaluate the report, ~~and~~ determine the response, and develop a plan for caseworker safety, as outlined in Section~~s~~ 30.400~~10 through 30.430~~. Counties ~~may~~ ARE URGED TO use the RED Team process.

3. Staff open cases of each caseworker monthly to ensure cases meet program requirements related to the provision of protective services.

4. REVIEW CASES TO ENSURE: ~~Use the APS case review tool in the data system~~CAPS ~~each month to review a minimum of fifteen percent (15%) TWENTY-FIVE (25%) of each caseworker's cases that were open and/or closed that month to ensure:~~

a. Timely casework;

b. Investigation, assessment, and case planning were thorough and complete;

c. Case closure, if applicable, was appropriate; and,

d. Documentation in ~~the data system~~CAPS is ~~thorough~~COMPLETE and ~~complete~~ACCURATE.

5. REVIEW OF CASES SHALL BE COMPLETED USING ONE OF TWO APPROVED METHODS:

a. USING THE CASE REVIEW SCORE CARD IN CAPS, EACH MONTH REVIEW FIFTEEN PERCENT (15%) OF EACH CASEWORKER'S CASES THAT WERE OPEN AND/OR CLOSED DURING THE MONTH; OR,

b. APPROVE EVERY COUNTY APS CASE AT THREE KEY JUNCTURES OF THE APS CASEWORK PROCESS UTILIZING THE AUTOMATED APPROVAL PROCESS IN CAPS, AS FOLLOWS:

i. UPON COMPLETION OF THE INITIAL INVESTIGATION, ASSESSMENT, AND CASE PLAN;

ii. UPON COMPLETION OF A SIX MONTH REASSESSMENT FOR CASES OPEN LONGER THAN SIX MONTHS; AND,

iii. AT CASE CLOSURE.

~~5~~6. Assess APS caseworkers' professional development needs and provide opportunities for training.

~~6~~7. Respond to APS reports or have a contingency plan to respond within assigned time frames, including emergencies, and to provide protective services when no caseworker is available.

B. APS caseworkers shall, at a minimum:

1. Receive reports of mistreatment~~, exploitation,~~ and self-neglect as outlined in Section~~s~~ 30.400~~10 through 30.430~~;

2. Investigate allegations and assess the client's safety and needs as outlined in Section 30.500;

3. Develop, implement, and monitor case plans, conduct required client visits, and provide protective services as outlined in Section 30.600;

4. Document case findings as outlined throughout 12 CCR 2518-1; AND,

5. Assume responsibility for own learning and required training hours.

C. APS case aides may assist caseworkers in completing non-professional level tasks that do not require casework expertise, but shall not perform the duties of the caseworker or supervisor, such as completing:

1. The investigation and/or assessment;

2. The case plan;

3. The required monthly client contact visits; or,

4. Required reports to the court, for cases in which the county department is the guardian or conservator.

D. APS ~~call~~ INTAKE screeners or administrative support staff may:

1. Receive and document intake reports in ~~the data system~~ CAPS OR THROUGH THE CAPS WEB2CASE FORM;

2. Assign all reports to the supervisors for determination of appropriate response; and,

3. Direct urgent calls to the appropriate internal and external authorities.

30.400 REPORT RECEIPT AND RESPONSE

30.410 INTAKE [Rev. eff. 9/1/14]

A. The county department shall receive oral or written reports of at-risk adult mistreatment~~, exploitation,~~ and self-neglect, OCCURRING IN THE COMMUNITY OR IN A FACILITY.

B. The county department shall have an established process during business and non-business hours for receiving such reports.

C. The county department shall input oral reports directly in ~~the data system~~CAPS OR THE CAPS WEB2CASE FORM. Written reports received via email, fax, or mail shall be documented in ~~the data system~~CAPS within one (1) business day of receipt. If unable to enter the report in the system within one business day, the county department shall document the reason.

D. ~~The data system~~ CAPS shall guide the information gathered for the report to include:

1. The client's demographic information, such as name, gender, date of birth or approximate age, address, current location if different from permanent address, and phone number;

2. The reporter's demographic information, unless the reporter requests anonymity, such as name, phone number, address, relationship to client and, if applicable, the reporter's agency or place of business;

3. Allegations of mistreatment~~, exploitation,~~ or self-neglect;

4. Safety concerns for the client;

5. Safety concerns for the caseworker; and,

6. The alleged perpetrator's information, such as name, gender, address, phone number, and relationship to the client, when mistreatment is alleged.

E. THE COUNTY DEPARTMENT SHALL DETERMINE JURISDICTION FOR RESPONDING TO THE REPORT.

1. THE COUNTY DEPARTMENT WITH JURISDICTION FOR RESPONDING TO A REPORT IS THE COUNTY IN WHICH THE ADULT RESIDES.

2. WHEN THE ADULT IS HOMELESS, AS DEFINED IN 42 U.S.C. SECTION 11302, THE COUNTY DEPARTMENT WITH JURISDICTION IS THE COUNTY IN WHICH THE ADULT'S PRIMARY NIGHTTIME RESIDENCE IS LOCATED.

3. IF JURISDICTION IS UNABLE TO BE DETERMINED BY 1 OR 2, ABOVE, THE COUNTY DEPARTMENT WITH JURISDICTION IS THE COUNTY IN WHICH THE ADULT IS CURRENTLY PRESENT.

4. IF AN EMERGENCY RESPONSE IS NECESSARY, THE COUNTY DEPARTMENT WHERE THE ADULT IS LOCATED AT THE TIME OF THE REPORT IS THE RESPONSIBLE COUNTY DEPARTMENT UNTIL JURISDICTION IS DETERMINED.

F. COUNTY DEPARTMENTS SHALL UTILIZE ALL AVAILABLE RESOURCES TO DETERMINE JURISDICTION, SUCH AS:

1. HISTORY WITHIN CAPS;

2. COLORADO BENEFITS MANAGEMENT SYSTEM (CBMS);

3. COLORADO COURTS;

4. WHERE SERVICES ARE BEING PROVIDED; AND/OR,

5. THE ADULT'S SCHOOL.

~~E~~G. If a county department receives a report and determines that the report was made to the wrong county, the receiving county department shall ~~forward~~TRANSFER the report to the responsible county department as soon as possible, but no later than ~~eight (8)~~ ONE (1) hour~~S~~ after determining the correct county.

30.420 REPORT CATEGORIZATION [Rev. eff. 9/1/14]

A. The county department shall review and evaluate the report UTILIZING THE RED TEAM FRAMEWORK OR SUPERVISORY REVIEW to determine whether THE:

1. ~~The c~~Client meets the definition of an at-risk adult; and,

2. ~~The a~~Allegations involve mistreatment~~, exploitation,~~ or self-neglect.

~~3~~B. The county department shall not investigate reports of verbal and/or emotional abuse when no other mistreatment indicators exist because verbal and/or emotional abuse are not included as mistreatment in C.R.S. Title 26, Article 3.1.

~~B~~C. ~~The data system~~CAPS ~~shall~~ WILL generate a response recommendation.

1. The APS supervisor shall have the final decision to screen in or out the report.

2. The APS supervisor shall document in ~~the data system~~CAPS why the ~~data system~~ CAPS recommendation was reversed.

~~C~~D. The county shall document and screen all reports received from law enforcement, as a result of Section 18-6.5-108(2)(b), C.R.S., UTILIZING THE RED TEAM FRAMEWORK OR SUPERVISORY REVIEW, to determine if the victim and the allegations meet AP eligibility criteria outlined in Sections 30.230 and 30.420, A.

E. COUNTY DEPARTMENTS ARE URGED TO DEVELOP AND IMPLEMENT A PROCESS UTILIZING THE RED TEAM FRAMEWORK IN CAPS TO REVIEW REPORTS TO DETERMINE REPORT CATEGORIZATION AND RESPONSE TIME FRAMES. THE SUPERVISOR OR LEAD WORKER HAS THE DISCRETION TO OVERRULE THE RED TEAM DECISION.

~~D~~F. Reports that do not involve an at-risk adult and mistreatment~~, exploitation,~~ or self-neglect, as outlined in Section 30.420, A, shall be screened out NO LATER THAN THE THIRD WORKING DAY AFTER THE RECEIPT OF THE REPORT. The county department shall not conduct an investigation.

1. The county department ~~shall~~MAY provide information and/or referral(s) to the reporting party, as appropriate.

2. The county department may inform the reporting party of the decision not to investigate.

3. The county department shall document the reason the report was screened out.

~~E~~G. Reports that involve an at-risk adult and mistreatment~~, exploitation,~~ or self-neglect, as outlined in Section 30.420, A, shall be screened in and are determined to be a case.

30.430 RESPONSE PRIORITY [Rev eff. 9/1/14]

A. The county department shall determine a time frame response to the case based upon the reported level of risk.

B. When factors present indicate the client is in clear and ~~imminent~~ IMMEDIATE danger or urgent and significant risk of harm due to the severity of the mistreatment~~, exploitation,~~ or self-neglect, or due to the vulnerability or physical frailty of the client, the county department shall:

1. Determine the case to be an emergency;

2. Call 911, if appropriate based on the circumstances of the report; and,

3. Make an initial response as soon as possible, but no later than twenty-four (24) hours including non-business ~~hours~~ DAYS, after the receipt of the report. An initial response shall be:

   a. A face-to-face visit with the client; or,

   b. An attempted face-to-face visit with the client; or,

   c. An outreach to another professional, such as law enforcement~~, Long Term Care Ombudsman,~~ or hospital staff, to ascertain the client's immediate safety.

4. If the initial response was not a face-to-face contact with the client ~~or~~ AND the county department was unable to ascertain the client's safety, the county department shall attempt a face-to-face client contact each day following the initial attempt at contact, including non-business days.

   a. A law enforcement welfare check may be substituted for ~~one~~ attemptS at contact DURING NON-BUSINESS DAYS. ~~but does not qualify as the face-to-face contact.~~ THE COUNTY DEPARTMENT SHALL FOLLOW UP ON THE NEXT WORKING DAY.

b. If the county department has confirmed the client to be unavailable or safe, SUCH AS IN THE INTENSIVE CARE UNIT (ICU), the reason for delayed response shall be documented.

c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

d. Following the third DAY OF unsuccessful attemptS at contact, the county department may choose to send a letter requesting an appointment with the client.

e. If attempts at contact remain unsuccessful, the county department shall close the ~~referral~~CASE no later than ~~twenty (20)~~THIRTY-FIVE (35) calendar days after the last attempt at contact.

f. The county department shall document ~~in the data system~~ all attempts to contact the client.

5. IF THE INITIAL RESPONSE WAS NOT A FACE-TO-FACE CONTACT WITH THE CLIENT ~~If~~ BUT the county department was able to ascertain safety, it shall make a face-to-face client contact on the first working day following the report. ~~If the client is unavailable, such as in ICU, the county shall document why the face-to-face could not be completed~~.

a. If the county department has confirmed the client to be unavailable, SUCH AS IN THE INTENSIVE CARE UNIT (ICU), the reason shall be documented.

b. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

c. Following the third DAY OF unsuccessful attemptS at contact, the county department may choose to send a letter requesting an appointment with the client.

d. If attempts at contact remain unsuccessful, the county department shall close the case no later ~~twenty (20)~~ THIRTY-FIVE (35) calendar days after the last attempt at contact.

e. The county department shall document ~~in the data system~~ all attempts to contact the client.

C. When ~~factors present~~ THE REPORT AND SUBSEQUENT SUPERVISORY REVIEW AND/OR RED TEAM PROCESS indicate the client is not in ~~imminent~~ IMMEDIATE danger or urgent risk of harm but mistreatment~~, exploitation,~~ or self-neglect is present or LIKELY PRESENT, ~~conditions exist that might reasonably result in mistreatment, exploitation, or self-neglect,~~ the county department shall:

1. Determine the case to be a non-emergency.

2. Make AN INITIAL RESPONSE ~~A face-to-face contact with the client~~ no later than three (3) working days beginning the day after the county department's receipt of the report. AN INITIAL RESPONSE SHALL BE:

a. A FACE-TO FACE VISIT WITH THE CLIENT; OR

b. AN ATTEMPTED FACE-TO-FACE WITH THE CLIENT;

c. AN OUTREACH TO ANOTHER PROFESSIONAL SUCH AS LAW ENFORCEMENT OR HOSPITAL STAFF, TO ASCERTAIN THE CLIENT'S IMMEDIATE SAFETY.

~~a~~3. When the initial ~~attempt~~ RESPONSE WAS NOT A~~at~~ face-to-face contact with the client OR THE COUNTY DEPARTMENT WAS UNABLE TO ASCERTAIN THE CLIENT'S SAFETY, ~~is unsuccessful, an attempt at face-to-face~~ THE COUNTY DEPARTMENT SHALL ATTEMPT A FACE-TO-FACE CLIENT contact ~~shall be made~~ every other WORKING day for a minimum of three attempts.

a. A LAW ENFORCEMENT WELFARE CHECK MAY BE SUBSTITUTED FOR ONE ATTEMPT AT CONTACT, AND QUALIFIES AS ONE OF THE THREE REQUIRED ATTEMPTS AT CONTACT.

~~1)~~b. If the county department has confirmed the client to be unavailable or safe, the reason for delayed response shall be documented.

~~2)~~c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

~~b~~d. Following the third unsuccessful attempt at contact, the county department may choose to send a letter requesting an appointment with the client.

~~c.~~e. If attempts at contact remain unsuccessful, the county department shall close the case no later than ~~twenty (20)~~THIRTY-FIVE (35) calendar days after the last attempted contact.

~~d.~~f. The county department shall document all attempts to contact the client.

4. IF THE COUNTY DEPARTMENT WAS ABLE TO ASCERTAIN SAFETY,

a. THE COUNTY DEPARTMENT SHALL ATTEMPT A FACE-TO-FACE CLIENT CONTACT WITHIN THE RESPONSE TIME FRAME OR BEGINNING ON THE FIRST WORKING DAY AFTER ASCERTAINING SAFETY IF SAFETY WERE ASCERTAINED ON THE LAST DAY OF THE RESPONSE TIME FRAME. ATTEMPTS AT CONTACT SHALL CONTINUE EVERY OTHER WORKING DAY FOR A MINIMUM OF THREE ATTEMPTS.

b. IF THE COUNTY DEPARTMENT HAS CONFIRMED THE CLIENT TO BE UNAVAILABLE, THE REASON SHALL BE DOCUMENTED.

c. INITIAL AND SUBSEQUENT ATTEMPTS AT CONTACT SHALL BEGIN IMMEDIATELY WHEN THE CLIENT BECOMES OR IS EXPECTED TO BECOME AVAILABLE.

d. FOLLOWING THE THIRD UNSUCCESSFUL ATTEMPT AT CONTACT, THE COUNTY DEPARTMENT MAY CHOOSE TO SEND A LETTER REQUESTING AN APPOINTMENT WITH THE CLIENT.

e. IF ATTEMPTS AT CONTACT REMAIN UNSUCCESSFUL, THE COUNTY DEPARTMENT SHALL CLOSE THE CASE NO LATER THAN THIRTY-FIVE (35) CALENDAR DAYS AFTER THE LAST ATTEMPT AT CONTACT.

f. THE COUNTY DEPARTMENT SHALL DOCUMENT ALL ATTEMPTS TO CONTACT THE CLIENT.

D. Prior to the initial face-to-face client contact visit, the county department shall determine whether:

1. The visit and investigation should be made in conjunction with law enforcement and/or personnel from other agencies in accordance with the county department's cooperative agreements;

2. The client is in ~~the data system~~CAPS and/or is otherwise known to the county department;

3. Safety concerns exist, based on historical data and information provided in the report, requiring the caseworker to be accompanied by:

a. Law enforcement;

b. The supervisor;

c. Another case worker; or,

d. Emergency, medical, and/or mental health personnel, if known or suspected medical or psychiatric conditions exist.

E. If the case originally appears to indicate a need for a face-to-face investigation but further assessment determines that a face-to-face contact is not required to resolve potential safety and risk concerns, the county department may ~~provide telephone response and assistance~~ COLLABORATE WITH OTHER PROFESSIONALS OR RESPONSIBLE FAMILY OR SUPPORTS TO RESOLVE THE SAFETY CONCERNS. Cases appropriate for ~~telephone response and assistance~~ PHONE COLLABORATION include those:

1. That present heightened worker safety concerns and upon consultation, law enforcement directs APS not to respond.

2. That present heightened worker safety concerns due to environmental or infectious disease concerns and upon consultation, first responders, public health officials, and/or code enforcement directs APS not to respond.

3. In which it is determined that responsible family is aware of the concerns and is working appropriately to address the concerns.

4. Regarding a chronic situation in which APS has had a visit with the competent client in the past thirty (30) calendar days and determined APS intervention is unwanted or could not resolve the concern.

~~5. In which the client is competent and able, with assistance from APS or other support systems, to arrange services.~~

~~6~~5. Regarding clients that have a case manager in place, such as a Single Entry Point (SEP) case manager, and calls between APS and the case manager can resolve the reporter's concerns.

~~7~~6. In which the client is hospitalized or institutionalized prior to the initial visit, and the county has determined that ongoing protective services is not required.

30.500 INVESTIGATION AND ASSESSMENT

30.510 INVESTIGATION AND ASSESSMENT OVERVIEW [Rev. eff. 9/1/14]

A. The county department shall ~~begin~~CONDUCT ~~an~~ A THOROUGH AND COMPLETE investigation into the allegations UNLESS THE INITIAL VISIT AND ASSESSMENT CONFIRMS THAT THE CLIENT IS NOT AN AT-RISK ADULT. ~~and an assessment of the client's risk, safety, and strengths during the initial face-to-face visit to further clarify the level of risk of mistreatment, exploitation, or self-neglect to the client and the client's immediate needs.~~ INVESTIGATION IS REQUIRED BY STATUTE AND THE CLIENT CANNOT REFUSE AN INVESTIGATION.

B. THE COUNTY DEPARTMENT SHALL CONDUCT AN ASSESSMENT OF THE CLIENT'S RISK, SAFETY, AND STRENGTHS DURING THE INITIAL FACE-TO-FACE VISIT TO FURTHER CLARIFY THE LEVEL OF RISK OF MISTREATMENT OR SELF-NEGLECT TO THE CLIENT AND THE CLIENT'S IMMEDIATE NEEDS, WHENEVER POSSIBLE.

~~B~~C. The investigation and assessment may be conducted independent of one another or simultaneously, depending on the nature of the allegations.

D. IF UPON INITIAL INVESTIGATION, THE COUNTY DEPARTMENT DETERMINES A DIFFERENT COUNTY HAS JURISDICTION, THE ORIGINATING COUNTY DEPARTMENT SHALL TRANSFER THE CASE IN CAPS. THE COUNTY DEPARTMENT DETERMINED TO HAVE JURISDICTION SHALL UPHOLD THE SCREENING DECISION AND CONDUCT THE INVESTIGATION AND ASSESSMENT, UNLESS:

1. ADDITIONAL OR NEW INFORMATION RELATED TO THE SAFETY OF THE ADULT OR ALLEGED MISTREATMENT OR SELF-NEGLECT INDICATING THE CASE MAY BE CLOSED IS GATHERED BY THE COUNTY DEPARTMENT DETERMINED TO HAVE JURISDICTION.

2. THE BASIS FOR THE DECISION TO CLOSE THE CASE SHALL BE DOCUMENTED IN CAPS.

30.520 INVESTIGATION [Rev. eff. 9/1/14]

A. The county department shall conduct an investigation to determine findings related to allegations of mistreatment~~, exploitation~~ or self-neglect. The investigation shall include, but may not be limited to:

1. Determining the need for protective services. If the client is in clear and ~~imminent~~ IMMEDIATE danger, the county shall intervene immediately by notifying the proper emergency responders~~;~~.

2. DETERMINING IF THE INVESTIGATION SHOULD BE CONDUCTED JOINTLY WITH ANOTHER ENTITY, SUCH AS:

   a. LAW ENFORCEMENT AND/OR THE DISTRICT ATTORNEY;

   b. COMMUNITY CENTERED BOARD;

   c. HEALTH FACILITIES DIVISION;

   d. ATTORNEY GENERAL'S MEDICAID FRAUD UNIT; AND/OR,

   e. THE LONG-TERM CARE OMBUDSMAN.

~~2~~3. Conducting a face-to-face interview with the client, unannounced and in private, whenever possible, AND IF NOT UNANNOUNCED AND/OR IN PRIVATE, THE REASON SHALL BE DOCUMENTED IN CAPS~~;~~.

~~3~~4. Conducting interviews with collateral contacts.

~~4~~5. Interviewing the alleged perpetrator(s), with or without law enforcement, when appropriate and safe, AND IF THE PERPETRATOR IS NOT INTERVIEWED, THE REASON SHALL BE DOCUMENTED IN CAPS.

~~5~~6. Collecting evidence and documenting with photographs or other means, when appropriate, SUCH AS:

a. POLICE REPORTS;

b. ANY AVAILABLE INVESTIGATION REPORT FROM A CURRENTLY OR PREVIOUSLY INVOLVED FACILITY AND THE OCCURRENCE REPORT FROM THE HEALTH FACILITIES DIVISION;

c. MEDICAL AND MENTAL HEALTH RECORDS;

d. BANK RECORDS;

e. CARE PLANS FOR ANY PERSON IN A FACILITY OR RECEIVING OTHER SERVICES THAT REQUIRE A CARE PLAN AND ANY DAILY LOGS OR CHARTS; AND/OR,

f. STAFFING RECORDS AND EMPLOYEE WORK SCHEDULES WHEN INVESTIGATING IN A FACILITY.

~~6~~7. Making a finding regarding the substantiation or unsubstantiation of the allegations~~;~~.

~~7~~8. Determining the identity of, and making a finding related to, the perpetrator(s) of the mistreatment~~ OR exploitation or self-negect;~~.

~~8~~9. Determining whether there are additional mistreatment concerns not reported in the initial allegations and investigating AND DOCUMENTING any NEWLY identified concerns~~;~~. ~~and,~~

~~9~~10. Notifying law enforcement when criminal activity is suspected.

~~B. The county department shall~~

~~1.~~B. THE COUNTY DEPARTMENT SHALL ~~C~~complete ~~and document~~ the investigation ~~in the data system~~ within forty-five (45) calendar days of the receipt of the ~~referral~~REPORT, ENSURING THAT DOCUMENTATION OF THE INVESTIGATION IS OCCURRING IN CAPS THROUGHOUT THE INVESTIGATION PROCESS, AS FOLLOWS: ~~. If the investigation cannot be completed within this time frame, the county department shall document the reason why in the data system.~~

1. ALL INTERVIEWS, CONTACTS, OR ATTEMPTED CONTACTS WITH THE CLIENT, COLLATERALS, ALLEGED PERPETRATORS, AND OTHER CONTACTS DURING THE INVESTIGATION SHALL BE DOCUMENTED WITHIN FOURTEEN (14) CALENDAR DAYS OF RECEIPT OF THE INFORMATION.

~~2. Document the investigation in the data system to minimally include window fields and narrative of the:~~

~~a. Allegations;~~

~~b. Mistreatment category(ies) identified by the reporter and any additional mistreatment, exploitation, or self-neglect identified during the investigation, including a finding for each category;~~

~~b. Worker safety issues, if different from the information in the initial report;~~

~~d. Client interview information;~~

~~e. Alleged perpetrator(s) information, including a finding for each perpetrator, if applicable;~~

~~f. Collateral interview information;~~

~~g. Evidence collected;~~

~~h. Determination of whether the allegation(s) and any additional mistreatment, exploitation or self-neglect identified during the investigation are substantiated, unsubstantiated, or are inconclusive; and,~~

~~i. Date referred to law enforcement or the District Attorney, and a description of law enforcement or District Attorney (DA) involvement, if any~~.

2. ALL EVIDENCE COLLECTED DURING THE INVESTIGATION SHALL BE SCANNED AND ATTACHED TO THE CASE BY THE CONCLUSION OF THE INVESTIGATION.

3. FINDINGS FOR THE ALLEGATIONS AND ALLEGED PERPETRATOR SHALL BE DOCUMENTED NO LATER THAN FORTY-FIVE (45) CALENDAR DAYS FROM RECEIPT OF THE REPORT.

4. IF THE INVESTIGATION CANNOT BE COMPLETED WITHIN THIS TIME FRAME, THE COUNTY DEPARTMENT SHALL DOCUMENT THE REASON WHY.

30.530 ASSESSMENT [Rev. eff. 9/1/14]

A. The county department shall COMPLETE A BASELINE ASSESSMENT OF~~assess~~ the client to determine if there is a need for protective services. If the client is in clear and ~~imminent~~ IMMEDIATE danger, the county shall intervene immediately by notifying the proper authorities or arranging for appropriate emergency responders.

B. The county department shall determine ~~for each indicator a level of impact to~~ the client's RISK AND safety~~, health, and well-being by assessing the client's strengths and needs~~ USING THE ASSESSMENT TOOL IN CAPS. ~~in the following five (5) assessment status areas, as applicable:~~

~~1. Physical status, including the client's ability to perform various activities of daily living;~~

~~2. Environmental status, including the conditions within the client's residence, the availability of food and drinking water, and the functionality of heating, plumbing, and electrical systems;~~

3. Resources and financial status, including the client's income, ability to access income, changes in financial circumstances, unpaid bills, and signs of exploitation;

4. Medical status, including the client's current and previous medical conditions, hospitalizations, prescribed medications, insurance, and hearing, vision or dental needs; and,

5. Mental and behavioral status, including the client's capacity to make decisions; ability to manage money or medication, ability to receive or communicate information; ability to plan and sequence; behaviors that threaten the safety of the client or others; a history of mental health conditions; and, any recent loss.

C. The county department shall assess the client's support system status, including family members, friends, involvement with organizations, and any other natural support.

D. The county department shall:

1C. THE COUNTY DEPARTMENT SHALL Ccomplete and document the assessment in the data systemCAPS within forty-five (45) calendar days of the receipt of the report, AS FOLLOWS: If the assessment cannot be completed within this time frame, the county department shall document the reason why in the data system.

1. ALL IMPACTS AND MITIGATING SERVICES, AND THE NARRATIVE SUMMARY SHALL BE DOCUMENTED AND THE ASSESSMENT MARKED COMPLETE NO LATER THAN FORTY-FIVE (45) CALENDAR DAYS FROM RECEIPT OF THE REPORT.

2. Document the assessment in the data system to minimally include window fields and narrative of:

a. The observations in each of the six assessment status areas, as applicable; and,

b. The level of impact for all status area risk factor(s); and,

c. If a mitigating service is in place to improve safety.

2. IF THE ASSESSMENT CANNOT BE COMPLETED WITHIN THIS TIME FRAME, THE COUNTY DEPARTMENT SHALL DOCUMENT THE REASON WHY.

30.600. CASE PLANNING AND IMPLEMENTATION

30.610. CASE PLAN DEVELOPMENT [Rev. eff. 9/1/14]

A. The county department shall develop a case plan for protective services based upon the findings of the investigation and assessment and in accordance with APS principles.

B. A case plan shall not be developed when the allegations are unsubstantiated and there is no other identified need.

C. The case plan shall be documented in the data system and shall include:

1. Client strengths, including services in place, support systems, resources, and the client's personal abilities;

~~2. Client needs, including the nature of the protective issue and/or needs of the client and why the client is unable to meet his/her own needs without APS intervention;~~

~~3~~1. THE **s**ervice ~~goals~~ NEEDS NECESSARY TO SUCCESSFULLY ACHIEVE SAFETY IMPROVEMENT FOR ANY IDENTIFIED RISK FACTORS, CHARACTERIZED WITH A SIGNIFICANT IMPACT, FOR WHICH THERE IS NO ADEQUATE MITIGATING SERVICE IN PLACE AT THE TIME OF APS INITIAL RESPONSE; ~~at a minimum to include a goal for all unmitigated factors with an SIGNIFICANT impact to the client's safety, including why the goal was identified, why it is the least restrictive intervention, how it will meet the client's needs and desires and reduce risk, the person responsible for implementing the goal, and the implementation date; and,~~

2. THE PERSON RESPONSIBLE FOR ARRANGING EACH IDENTIFIED SERVICE NEED, AND IF OTHER THAN THE COUNTY DEPARTMENT, DOCUMENT THE INDIVIDUAL'S AGREEMENT TO ARRANGE THE SERVICE NEED; AND,

~~4~~3. ~~Client's and/or client's fiduciary's input into the development of the case plan, including the client's and/or the fiduciary's consent to the overall plan and the specific goals as outlined in Section 30.620.~~ THE STATUS OF ALL IDENTIFIED SERVICE NEEDS.

~~D. The county department shall:~~

~~1~~D. THE COUNTY DEPARTMENT SHALL ~~C~~complete and document the case plan ~~in the data system~~ within forty-five (45) calendar days of the receipt of the report. If the case plan cannot be completed within this time frame, the county department shall document the reason why in CAPS. ~~the data syste~~m.

~~2. Document the case plan in the data system to minimally include window fields and narrative of the required elements outlined in Section 30.610, C.~~

E. The county department shall implement services, upon consent of the client, that are available in the community and that the client is eligible to receive at no or reduced cost or is able to pay for privately.

1. The county department shall not be required to provide and/or pay for services that are not available in the community or those that the client is not eligible to receive at no or reduced cost or is able to pay for privately; but,

2. The county department is urged to explore all available options, including private companies, to secure needed services.

F. If services are unavailable through other government programs or local service providers and the APS client is unable to pay for the services, the county shall utilize APS client services funds, within available appropriations, to purchase GOODS AND services for the APS client. ~~APS county services funds shall be utilized:~~

1. THE COUNTY DEPARTMENT SHALL NOT OPEN AN APS CASE ONLY TO PURCHASE A SERVICE FOR A COMMUNITY MEMBER AND SHALL NOT USE APS CLIENT SERVICES FUNDS FOR ANY SERVICE THAT DOES NOT BENEFIT THE APS CLIENT.

~~1~~.2. ~~APS client services funds shall be utilized in emergency situations, to include, but not limited to, emergency shelter, food, or utilities; and/or,~~ CLIENT SERVICES FUNDS MAY BE USED IN THE FOLLOWING SITUATIONS:

a. EMERGENCY SITUATIONS, SUCH AS EMERGENCY SHELTER, FOOD, MEDICINE, OR UTILITIES;

b. WHEN THE PURCHASE(S) RESOLVES THE IMMEDIATE NEED; OR,

~~2~~c. For one-time, temporary, or short-term needs while the APS client is waiting for other service providers or funding sources to be approved and services begun; and/or,

3. GOODS AND SERVICES ACCEPTABLE FOR PURCHASE WITH CLIENT SERVICES FUNDS SHALL BE THE MINIMUM NECESSARY TO RESOLVE THE SAFETY CONCERN.

~~3~~4. ~~To~~ CLIENT SERVICES FUNDS MAY BE USED TO develop a county or regional contract with an agency or professional to provide a specific service for multiple APS clients throughout the contract duration, such as a specialist to conduct in-home capacity evaluations, a registered nurse to do in-home medical evaluations, or a long-term care facility to provide emergency shelter beds.

30.620 PROVISION OF SERVICES [Rev. eff. 9/1/14]

A. THE COUNTY DEPARTMENT SHALL PROVIDE PROTECTIVE SERVICES FOR THE SHORTEST DURATION NECESSARY TO ENSURE THE CLIENT'S SAFETY BY IMPLEMENTING CASE PLAN GOALS AS QUICKLY AS POSSIBLE IN ORDER TO STABILIZE THE CLIENT'S SITUATION AND PREVENT FURTHER MISTREATMENT OR SELF-NEGLECT.

~~A~~B. If the client appears to have capacity to make decisions:~~, the client's consent or refusal to the provision of protective services shall be obtained. and documented in the data system~~.

~~1.~~ ~~Consent or refusal shall be obtained within forty-five (45) calendar days of receipt of the report and documented. in the data system.~~

~~2~~1. ~~A~~ THE COUNTY DEPARTMENT SHALL ENCOURAGE THE CONSENTING client ~~who consents shall be encouraged~~ to sign a release of information that covers general, medical, and/or money management, as appropriate to the client's needs.

~~3~~2. ~~If a~~ THE client MAY refuse~~s~~ protective services, but THE COUNTY DEPARTMENT IS ENCOURAGED TO ATTEMPT TO OBTAIN THE CLIENT'S consent~~s~~ to additional visits or phone calls from the caseworker IF THE SITUATION APPEARS TO REQUIRE FURTHER SERVICES. ~~t~~The caseworker shall document the consent OR REFUSAL TO ADDITIONAL VISITS OR PHONE CALLS.~~to visits or calls in the data system and continue to conduct home visits to assess the client's need for protective services.~~

43. Clients with capacity may refuse any or all services and may revoke ~~consent at any~~ time.

~~5~~3. Caseworkers shall provide clients who refuse services with the county department contact information for future reference.

~~B~~C. If a client is suspected to lack capacity to make decisions, is at risk for harm, and refuses to consent to services, the county department shall document the client's inability to provide consent. ~~in the data system. The county department shall ensure immediate safety and:~~

~~1. Make its best effort to obtain an evaluation of the client's decision making capacity from a qualified professional; and,~~

~~2. Intervene as necessary to provide for the immediate safety and health of the client.~~

~~3. These situations shall be staffed with the supervisor and/or county attorney to:~~

~~a. Determine the client's risk and safety;~~

~~b. Assess the client's ability to consent;~~

~~c. Determine urgency of safety concerns if intervention is not taken;~~

~~d. Review previous interventions; and,~~

~~e. Ensure the intervention is done ethically and is the least restrictive intervention to ensure the client's safety.~~

1. DOCUMENTATION SHALL INCLUDE:

   a. OBSERVATIONS OF CLIENT BEHAVIORS AND ACTIONS;

   b. MEDICAL DOCUMENTATION OF CLIENT'S SUSPECTED INCAPACITY AND SAFETY CONCERNS TO SUPPORT INVOLUNTARY CASE PLANNING; AND/OR,

   c. INVESTIGATIVE EVIDENCE.

2. THE COUNTY DEPARTMENT SHALL ENSURE IMMEDIATE SAFETY AND MAKE ITS BEST EFFORT TO OBTAIN AN EVALUATION OF THE CLIENT'S DECISION MAKING CAPACITY FROM A QUALIFIED PROFESSIONAL.

3. THESE SITUATIONS SHALL BE STAFFED WITH THE SUPERVISOR AND/OR COUNTY ATTORNEY TO:

   a. DETERMINE THE CLIENT'S RISK AND SAFETY;

   b. ASSESS THE CLIENT'S ABILITY TO CONSENT;

   c. DETERMINE URGENCY OF SAFETY CONCERNS IF INTERVENTION IS NOT TAKEN;

   d. REVIEW PREVIOUS INTERVENTIONS; AND,

   e. ENSURE THE INTERVENTION IS DONE ETHICALLY AND IS THE LEAST RESTRICTIVE INTERVENTION TO ENSURE THE CLIENT'S SAFETY.

4. INTERVENE IF APPROPRIATE AND AVAILABLE TO COORDINATE WITH THE RESPONSIBLE AGENCY FOR THE IMMEDIATE SAFETY AND HEALTH OF THE CLIENT, SUCH AS:

   a. GAINING ACCESS TO THE CLIENT BY GETTING ASSISTANCE FROM LAW ENFORCEMENT, FAMILY, OR ANOTHER PERSON THE CLIENT TRUSTS;

   b. EMERGENCY HOSPITALIZATION;

   c. HOME CLEAN UP, WHEN THERE IS A CLEAR BIOHAZARD;

d. MENTAL HEALTH HOLD, PER TITLE 27, ARTICLE 65, C.R.S.;

e. FREEZING BANK ACCOUNTS TO PREVENT FURTHER LOSS OF ASSETS;

f. EMERGENCY PROTECTION ORDER, PER TITLE 13, ARTICLE 14, C.R.S.;

g. AUTHORIZATION OF A MEDICAL PROXY DECISION MAKER, PER TITLE 15, ARTICLE 18.5, C.R.S.;

h. REQUESTING A JUDICIAL REVIEW OF A FIDUCIARY, PER TITLE 15, ARTICLE 10, PART 5, C.R.S., AND TITLE 15, ARTICLE 14, PART 7, C.R.S.;

i. CONTACTING THE SOCIAL SECURITY ADMINISTRATION OR OTHER PENSION ADMINISTRATOR TO SECURE A REPRESENTATIVE PAYEE;

j. PETITIONING THE COURT FOR EMERGENCY GUARDIANSHIP AND/OR SPECIAL CONSERVATORSHIP, PER TITLE 15 ARTICLE 14, PARTS 3 AND 4, C.R.S., OR,

k. ALCOHOL AND DRUG INVOLUNTARY COMMITMENT, PER TITLE 27, ARTICLE 81, PART 112 AND TITLE 27, ARTICLE 82, PART 108.

~~C~~D. If a client lacks capacity and has a fiduciary to make decisions on behalf of the client, the county department shall consult with supervisors, the county director, the county attorney, law enforcement, and/or the district attorney to determine whether the county department should petition the court for a review of the fiduciary's actions if:

1. The fiduciary refuses to allow the provision of protective services, which places the client at-risk for continued mistreatment~~, exploitation~~ or self-neglect; or,

2. There are allegations and evidence of mistreatment ~~or exploitation~~ of the client by the client's fiduciary.

3. The county department shall petition the court under the appropriate statute:

a. Uniform Power of Attorney Act, as outlined in Title 15, Article 14, Part 7, C.R.S.;

b. Guardianship or conservatorship statutes as outlined in Title 15, Article 14, Parts 3 and 4, C.R.S.; and/or,

c. Fiduciary oversight statute, as outlined in Title 15, Article 10, Part 5, C.R.S.

~~D~~E. THE COUNTY DEPARTMENT SHALL MAINTAIN ONGOING CLIENT CONTACT AS LONG AS THE CASE IS OPEN.

1. FOR CLIENTS LIVING IN THE COMMUNITY, A FACE-TO-FACE CLIENT CONTACT SHALL OCCUR AT LEAST ONCE EVERY MONTH, NOT TO EXCEED THIRTY FIVE CALENDAR DAYS (35) FROM THE LAST FACE-TO-FACE CONTACT.

2. FOR CLIENTS LIVING IN A FACILITY, A FACE-TO-FACE CLIENT CONTACT SHALL OCCUR AT LEAST ONCE EVERY MONTH, NOT TO EXCEED THIRTY FIVE CALENDAR DAYS (35) FROM THE LAST FACE-TO-FACE CONTACT.

a. THE COUNTY DEPARTMENT HAS THE OPTION OF SUBSTITUTING A PHONE CALL TO THE DIRECT CARE PROVIDER TO ASCERTAIN THE

CLIENT'S CURRENT STATUS, IN LIEU OF A FACE-TO-FACE VISIT FOR EVERY OTHER REQUIRED MONTHLY FACE-TO-FACE CONTACT.

b. IF IT HAS BEEN REPORTED THAT THE CLIENT HAS BEEN MISTREATED AT THE FACILITY, WHETHER CAUSED BY A STAFF PERSON, VISITOR, OR OTHER RESIDENT, AND THE FACILITY HAS NOT APPROPRIATELY RESOLVED THE CAUSE OF THE MISTREATMENT OR PUT ADEQUATE SAFETY MEASURES IN PLACE, THEN A PHONE CALL TO ASCERTAIN THE CLIENT'S CURRENT STATUS IS NOT APPROPRIATE AND THE REQUIRED MONTHLY CONTACT SHALL BE A FACE-TO-FACE VISIT.

3. DURING THE MONTHLY CONTACT, THE COUNTY DEPARTMENT SHALL:

a. CONTINUE THE INVESTIGATION OF ALLEGATIONS, IF APPLICABLE;

b. CONTINUE ASSESSMENT OF CLIENT'S STRENGTHS AND NEEDS, INCLUDING CHANGES TO THE CLIENT'S STATUS;

c. PURSUE THE CONTINUED SAFETY IMPROVEMENT AND REDUCTION AND/OR MITIGATION OF RISK;

d. MONITOR THE EFFECTIVENESS OF ARRANGED SERVICES TO DETERMINE WHETHER CONTINUED APS INTERVENTION IS NEEDED; AND,

e. DOCUMENT INFORMATION GATHERED DURING THE CONTACT PER THE ABOVE MONTHLY CONTACT REQUIREMENTS AND UPDATE ALL CONTACT RECORDS AS INFORMATION IS OBTAINED AND/OR CHANGES OCCUR FOR THE CLIENT, ALLEGED PERPETRATOR, REPORTING PARTY, AND SUPPORTS WITHIN FOURTEEN (14) CALENDAR DAYS OF THE VISIT.

F. COUNTY DEPARTMENTS MAY COMPLETE MONTHLY VISITS FOR OTHER COUNTY DEPARTMENTS AS A COURTESY, AS FOLLOWS:

1. WHEN A CLIENT TEMPORARILY OR PERMANENTLY RELOCATES TO A LICENSED FACILITY MORE THAN SEVENTY-FIVE (75) MILES OUTSIDE THE COUNTY BOUNDARY AND THE COUNTY DEPARTMENT OF ORIGINAL JURISDICTION MAINTAINS THE CASE, THE COUNTY DEPARTMENT SHALL ENSURE ONGOING PROTECTIVE SERVICES.

2. MONTHLY CONTACTS, REQUIRED BY SECTION 30.620, E, MAY BE CONDUCTED BY THE COUNTY OF ORIGINAL JURISDICTION OR MAY BE CONDUCTED VIA COURTESY VISITS BY THE COUNTY DEPARTMENT IN WHICH THE FACILITY IS LOCATED OR BY ANOTHER COUNTY DEPARTMENT THAT IS VISITING THE FACILITY.

3. NO COUNTY DEPARTMENT SHOULD BE EXPECTED TO PROVIDE MORE THAN THREE COURTESY VISITS PER TWELVE (12) MONTH PERIOD, AT THE REQUEST OF THE COUNTY DEPARTMENT OF ORIGINAL JURISDICTION. COUNTY DEPARTMENTS MAY NEGOTIATE TO PROVIDE MORE THAN THREE COURTESY VISITS.

4. UPON COMPLETION OF EACH COURTESY VISIT, THE COUNTY DEPARTMENT THAT CONDUCTED THE VISIT SHALL DOCUMENT THE MONTHLY CONTACT IN

CAPS, AS REQUIRED IN SECTION 30.620, E WITHIN FOURTEEN (14) CALENDAR DAYS OF THE MONTHLY CONTACT.

5. A COUNTY DEPARTMENT CONDUCTING A COURTESY VISIT SHALL NOT DOCUMENT THE VISIT AS A NEW REPORT OR CASE FOR THE PURPOSE OF DATA COLLECTION.

G. IF THE CLIENT PERMANENTLY RELOCATES TO ANOTHER COUNTY AND THE CLIENT NO LONGER NEEDS PROTECTIVE SERVICES, OR THE CLIENT PERMANENTLY RELOCATES TO ANOTHER STATE, THE COUNTY DEPARTMENT SHALL CLOSE THE CASE, AS OUTLINED IN SECTION 30.660.

H. IF THE CLIENT RELOCATES TO ANOTHER COUNTY AND THE CLIENT CONTINUES TO NEED PROTECTIVE SERVICES, THE COUNTY DEPARTMENT SHALL UPDATE THE CASE, AS FOLLOWS, AND TRANSFER THE CASE TO THE CLIENT'S NEW COUNTY OF RESIDENCE WITHIN FIVE (5) CALENDAR DAYS OF LEARNING THE MOVE IS PERMANENT.

1. UPDATE THE CLIENT, PERPETRATOR, REPORTING PARTY, AND COLLATERAL CONTACT INFORMATION; AND,

2. UPDATE THE INVESTIGATION, ASSESSMENT, CASE PLAN, AND CASE NOTES TO INCLUDE ALL INFORMATION GATHERED TO DATE; AND,

3. CALL THE RECEIVING COUNTY DEPARTMENT SUPERVISOR TO STAFF THE CASE PRIOR TO THE TRANSFER.

I. WHEN A CLIENT RELOCATES TO A NEW COUNTY, THE CASE MAY REMAIN WITH THE FORMER COUNTY DEPARTMENT ONLY WHEN:

1. THE CASE IS WITHIN THIRTY-FIVE (35) CALENDAR DAYS OF RESOLUTION AND THE FORMER COUNTY DEPARTMENT CHOOSES TO RETAIN THE CASE; AND/OR,

2. THE FORMER COUNTY DEPARTMENT HOLDS REPRESENTATIVE PAYEESHIP AND CHOOSES TO RETAIN THE CASE; AND/OR,

3. THE FORMER COUNTY DEPARTMENT HOLDS GUARDIANSHIP OR CONSERVATORSHIP.

a. AS SPECIFIED IN A WRITTEN AGREEMENT, EITHER THE FORMER OR RECEIVING COUNTY DEPARTMENT MAY PROVIDE PROTECTIVE SERVICES.

b. EITHER COUNTY DEPARTMENT MAY, WITH THE AGREEMENT OF THE RECEIVING COUNTY DEPARTMENT, PETITION THE COURT FOR A TRANSFER OF GUARDIANSHIP AND/OR CONSERVATORSHIP TO THE RECEIVING COUNTY DEPARTMENT.

J. COUNTY DEPARTMENTS SHALL WORK COLLABORATIVELY TO PROVIDE PROTECTIVE SERVICES TO CLIENTS, AS NEEDED.

K. THE COUNTY DEPARTMENT SHALL REASSESS THE CLIENT'S NEEDS AND REVIEW THE PROVISION OF PROTECTIVE SERVICES AT LEAST EVERY 180 DAYS AS LONG AS THE CASE REMAINS OPEN, BY:

1. COMPLETING AND DOCUMENTING A NEW ASSESSMENT ON OR BEFORE THE REASSESSMENT DUE DATE;

2. DETERMINING THE APPROPRIATENESS OF CONTINUED PROTECTIVE SERVICES, BASED ON THE NEW ASSESSMENT; AND,

3. UPDATING THE CLIENT SERVICES IN THE CASE PLAN.

30.630 COURT INTERVENTION [Rev. eff. 9/1/14]

A. When the investigation and assessment indicates probable incapacity and there is IMMEDIATE DANGER TO THE CLIENT'S HEALTH, SAFETY, AND WELFARE AND THE CLIENT IS UNABLE AND/OR UNWILLING TO ACCEPT SERVICES, ~~no other alternative to protect the client from mistreatment, exploitation or self-neglect,~~ the county department is urged to seek court intervention to petition the court for an order authorizing ~~the provision of specific protective services and/or for~~ the appointment of aN EMERGENCY guardian and/or SPECIAL conservator IN ORDER TO RESOLVE THE IMMEDIATE SAFETY CONCERN(S).

1. Prior to reaching a decision to petition the court FOR GUARDIANSHIP OR CONSERVATORSHIP, the COUNTY DEPARTMENT SHALL ENSURE THAT THE following factors ARE MET AND HAVE BEEN DOCUMENTED: ~~shall be investigated and documented in the data system~~:

a. No other method of intervention will meet the client's needs; AND,

b. THE COURT INTERVENTION WILL RESOLVE SAFETY CONCERNS; AND,

c. THE GUARDIANSHIP IS NOT BASED SOLELY TO MAKE MEDICAL DECISIONS ON BEHALF OF THE CLIENT AS THE COUNTY DEPARTMENT IS PROHIBITED BY TITLE 15 ARTICLE 18.5, C.R.S. FROM PETITIONING THE COURT SOLELY FOR THIS REASON; AND,

~~b~~d. The degree of incapacity, as supported by medical or psychiatric evidence, and the degree of risk, as supported by investigative evidence, warrants this action; OR,

~~c~~e. The suspected incapacity of the client and the degree of risk, as supported by the investigative evidence, warrants this action and medical or psychiatric evidence of incapacity cannot be obtained without court intervention.

2. The type of court intervention sought shall be the least restrictive intervention required to meet the needs of the client and only for those areas in which the client lacks the capacity or ability to understand the consequences of decisions, as medically or psychiatrically substantiated.

B. In the absence of other responsible parties, such as family or friends, the county department is urged to accept guardianship and/or conservatorship.

1. The county department shall consult with an attorney prior to filing a petition and throughout the process.

2. The county department shall provide all information deemed necessary by legal counsel.

3. A representative of the county department shall be prepared to testify in support of the petition.

4. When a county department is appointed by the court to act as guardian or conservator, a copy of the letter of appointment and all other court documents and reports shall be maintained in CAPS~~ the data system~~ AND THE CLIENT'S CASE RECORD UPDATED TO REFLECT FIDUCIARY INFORMATION.

~~C. The county department shall not petition the court for guardianship solely to make medical decisions. The county department may accept such guardianship, if another agency or person petitions the court and the county department is appointed by the court.~~

~~D~~.C. The county department may choose to accept or reject any appointment of guardianship, based upon county department policy.

~~E~~.D. The county department shall initiate proceedings to withdraw as guardian and/or conservator when:

1. Medical or psychiatric evidence indicates a guardian and/or conservator is no longer necessary;

2. Another appropriate guardian or conservator has been identified; or,

3. The county department is no longer able to fulfill guardianship responsibilities, as appointed.

~~F.~~E. When a person or agency other than the county department is requesting appointment as the guardian and/or conservator of the client, the county department shall assist responsible parties, as needed, in identifying legal counsel or provid~~e~~ING other assistance in initiating the petition(s).

30.640 REPRESENTATIVE PAYEE [Rev. eff. 9/1/14]

A. The county department shall only apply for appointment as a representative payee when no other reliable person or agency is available and willing to seek the appointment and:

1. The reported financial issues pertaining to mistreatment~~, exploitation,~~ and/or self-neglect have been substantiated and determined to present ~~the potential for~~ significant harm to the client's health, safety, or welfare without intervention; and,

2. Other less restrictive intervention options have been assessed and found to be inadequate to protect and assist the client; and,

3. Medical, psychiatric, and/or financial evidence exists to show the client is unable to manage his/her personal finances.

B. The county department shall follow the procedures and guidelines for payees as set forth by the SSA or other organization(s).

C. The county department shall initiate procedures, as outlined by the SSA or other organization(s), to discontinue its services as representative payee when:

1. Medical, psychiatric, and/or financial evidence indicates a payee is no longer necessary;

2. Another appropriate payee has been identified; ~~or,~~

3. The county department is no longer able to fulfill payee responsibilities, as appointed; or,

4. The client dies.

30.645 TRUST ACCOUNTS [Eff. 4/1/13]

A. The county department shall ensure that all guardianships, conservatorships, representative payeeships, and personal needs accounts that are held by the county department, and in which the county department has some financial authority or responsibility, have an established trust account.

B. The established trust account shall bear the name of the county department or the name and the title of the director of the county department as trustee for the client or as otherwise required by the Social Security Administration (SSA).

1. Withdrawals from savings, checking, or investment accounts shall require two signatures, neither of which may be the caseworker or the bookkeeper.

2. Shortages in trust accounts are the responsibility of the county department.

C. The county department shall manage any trust account established pursuant to such department's fiduciary duty as a guardian, conservator, representative payee, or other purpose in accordance with any State and Federal requirements for said accounts.

30.650 PROVISION OF PROTECTIVE SERVICES [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.500 AND 30.620.

~~A. The county department shall maintain ongoing client contact as long as the case is open, to include, at a minimum:~~

~~1. A face-to-face client contact shall occur at least every thirty (30) calendar days.~~

~~a. When the client resides in a supervised in-home or facility setting that reduces the possibility of further mistreatment, exploitation or self-neglect, a face-to-face contact shall occur at least every sixty (60) calendar days b. A face-to-face or telephone contact shall be made with the caretaker or responsible collateral at the facility at least once midway through the sixty (60) day period.~~

~~2. Continued investigation, as needed;~~

~~3. Continued assessment of the client's needs; and,~~

~~4. Implementation of the case plan goal(s) and update of the case plan as goals are completed and/or added.~~

~~B. The county department shall provide protective services for the shortest duration necessary to ensure the client's safety by implementing case plan goals as quickly as possible in order to stabilize the client's situation and prevent further mistreatment, exploitation or self-neglect.~~

~~C. The county department shall document all monthly contacts and other significant case information in the data system within fourteen (14) days of the contact or receipt of the information, to minimally include:~~

~~1. Observations made during required client contact visits and/or collateral contacts;~~

~~2. New linformation learned as a result of ongoing investigation and assessment; and,~~

~~3. Court and/or fiduciary related information.~~

~~D. The county department shall reassess the client's needs and the provision of protective services at least every six months as long as the case remains open, by:~~

~~1. Completing a new assessment and case plan on or before the reassessment due date;~~

~~2. Staffing the case to determine the appropriateness of continuing protective services, based on the new assessment and case plan; and,~~

~~3. Documenting the reassessment within fourteen (14) days of completing the reassessment, to minimally include:~~

~~a. Completing a new the assessment as outlined in Section 30.53040, C, 2;~~

~~b. Completing a new case plan as outlined in Section 30.610710, D, 2; and,~~

~~c. Updates to the data system of any other changes~~ in the case

30.660 CASE CLOSURE [Rev. eff. 9/1/14]

A. Cases not requiring additional protective services shall be closed within thirty-FIVE (3~~0~~5) calendar days of the last ~~phone, mail, or face-to-face contact~~ MONTHLY CONTACT with the client.

1. IF THE CLIENT CANNOT BE LOCATED AND YOU HAVE SENT A LETTER TO THE CLIENT OR ARE REACHING OUT TO OTHERS WHO MIGHT KNOW THE CLIENT'S LOCATION, THE CASE MAY REMAIN OPEN UNTIL THE COUNTY DEPARTMENT EXHAUSTS ALL ATTEMPTS TO LOCATE THE CLIENT.

2. THE COUNTY DEPARTMENT SHALL DOCUMENT ALL ATTEMPTS TO LOCATE THE CLIENT.

B. Cases in which the client is relocated to a long-term care facility may remain open for up to ~~three (3) months~~ THIRTY-FIVE (35) CALENDAR DAYS in order to ENSURE THE PLACEMENT IS APPROPRIATE FOR THE CLIENT'S NEEDS. THE COUNTY DEPARTMENT MAY KEEP THE CASE OPEN PAST THE THIRTY-FIVE (35) DAYS IF THERE IS GOOD CAUSE AND THE DEPARTMENT DOCUMENTS THE REASON IN CAPS. ~~monitor the continuing need for long-term care.~~

C. Cases in which the county department has been appointed as the client's guardian, conservator, and/or representative payee shall remain open for the duration of the court order or for as long as the county remains as the representative payee.

D. A decision to close a case shall be made for any or all of the following reasons:

1. After investigation and assessment, the client does not meet the definition of an at-risk adult.

2. After investigation and assessment, the allegations are determined to be unsubstantiated AND THERE ARE NO OTHER IDENTIFIED NEEDS AS DETERMINED BY THE ASSESSMENT.

3. The investigation and assessment substantiates situations of ~~actual or potential~~ mistreatment~~, exploitation~~ or self-neglect and the client is competent to make decisions and refuses services.

4. If, after repeated and documented efforts, the whereabouts of the client cannot be established OR THE CLIENT REFUSES CONTACT.

5. The client no longer needs protective services.

6. Service goals are completed.

7. Repeated efforts at service delivery have proven to be ineffective and no additional alternatives exist.

8. CRITICAL SERVICES NECESSARY TO IMPROVE SAFETY ARE UNAVAILABLE IN THE COMMUNITY OR TO THE CLIENT.

9. THE CLIENT MOVED OUT OF THE STATE.

10. THE CLIENT HAS BEEN SENTENCED TO INCARCERATION FOR LONGER THAN THIRTY (30) CALENDAR DAYS.

~~8~~11. The client died.

E. The county department shall document the case closure ~~in the data system~~, to minimally include:

1. ~~Completion of a~~ A final assessment, IF APPLICABLE, to determine the safety improvement as a result of APS intervention;

2. Update of all case, CLIENT, PERPETRATOR, REPORTING PARTY, AND COLLATERAL CONTACT INFORMATION ~~windows~~ to reflect the most current data and information; ~~and,~~

3. REASON FOR CASE CLOSURE;

4. WHETHER THERE IS CONTINUED PERPETRATOR INVOLVEMENT; AND,

~~3~~5. ~~Completion of tThe case disposition window to include a~~ A narrative to address the OVERALL OUTCOME OF APS INTERVENTION, TO INCLUDE WHY SAFETY WAS OR WAS NOT INCREASED AND WHY RISK WAS OR WAS NOT DECREASED.

~~a. Reason for case closure;~~

~~b. Ongoing client needs;~~

~~c. Continuing perpetrator involvement, if applicable; and,~~

~~d. Safety outcome;~~

30.700 COUNTY ASSIGNMENT AND COURTESY VISITS

30.710 COUNTY ASSIGNMENT [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.410, 30.510, and 30.620.

~~A. The county department of permanent residence shall receive and respond to reports, except in the following situations:~~

1. When the client does not have an open case and is temporarily located in a county other than his or her permanent county of residence, the county in which the adult is temporarily located shall be the originating county and shall provide services.

    a. When the client returns to his or her permanent county of residence, the case shall be closed as outlined in Section 30.660.

        1) If the client continues to need protective services, the originating county shall make a report to the permanent county of residence within one business day of learning of the move.

        2) The receiving county department shall review and screen the report and shall establish a timeframe for investigation as specified in Section 30.430.

    b. Homeless clients shall be provided services by the originating county until the client is no longer located within the county or is located more than seventy-five (75) miles from the originating county department office, whichever is further.

2. When the client has an open APS case in his or her permanent county of residence, and is temporarily located in a county other than his or her permanent county of residence, the county department of permanent residence shall provide protective services for the client.

    a. The county of permanent residence may close the case, as outlined in section 30.660, if the client's move is permanent.

        1) If the client continues to need protective services, the originating county shall make a report to the permanent county of residence within one business day of learning of the move.

        2) The receiving county department shall review and screen the report and shall establish a timeframe for investigation as specified in Section 30.430.

    b. The county of permanent residence may request courtesy visits by the county of temporary residence, as outlined in Section 30.720, B, if the client's current location is temporary.

B. When a client relocates to a new county, the case may remain with the former county department only when:

1. Opening a case in another county would adversely affect the client's health, safety, or welfare; and/or,

2. The case is within three months of resolution and the former county department chooses to retain the case; and/or,

3. The former county department holds representative payeeship and chooses to retain the case; and/or,

4. The former county department holds guardianship or conservatorship.

    a. As specified in a written agreement, either the former or receiving county department may provide protective services.

b. Either county department may, with the agreement of the receiving county department, petition the court for a transfer of guardianship and/or conservatorship to the receiving county department.

C. County departments shall work collaboratively to provide protective services to clients, as needed.

30.720 COURTESY VISITS [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.620

A. When a client temporarily or permanently relocates to a licensed facility more than seventy-five (75) miles outside the county boundary and the county department of original residence maintains the case, as outlined in Section 30.710, B, the county departments shall ensure ongoing protection services.

B. Bi-monthly face-to-face visits, required by Section 30.650, A, may be conducted by the county of original residence or may be conducted via courtesy visits by the county department in which the facility is located or by another county department that is visiting the facility.

C. No county department shall be required to provide more than three courtesy visits per twelve (12) month period, at the request of the county department of original residence. County departments may negotiate to provide more than three courtesy visits.

D. The county department of original residence shall obtain written confirmation of the schedule of courtesy visits.

E. Upon completion of each courtesy visit, the county department that conducted the visit shall document in the data system the adult's current situation, including recommendations for continuing the existing, or providing additional, services within fourteen (14) calendar days.

F. In months where a face-to-face visit is not required by rule, oversight through telephone contact with appropriate facility staff, such as the administrator, social worker, or nursing staff shall be provided by the county department of original residence.

G. A county department conducting a courtesy visit shall not document the visit as a new report or case for the purpose of data collection.

30.800 COMMUNITY COLLABORATION

30.810 COOPERATIVE AGREEMENTS [Rev. eff. 9/1/14]

A. Per Section 26-3.1-103(2), C.R.S., the county department shall develop cooperative agreements in conjunction with its local:

1. Law enforcement agencies;

2. District Attorney;

3. Long-Term Care Ombudsman; and,

4. Community Centered Board.

B. The focus of such agreements shall be the coordination of investigations and protective services that promotes the protection of at-risk adults and each agreement shall provide that each agency shall maintain the confidentiality of the information exchanged pursuant to joint investigations.

C. The agreement with law enforcement shall include, at a minimum:

1. A process outlining the role of law enforcement for receiving, assessing, referring, and responding to reports received during the county department's non-business hours, if applicable;

2. A procedure regarding sharing of reports of mistreatment~~, exploitation,~~ and self-neglect between the local law enforcement agency(ies) and the county department;

3. Procedures for the provision of assistance from one agency upon the request of the other agency;

4. Procedures to coordinate investigative duties; and,

5. The beginning and ending date of the agreement, the term of which shall not exceed five years.

D. The agreement with the District Attorney shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect between the District Attorney and the county department;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

E. The agreement with the Long-Term Care Ombudsman shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect from one agency to the other;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

F. The agreement with the Community Centered Board shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect from one agency to the other;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

30.820 COLLABORATION [Eff. 8/1/12]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.500 AND 30.810.

~~A. The county department shall collaborate with other government and community agencies, such as but not limited to, mental health centers and Area Agencies on Aging, to coordinate services that promote the protection of at-risk adults.~~

~~B. The county department is urged to develop cooperative agreements with those agencies to help ensure the best outcomes for clients.~~

C. ~~The county department shall coordinate investigations in facilities, which include~~:

~~1. Medical and long-term care facilities, group homes, and alternative care facilities, required to be licensed by the Colorado Department of Public Health and Environment (CDPHE); and,~~

~~2. Any site or home that provides care for less than three persons and are not required to be licensed by CDPHE; but,~~

~~3. Does not apply to an adult's private residence in which 24-hour care is provided only to that adult.~~

D. ~~Investigations in facilities may require multi-agency cooperation and the county department may be asked to monitor or assist with an investigation conducted by another agency, such as:~~

~~1. Law enforcement;~~

~~2. District Attorney's office;~~

~~3. Colorado Attorney General's office;~~

~~4. Colorado Department of Public Health and Environment (CDPHE);~~

~~5. Colorado Department of Human Services:~~

~~a. Alcohol and Drug Abuse Division (ADAD);~~

~~b. Division of Mental Health;~~

~~c. Division of Child Welfare; or,~~

~~d. Division for Developmental Disabilities;~~

~~6. Long-Term Care Ombudsman Program; and/or,~~

~~7. Legal Center for People with Disabilities and Older People.~~

~~E. The county department shall conduct the investigation in a facility when:~~

~~1. The county department is the adult's guardian;~~

~~2. There are significant indicators of financial exploitation;~~

~~3. There is significant physical injury to the resident as a result of mistreatment;~~

~~4. Allegations of sexual assault or sexual abuse are made, and law enforcement is not going to be involved;~~

~~5. Law enforcement indicates abuse occurred and is likely to continue but not enough evidence exists to bring criminal charges; or,~~

~~6. Resident abuse by a person living outside the facility has occurred, and law enforcement is not going to be involved.~~

~~F. APS will usually not investigate reports in facilities involving:~~

~~1. Resident to resident abuse, unless the facility, the CDPHE, and/or the Long-Term Care Ombudsman is unwilling or unable to resolve the issue;~~

~~2. Staff to resident abuse, unless the CDPHE and/or law enforcement are unwilling or unable to resolve the issue;~~

~~3. Occurrences reported by licensed facilities to the CDPHE or law enforcement; or,~~

~~4. Resident's rights, quality of care, administrative policies and procedures, staffing, involuntary discharge, or issues regarding physical surroundings.~~

30.830 ADULT PROTECTION TEAMS [Rev. eff. 9/1/14]

A. The director of each county department with ten (10) or more ~~referrals~~ SCREENED IN REPORTS of at-risk adult mistreatment and/or self-neglect in the prior state fiscal year is required to establish or coordinate an Adult Protection Team.

1. The county department may establish its own Team or may coordinate with another contiguous county department(s) that is required to coordinate a Team.

2. The Team shall meet quarterly, at a minimum.

3. The county department shall determine the level of decision making authority for the Team. The role of the Team may be advisory only.

B. The purpose of the Team shall be to:

1. Review the processes used to report and investigate mistreatment and self-neglect of at-risk adults;

2. Staff particular cases or possible cases with Team members, such as those that:

a. Have proven difficult to resolve and Team members may be able to identify solutions;

b. Are situations where early intervention by other community systems may prevent mistreatment; and/or,

c. Are valuable for educating Team members on APS program processes and requirements.

3. Facilitate interagency cooperation regarding services to at-risk adults including the development of solutions and action steps necessary to reduce risk AND IMPROVE SAFETY; and,

4. Provide community education on the mistreatment and self-neglect of at risk adults. The county department shall be the primary training agency, but may utilize training provided by team members or another designee. The county department shall:

a. Determine the topic to be presented, based upon county department or community need;

b. Use materials developed by the county department, the State Department, national associations, or other professional adult protective services agencies;

c. At a minimum, provide five (5) training activities per fiscal year, in any combination of the following:

1) A live presentation to a community or professional group;

2) Participation in a senior or community forum, such as:

a) Providing an article for a newsletter or local community newspaper; or,

b) Providing brochures or other written materials at a county department or other community event.

3) Sponsorship of a community Elder Abuse Awareness Day or similar event.

C. The director of the county department or the director's designee shall identify and recruit team members consistent with professional groups as specified in Section 26-3.1-102(1)(b), C.R.S., and other relevant community agencies.

D. Each Team member shall be advised of the confidential nature of his/her responsibilities in accordance with Section 26-3.1-102(7), C.R.S., and shall be required to sign a confidentiality agreement annually.

E. The Team shall develop and adopt written By-laws or a Memorandum of Understanding that minimally include the Team's:

1. Purpose;

2. Structure, including:

a. Meeting facilitation. Teams that conduct education to the community as part of the Team meeting shall adjourn to executive session prior to staffing any case or discussing any APS client or community member;

b. Frequency of meetings; and,

c. Composition of the Team.

3. Rules for membership, including:

   a. Member duties;

   b. Process for resignation and causes for termination from the Team.

4. Process for handling potential conflicts of interest.

F. The county department shall enter all Team activities in ~~the data system~~CAPS within fourteen (14) calendar days of the activity.

Title of Proposed Rule:	Adult Protective Services Program Revisions	
CDHS Tracking #:	15-5-8-1	
Revising official Rule #s:	12 CCR 2518-1, Volume 30	
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829 E-Mail: peggy.rogers@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)

The rules at 12 CCR 2518-1 are the program rules for the Adult Protective Services (APS) program, as authorized by Title 26, Article 3.1, C.R.S. The APS program provides protective services for at-risk adults who are experiencing mistreatment or are self-neglecting. The purpose of this proposed rule change is to update all Adult Protective Services (APS) rules to:

- Align the rules with changes made to statute as a result of SB15-109 and HB16-1394,
- Remove redundant rules and requirements,
- Better align rules with current practice and the Colorado APS data system (CAPS),
- Better align rules with child protective services rules, as deemed appropriate,
- Improve APS practices that impact services for at-risk adults, and
- Make technical corrections.

Several legislative changes have occurred over the past few years that make updates to the rules necessary. In July 2014, significant changes were made to the Adult Protective Services (APS) program. SB13-111 created mandatory reporting for at-risk elders and established a new Colorado APS data system (CAPS). Mandatory reporting for at-risk elders and the CAPS data system were implemented starting on July 1, 2014. SB15-109 expanded mandatory reporting to include adults with intellectual and developmental disabilities effective July 1, 2016. HB16-1394 made changes to definitions and other areas of the APS statute, in conjunction with SB15-109. In addition, in September 2015, Colorado APS was awarded a Federal Grant through the Administration for Community Living (ACL) that changed the APS intake and assessment processes, which must be incorporated into rule.

The last update to the APS Rules was in the Fall of 2014. Since that time, there have been a number of issues that have surfaced that were unanticipated when the last rule changes were implemented. Many of these issues have been identified during data analysis for C-Stat, through formal quality assurance case and program reviews, through conversations and training sessions with county departments, and in conversations with collaborating agencies that work with at-risk adults. SB15-109 and HB16-1394 are also driving additional changes. The APS Task Group, formed by the PAC and the Economic Security Sub-PAC, met monthly from November 2015 to April 2016 to develop the recommended rule changes. Six webinars were held for county department directors and APS staff during the weeks of May 2, 2016 and May 9, 2016 to review the recommendations and solicit feedback and comments. The Task Group met in June 2016 to review the feedback from the webinars and received via email to make these final recommendations.

New rules and/or key changes to current rule include the following:

- HB16-1394 made minor changes to the definitions of various forms of mistreatment in the Adult Protective Services (APS) statute and are therefore being updated in rule. (30.100)

- The rule that requires the county departments to notify the state department of a change in APS staffing is being updated. The current rule allows county departments three working days from the staffing change to notify the state department. The rule is being updated so that notification must be made within

three working days but no later than the employee's last day of employment. This change is being made to ensure that access to the APS data system, CAPS, can be removed as soon as an APS staff person is no longer going to be working for the county department or in the APS program. CAPS documentation contains personal identifying information (PII) and HIPAA protected personal health information (PHI), which must be secured timely. (30.210,C)

- Proposed revisions to rules include expanding the types of college majors and degrees that would qualify a person for an APS caseworker position at the Professional Entry and Journey levels. (30.310)

- A proposed change is being made to rules related to the requirement for a "flagged" background check from "strongly urged" to "shall". A flagged background check ensures that the county department would be notified if an APS staff member with direct access to at-risk adults, were to be arrested after their original background check was completed. This may be critical information to client safety. However, several county departments indicated that they do not include a flagged check in their contract with the outside company that completes background checks for the county, therefore, they would be unable to meet this rule requirement without renegotiating the contract. The Department is therefore, withdrawing the requirement at this time. (30.320,C)

- Changes to rules related to training requirements for county APS staff are being proposed. (30.330) Training is a key component to ensuring that reports of mistreatment and self-neglect of at-risk adults are being investigated correctly and appropriate protective services identified and implemented. APS serves a varied population, including frail elderly, persons with traumatic brain injury or neurological impairments, persons with an intellectual or developmental disability, and persons with complex cognitive, medical, physical, or behavioral health limitations. Current training requirements are not very timely for new APS staff and are not very comprehensive related to continuing education requirements. The goal for the rule changes are to make gradual improvements to training requirements that can be readily met by county departments while ensuring that staff working with at-risk adults are better trained to provide those protective services. The changes are as follows:
    - Training requirements for new APS staff are being changed. (30.330,A) Currently, new APS staff have up to one year to complete some aspects of new worker training. The Task Group believes that this time needs to be shortened and recommends the following changes:
        - Time allowed to complete the Pre-Academy Workbook (PAW), which is the first basic introduction to the APS program requirements, is being shortened from the current three (3) months for full time APS staff or six (6) months for part time APS staff to one (1) month for all new APS staff. APS caseworkers will not be allowed to be assigned cases until the PAW has been completed.
        - Time allowed to attend APS Training Academy for APS staff who are less than 25% FTE in the APS program and are the only APS staff person for the county department, is being shortened from the current twelve (12) months to nine (9) months. All other APS staff would be required to attend the four-day training within six (6) months of employment in the APS program, rather than the current nine (9) months.
    - Continuing Education requirements for APS staff on the job longer than one year are being increased. (30.330,B) Currently the requirements are less than those required of Child Protective Services (CPS) staff. Increasing the requirements will begin to move training requirements to be more in line with CPS training requirements, and are as follows:

- Full time caseworkers would increase to 40 hours per year from the current 30 hours. This would align with continuing education requirements for full time CPS caseworkers.
- Full time APS supervisor's requirement would increase from the current 20 hours per year to 30 hours. This requirement is still 10 hours short of aligning with the CPS supervisor requirement.
- Full time APS case aides would increase from 15 hours per year to 20 hours per year. There is not a similar requirement for CPS case aides.
- Prorated hours for part-time staff would increase accordingly.

- Changes are being proposed related to the APS supervisor's responsibility for conducting reviews of the casework conducted by their caseworkers. Current rules require supervisors to formally review 15% of all cases each month using the case review scorecard in CAPS. The proposed rule change would allow supervisors to continue this method of review OR choose the new method developed for these rules that would mirror the supervisor requirements for case review in CPS, i.e., that the supervisor review and approve every case at certain key points in the case. For APS this would be at two or three key times in the case: 1) when the initial investigation, assessment, and case plan has been completed; 2) at the six month time in the case, if the case is still open (only about 2% of APS cases are open six months or longer); and 3) at case closure. These points of review mirror similar processes in CPS that require supervisory approval. (30.340,A)

- Rules are being added to the Intake rules that address the issue of which county has jurisdiction to respond to a new report of mistreatment. Currently, APS has rules related to this in the County Assignment section (30.710). The Task Group felt that these rules were better moved to the section of rules where those decisions are being made. So, for initial jurisdictional questions, the rules are being moved to the Intake section of rules (30.410). Additionally, there continues to be concerns voiced by the Task Group that even with the current rules, there are disputes of jurisdiction among the counties that sometimes slows down the response to the report. Task Group members who work in both APS and CPS recommended mirroring language recently implemented in the CPS rules that have helped to lessen these same types of disputes related to CPS reports; the Group agreed to that recommendation.

- A new rule is being added to require the county department to make a decision about a new intake within three working days following the date of the report. This is the time frame for responding to a new report and so the decision about the type of response should be made by this time. This fills a gap in rules. (30.420,F)

- Rules were changed to allow a law enforcement welfare check to substitute for one attempt at contact during non-business hours for emergency and non-emergency reports. Current rule does not allow the welfare check to substitute but with the changes to law enforcement's responsibilities related to mandatory reporting and responding to reports of mistreatment, this change provides additional flexibility for county departments. Rules were added to address follow up requirements when the initial response was a phone call to ascertain the client's safety rather than a face-to-face visit. These rules are filling a gap in the current rules. The rules reflect similar requirements as follow up visits for other types of responses. (30.430,B and 30.430,C)

- Rules are being added to the Investigation rules that address the issue of which county has jurisdiction to investigate a report of mistreatment. Currently, APS has rules related to this in the County Assignment

section (30.710). The Task Group felt that these rules were better moved to the section of rules where those decisions are being made. So, for jurisdictional questions that arise during the investigation, the rules are being moved to the Investigation section of rules (30.510, D) and section 30.710 is being repealed. Additionally, there continues to be concerns voiced by the Task Group that there even with current rules, there are disputes related to jurisdiction among the counties that sometimes slows down the investigation and subsequent provision of services. Task Group members who work in both APS and CPS recommended mirroring language recently implemented in the CPS rules that have helped to lessen these same types of disputes related to CPS; the Group agreed to that recommendation.

- Rules are being added to the Investigation section to ensure that thorough investigations are conducted in coordination with other agencies, when appropriate. Rules related to joint investigations are currently at section 30.820, Collaboration. These rules are being moved to the Investigation section where this collaboration process occurs and Section 30.820 is being repealed. The rules are being updated to reflect current processes related to joint investigations. The rules in this section are also being updated to reflect the requirements to thoroughly investigate the allegations and the client's strengths and needs, by interviewing persons with potential knowledge of the allegations or of the client's needs and gathering and documenting evidence to support or refute the allegations and client needs. When these steps are not completed when investigating a report, the problems and needs of that at-risk adult are not accurately identified so that they can be addressed through the provision of protective services, thus leaving the at-risk adult in continuing danger. (30.520)

- Rules related to the client's functional Assessment, specifically related to "assessment status areas" are being repealed; however, an assessment will still be required. The assessment is a required element in CAPS and therefore, the details of the individual assessment factors are not needed in rule. (30.530)

- Rules related to the Provision of Services, i.e., implementing the case plan developed as a result of the investigation and assessment findings, are being updated. Currently, rules related to the provision of services are found at Sections 30.620 (Provision of Services), 30.650 (also titled Provision of Services), and 30.720 (Courtesy Visits). Rules from sections 30.650 and 30.720 are being moved to section 30.620 and are being updated. Sections 30.650 and 30.720 are being repealed. The updates to the rules include the following:
    - Language is being cleaned up to be clearer and more concise. (30.620)
    - Rules are being added to reflect documentation necessary to determine that a client may not have the capacity to refuse protective services. (30.620,C)
    - Rules are being added to reflect the options for involuntary intervention when a client is at immediate risk of harm and likely does not have the capacity to understand the risks of refusing protective services. (30.620, D)
    - The requirement for ongoing client contact as long as the case remains open is being changed from the current requirement of a face-to-face contact with the client every 30 days to a requirement for a contact once a month, with no more than 35 days between contacts. For clients who live in a facility providing 24/7 supervision, there is a current allowance for a phone call to facility staff to check on the client every other month in lieu of the face-to-face visit. This rule is being modified to ensure that if the client has been alleged to have been mistreated at the facility, the phone call is not appropriate until the facility has put appropriate safety measures in place. Rules are being updated to better outline the requirements of the monthly contact visits. These rules ensure that the worker is continuing to assess any changes to the client's needs, are

monitoring services for appropriateness, are documenting any significant incidents experienced by the client, and are documenting their work towards implementing protective services. (30.620,F)
  - The rules related to courtesy visits are being updated to reflect current processes. (30.620,G)
  - The rules related to cases in which the client moves to a new county or to another state are being updated to reflect current processes. (30.620, H-K)
  - The rules related to the re-assessment process, required every six months as long as the case is opened, have been streamlined to reduce redundancy and reflect current processes. (30.620,L)

- Rules are being changed in the Case Closure section to reflect a more streamlined process for closing the case that reduces redundant documentation that was not beneficial to the outcome of the case. Rules are also being updated to reflect other current practices. (currently at 30.660; new section number will be 30.650)

Clarifying changes to current rule include the following:

- APS has always had a statutory mandate to investigate mistreatment in the community and in facilities; county department APS staff have asked that a definition of "Facility" be added to rule. (30.100)

- Rules related to the storage of documentation of APS reports and cases are being updated to provide additional clarification due to CAPS being a "paperless" system. (30.250)

- Rule is expanding those eligible for access to CAPS from only direct APS staff to APS staff and other county department staff with a business need, e.g., county director, unit/department administrator, or APS data analyst. (30.250)

- A rule is being proposed to add the current practice of annually signing the CAPS Security and Confidentiality agreement. This rule and the current practice will help to ensure that access to CAPS is limited to active CAPS users, another process to protect client PII and PHI. (30.250)

- A rule is being proposed to allow the State Department to remove access to CAPS if user is accessing information inappropriately. (30.250)

- Rules related to Documentation are being updated to provide clarity related to report and case documentation requirements. (30.260)

- Rules are being updated to "urge", though not require, counties to utilize the RED team process for evaluating reports to determine if the report should be screened in for investigation or screened out because it does not meet eligibility requirements for APS intervention. The current rule is "may use". Language is being added to ensure that either the RED team or a supervisor is reviewing and determining whether the report should be screened in or out and the type of response needed (emergency vs non-emergency) and urging, though not requiring, use of the RED team evaluation process. (30.340 and 30.420)

- Language is being added to ensure that reports are taken related to mistreatment of at-risk adults, whether the adult lives in the community or in a facility. (30.410)

- Language was updated to better reflect the requirements for follow up attempts at contact when the initial response to a report was not a face-to-face visit with the client. (30.430,C)

- Rules were clarified around those cases that are screened in for investigation but may not need a face-to-face response by APS. These rules do not change the requirement but make the requirement more easily understood. (30.430,E).

- Rules were clarified related to investigation and assessment, particularly related to the APS mandate to investigate reports or mistreatment or self-neglect of an at-risk adult no matter where the mistreatment occurred. (30.510, A-B)

- Rules related to Case Plan Development are being updated to reflect the current process in CAPS, which were implemented to reduce redundant documentation that did not improve the outcome of the case and was time consuming for the caseworkers. (30.610)

- Rules related to usage of the Client Services funds for purchasing needed goods and services for APS clients are being updated to provide additional clarification on the acceptable use of these funds. (30.610,F)

- Language in the rules related to Court Intervention (30.630) are being updated to be clearer.

Technical corrections to current rule include the following:

- The term “data system” is being replaced throughout with the name of the data system, CAPS, for simplicity and clarity. A new definition of CAPS is added and the definition of “Data System” is repealed. (30.100)

- The term “referral” is being replaced with the current terminology “report”. Most of these changes were completed with the rule changes approved in 2014, but a few instances of the old term were missed and are being corrected in this rule making.

- The phrase “mistreatment, exploitation, and self-neglect” is being replaced by “mistreatment and self-neglect” to reflect the change in statutory definitions as a result of HB16-1394.

- The term “imminent” is being replaced by “immediate” throughout. Task Group members indicated that this term was more easily understood and applied by APS staff and aligns with the terminology used by CPS.

- A rule is being repealed in the Eligibility section (30.230,B) as it is redundant to rules in the Report Categorization section (30.420)

- The term “hours” is being replaced by “days” in determining the response to an emergency report. This does not change the response time frame but Task Group members felt that “non-business days” was clearer than “non-business hours”. (30.430, B)

- The long-term care ombudsman is being removed from rule as a contact for ascertaining a client's immediate safety. The ombudsman cannot share information with APS unless they have explicit consent from the client and are not emergency responders, therefore, this option for ascertaining a client's safety is not a predictable no appropriate option. (30.430, B)

- A redundant rule was repealed at 30.430,B.

- Rule language was changed to be more concise and was brought into alignment with current practice of ensuring an initial response. (30.430,C)

- A rule was repealed related to a client who is competent and able to arrange their own services. Clients who are able to do this are not at-risk adults, by definition, and so would not continue to have an open case. (30.430,E)

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2015) - State Board to promulgate rules; 26-1-109, C.R.S. (2015) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2015) - state department to promulgate rules for public assistance and welfare activities.

Program Authority: 26-3.1-108, C.R.S. (2015) Rules. The state department shall promulgate appropriate rules for the implementation of this article.

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?	X	Yes		No

If yes, please explain.

Some definitions are repeated in rule from statute. Ensuring that the definitions are in rule provides APS staff the ability to easily understand their program requirements within one document.

The program has sent this proposed rule-making package to which stakeholders?

Policy Advisory Committee (PAC); Economic Security Sub-PAC; Child Welfare Sub-PAC; County Departments of Human/Social Services; Colorado Human Services Directors Association (CHSDA); Colorado Counties, Inc. (CCI); Colorado Commission on Aging (CCOA); Colorado Legal Services; Colorado Senior Lobby; Community Centered Boards; Colorado Department of Public Health and Environment, Health Facilities Division; Colorado Department of Health Care Policy and Financing, Division for Intellectual and Developmental Disabilities; Disability Law Colorado; Area Agencies on Aging; ARC of Colorado.

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

Title of Proposed Rule:	Adult Protective Services Program Revisions	
CDHS Tracking #:	15-5-8-1	
Revising official Rule #s:	12 CCR 2518-1, Volume 30	
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829 E-Mail: peggy.rogers@state.co.us

REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Groups that will benefit from these rules are at-risk adults and APS staff. County department APS staff will be responsible for implementing the program requirements for all at-risk adults. The State Department APS staff will be responsible for providing oversight of the counties through training and quality assurance activities.

The rules will lead to improved APS casework practice in many areas and the result will be to improve protective services provided to at-risk adults as the rules are fully implemented by county department APS staff.

2. Describe the qualitative and quantitative impact:

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

The APS program has experienced significant change in the past several years as a result of a number of legislative changes to the APS program requirements. With the implementation of mandatory reporting of mistreatment of at-risk elders in SFY 2014-15, APS is now receiving nearly 17,000 reports a year, a 41% increase from the prior year. Additional funding for APS staff and training has been received by county APS programs to be used to improve services for at-risk adults who are experiencing mistreatment or self-neglect. Additionally, with the implementation of the new APS data system (CAPS), it is possible to see the gaps in understanding of what a thorough investigation and appropriate implementation of protective services entails, due in large part to the deficit in training and quality assurance resources available for the APS program since the law was enacted in 1983. These rule changes are recommended in an effort to continue to improve services and outcomes for the vulnerable populations that the APS program serves. For example, the RED team process for reviewing, evaluating, and deciding (RED) how to respond to a report of suspected mistreatment has been proven over time to be a more precise process for making decisions about reports. These rule changes would further encourage the use of RED by every county, with the Task Group's agreement that ultimately in the years to come, this process would become a required process for every APS program.

3. Fiscal Impact:

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.

Answer should NEVER be just "no impact" answer should include "no impact because…."

State Fiscal Impact: There is no fiscal impact to the State because any required changes to the CAPS data system as a result of these new rules are currently funded through a contract with the vendor and/or through a Federal grant.

County Fiscal Impact: There is no fiscal impact to the County Departments as the removal of the flagged background check requirement removes any fiscal impact.

Federal Fiscal Impact: There are no new fiscal impacts. APS receives approximately $2 million dollars in federal Title XX funds that is provided to the county departments as part of the APS Administration Allocation. The State Department received a federal grant to make improvements to the APS data system (CAPS) in September 2015 and these funds are being used to make updates to the intake and assessment areas of the system, which will address the changes in these proposed rules.

Other Fiscal Impact *(such as providers, local governments, etc.)*: There is no other fiscal impact identified as the APS is a county department administered, State Department supervised program.

4. Data Description:

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

Research conducted by Hermann Ebbinghaus (1885), which has been subsequently verified by other research studies, identifies the "forgetting curve" for remembering details of a training or event over time. These studies were used to guide the decision to begin shortening the allowed time frame for documenting casework events from 14 days to 10 days. Based on stakeholder feedback the Department has decided to leave the time frame at 14 days at this time.

Quality assurance activities that include formal and informal case reviews, data integrity activities, and C-Stat activities that have included hundreds of informal case reviews provided insight into the need to add and clarify rules for county APS staff to ensure that quality investigation, client needs assessments, and appropriate and adequate case planning and service implementation was being conducted. In formal case reviews, only 19% of caseworkers met the compliance goal for quality casework of 90% or higher and 31% received scores of 75 to 89%. The remaining 50% of workers scored below 75%, with 15% of the total caseworkers reviewed scoring less than 50%. Informal reviews conducted through c-stat activities and other quality assurance and data integrity reviews also show that their investigations are not complete leading to incorrect findings and case planning, documentation in the case does not detail the client's strengths and needs or the caseworker's actions in the case, and services needed to improve safety and reduce risk are not accurately identified or implemented.

5. Alternatives to this Rule-making:

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative.

There is no alternative to these proposed changes:

- Updates due to changes in the statute for the APS program
- Those changes made to better reflect current processes in the APS data system (CAPS)
- Changes made to make some technical corrections, repeal duplicative rules, clarify language, and to move current rules to more appropriate sections of the APS rules

Title of Proposed Rule:	Adult Protective Services Program Revisions	
CDHS Tracking #:	15-5-8-1	
Revising official Rule #s:	12 CCR 2518-1, Volume 30	
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829 E-Mail: peggy.rogers@state.co.us

New rules are being added to address improved casework practices that are necessary for improved outcomes of intervention for at-risk adults served by the APS program. These practices might be addressed through training but those attempts have not been as successful as needed to ensure good outcomes for all vulnerable adults served by the APS program. Since the Fall of 2014, the State Department has provided training and technical assistance on these areas of improvement through regional training, quarterly training meetings, weekly email updates and reminders, webinar training, and through one-on-one technical assistance for supervisors and caseworkers on monthly basis. But, with half of all caseworkers still scoring below average on case reviews conducted in the past nine months, it is now necessary to ensure that minimum requirements are outlined clearly in rule.

Title of Proposed Rule:

Rule-making#:

Office/Division or Program: Rule Author: Phone:

OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.100 (Definitions) 30.430,B,4,e (Response Priority) 30.520,B,1 (Investigation) 30.830,A (Adult Protection Teams)	Definitions of "client" and "RED Team" and other rules cited have the outdated term "referral".	Update definitions and rules with current term of "report" in place of "referral".		X
30.100 30.210, F. 30.220, B, 1 30.220, B, 2 30.250, I, 2 30.250, I, 3 30.250, K 30.260, A 30.260, B 30.310, D 30.330, C 30.340, A, 4d 30.340, D, 1 30.410, C 30.410, D 30.420, C 30.420, C, 2 30.430, B, 4f 30.430, B, 5e 30.430, D, 2 30.530, C, 1 30.610, D 30.640, B, 4 30.830, F	Use of the term "the data system."	Update all rules to use "CAPS" in place of "the data system."		X
30.100	Definition of "Abuse"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	Definition of "At-risk Adult"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	None	Add definition of CAPS, Colorado Adult Protective Services data system		X
30.100	Definition of "Caretaker"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	Definition of "Caretaker Neglect"	Update definition to reflect statutory change, per HB16-1394.		X

Title of Proposed Rule:

Rule-making#:

Office/Division or Program: Rule Author: Phone:

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.100	Definition of "case planning" does not include "improving safety" as a purpose.	Update definition of "case planning" to include the term "and improve safety."		X
30.100	Definition of "Collateral Contact"	Update definition to add "facility staff" to the list of examples.		X
30.100	Definition of "data system".	Repeal definition. New CAPS definition replaces this definition.		X
30.100	Definition of "Exploitation"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	None	Add definition of "Facility" to provide clarification of what constitutes a facility.		X
30.100	Definition of "Mistreatment"	Update definition to reflect statutory change, per HB16-1394.		X
30.100 30.230,B,1 30.240,A 30.250,K 30.330,A,5 30.340,A,1 30.340,B,1 30.410,A 30.410,D,3 30.420,A,2 30.420,F 30.420,G 30.430,B 30.520,A 30.620,D,1 30.620,D,2 30.640,A,1 30.660,D,3 30.810,C,2 30.810,D,1 30.810,E,1 30.810,F,1	Phrase "mistreatment, exploitation, and self-neglect"	Replaces with new terminology of "mistreatment and self-neglect".		X
30.100	None	Add definition of "Undue Influence" to reflect statutory change, per HB16-1394.		X
30.210, B	Grammatical error regarding placement of the phrase "make reasonable efforts to."	Move the phrase "make reasonable effort to" from after "The county department shall" to make the sentence flow better and read "The county department shall utilize funding appropriated by the State Legislature to make reasonable efforts to…"		X

Title of Proposed Rule:

Rule-making#:

Office/Division or Program: Rule Author: Phone:

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.210, C.	Current rule states that county departments shall report changes of staffing to the state department within 3 working days of change.	Rule is rewritten to reflect need to protect PII and PHI in CAPS by notifying the State Department when a CAPS user leaves the APS program. Rule reflects how notification must be made. Changes the time frame for reporting changes from three working days to "…three working days…but no later than the CAPS user's last day of employment."	X	
30.230,B	Currently states under number one that protective services are provided to at-risk adults who need assessment for health, welfare, protection, and/or safety.	Remove "who need assessment…" to reduce redundancy. All screened in reports need assessment for health, safety, welfare, and protection.		X
30.250, I, 3	Currently states that only APS staff has access to CAPS.	Change to allow access for persons with a business need.		X
30.250, I, 6	None	Adds a rule regarding the need for CAPS users to sign the security confidentiality agreement.	X	
30.250, J	Rule regarding violating confidentiality.	Adds a rule that CAPS users shall not access information in CAPS that is not necessary to serve the client. Allows the State Department to remove access to CAPS for violations.		X
30.250, K	None	Adds clarifying language to include APS case information not in CAPS as confidential.		X
30.260, A	Rule regarding required documentation of reports and cases.	Add language that clarifies what elements are required to be thoroughly documented in CAPS.		X
30.260,B,1	Rule requiring a release of information signed by the client be attached to the case in CAPS.	Clarifies that a release is not mandatory, but should be completed when appropriate.		X
30.260,C	None	Adds a rule to require all documentation, notes, and evidence for the case be entered into CAPS and then destroyed. Provides exception for original legal documents, such as guardianship orders or birth certificates.		X
30.310, A	Rule regarding education and experience requirements for hire.	Add "criminal justice" to the list of fields that qualify for the education requirement. Changes the term "obtained" to "completed" to clarify experience requirement. Allows a Master's degree substitution for Journey Level to be in any field allowed in the list of degrees.		X

Title of Proposed Rule:

Rule-making#:

Office/Division or Program: Rule Author: Phone:

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.320, C, 3	Rule regarding background checks for prospective employees.	Change "strongly urged to require" to "shall" to require counties to flag background checks for future arrests and convictions. No change is being made per stakeholder feedback.	**X**	
30.320,C,5,a	Lists criminal offenses that disqualify an applicant from employment as an APS worker.	Technical correction to remove Title 18, Article 18.5 (drug taskforce) from the list.		X
30.330, A, 1	Rule regarding completion of the Pre-Academy Workbook for new hires and transfers.	Change from full-time caseworkers having 3 months and part-time caseworkers having 6 months to complete it to all new caseworkers shall complete it within 1 month of hire and not being assigned cases until it is complete.		X
30.330, A, 2	Rule regarding completion of the APS training academy.	Counties with only 1 caseworker that is less than 25%FTE shall complete the training academy in 9 months, instead of the current 12 months. All other counties with at least 1 caseworker 25% or higher FTE shall complete it in 6 months instead of the current 9 months.		X
30.330, A, 4	Rule regarding completion of the Pre- Academy Workbook by case aides.	Change to requiring new case aides to complete the workbook within 1 month of hire instead of the current 3 months.		X
30.330, B, 1	Rule regarding ongoing training hours requirements for caseworkers.	Increases requirement to 40 hours per fiscal year instead of the current 30 hour requirement. Remove reading reports and professional journals from the non-state provided training options.		X
30.330, B, 2	Rule regarding ongoing training hours requirements for supervisors.	Increases requirement to 30 hours per fiscal year instead of the current 20 hours. Change the number of state provided hours from 10 to 15 hours.		X
30.330, B, 3	Rule regarding ongoing training hours requirements for case aides.	Increases requirement to 20 hours per fiscal year instead of the current 15.		X
30.330, B, 4	Rule regarding ongoing training hours requirements for part time APS staff.	The required number of hours required is prorated for part-time APS staff. Those requirements are increased for each quartile of FTE, in relation to the increased requirements for full time staff.	X	
30.340, A	Rule regarding supervisor duties.	Add "or lead worker" to the rule to allow for lead workers to complete these duties in lieu of the supervisor.		X
30.340,A,1	Cites another section of rule.	Updates the citation.		X
30.340, A, 2	Rule regarding RED Team process.	Changes the language from "may" to "are urged to" for use of the RED team process. Updates rule citation.		X

Title of Proposed Rule:

Rule-making#:

Office/Division or Program: Rule Author: Phone:

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.340, A, 4	Rule regarding the case review requirement for supervisors.	Update rule A,4 to a phrase to "review cases to ensure". Clarifies language related to documentation. Moves 15% review requirement to A,5.		
30.340, A, 5	None	Moves 30.340,A,4 to this rule. Allows supervisor to continue to review 15% of all cases using the formal case review tool or choose a new option of reviewing and approving every case at three key points in the case.	X	
30.340,B,1	Cites another section of rule.	Updates the citation.		X
30.340, D	Rule regarding the role of screeners.	Change the term "call" to "intake" screeners to more accurately name the role. Change the location of the documentation of intake reports to include CAPS and the Web2Case form.		X
30.410, A	Rule regarding intake of reports.	Add clarifying language "occurring in the community or in a facility" to provide better guidance on APS jurisdiction to investigate.		X
30.410, C	Rule regarding intake of reports.	Change the language to include documenting the report in the Web2Case form or CAPS.		X
30.410, E and F	Rules regarding county assignment are currently found at 30.710.	Repeal 30.710. Adds rules relating to county assignment or jurisdiction for reports that have not yet been screened in/out to 30.410,E as this location better relates to the rules about Intake. New rules provide simpler method of determining jurisdiction.		X
30.410, G	Rule regarding the transfer of an intake that was reported to the wrong county within eight (8) hours.	Change the term "forward" to "transfer" to more accurately match the process in CAPS. Change the timeframe for transferring a report made to the wrong county to one (1) hour after determining the report was made to the wrong county.	X	
30.420, A and D	Rule regarding evaluating new reports.	Add the language "utilizing the RED team framework or supervisory review" for determining if a report meets APS criteria to clarify the two approved options for this process.		X
30.420,C	Technical correction	Changes "shall" to "will" for the CAPS system generation of a screen in/out recommendation.		X
30.420,E	None	Adds rule to provide guidance on the RED team framework should counties choose to utilize the RED team process.	X	
30.420, F	Rule regarding process for reports that do not meet criteria for APS response.	Add a 3 day timeframe to screen out reports when they do not meet APS criteria.		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.420, F, 2	Rule regarding providing information to reporting parties when the report is screened out.	Change the term "shall" to "may" provide information to reporting parties.		X
30.430, B	Rule regarding emergency response timeframes.	Change the term "imminent" to "immediate."	X	
30.430, B, 3	Rule regarding emergency response timeframes.	Change the term "hours" to "days" for clarity. Remove "long term care ombudsman" from other professionals to reach to ascertain immediate safety.	X	
30.430, B, 4	Technical correction.	Change "or" to "and"; change "hours" to "days" in rules on follow up contact attempts for emergency response reports.		X
30.430, B, 4,a	Rule regarding follow up on emergency response timeframes.	Change the current rule that allows for law enforcement to substitute for one attempt at contact to allow law enforcement to substitute for attempts at contact during non-business days. Add rule that counties shall follow up the next working day.		X
30.430, B, 4,b	Rule regarding follow up on emergency response timeframes.	Add "such as in the intensive care unit" for clarification.		X
30.430, B, 4,d	Rule regarding follow up on emergency response timeframes.	Technical correction - add "day of" and change "attempt" to "attempts" to provide clarity.		X
30.430, B, 4,e	Rule regarding closing case if contact is unsuccessful.	Change "referral" to "case" to update to current terminology. Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		X
30.430, B, 4,f	Rule regarding follow up on emergency response timeframes.	Remove "in the data system" to make it more concise.		X
30.430, B, 5	Rule regarding follow up on emergency response timeframes.	Add the language "If the initial response was not face-to-face contact with the client, but…" to provide clarity.		X
30.430, B, 5,a	Rule regarding follow up on emergency response timeframes.	Add "such as in the intensive care unit" for clarification.		X
30.430, B, 5,c	Rule regarding follow up on emergency response timeframes.	Technical correction - Add "day of" and change "attempt" to "attempts" to provide clarity.		X
30.430, B, 5,d	Rule regarding follow up on emergency response timeframes.	Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		
30.430, C	Rule regarding non-emergency response.	Updates language to provide clarity and approved supervisory or RED Team decision-making process.		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.430, C, 2	Rule regarding non-emergency response.	Change "a face-to-face contact" to "an initial response" to update to current terminology. Add rule to define an initial response, based on current process.		X
30.430, C, 3	Rule regarding non-emergency response.	Change the language to reflect the process for follow up when the initial response was not a face-to-face contact and the worker was unable to ascertain safety by phone to reflect the options for initial responses. Clarify the language that the county shall attempt face-to-face contact every other working day.		X
30.430, C, 3,a	Rule regarding non-emergency response.	Adds a rule that states a law enforcement welfare check can be substituted for one attempt at contact to allow for flexibility for the caseworker.		X
30.430, C, 3,e	Rule regarding non-emergency response.	Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		X
30.430, C, 4	None	Adds rules that define the follow up required when a worker is able to ascertain safety for the initial response, but has not yet had a face-to-face contact with the client.		X
30.430, E	Rule regarding re-evaluation of whether a face-to-face response is needed for a non-emergency response case.	Change "provide telephone response and assistance" to clarify what is an appropriate phone contact to make for phone collaboration. Change the term "telephone response and assistance" to "phone collaboration" in the second sentence to update to current terminology.		X
30.430, E,5	Rules regarding cases appropriate for "phone collaboration to resolve concerns.	Repeal #5 as clients that fit that description do not usually meet the criteria for "at-risk adult" and APS should not be involved.		X
30.510, A and B	Rule regarding conducting investigations and client assessments.	Update language related to the investigation. Adds clarifying language that the investigation must be completed regardless of the client's consent, as it is required by statute. Adds provision that if assessment confirms the client is not an at-risk adult, therefore not meeting criteria for APS intervention, the investigation does not need to be completed. Moves rules related to client assessment to new section "30.510,B".		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.510, D	Rules regarding county assignment are currently found at 30.710.	Repeal 30.710. Adds rules relating to county jurisdiction after reports have been screened in for investigation to 30.510, D as this location better relates to the rules about Investigation. New rules allow transfer of the case and require receiving county to investigate, unless they have new information that would allow them to close the case.		X
30.520, A, 1	Rule regarding the investigation process and requirements.	Change the term "imminent" to "immediate."		X
30.520, A, 2	Rules regarding collaboration with other investigative agencies are currently found at 30.820.	Repeal 30.820. Move rules related to entities to consider as part of a collaborative investigation to 30.520, as they better align with the Investigation, and update language.	X	
30.520, A, 3	Rule regarding client interview being unannounced and in private.	Add clarifying language that states if not unannounced or in private, worker will document the reason.		X
30.520, A, 5	Rule regarding the requirement to interview the alleged perpetrator, when appropriate and safe.	Add requirement to document why an alleged perp was not interviewed.		X
30.520, A, 6	Rule regarding collecting evidence.	Adds suggestions for evidence that can and should be collected, as appropriate.	X	
30.520, A, 8	Rule requiring identification of the perpetrator.	Repeal the term "self-neglect, as there is no perpetrator in self-neglect cases.		X
30.520, A, 9	Rule requiring investigation of mistreatment identified during investigation.	Adding the clarifying language that states new/additional allegations that are identified must be documented in CAPS.		X
30.520, B, 1	Rule regarding the time frame for completing the investigation.	Adds requirement to document in CAPS throughout the investigative process. Establishes a time frame to document interviews within ten (10) days of the interview. Moves rule related to being unable to complete an investigation in the timeframe to B,4. Repeals the rules at the current "B2" and moves them to the new "B 1-3" and updates language related to the elements of the investigation that must be documented. The change to 14 days to 10 days is no longer being made per stakeholder feedback. The time frame will remain at 14 days at this time.	X	
30.520, B, 2	Rule regarding documenting investigative information.	Repeal current rule. Added to 30.520, B, 1 through 3, above.		X
30.530 A	Rule regarding the assessment process and requirements.	Change "assess" to "complete a baseline assessment of" to reflect current practice. Change "imminent" to "immediate."		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.530, B	Rule regarding the assessment tool in CAPS.	Update language to make is clear that risk and safety need to be assessed, per current practice. Removes the five status areas that need to be assessed (B1-5, and C). The assessment tool is established in CAPS so naming areas of the assessment is not necessary.		X
30.530, C	Currently 30.530,D, 1 and 2. Rules regarding documentation of the assessment.	Updates the language to indicate what is required for the assessment to be completed timely. Moves rule related to being unable to complete an assessment in the timeframe to C,2. Repeal current rule C,2, as it is included in the new C,1.		X
30.610, C	Rule regarding the case plan process and requirements.	Rules in this section are being rewritten to reflect current practice, which was changed to reduce redundancy and put into place a more efficient and effective case plan requirement.		X
30.610, F	Rule regarding the use of client services funds.	Rules in this section are being rewritten to more clearly reflect when APS Client Services funds may and may not be utilized.		X
30.620, A	Rule regarding providing services in least restrictive manner.	Repeal section 30.650. Move current 30.650,B to 30.620 as the content is related to what takes place after the investigation and assessment. This move makes the rules easier to find and more cohesive.	X	
30.620, B	Rule regarding provision of services for adults with capacity to make decisions.	Removes redundant language and clarifies what steps are needed if it appears the client has capacity to make decisions and either refuses or consents to services.		X
30.620, C	Rules related to provision of services when the client appears to lack capacity.	Add clarification on what must be documented related to the client's suspected incapacity; adds possible interventions for ensuring the immediate safety and health of a client who is suspected to lack capacity. Repeal current rule 30.620,B,3 as it is redundant to rule 30.620,C,4.		X

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.620, E	Currently at 30.650 -Provision of services. Rules regarding ongoing contact with clients throughout the provision of services.	Repeal Section 30.650. Move rules from 30.650 to this section. Change the requirement for monthly contact with clients in the community from every 30 days to once a month, not to exceed 35 days since the previous monthly contact. For clients living in a facility, adds a requirement the contact every other month that can be by phone, cannot be a phone contact if there is concern with the facility providing adequate care. Reduces time frame to document monthly contact from 14 days to 10 days. Clarifies what is required in implementing a case plan. Adds requirement to update case information, as changes occur month to month. The change from 14 days to 10 days is no longer being made, per stakeholder feedback. The timeframe will remain at 14 days at this time.	X	
30.620, F	Currently 30.720 – Courtesy Visits. Rules regarding courtesy visits with a client for another county.	Repeal Section 30.720. Move those rules to this section to make rules more cohesive. Updates rules to reflect current practice. Changes time frame to document the courtesy visit from 14 days to 10 days. The change from 14 days to 10 days is no longer being made, per stakeholder feedback. The timeframe will remain at 14 days at this time.	X	
30.620, G through J	Currently at 30.710, rules related to a client relocating to another county while the case remains open.	Repeal Section 30.710. Move rules to this section to make rules more cohesive. Update rules to reflect current practice related to case transfers in CAPS. Shortens the length of time a case may remain with the former county department once a client has moved.		X
30.620, K	Currently at 30.650,D. Rules related to the six month reassessment requirement.	Repeal Section 30.650. Move reassessment rules to this section and update to reflect current practice, which is a simpler and more efficient process than current rule.		X
30.630, A	Rule regarding emergency court intervention.	Updates the rule to be specific to emergency situations in which the county may need to intervene through the courts.		X
30.630, A,1	Rule regarding steps to take prior to seeking court intervention.	Adds language to specify that the county ensures all factors are met and documented prior to petitioning the court. Adds a rule at (b) that the county should ensure that court intervention will resolve the safety concern. Moves current section “C” to “A,1,c”.	X	

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Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.630, B, 4	Rule regarding documentation requirements when the county department has been named the guardian or conservator.	Adds language that the client's case record must be updated with the fiduciary information.		X
30.630,E	Technical correction.	Change "provide" to "providing" to be grammatically correct.		X
30.640,A,1	Rule regarding appointment of the county as representative payee.	Technical correction to remove "the potential for" before "significant harm."		X
30.650	Section on the Provision of Protective Services.	Repeal Section. Rules have been recodified under 30.520 and 30.620.		X
30.660, A	Timeframe for closing a case.	Updates rule to require case closure within 35 days of last client contact, rather than current 30 days. Adds rule allowing the case to remain open longer if county is actively looking for the client.		X
30.660,B	Timeframe for closing a case for a client placed in a facility.	Updates rule to shorten the time from the current three (3) months to 35 days, unless there is good cause.		X
30.660,D	Case closure reasons.	Updates the rule to close the case when allegations are unsubstantiated and there are no other identified needs, per the client assessment. Updates the rule to allow closure of the case if the client refuses contact or refuses services. Adds additional closure reasons, including services unavailable, client incarcerated, and client moved out of state.		X
30.660,E	Case closure procedures	Updates rules to reflect current case closure practices, which were changed to reduce redundancy and create a more efficient closure process.		X
30.700 30.710 30.720	Rules section County Assignment and Courtesy Visits	Repeal. Rules have been recodified in Sections 30.410, 30.510, and 30.620		X
30.820	Rule regarding collaboration with other agencies.	Repeal to reduce redundancy. Rules have been recodified in Sections 30.500 and nearly the same rules were found in Section 30.810.		X
30.830	Rule related to which counties are required to have an AP Team.	Technical correction from "referrals" to the current term "screened in reports". Addition of the phrase "and improve safety."		X

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STAKEHOLDER COMMENT SUMMARY

DEVELOPMENT

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

APS Task Group created by the Economic Security Sub-PAC. This task group was moved under the Child Welfare Sub-PAC in May 2016. The APS task group consisted of representatives from the State Department APS unit and from sixteen (16) counties who were nominated by their county director and approved by the Colorado Human Services Directors Association. The county departments represented on the task group were: Adams, Arapahoe, Archuleta, Boulder, Denver, Douglas, Eagle, El Paso, Jefferson, Larimer, Mesa, Montrose, Morgan, Park, Pueblo, and Weld.

THIS RULE-MAKING PACKAGE

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

Policy Advisory Committee (PAC); Economic Security Sub-PAC; Child Welfare Sub-PAC; County Departments of Human/Social Services; Colorado Human Services Directors Association (CHSDA); Colorado Counties, Inc. (CCI); Colorado Commission on Aging (CCOA); Colorado Legal Services; Colorado Senior Lobby; Community Centered Boards; Colorado Department of Public Health and Environment, Health Facilities Division; Colorado Department of Health Care Policy and Financing, Division for Intellectual and Developmental Disabilities; Disability Law Colorado; Area Agencies on Aging; ARC of Colorado.

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[ ] Yes [X] No

If yes, who was contacted and what was their input?

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[X] Yes [ ] No

Date presented __June 2, 2016_____.

What issues were raised? Concerns related to shortening the time frame for documenting case actions from 14 to 10 calendar days. The rules have been revised to keep the 14 day time frame. Concerns for requiring a flagged background check. That proposed change has been removed.

If not presented, explain why.

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Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

The rules were emailed to county department directors and APS staff for review and feedback in late April 2016. The State held six webinar sessions between May 2 and May 12, 2016 for county directors, Adult Protective Services (APS) managers and supervisors, and APS caseworkers to go over the proposed rule changes in detail. Over eighty (80) APS staff and county directors representing more than 30 counties attended these webinars and provided feedback and suggestions for improvements and changes to the rules. In May 2016, the APS Task Group was provided the feedback from the webinars and the proposed changes as a result of the feedback. Per the APS Task Group request, the comments for the rules were initially reviewed and discussed via email among task group members. The State Department also met with the County Human Services Directors Association Steering Committee members on June 2, 2016 to discuss the rule process. A final meeting of the APS task group was held June 10, 2016 during which the task group members discussed and made final decisions related to the rules that had been commented upon by county departments. The APS task group supports the final rule recommendations, as drafted in this Initial Circulation.

Below is a summary of comments received via the rules webinar sessions and subsequent emails and the actions to address the comments.

30.330 Training Requirements; 30.530 Investigation; 30.620 Provision of Services; and 30.830 Adult Protection Teams: One proposed rule revision that received stakeholder feedback had to do with the timeframe for casework and other documentation to be entered into the CAPS data system that can be found in multiple sections of the rules, as listed. The proposed rule change was to decrease the amount of time caseworkers have to enter documentation to 10 calendar days from 14 calendar days. This change was proposed to improve the quality and accuracy of the documentation based on available scientific research on memory. However, representatives from counties identified this as a concern during the webinars and in meetings with Department staff, explaining that they felt this was an unnecessary change. They requested to keep the 14 day documentation requirement. The APS Task Group considered the request and developed a compromise to reduce the time allowed for documenting key casework related information to 10 days, including interviews of clients and alleged perpetrators and monthly contact visit notes. The Task Group determined that the time allowed for documentation of non-casework related information, such as continuing education hours completed, would remain at 14 days. Roughly 75% of task group members supported this compromise. However, after further discussion with the Child Welfare Sub-PAC, the sub-PAC members were strongly opposed to shortening the time frame to 10 days for casework practice, indicating that with an expected 30% increase in reports due to implementation of SB15-109, shortening the time frame at this time would impair the Department's ability to manage their workload. The Department has determined that it will leave the 14 day documentation time frame in place at this time.

30.210 APS Program Administration: A change to the rules to require counties to notify the State of change in staffing "immediately" as opposed to within "three working days" was proposed to ensure that persons no longer working in the APS program would have their access to the APS data system, CAPS, removed. CAPS contains a

great deal of personal identifying information (PII) and HIPAA protected personal health information (PHI) that must be protected and kept secure. Two counties felt that the change to require county departments to notify the state immediately upon learning of a change in staffing was an unnecessary time constraint to give to counties. These two counties felt that "one business day" to make the notification was more reasonable. Two other counties felt that the reduction of time to notify the State enhanced best practices and would result in a better outcome for protecting confidential information. One county noted a concern related to their IT department's inability to access CAPS to submit the change in staffing. A compromise was drafted, with unanimous support of the task group, to require notification "within three (3) working days upon learning of a change in APS staffing but no later than the CAPS user's last day of employment."

30.260 Documentation: Several counties voiced concern over including the language "preferably in the county attorney's office" regarding the secure housing of hard copy documents relating to case files due to the lack of a county attorney's office at their department. Compromise language was drafted during the email review by the task group to secure those documents "in a secured location."

30.320 Background Check Requirements. A proposed change related to the requirement for a "flagged" background check from "strongly urged" to "shall". A flagged background check ensures that the county department would be notified if an APS staff member with direct access to at-risk adults, were to be arrested after their original background check was completed. This may be critical information to client safety. However, a county department indicated that due to its current contract with a company performing the background checks for the county department, it and other counties with similar contracts, would be unable to conform to rule under their current contracts. The Department, therefore, decided to delay this rule change at this time.

30.330 Training Requirements: Initial rule recommendations for counties with only one caseworker who is less than 25% FTE in APS was to require all ten (10) hours of continuing education be state-provided training. One small county recommended that small counties be able to attend local training for a portion of their required training hours. Two counties were in support of the training being all state provided. Upon review by the APS task group, it was unanimously recommended that part of the training requirement could be met through local training opportunities.

30.340 Staff Duties and Responsibilities: During the initial task group meetings, there was discussion about the 15% case review requirement. At that time, the consensus of the APS Task Group was to continue with the 15% requirement, but also offer the option of utilizing the enhanced supervision profile for caseworkers which would allow for supervisors/lead workers to review cases at key junctures, reducing the amount that would be reviewed at each time, thus creating a more efficient process. Counties would have the option to choose their specific method of reviewing casework. During the webinars, one county suggested lowering the 15% supervisory case review requirement to 10%. The State Department has identified a need for increased quality assurance reviews of casework and therefore supports then initial recommendation of the task group to provide the county the option of reviewing 15% of all cases or reviewing each case at key casework process points. There were no further objections from the task group.

30.410 Intake: One county asked that the timeframe requirement for transferring reports to the correct county when they are received in the wrong county remain at eight (8) hours, or one business day, instead of reducing to one (1) hour, as was initially recommended by the Task Group. Another county was in support of this recommendation, while one county felt that one (1) hour was sufficient and addressed the concern of timeliness of initial response when reports are transferred. Upon further consideration by the Task Group, just over 60% support keeping the one hour requirement as the recommendation.

30.420 Report Categorization: Two counties recommended that the elements of the RED Team framework be removed from rule due to the possibility of these elements changing in the future and the thought that this was better defined in training, rather than rule. Because the RED Team framework is being added to CAPS, the task group unanimously determined it was not necessary to include in the rules.

30.430 Response Priority: During the webinars, three counties asked for the State to add a five (5) day response time frame to rule to mirror child protection practices. One of these counties wanted the increased time to allow for counties to do more research on the client if the report was going to be screened out for not meeting criteria of an at-risk adult or no mistreatment. One county noted support in keeping the APS response time frames as is. Counties statewide are meeting the initial response time frame 98% of the time. There does not appear to be a business need to add a five (5) working day response time for reports and it does not seem to be in the best interest of the population served by the APS program. Many APS clients are isolated with no contact with other people. A five working day response could mean that clients were not seen for nearly two weeks following receipt of the report. In addition, the child welfare time frame is to be used when there are no safety concerns identified in the report. In APS, if there is no identified mistreatment, the report is screened out. The State Department supports continuing the APS response time frames as is. There were no further objections from the task group.

30.430 Response Priority: The APS Task Group proposed to add to rule that attempts at client contact should be made at different times of the day, which was perceived by several caseworkers to mean there had to be multiple attempts in the same day, which was not the task group's intent. During email review of the comments, some task group members suggested removing the new rule from the recommendations while others thought it could remain if the language were clarified and moved to a different section of the rules. During the final meeting and discussion, the task group was split equally on this and so the rule was removed from the rule recommendations.

30.430 Response Priority: One county asked for clarification on why the Long Term Care Ombudsman (LTCO) was removed from the list of suggested professionals to reach out to and ascertain a client's immediate safety for an initial response. Two counties support the removal of the LTCO from this list. During email discussions, it was explained that the long-term care ombudsmen are unable to respond immediately to a situation, as law enforcement or hospital staff can, where determination of the client's immediate safety is necessary. Additionally, the ombudsman cannot share information with APS without expressed consent of the client. The removal remains the recommendation.

30.520 Investigation: APS Task Group recommended repealing rules at Section 30.820 related to collaborative/joint investigations, including a list of agencies that could work with APS on an investigation, and move them to the Investigation section of the rule as that's when a joint investigation determination would be made. The rule in the new location was updated to be more concise and lists the five key agencies that could partner with APS in investigating mistreatment. Two counties opposed including the list, citing that it is best practice and should be addressed in training rather than included in rule. Two counties supported the addition of this element and the suggested agencies, as it provides more clarity and guidance for caseworkers. Upon further discussion, the task group was unanimous in its recommendation to keep the list in rule.

30.520 Investigations: Rules were added to the current rules related to interviewing collaterals, to add guidance as to who a collateral might be. Other guidance was added to the rules related to the collection and documentation of evidence. One county suggested that all lists that help to define the expectation of the rule be removed and addressed through training. Two counties supported the additional guidance and clarification to assist caseworkers in ensuring their investigations are thorough and complete and they are meeting all required elements. Upon further discussion, it was determined that the definition of "collateral" already contained all of the new elements in the proposed rule with the exception of "facility staff". A unanimous decision was made to update the definition to add "facility staff" and remove the new list of collaterals from the rule in this section. The task group also discussed the additional lists related to the collection and documentation of evidence and agreed unanimously to include both lists in the rule recommendations.

30.620 Provision of Services: Rules from 30.650 were moved to this section related to the monthly client contact requirement for all open APS cases. Rules were proposed to change the current contact requirement of every 30 days to "once a month, but no more than 35 days from the last client contact." Counties were strongly in favor of this rule recommendation.

30.620 Provision of Services: Rules from 30.650 were moved to this section related to the monthly client contact requirement for all open APS cases. These rules detail the purpose of the monthly contact. The rules that were moved were updated related to the ongoing investigation and assessment of client needs to provide better clarity of that purpose and two new purposes was added related to monitoring of services in place and the continued pursuit of safety improvement and risk reduction. One county asked that all requirements for evaluation during monthly contacts and their documentation be removed from rule, describing them as "overly prescriptive." One county noted support in keeping the criteria. Upon further discussion and review, the task group unanimously agreed to keep the rule recommendations in place.

30.620 Provision of Services: Rules were added that detail appropriate options for involuntary case planning. These options apply to at-risk adults who are have immediate safety and health concerns but who are refusing services, but likely lack the capacity to refuse services. Two counties asked to remove the list of suggested interventions for coordinating for a client's immediate safety and provide training around these options, instead. One county noted support in keeping these suggested interventions in rule as additional guidance for caseworkers. Upon further consideration the more than 90% of the task group members agreed to leave the options in the rule recommendations.

30.620 Provision of Services: Rules from 30.710 were moved to this section related to case jurisdiction when a client moves to a new county during provision of services. One of these rules provides guidance for those clients who are wards of the county department. One county expressed concern that the rule would allow a county to go to the court and have the guardianship transferred to a new county without consent of the new county. The State clarified for this county that this is not a new rule and that, as the rule states, counties cannot transfer guardianships without the receiving county's acceptance and collaboration on petitioning the court. No other counties provided feedback on this item. The rule was left as is.

30.630 Court Intervention: The task group recommended the addition of a rule that guardianship or conservatorship would only be sought for APS clients who have a facility placement. One county felt that it was unnecessary to include that the county should secure placement for the client prior to pursuing court intervention. They expressed that they often will pursue court intervention to appoint a conservator for a client so that they may continue to live independently in the community as a least restrictive option. Another county thought that a home placement for a ward who could afford to pay for 24/7 care and supervision was appropriate. As the rule change was written, this would not be an option for counties moving forward. The State does not recommend that counties take on guardianship for clients living in the community due to the liability and increased difficulty in being able to ensure their safety. However, upon further discussion by the task group, nearly 70% agreed the rule should not be recommended going forward and so is not included in this Initial Circulation.

30.650 Case Closure: The closure reason related to the allegations being unsubstantiated was updated in the initial rule recommendations to add "…and there are no other identified needs." Two counties felt that the language of "no other identified needs" was too vague. One county was in support of leaving the language as is. Upon further input and suggestion from task group members, the rule was amended to read, "…there are no other identified needs as determined by the assessment."

[3/23/15 downloaded from SoS web site]

(12 CCR 2518-1)

30.000 ADULT PROTECTIVE SERVICES

30.100 DEFINITIONS [Rev. eff. 9/1/14]

The following definitions shall apply to these rules.

"Abuse", pursuant to Section 26-3.1-101~~(7)(a)~~(1), C.R.S., means ~~mistreatment that occurs where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation; or, where unreasonable confinement or restraint is imposed; or where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, Article 3, Part 4, C.R.S.~~ ANY OF THE FOLLOWING ACTS OR OMISSIONS COMMITTED AGAINST AN AT-RISK ADULT:

A. THE NONACCIDENTAL INFLICTION OF PHYSICAL PAIN OR INJURY, AS DEMONSTRATED BY, BUT NOT LIMITED TO, SUBSTANTIAL OR MULTIPLE SKIN BRUISING, BLEEDING, MALNUTRITION, DEHYDRATION, BURNS, BONE FRACTURES, POISONING, SUBDURAL HEMATOMA, SOFT TISSUE SWELLING, OR SUFFOCATION;

B. CONFINEMENT OR RESTRAINT THAT IS UNREASONABLE UNDER GENERALLY ACCEPTED CARETAKING STANDARDS; OR

C. SUBJECTION TO SEXUAL CONDUCT OR CONTACT CLASSIFIED AS A CRIME UNDER THE "COLORADO CRIMINAL CODE", TITLE 18, C.R.S.

"Adult Protective Services (APS) Program" means the State Department supervised, county department administered program that has the authority to investigate and/or assess allegations of mistreatment and self-neglect of at-risk adults. The APS Program offers protective services to prevent, reduce, or eliminate the current or potential risk of mistreatment or self-neglect to the at-risk adult using community based services and resources, health care services, family and friends when appropriate, and other support systems. The APS Program focuses on the at-risk adult and those services that may prevent, reduce, or eliminate further mistreatment or self-neglect. The APS Program refers possible criminal activities to law enforcement and/or the district attorney for criminal investigation and possible prosecution.

"Allegation" means a statement asserting an act or suspicion of mistreatment or self-neglect involving an at-risk adult.

"Assessment" means the process of evaluating a client's functional abilities to determine the client's level of risk and, in cooperation with the client whenever possible, to identify service needs for the case plan.

"Assumed responsibility", as used in the definition of caretaker, means a person who is providing or has provided recurring assistance to help meet the basic needs of an at-risk adult. The assumption of responsibility can attach by entering into a formal or informal agreement, whether paid or unpaid; by identifying oneself as a caretaker to others; or based on the nature of the situation or relationship between the caretaker and the at-risk adult.

"At-risk adult", pursuant to Section 26-3.1-101~~(1)~~(1.5), C.R.S., means an individual eighteen years of age or older~~:~~ WHO IS SUSCEPTIBLE TO MISTREATMENT OR SELF-NEGLECT BECAUSE THE INDIVIDUAL IS UNABLE TO PERFORM OR OBTAIN SERVICES NECESSARY FOR HIS OR HER HEALTH, SAFETY, OR WELFARE, OR LACKS SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE OR COMMUNICATE RESPONSIBLE DECISIONS CONCERNING HIS OR HER PERSON OR AFFAIRS.

~~A. Who is susceptible to mistreatment because he/she is unable to perform or obtain services necessary for his/her health, safety, or welfare; or,~~

~~B. Who lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person or affairs.~~

~~C. Persons are not considered "at-risk" solely because of age and/or disability.~~

"CAPS" MEANS THE COLORADO ADULT PROTECTIVE SERVICES (APS) STATE DEPARTMENT PRESCRIBED DATA SYSTEM THAT THE COUNTY DEPARTMENT SHALL USE TO DOCUMENT APS PROGRAM ACTIVITIES, INCLUDING ALL REPORTS AND CASEWORK, ADULT PROTECTION TEAM ACTIVITIES, APS STAFF QUALIFICATIONS, FTE, ONGOING TRAINING, COOPERATIVE AGREEMENTS, AND OTHER ACTIVITIES REQUIRED BY RULE.

"Caretaker", pursuant to Section 26-3.1-101(2), C.R.S., means a person who ~~is responsible for the care of an at-risk adult as a result of a family or legal relationship or a person who has assumed responsibility for the care of an at-risk adult or is paid to provide care or services to an at-risk adult.~~

A. IS RESPONSIBLE FOR THE CARE OF AN AT-RISK ADULT AS A RESULT OF A FAMILY OR LEGAL RELATIONSHIP;

B. HAS ASSUMED RESPONSIBILITY FOR THE CARE OF AN AT-RISK ADULT; OR,

C. IS PAID TO PROVIDE CARE, SERVICES, OR OVERSIGHT OF SERVICES TO AN AT-RISK ADULT.

"Caretaker neglect", pursuant to Section 26-3.1-101(2.3)**(a)**, C.R.S., means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, HABILITATION, ~~or~~ supervision, OR OTHER TREATMENT NECESSARY FOR THE HEALTH, SAFETY, OR WELFARE OF THE AT-RISK ADULT is not secured for an at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise,~~;~~ ~~except that the withholding, withdrawing, or refusing of any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, shall not be deemed caretaker neglect. As used in this subsection (2.3), "medical directive or order" includes, but is not limited to, a medical durable Power of Attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a Medical Order for Scope of Treatment form executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR Directive executed pursuant to Article 18.6 of Title 15, C.R.S.~~ OR A CARETAKER KNOWINGLY USES HARASSMENT, UNDUE INFLUENCE, OR INTIMIDATION TO CREATE A HOSTILE OR FEARFUL ENVIRONMENT FOR AN AT-RISK ADULT.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2.3), THE WITHHOLDING, WITHDRAWING, OR REFUSING OF ANY MEDICATION, ANY MEDICAL PROCEDURE OR DEVICE, OR ANY TREATMENT, INCLUDING BUT NOT LIMITED TO RESUSCITATION, CARDIAC PACING, MECHANICAL VENTILATION, DIALYSIS, ARTIFICIAL NUTRITION AND HYDRATION, ANY MEDICATION OR MEDICAL PROCEDURE OR DEVICE,

IN ACCORDANCE WITH ANY VALID MEDICAL DIRECTIVE OR ORDER, OR AS DESCRIBED IN A PALLIATIVE PLAN OF CARE, IS NOT DEEMED CARETAKER NEGLECT.

(c) AS USED IN THIS SUBSECTION (2.3), "MEDICAL DIRECTIVE OR ORDER" INCLUDES A MEDICAL DURABLE POWER OF ATTORNEY, A DECLARATION AS TO MEDICAL TREATMENT EXECUTED PURSUANT TO SECTION 15-18-104, C.R.S., A MEDICAL ORDER FOR SCOPE OF TREATMENT FORM EXECUTED PURSUANT TO ARTICLE 18.7 OF TITLE 15, C.R.S., AND A CPR DIRECTIVE EXECUTED PURSUANT TO ARTICLE 18.6 OF TITLE 15, C.R.S.

"Case" means a report that contains information indicating that there is an at-risk adult and a mistreatment category, and the report is screened in for investigation and/or further assessment.

"Caseload average" means the fiscal year monthly average sum of new reports plus ongoing cases per caseworker. The fiscal year caseload average is calculated as: [(fiscal year total of new reports/12) + (beginning cases on July 1 + ongoing cases on June 30/2)]/FTE on June 30 = caseload average.

"Case Planning" means using the information obtained from the investigation and/or assessment to identify, arrange, and coordinate protective services in order to reduce the client's level of risk for mistreatment AND IMPROVE SAFETY.

"Clergy member", pursuant to Section 26-3.1-101(2.5), C.R.S., means a priest; rabbi; duly ordained, commissioned, or licensed minister of a church; member of a religious order; or recognized leader of any religious body.

"Client" means an actual or possible at-risk adult for whom a ~~referral~~REPORT has been received and the county department has made a response, via telephone resolution or open case.

"Collateral contact" means a person who has knowledge about the client's situation that supports, refutes, or corroborates information provided by a client, reporter, or other person involved in the case. Examples of contacts include, but are not limited to, family members, law enforcement, health care professionals, service providers, FACILITY STAFF, neighbors, and friends.

"County Department" means a county department of human/social services.

~~"Data system" means the State Department prescribed data system that the county department shall use to document APS Program activities, including all reports and casework, Adult Protection Team activities, APS staff qualifications, FTE, ongoing training, cooperative agreements, and other activities required by rule.~~

"Enhanced supervision" means ~~the data system~~ CAPS security access that prevents a caseworker from finalizing an investigation, assessment, case plan, or case closure without supervisory approval.

"Exploitation" means an act or omission committed by a person that:

A. Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk adult of the use, benefit, or possession of ~~his or her money, assets, or property~~ ANYTHING OF VALUE;

~~B. In the absence of legal authority~~:

~~1~~B. Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk adult; ~~or,~~

~~2~~C. Forces, compels, coerces, or entices an at-risk adult to perform services for the profit or advantage of the person or another person against the will of the at-risk adult; or,

~~C~~D. Misuses the property of an at-risk adult in a manner that adversely affects the at-risk adult's ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

"FACILITY" MEANS MEDICAL AND LONG-TERM CARE FACILITIES THAT PROVIDE 24 HOUR CARE AND OVERSIGHT FOR RESIDENTS, AND INCLUDES GROUP AND HOST HOMES, ALTERNATIVE CARE FACILITIES, STATE REGIONAL CENTERS, AND STATE MENTAL HEALTH FACILITIES.

"Financial institution" means a state or federal bank, savings bank, savings and loan association or company, building and loan association, trust company, or credit union.

"Fiscal Year" means the State Department fiscal year, which begins July 1 and ends June 30.

"FTE" means Full Time Equivalent. The actual percentage of time a person works on the APS program shall be considered that person's FTE.

"Inconclusive finding" means that indicators of mistreatment, exploitation, or self-neglect may be present but the investigation could not confirm the evidence to a level necessary to substantiate the allegation.

"Investigation" means the process of determining if an allegation(s) of mistreatment involving an at-risk adult can be substantiated by a preponderance of evidence.

"Least restrictive intervention" means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent mistreatment.

"Minor impact" means the client may experience some difficultly with the assessment risk indicator, but there is very little impact on the client's overall health, safety, and/or welfare and no intervention is necessary to improve overall safety.

"Mistreatment", pursuant to Section 26-3.1-101(7), C.R.S., means ~~an act or omission that threatens the health, safety, or welfare of an at-risk adult or that exposes an at-risk adult to a situation or condition that poses imminent risk of death, serious bodily injury, or bodily injury to the at-risk adult. Mistreatment includes, but is not limited to:~~

A. Abuse; ~~that occurs:~~

~~1. Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;~~

~~2. Where unreasonable confinement or restraint is imposed; or,~~

~~3. Where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, C.R.S.~~

B. Caretaker neglect~~.~~;

C. EXPLOITATION;

D. AN ACT OR OMISSION THAT THREATENS THE HEALTH, SAFETY, OR WELFARE OF AN AT-RISK ADULT; OR,

E. AN ACT OR OMISSION THAT EXPOSES AN AT-RISK ADULT TO A SITUATION OR CONDITION THAT POSES AN IMMINENT RISK OF BODILY INJURY TO THE AT-RISK ADULT.

"Person(s)" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the State Department of Colorado, and all political subdivisions and agencies thereof.

"Protective Services" means services to prevent the mistreatment and self-neglect of an at-risk adult initiated and provided by the county department authorized to administer the Adult Protective Services Program. Such services include, but are not limited to:

A. Receipt and investigation of reports of mistreatment~~, exploitation,~~ and self-neglect;

B. Assessment of the at-risk adult's physical, environmental, resources and financial, medical, mental and behavioral, and support system needs;

C. Protection from mistreatment;

D. Coordination, implementation, delivery, and monitoring of services necessary to address the at-risk adult's safety, health, and welfare needs;

E. Assistance with applications for public benefits and other services; and,

F. Initiation of protective and probate proceedings under Colorado Revised Statutes.

"Reassessment" means the process of updating the assessment status areas and the case plan, including the status of any services implemented and any new services and/or goals identified since the last assessment.

"RED Team" is an acronym that stands for Review, Evaluate, and Direct. The RED Team is a decision making process that utilizes a structured framework to determine the county department's response to ~~referrals~~REPORTS.

"Report" means an oral or written report of suspected mistreatment or self-neglect of a suspected at-risk adult, received by the county department.

"Risk" means conditions and/or behaviors that create increased difficulty or impairment to the client's ability to ensure health, safety, and welfare.

"Safety" means the extent to which a client is free from harm or danger, or to which harm or danger is lessened.

"Self-Determination" means the right to decide for one's self; the ability or right to make one's own decisions without interference from others.

"Self-Neglect", pursuant to Section 26-3.1-101(10), C.R.S., means an act or failure to act whereby an at-risk adult substantially endangers his/her health, safety, welfare, or life by not seeking or obtaining services necessary to meet the adult's essential human needs. Refusal of medical treatment, medications, devices, or procedures by an adult or in accordance with a valid medical directive or order, or as described in a palliative plan of care, shall not be deemed self-neglect. Refusal of food and water in the context of a life-limiting illness shall not, by itself, be evidence of self-neglect. "Medical directive or order" includes, but is not limited to, a medical durable power of attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a medical orders for scope of treatment form

executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR directive executed pursuant to Article 18.6 of Title 15, C.R.S.

“Significant impact” means that the client’s impairment diminishes the client’s health, safety, and/or welfare and intervention is necessary to improve overall safety.

"Staffing a case" means the review of an APS case between the supervisor and caseworker to ensure the appropriateness of the investigation findings, client assessment, case plan, service provision, need for ongoing services, plans to terminate services, documentation, and overall intervention as it relates to APS rules and best practices. Staffing a case may include the county department APS unit, the State Department APS unit, and/or the APS Team in addition to the supervisor and caseworker.

"State Department" means the Colorado Department of Human Services.

"Substantiated finding" means that the investigation established by a preponderance of evidence that mistreatment, exploitation, or self-neglect has occurred.

“UNDUE INFLUENCE” MEANS THE USE OF INFLUENCE TO TAKE ADVANTAGE OF AN AT-RISK ADULT’S VULNERABLE STATE OF MIND, NEEDINESS, PAIN, OR EMOTIONAL DISTRESS.

"Unsubstantiated finding" means the investigation did not establish any evidence that mistreatment or self-neglect has occurred.

30.200 ADULT PROTECTIVE SERVICES PROGRAM ADMINISTRATION AND OVERVIEW

30.210 APS PROGRAM ADMINISTRATION [Rev. eff. 9/1/14]

A. The Adult Protective Services (APS) Program is mandated by Title 26, Article 3.1, of the Colorado Revised Statutes. The county department shall administer the APS Program in accordance with the statutes and rules governing the APS Program and in general State Department fiscal and program regulations.

B. The county department shall ~~make reasonable efforts to~~ utilize funding appropriated by the State Legislature to MAKE REASONABLE EFFORTS TO maintain a fiscal year caseload average of twenty-five to one (25:1), as intended by S.B. 13-111.

C. ~~The county department shall report to the State Department the active caseworker, case aide, and supervisory staff, including FTE, beginning July 1, 2014, and within three (3) working days whenever APS staff changes occur.~~IN ORDER TO ENSURE THE SECURITY OF CAPS AND THE PERSONAL IDENTIFYING INFORMATION (PII) AND PERSONAL HEALTH INFORMATION (PHI) CONTAINED WITHIN, THE COUNTY DEPARTMENT SHALL NOTIFY THE STATE DEPARTMENT THROUGH A CAPS SUPPORT REQUEST WITHIN THREE (3) WORKING DAYS UPON LEARNING OF A CHANGE IN APS STAFFING, BUT NO LATER THAN THE CAPS USER’S LAST DAY OF EMPLOYMENT. AN EMAIL TO THE STATE DEPARTMENT MAY SUBSTITUTE FOR A CAPS SUPPORT TICKET IN THE EVENT A CAPS SUPPORT TICKET CAN NOT BE SUBMITTED.

D. The county department shall make reasonable efforts to advise county residents of services available through the APS Program by such methods as Adult Protection Team mandated community education, as defined at Section 30.830, B, 4, press releases, presentations, pamphlets, and other mass media.

E. The county department shall handle responses to requests for services from other agencies, including the State Department, other county departments, or another state’s APS Program, in the same manner and time frames as requests received from within the county.

F. The county department shall report to the State Department at such times and in such manner and form as the State Department requires, including through ~~the data system~~CAPS, manually generated reports, quality improvement and assurance processes, and other forms of reporting.

30.220 APS PROGRAM REVIEW AND OVERSIGHT [Rev. eff. 9/1/14]

A. The county department shall be subject to the provisions outlined in Section 26-1-111, C.R.S., requiring the State Department to ensure that the county department complies with requirements provided by statute, State Board of Human Services and Executive Director rules, federal laws and regulations, and contract and grant terms.

B. The county department shall be subject to routine quality control and program monitoring, to minimally include:

1. Targeted review of ~~the data system~~CAPS documentation;

2. Review and analysis of data reports generated from ~~the data system~~CAPS;

3. Case review;

4. Targeted program review conducted via phone, email, or survey; and,

5. Onsite program review.

C. The focus of the monitoring shall be to identify:

1. Compliance with program statute and rules;

2. Best practices that can be shared with other county departments; and,

3. Training needs.

D. The county department shall be subject to a performance improvement plan to correct areas of identified non-compliance.

E. The county department shall be subject to corrective action and sanction, as outlined in 9 CCR 2501-1 if the county fails to make improvements required under the performance improvement plan.

30.230 ELIGIBILITY [Rev. eff. 9/1/14]

A. Protective services are provided to persons that meet the definition of “at-risk adult” as defined in Section 30.100. Persons shall not be considered “at-risk” solely because of age and/or disability.

B. Protective services are provided to at-risk adults:

~~1.~~ ~~Who need assessment for health, welfare, protection, and/or safety; and/or,~~

~~2~~1. Who need short term services due to a report of actual or ~~potential~~SUSPECTED mistreatment~~, exploitation,~~ or self-neglect; and/or,

~~3~~2. Who need ongoing protection as the result of substantiation of mistreatment or self-neglect; and/or,

43. For whom the county department has been appointed guardian and/or conservator, or has been designated as representative payee; and/or,

~~5~~4. Who are residents of long term care facilities, such as nursing homes and assisted living residences, who must relocate due to the closure of the facility and:

a. The county department has been appointed guardian and/or conservator; or,

b. They are in need of protective services due to a lack of case management and/or assistance from any other reliable source.

~~6~~5. Without regard to income, resources, or lawful presence.

30.240 APS PRINCIPLES – CONSENT, SELF DETERMINATION, AND LEAST RESTRICTIVE INTERVENTION [Rev. eff. 9/1/14]

A. The client's consent is not required for the county department to investigate or assess allegations of mistreatment~~, exploitation,~~ or self-neglect.

B. The final decision as to acceptance of protective services shall rest with the client unless the client has been adjudicated incapacitated by the court or as outlined in Section 30.600.

C. Protective services provided to and other services arranged for the client shall constitute the least restrictive intervention and be those services provided for the shortest duration and to the minimum extent necessary to meet the needs of the client.

D. It shall not be construed that a person is being mistreated when he or she is being furnished or is relying upon treatment or practices that:

1. Rely on the tenets and practices of that person's recognized church or religious denomination; or,

2. Do not violate local, state, or federal laws.

E. Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect.

30.250 CONFIDENTIALITY [Rev. eff. 9/1/14]

A. Information received as a result of a report to APS and subsequent investigation and casework services shall be confidential and shall not be released without a court order for good cause except in limited circumstances, as defined in Section 30.250, E.

B. The county department shall treat all information related to the report and the case, whether in written or electronic form, as confidential according to applicable statutes, including, but not limited to, the following:

1. Identifying information, such as the name, address, relationship to the at-risk adult, date of birth, or Social Security Number of the:

a. At-risk adult;

b. At-risk adult's family members;

c. Reporting party;

d. Alleged perpetrator; and,

e. Other persons involved in the case.

2. Allegations, assessment, and investigative findings, including, but not limited to:

a. Initial report of allegations and concerns;

b. The client's physical, environmental, resources and financial, medical, mental and behavioral, and social systems status;

c. Medical and behavioral diagnoses, past medical conditions, and disabilities;

d. Services provided to or arranged for the adult;

e. Information learned as a result of a criminal investigation;

f. Information obtained during the APS investigation and the substantiation or non-substantiation of the allegations; AND,

g. Legal protections in place including, but not limited to, wills, advance directives, powers of attorney, guardianship, conservatorship, representative payeeship, and protective orders.

C. Individuals or groups requesting information regarding APS reports and/or investigations shall be informed of the confidential nature of the information and shall be advised that a court order is required to release information held by the county department, except as provided at Section 30.250, E. These persons or groups include, but are not limited to:

1. Federal and state legislators;

2. Members of other governmental authorities or agencies, including county commissioners, city councils, school boards, and other city and county department boards, councils, officials, and employees;

3. Courts and law enforcement agencies;

4. Attorneys, guardians, conservators, agents under powers of attorney, representative payees, and other fiduciaries;

5. Family members, reporting parties, or other interested parties;

6. Any alleged perpetrator; and,

7. Media representatives.

D. In a criminal or civil proceeding or in any other circumstance in which the APS report and/or case record is subpoenaed or any request for disclosure has been made, or any county department or State Department representative is ordered to testify concerning an APS report or case, the court shall be advised, through proper channels, of the statutory provisions, rules, and policies concerning disclosure of information.

1. Confidential information shall not be released unless so ordered by the court for good cause.

2. Courts with competent jurisdiction may determine good cause. Although it is not an exhaustive list, the following are examples of court proceedings in which a court may determine that good cause exists for the release of confidential information:

   a. Guardianship or conservatorship proceeding in which either the county is the petitioner or has been ordered to testify;

   b. Review of Power of Attorney under the Uniform Power of Attorney Act, as outlined at Title 15, Article 14, Part 7, Colorado Revised Statutes (C.R.S.);

   c. Review of a fiduciary under Title 15, Article 10. Part 5, C.R.S.; and/or,

   d. Criminal trial.

E. Information held by the State Department or county department may be released without a court order only when:

1. Coordination with professionals and collateral contacts is necessary to investigate mistreatment, exploitation, or self-neglect and/or to resolve health and/or safety concerns.

2. It is essential for the provision of protective services, including establishing eligibility for, arrangement and implementation of services and benefits, and appointment of a guardian and/or conservator.

3. A review of a Power of Attorney is requested under the Uniform Power of Attorney Act, as outlined at C.R.S. Title 15, Article 14, Part 7 or review of a fiduciary under C.R.S. Title 15, Article 10, Part 5.

4. A case is reviewed with the adult protection team, in accordance with the adult protection teams by-laws, and when in executive session with members who have signed a confidentiality agreement.

5. A criminal complaint or indictment is filed based on the APS report and investigation.

6. There is a death of a suspected at-risk adult and formal charges or a grand jury indictment have been brought.

7. The coroner is investigating a death suspected to be a result of mistreatment or self-neglect.

8. The client requests his/her file and provides a written release of information, in accordance with the county department's policy. The county department shall review the request to determine whether the client has the ability to provide informed consent related to the release of the file.

F. Whenever there is a question about the legality of releasing information or the ability of the client to provide informed consent, the requestor, whether the client or another person, shall be advised to submit a written request to the appropriate court to order the county department to produce the desired records or information within the custody or control of the county department.

G. Information released under Section 30.250, D and E, shall be the minimum information necessary to secure the services, conduct the investigation, or otherwise respond to the court order or request for information. The county department shall:

1. Provide the information only to persons deemed essential to the court order, criminal investigation, Adult Protection team activities, the provision of services, or client request;

2. Edit the information prior to its release to physically remove or redact sensitive information not essential to the court order, criminal investigation, Adult Protection Team activities, provision of services and benefits, or client request;

3. Always redact the reporting party information and other documentation that could identify the reporting party unless specifically ordered by a court or the reporter has given written consent to release his/her information;

4. Always redact all HIPAA protected information and any other confidential information which is protected by law unless specifically ordered by a court; and,

5. Redact all other report and case information not directly related to the request.

H. When a court order or other written request for the release of information related to an APS report or case is received, as outlined in Sections 30.250, D and E, the county department shall:

1. Comply within the time frame ordered by the court, or in accordance with county department policy; and,

2. Provide a written notice with the information to be released regarding the legality of sharing confidential information.

I. All confidential APS information and data shall be processed, filed and stored using safeguards that prevent unauthorized personnel from acquiring, accessing, or retrieving the information.

1. Client files shall be kept in a secured area when not in use.

2. Passwords ~~to the APS data system~~ TO CAPS shall be kept secured.

3. The State Department shall ensure that only ~~APS~~ STATE AND COUNTY staff persons WITH A BUSINESS NEED TO DO SO SHALL have access to ~~the APS data system.~~CAPS.

4. Laptops and other mobile devices used to document in the field shall be protected and encrypted in compliance with HIPAA security requirements.

5. Email correspondence that contains APS confidential information shall be sent through secure encryption programs.

6. ALL CAPS USERS MUST ELECTRONICALLY SIGN THE CAPS SECURITY AND CONFIDENTIALITY AGREEMENT ANNUALLY.

J. COUNTY DEPARTMENTS SHALL NOT ACCESS INFORMATION IN CAPS THAT IS NOT NECESSARY TO SERVE THE CLIENT. VIOLATIONS MAY RESULT IN LOSS OF ACCESS TO CAPS, AT THE DISCRETION OF THE STATE DEPARTMENT.

~~J.~~K. Any person who willfully violates confidentiality or who encourages the release of information related to the mistreatment~~, exploitation,~~ and self-neglect of an at-risk adult from ~~the data system~~CAPS or THE APS case file, to persons not permitted access to such information, commits a Class 2 petty offense and shall be punished as provided in Section 26-3.1-102(7)(c), C.R.S.

~~K~~L. Clients shall be referred to the Colorado Address Confidentiality Program (ACP) as appropriate to determine their eligibility for services including the legal substitute mailing address and mail forwarding services. The State Department and county department shall comply with any applicable provisions for APS clients enrolled in the ACP.

30.260 DOCUMENTATION [Rev. eff. 9/1/14]

A. The county department shall THOROUGHLY document all Adult Protective Services (APS) reports and case information in ~~the data system~~CAPS. There shall be no parallel paper or electronic system used to enter APS documentation. DOCUMENTATION SHALL INCLUDE ALL ASPECTS OF THE APS CASE, INCLUDING:

1. INITIAL REPORT;

2. INVESTIGATION;

3. ASSESSMENT;

4. CASE PLAN;

5. CONTACT RECORDS FOR THE CLIENT, ALLEGED PERPETRATOR, REPORTER, AND ALL COLLATERALS AND SUPPORTS;

6. ONGOING CASE NOTES;

7. CASE CLOSURE; AND,

8. ANY OTHER PROCESSES RELATED TO THE CASE.

B. All documents and evidence critical to the APS case record shall be scanned into ~~the data system~~CAPS, to include:

1. ~~The~~A release of information form(s) signed by the client~~;~~, WHEN APPROPRIATE;

2. All of the client's Powers of Attorney(s), living will declaration, and/or other advance directives, as applicable;

3. All documents, reports, and correspondence related to guardianship, conservatorship, and representative payeeship, whether county department held or private, as applicable; and,

4. Other documentation, such as medical reports, results of psychiatric evaluations, photographic documentation, and other evidence collected during the investigation and assessment.

C. ALL DOCUMENTATION PERTAINING TO APS REPORTS AND CASES, INCLUDING INTERVIEW AND CASE NOTES, EVIDENCE GATHERED, SUCH AS PHOTOS, MEDICAL RECORDS, AND BANK STATEMENTS SHALL BE KEPT IN A SECURE LOCATION UNTIL DOCUMENTED IN CAPS AND THEN SHALL BE DESTROYED.

a. HARDCOPY AND ELECTRONIC APS FILES CREATED PRIOR TO JULY 1, 2014 SHALL BE KEPT IN A SECURED LOCATION.

b. ALL APS FILES CREATED JULY 1, 2014 OR LATER SHALL BE DOCUMENTED IN CAPS AND THE FILE/NOTES DESTROYED.

c. ORIGINAL LEGAL DOCUMENTS SUCH AS GUARDIANSHIP, REPRESENTATIVE PAYEESHIP, BIRTH CERTIFICATES, OR TAX DOCUMENTS MAY BE RETAINED IN A HARDCOPY FILE, IN ADDITION TO CAPS, THAT IS IN A SECURED LOCATION.

~~C~~.D. Case records shall be retained for a minimum of three (3) years, plus the current year, after the date of case closure.

30.300 STAFF QUALIFICATIONS, TRAINING, AND DUTIES

30.310 EDUCATION AND EXPERIENCE QUALIFICATIONS [Rev. eff. 9/1/14]

A. The county department shall ensure that all personnel who supervise or provide professional services in the APS program possess the following minimum qualifications for education and experience:

1. The Professional Entry (Training) Level position shall require a Bachelor's degree with an equivalent of thirty (30) semester or forty-five (45) quarter hours in human behavioral sciences or health care related courses, such as, social work, sociology, psychology, psychiatry, gerontology, nursing, special education, family intervention techniques, diagnostic measures, therapeutic techniques, guidance and counseling, CRIMINAL JUSTICE, ~~or~~ other human behavioral sciences, or A medical field relevant to the APS ~~P~~program and/or at-risk adults.

2. Professional Journey Level position shall meet the requirements for the Professional Entry (Training) Level position and shall have obtained the skills, knowledge, and abilities to perform duties at the fully independent working level, as follows:

   a. ~~The required degree plus o~~One (1) year of professional casework in a public or private social services agency ~~obtained~~ COMPLETED after the degree is obtained; or,

   b. A Master's degree in ~~social work.~~A FIELD AS LISTED IN 30.310, A, 1.

3. The Casework Supervisor position shall meet the requirements for the Professional Journey Level position plus have at least three years professional casework experience at the journey level obtained after the Bachelor's or Master's degree. County department managers, administrators, and directors with direct supervision shall meet this requirement.

4. The Case Aide and Intake Screener positions, if available in the county department, shall have obtained a high school diploma or a General Equivalency Diploma (GED) plus have at least six (6) months full time public contact in human services or a related field. Substitution for public contact is successful completion of a certificate program in gerontology and/or at least six, college level credit hours in a human behavioral sciences or health care field.

B. If proven recruitment difficulty exists or the APS staff person was hired to perform APS duties prior to November 1, 1998, the county department may request a waiver of these requirements by submitting a request to the State Department Adult Protective Services unit. The request shall include:

1. The position for which the county department is requesting a waiver, including the percentage of time the position will be performing the duties of the APS program (% FTE).

2. Justification of the need for a waiver, to include:

   a. Documentation of the recruiting effort;

   b. Educational background of the proposed candidate, including degrees and post degree training, such as completion of a gerontology certificate, post graduate coursework, or other relevant training courses;

   c. Years of direct experience working with at-risk adults or other vulnerable populations applicable to the APS Program and clients; and,

   d. Other relevant qualities and information that demonstrate the candidate would be acceptable as a training level caseworker.

3. A plan on how and when the candidate will meet the coursework requirement or will otherwise meet the educational requirements of the position.

4. If the waiver request is not approved and the county department disagrees with the decision, the county department may request review of the decision by the Executive Director of the State Department.

D. All APS staff education and experience shall be documented in ~~the data system~~CAPS.

30.320 BACKGROUND CHECK REQUIREMENTS [Eff. 8/1/12]

A. The county department shall complete a criminal background check on all prospective APS employees who, while in their employment, have direct, unsupervised contact with any actual or potential at-risk adult.

B. If the county department has not previously requested and received a criminal background check on a current employee hired on or after June 1, 2010, the county department shall immediately request a fingerprint criminal background check. The county department shall pay the fee.

C. The county department shall require a fingerprint background check for all prospective employees.

1. The county department shall submit to the Colorado Bureau of Investigation (CBI) a complete set of fingerprints taken by a qualified law enforcement agency to obtain any criminal record held by the CBI.

2. The background check shall include a check of the records at the Colorado Bureau of Investigation and the Federal Bureau of Investigation.

3. The county department is strongly urged to require the background check be flagged for future notification of arrest and/or conviction.

4. The prospective employee shall pay the fee for the criminal record check unless the county department chooses to pay the fee.

5. The prospective employee's employment shall be conditional upon a satisfactory criminal background check.

   a. The current employee or applicant shall be disqualified from employment, regardless of the length of time that may have passed since the discharge of the sentence imposed, for any felony criminal offenses as defined in Title 18, Articles

2-10, 12-13, 15-18~~.5~~, 20, 23 of the Colorado Revised Statutes, or any felony offense in any other state the elements of which are substantially similar to the elements of any of the offenses included herein.

b. At the county department's discretion, a person shall be disqualified from employment either as an employee or as a contracting employee if less than ten years have passed since the person was discharged from a sentence imposed for conviction of any of the following criminal offenses:

1) Third degree assault, as described in Section 18-3-204, C.R.S.;

2) Any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

3) Violation of a protection order, as described in Section 18-6-803.5, C.R.S.;

4) Any misdemeanor offense of child abuse, as defined in Section 18-6-401, C.R.S.;

5) Any misdemeanor offense of sexual assault on a client by a psychotherapist, as defined in Section 18-3-405.5, C.R.S.;

6) Any misdemeanor offense of arson, burglary and related offenses, robbery, or theft, as defined in Title 18, Articles 1-4, C.R.S.;

7) A pattern of misdemeanor convictions within the ten years immediately preceding the date of submission of the application, or;

8) Any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described above.

4. Prospective employees who are transferring from one county department to another are not required to be re-fingerprinted if they complete the following process:

a. New employees must obtain their CBI clearance letter or a photocopy of their processed fingerprint card from their former employer. They must attach it to a new fingerprint card, with the top portion completed.

b. The new fingerprint card must include the new employer's address. "Transfer – County Department" must be inserted in the "Reason Fingerprinted" block.

c. The CBI clearance letter (or photocopy of the old fingerprint card) and the new fingerprint card shall be sent with payment by the county department to the CBI.

d. County departments that have accounts with CBI are not required to send payment, but the county department shall enter its CBI account number in the OCA block of the new fingerprint card.

30.330 TRAINING REQUIREMENTS [Rev. eff. 9/1/14]

A. The county department shall ensure that all new APS staff completes required APS training, as follows:

1. New entry and journey level caseworkers shall successfully complete the Pre-Academy Workbook (PAW) WITHIN ONE (1) MONTH OF HIRE OR TRANSFER TO THE APS PROGRAM AND SHALL NOT BE ASSIGNED CASES UNTIL THE PAW HAS BEEN COMPLETED. THE CASEWORKER SHALL DOCUMENT COMPLETION OF THE PAW IN CAPS.

   ~~a. Full time APS caseworkers shall complete the PAW within three (3) months of hire or transfer to the APS Program.~~

   ~~b. Part time APS caseworkers shall complete the PAW within six (6) months of hire or transfer to the APS Program.~~

2. New entry and journey level caseworkers shall complete the APS training academy. ~~within nine months of hire or transfer to the APS Program.~~

   a. Small ~~counties~~ COUNTY DEPARTMENTS with only one (1) caseworker who is less than a twenty-five percent (25%) FTE in APS shall complete the training academy within ~~twelve (12~~)NINE (9) months of hire or transfer to the APS Program. Caseworkers are strongly urged to request support from the State Department on any cases opened prior to attending training academy.

   b. ALL OTHER COUNTY DEPARTMENTS WITH AT LEAST ONE (1) CASEWORKER~~Counties~~ with a twenty-five percent (25%) or higher FTE in APS shall complete the training academy within ~~nine (9)~~ SIX (6) months of hire or transfer to the APS Program.

3. New supervisors, managers, administrators, and/or county department directors with direct casework supervision duties shall successfully complete the web-based APS supervisor training within six (6) months of hire, transfer to the APS Program, or promotion from a caseworker position. The web-based training requirements shall be waived if the supervisor, manager, administrator, or director attends the APS training academy.

4. New case aides shall complete the Pre-Academy Workbook (PAW) within ~~three (3)~~ ONE (1) months of hire or transfer to the APS Program. Case aides may attend APS training academy, space permitting.

5. APS intake screeners or other county department staff designated to receive reports of alleged mistreatment~~, exploitation,~~ and self-neglect of at-risk adults ~~shall complete the web-based enhanced screening training within sixty (60) days of hire or transfer to their position. Intake screeners~~ may complete the Pre-Academy Workbook (PAW).

B. The county department shall ensure that any APS staff member on the job longer than twelve (12) months completes ongoing training relevant to the APS Program and client populations. Attendance at any specific training event is at the supervisor's discretion.

   1. Caseworkers shall successfully complete at least ~~thirty (30)~~ FORTY (40) hours of ongoing training per fiscal year related to the APS Program, target populations, and the provision of casework services, as follows:

      a. At least fifteen (15) hours shall be State Department provided training specifically related to the APS Program, which may include:

         1) Statewide or regional training;

2) Quarterly training meetings;

3) County department onsite training; and/or,

4) Live webinar or self-directed web-based training.

b. Additional training options relevant to the APS Program, target populations, and/or the provision of casework services shall include, but are not limited to:

1) National APS organizations' webinar training;

2) Child Welfare Training Academy coursework that has cross-over relevance and has been approved by the State Department APS unit;

3) Other state or national APS conferences; AND/OR,

4) Regional training or conference conducted by agencies or professionals that work with older adults or people with disabilities including, but not limited to, a community centered board, Alzheimer's association, Colorado legal assistance developer, Colorado Coalition for Elder Rights and Abuse Prevention (CCERAP), Colorado Long-Term Care Ombudsman, local law enforcement, AP team, APS supervisor or county department attorney.~~; and/or,~~.

~~5) Reading reports or professional journals provided or approved by the State Department APS unit about current APS best practices, research, and interventions.~~

2. Supervisors, managers, administrators, and/or county department directors with direct casework supervision duties shall successfully complete at least ~~twenty (20~~) THIRTY (30) hours of ongoing training per fiscal year related to the APS Program, target populations, the provision of casework services, or general supervision of employees, as follows:

a. At least ~~ten (10)~~ FIFTEEN (15) hours shall be State Department provided training specifically related to the APS Program, as outlined for caseworkers.

b. Additional training options include those outlined for caseworkers plus training options related to general employee supervision.

3. Case aides shall successfully complete at least ~~fifteen (15)~~ TWENTY (20) hours of ongoing training per fiscal year, as outlined for caseworkers. At least seven (7) hours shall be State Department provided training.

4. Required training hours as outlined in Section 30.330, B, 1-3, shall be prorated for part time APS staff.

a. Persons working less than twenty-five percent (25%) in APS shall complete a minimum of:

1) ~~Six (6)~~ TEN (10) hours for caseworkers, SIX (6) OF WHICH SHALL BE STATE PROVIDED; AND,

2) ~~Four (4)~~ FIVE (5) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, THREE (3) OF WHICH SHALL BE STATE PROVIDED; and,

3) ~~Three (3)~~ FOUR (4) hours for case aides, TWO (2) OF WHICH SHALL BE STATE PROVIDED.

b. Persons working twenty-five through forty nine percent (25-49%) in APS shall complete a minimum of:

1) ~~Fifteen (15)~~TWENTY (20) hours for caseworkers, AT LEAST TEN (10) SHALL BE STATE PROVIDED;

2) ~~Eight (8)~~TEN (10) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, AT LEAST SIX (6) SHALL BE STATE PROVIDED; and,

3) ~~Eight (8)~~TEN (10) hours for case aides, AT LEAST FIVE (5) SHALL BE STATE PROVIDED.

c. Persons working fifty through seventy-four percent (50-74%) in APS shall complete a minimum of:

1) ~~Twenty-two (22~~) THIRTY (30) hours for caseworkers, AT LEAST FIFTEEN (15) SHALL BE STATE PROVIDED;

2) ~~Fifteen (15)~~ TWENTY (20) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, AT LEAST FIFTEEN (15) SHALL BE STATE PROVIDED; and,

3) ~~Eleven (11)~~TWELVE (12) hours for case aides, AT LEAST SIX (6) SHALL BE STATE PROVIDED.

d. Persons working seventy-five through one hundred percent (75-100%) in APS shall complete the full training requirement outlined in 30.330, B, 1-3.

C. All training hours shall be documented in ~~the data system~~CAPS within fourteen (14) calendar days of completion of the training.

30.340 STAFF DUTIES AND RESPONSIBILITIES [Rev. eff. 9/1/14]

A. The direct supervisor OR LEAD WORKER shall, at a minimum:

1. Receive reports of mistreatment~~, exploitation,~~ and self-neglect as outlined in Section~~s~~ 30.400~~10 through 30.430~~.

2. Evaluate the report, ~~and~~ determine the response, and develop a plan for caseworker safety, as outlined in Section~~s~~ 30.400~~10 through 30.430~~. Counties ~~may~~ ARE URGED TO use the RED Team process.

3. Staff open cases of each caseworker monthly to ensure cases meet program requirements related to the provision of protective services.

4. REVIEW CASES TO ENSURE: ~~Use the APS case review tool in the data system~~CAPS ~~each month to review a minimum of fifteen percent (15%) TWENTY-FIVE (25%) of each caseworker's cases that were open and/or closed that month to ensure:~~

a. Timely casework;

b. Investigation, assessment, and case planning were thorough and complete;

c. Case closure, if applicable, was appropriate; and,

d. Documentation in ~~the data system~~CAPS is ~~thorough~~COMPLETE and ~~complete~~ACCURATE.

5. REVIEW OF CASES SHALL BE COMPLETED USING ONE OF TWO APPROVED METHODS:

a. USING THE CASE REVIEW SCORE CARD IN CAPS, EACH MONTH REVIEW FIFTEEN PERCENT (15%) OF EACH CASEWORKER'S CASES THAT WERE OPEN AND/OR CLOSED DURING THE MONTH; OR,

b. APPROVE EVERY COUNTY APS CASE AT THREE KEY JUNCTURES OF THE APS CASEWORK PROCESS UTILIZING THE AUTOMATED APPROVAL PROCESS IN CAPS, AS FOLLOWS:

i. UPON COMPLETION OF THE INITIAL INVESTIGATION, ASSESSMENT, AND CASE PLAN;

ii. UPON COMPLETION OF A SIX MONTH REASSESSMENT FOR CASES OPEN LONGER THAN SIX MONTHS; AND,

iii. AT CASE CLOSURE.

~~5~~6. Assess APS caseworkers' professional development needs and provide opportunities for training.

~~6~~7. Respond to APS reports or have a contingency plan to respond within assigned time frames, including emergencies, and to provide protective services when no caseworker is available.

B. APS caseworkers shall, at a minimum:

1. Receive reports of mistreatment~~, exploitation,~~ and self-neglect as outlined in Section~~s~~ 30.400~~10 through 30.430~~;

2. Investigate allegations and assess the client's safety and needs as outlined in Section 30.500;

3. Develop, implement, and monitor case plans, conduct required client visits, and provide protective services as outlined in Section 30.600;

4. Document case findings as outlined throughout 12 CCR 2518-1; AND,

5. Assume responsibility for own learning and required training hours.

C. APS case aides may assist caseworkers in completing non-professional level tasks that do not require casework expertise, but shall not perform the duties of the caseworker or supervisor, such as completing:

1. The investigation and/or assessment;

2. The case plan;

3. The required monthly client contact visits; or,

4. Required reports to the court, for cases in which the county department is the guardian or conservator.

D. APS ~~call~~ INTAKE screeners or administrative support staff may:

1. Receive and document intake reports in ~~the data system~~ CAPS OR THROUGH THE CAPS WEB2CASE FORM;

2. Assign all reports to the supervisors for determination of appropriate response; and,

3. Direct urgent calls to the appropriate internal and external authorities.

30.400 REPORT RECEIPT AND RESPONSE

30.410 INTAKE [Rev. eff. 9/1/14]

A. The county department shall receive oral or written reports of at-risk adult mistreatment~~, exploitation,~~ and self-neglect, OCCURRING IN THE COMMUNITY OR IN A FACILITY.

B. The county department shall have an established process during business and non-business hours for receiving such reports.

C. The county department shall input oral reports directly in ~~the data system~~CAPS OR THE CAPS WEB2CASE FORM. Written reports received via email, fax, or mail shall be documented in ~~the data system~~CAPS within one (1) business day of receipt. If unable to enter the report in the system within one business day, the county department shall document the reason.

D. ~~The data system~~ CAPS shall guide the information gathered for the report to include:

1. The client's demographic information, such as name, gender, date of birth or approximate age, address, current location if different from permanent address, and phone number;

2. The reporter's demographic information, unless the reporter requests anonymity, such as name, phone number, address, relationship to client and, if applicable, the reporter's agency or place of business;

3. Allegations of mistreatment~~, exploitation,~~ or self-neglect;

4. Safety concerns for the client;

5. Safety concerns for the caseworker; and,

6. The alleged perpetrator's information, such as name, gender, address, phone number, and relationship to the client, when mistreatment is alleged.

E. THE COUNTY DEPARTMENT SHALL DETERMINE JURISDICTION FOR RESPONDING TO THE REPORT.

1. THE COUNTY DEPARTMENT WITH JURISDICTION FOR RESPONDING TO A REPORT IS THE COUNTY IN WHICH THE ADULT RESIDES.

2. WHEN THE ADULT IS HOMELESS, AS DEFINED IN 42 U.S.C. SECTION 11302, THE COUNTY DEPARTMENT WITH JURISDICTION IS THE COUNTY IN WHICH THE ADULT'S PRIMARY NIGHTTIME RESIDENCE IS LOCATED.

3. IF JURISDICTION IS UNABLE TO BE DETERMINED BY 1 OR 2, ABOVE, THE COUNTY DEPARTMENT WITH JURISDICTION IS THE COUNTY IN WHICH THE ADULT IS CURRENTLY PRESENT.

4. IF AN EMERGENCY RESPONSE IS NECESSARY, THE COUNTY DEPARTMENT WHERE THE ADULT IS LOCATED AT THE TIME OF THE REPORT IS THE RESPONSIBLE COUNTY DEPARTMENT UNTIL JURISDICTION IS DETERMINED.

F. COUNTY DEPARTMENTS SHALL UTILIZE ALL AVAILABLE RESOURCES TO DETERMINE JURISDICTION, SUCH AS:

1. HISTORY WITHIN CAPS;

2. COLORADO BENEFITS MANAGEMENT SYSTEM (CBMS);

3. COLORADO COURTS;

4. WHERE SERVICES ARE BEING PROVIDED; AND/OR,

5. THE ADULT'S SCHOOL.

~~E~~G. If a county department receives a report and determines that the report was made to the wrong county, the receiving county department shall ~~forward~~TRANSFER the report to the responsible county department as soon as possible, but no later than ~~eight (8)~~ ONE (1) hour~~S~~ after determining the correct county.

30.420 REPORT CATEGORIZATION [Rev. eff. 9/1/14]

A. The county department shall review and evaluate the report UTILIZING THE RED TEAM FRAMEWORK OR SUPERVISORY REVIEW to determine whether THE:

1. ~~The c~~Client meets the definition of an at-risk adult; and,

2. ~~The a~~Allegations involve mistreatment~~, exploitation,~~ or self-neglect.

~~3~~B. The county department shall not investigate reports of verbal and/or emotional abuse when no other mistreatment indicators exist because verbal and/or emotional abuse are not included as mistreatment in C.R.S. Title 26, Article 3.1.

~~B~~C. ~~The data system~~CAPS ~~shall~~ WILL generate a response recommendation.

1. The APS supervisor shall have the final decision to screen in or out the report.

2. The APS supervisor shall document in ~~the data system~~CAPS why the ~~data system~~ CAPS recommendation was reversed.

~~C~~D. The county shall document and screen all reports received from law enforcement, as a result of Section 18-6.5-108(2)(b), C.R.S., UTILIZING THE RED TEAM FRAMEWORK OR SUPERVISORY REVIEW, to determine if the victim and the allegations meet AP eligibility criteria outlined in Sections 30.230 and 30.420, A.

E. COUNTY DEPARTMENTS ARE URGED TO DEVELOP AND IMPLEMENT A PROCESS UTILIZING THE RED TEAM FRAMEWORK IN CAPS TO REVIEW REPORTS TO DETERMINE REPORT CATEGORIZATION AND RESPONSE TIME FRAMES. THE SUPERVISOR OR LEAD WORKER HAS THE DISCRETION TO OVERRULE THE RED TEAM DECISION.

~~D~~F. Reports that do not involve an at-risk adult and mistreatment~~, exploitation,~~ or self-neglect, as outlined in Section 30.420, A, shall be screened out NO LATER THAN THE THIRD WORKING DAY AFTER THE RECEIPT OF THE REPORT. The county department shall not conduct an investigation.

1. The county department ~~shall~~MAY provide information and/or referral(s) to the reporting party, as appropriate.

2. The county department may inform the reporting party of the decision not to investigate.

3. The county department shall document the reason the report was screened out.

~~E~~G. Reports that involve an at-risk adult and mistreatment~~, exploitation,~~ or self-neglect, as outlined in Section 30.420, A, shall be screened in and are determined to be a case.

30.430 RESPONSE PRIORITY [Rev eff. 9/1/14]

A. The county department shall determine a time frame response to the case based upon the reported level of risk.

B. When factors present indicate the client is in clear and ~~imminent~~ IMMEDIATE danger or urgent and significant risk of harm due to the severity of the mistreatment~~, exploitation,~~ or self-neglect, or due to the vulnerability or physical frailty of the client, the county department shall:

1. Determine the case to be an emergency;

2. Call 911, if appropriate based on the circumstances of the report; and,

3. Make an initial response as soon as possible, but no later than twenty-four (24) hours including non-business ~~hours~~ DAYS, after the receipt of the report. An initial response shall be:

   a. A face-to-face visit with the client; or,

   b. An attempted face-to-face visit with the client; or,

   c. An outreach to another professional, such as law enforcement~~, Long Term Care Ombudsman,~~ or hospital staff, to ascertain the client's immediate safety.

4. If the initial response was not a face-to-face contact with the client ~~or~~ AND the county department was unable to ascertain the client's safety, the county department shall attempt a face-to-face client contact each day following the initial attempt at contact, including non-business days.

   a. A law enforcement welfare check may be substituted for ~~one~~ attemptS at contact DURING NON-BUSINESS DAYS. ~~but does not qualify as the face-to-face contact.~~ THE COUNTY DEPARTMENT SHALL FOLLOW UP ON THE NEXT WORKING DAY.

b. If the county department has confirmed the client to be unavailable or safe, SUCH AS IN THE INTENSIVE CARE UNIT (ICU), the reason for delayed response shall be documented.

c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

d. Following the third DAY OF unsuccessful attemptS at contact, the county department may choose to send a letter requesting an appointment with the client.

e. If attempts at contact remain unsuccessful, the county department shall close the ~~referral~~CASE no later than ~~twenty (20)~~THIRTY-FIVE (35) calendar days after the last attempt at contact.

f. The county department shall document ~~in the data system~~ all attempts to contact the client.

5. IF THE INITIAL RESPONSE WAS NOT A FACE-TO-FACE CONTACT WITH THE CLIENT ~~If~~ BUT the county department was able to ascertain safety, it shall make a face-to-face client contact on the first working day following the report. ~~If the client is unavailable, such as in ICU, the county shall document why the face-to-face could not be completed~~.

a. If the county department has confirmed the client to be unavailable, SUCH AS IN THE INTENSIVE CARE UNIT (ICU), the reason shall be documented.

b. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

c. Following the third DAY OF unsuccessful attemptS at contact, the county department may choose to send a letter requesting an appointment with the client.

d. If attempts at contact remain unsuccessful, the county department shall close the case no later ~~twenty (20)~~ THIRTY-FIVE (35) calendar days after the last attempt at contact.

e. The county department shall document ~~in the data system~~ all attempts to contact the client.

C. When ~~factors present~~ THE REPORT AND SUBSEQUENT SUPERVISORY REVIEW AND/OR RED TEAM PROCESS indicate the client is not in ~~imminent~~ IMMEDIATE danger or urgent risk of harm but mistreatment~~, exploitation,~~ or self-neglect is present or LIKELY PRESENT, ~~conditions exist that might reasonably result in mistreatment, exploitation, or self-neglect,~~ the county department shall:

1. Determine the case to be a non-emergency.

2. Make AN INITIAL RESPONSE ~~A face-to-face contact with the client~~ no later than three (3) working days beginning the day after the county department's receipt of the report. AN INITIAL RESPONSE SHALL BE:

a. A FACE-TO FACE VISIT WITH THE CLIENT; OR

b. AN ATTEMPTED FACE-TO-FACE WITH THE CLIENT;

c. AN OUTREACH TO ANOTHER PROFESSIONAL SUCH AS LAW ENFORCEMENT OR HOSPITAL STAFF, TO ASCERTAIN THE CLIENT'S IMMEDIATE SAFETY.

~~a~~3. When the initial ~~attempt~~ RESPONSE WAS NOT A~~at~~ face-to-face contact with the client OR THE COUNTY DEPARTMENT WAS UNABLE TO ASCERTAIN THE CLIENT'S SAFETY, ~~is unsuccessful, an attempt at face-to-face~~ THE COUNTY DEPARTMENT SHALL ATTEMPT A FACE-TO-FACE CLIENT contact ~~shall be made~~ every other WORKING day for a minimum of three attempts.

a. A LAW ENFORCEMENT WELFARE CHECK MAY BE SUBSTITUTED FOR ONE ATTEMPT AT CONTACT, AND QUALIFIES AS ONE OF THE THREE REQUIRED ATTEMPTS AT CONTACT.

~~1)~~b. If the county department has confirmed the client to be unavailable or safe, the reason for delayed response shall be documented.

~~2)~~c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

~~b~~d. Following the third unsuccessful attempt at contact, the county department may choose to send a letter requesting an appointment with the client.

~~c.~~e. If attempts at contact remain unsuccessful, the county department shall close the case no later than ~~twenty (20)~~THIRTY-FIVE (35) calendar days after the last attempted contact.

~~d.~~f. The county department shall document all attempts to contact the client.

4. IF THE COUNTY DEPARTMENT WAS ABLE TO ASCERTAIN SAFETY,

a. THE COUNTY DEPARTMENT SHALL ATTEMPT A FACE-TO-FACE CLIENT CONTACT WITHIN THE RESPONSE TIME FRAME OR BEGINNING ON THE FIRST WORKING DAY AFTER ASCERTAINING SAFETY IF SAFETY WERE ASCERTAINED ON THE LAST DAY OF THE RESPONSE TIME FRAME. ATTEMPTS AT CONTACT SHALL CONTINUE EVERY OTHER WORKING DAY FOR A MINIMUM OF THREE ATTEMPTS.

b. IF THE COUNTY DEPARTMENT HAS CONFIRMED THE CLIENT TO BE UNAVAILABLE, THE REASON SHALL BE DOCUMENTED.

c. INITIAL AND SUBSEQUENT ATTEMPTS AT CONTACT SHALL BEGIN IMMEDIATELY WHEN THE CLIENT BECOMES OR IS EXPECTED TO BECOME AVAILABLE.

d. FOLLOWING THE THIRD UNSUCCESSFUL ATTEMPT AT CONTACT, THE COUNTY DEPARTMENT MAY CHOOSE TO SEND A LETTER REQUESTING AN APPOINTMENT WITH THE CLIENT.

e. IF ATTEMPTS AT CONTACT REMAIN UNSUCCESSFUL, THE COUNTY DEPARTMENT SHALL CLOSE THE CASE NO LATER THAN THIRTY-FIVE (35) CALENDAR DAYS AFTER THE LAST ATTEMPT AT CONTACT.

f. THE COUNTY DEPARTMENT SHALL DOCUMENT ALL ATTEMPTS TO CONTACT THE CLIENT.

D. Prior to the initial face-to-face client contact visit, the county department shall determine whether:

1. The visit and investigation should be made in conjunction with law enforcement and/or personnel from other agencies in accordance with the county department's cooperative agreements;

2. The client is in ~~the data system~~CAPS and/or is otherwise known to the county department;

3. Safety concerns exist, based on historical data and information provided in the report, requiring the caseworker to be accompanied by:

a. Law enforcement;

b. The supervisor;

c. Another case worker; or,

d. Emergency, medical, and/or mental health personnel, if known or suspected medical or psychiatric conditions exist.

E. If the case originally appears to indicate a need for a face-to-face investigation but further assessment determines that a face-to-face contact is not required to resolve potential safety and risk concerns, the county department may ~~provide telephone response and assistance~~ COLLABORATE WITH OTHER PROFESSIONALS OR RESPONSIBLE FAMILY OR SUPPORTS TO RESOLVE THE SAFETY CONCERNS. Cases appropriate for ~~telephone response and assistance~~ PHONE COLLABORATION include those:

1. That present heightened worker safety concerns and upon consultation, law enforcement directs APS not to respond.

2. That present heightened worker safety concerns due to environmental or infectious disease concerns and upon consultation, first responders, public health officials, and/or code enforcement directs APS not to respond.

3. In which it is determined that responsible family is aware of the concerns and is working appropriately to address the concerns.

4. Regarding a chronic situation in which APS has had a visit with the competent client in the past thirty (30) calendar days and determined APS intervention is unwanted or could not resolve the concern.

~~5. In which the client is competent and able, with assistance from APS or other support systems, to arrange services.~~

~~6~~5. Regarding clients that have a case manager in place, such as a Single Entry Point (SEP) case manager, and calls between APS and the case manager can resolve the reporter's concerns.

~~7~~6. In which the client is hospitalized or institutionalized prior to the initial visit, and the county has determined that ongoing protective services is not required.

30.500 INVESTIGATION AND ASSESSMENT

30.510 INVESTIGATION AND ASSESSMENT OVERVIEW [Rev. eff. 9/1/14]

A. The county department shall ~~begin~~CONDUCT ~~an~~ A THOROUGH AND COMPLETE investigation into the allegations UNLESS THE INITIAL VISIT AND ASSESSMENT CONFIRMS THAT THE CLIENT IS NOT AN AT-RISK ADULT. ~~and an assessment of the client's risk, safety, and strengths during the initial face-to-face visit to further clarify the level of risk of mistreatment, exploitation, or self-neglect to the client and the client's immediate needs.~~ INVESTIGATION IS REQUIRED BY STATUTE AND THE CLIENT CANNOT REFUSE AN INVESTIGATION.

B. THE COUNTY DEPARTMENT SHALL CONDUCT AN ASSESSMENT OF THE CLIENT'S RISK, SAFETY, AND STRENGTHS DURING THE INITIAL FACE-TO-FACE VISIT TO FURTHER CLARIFY THE LEVEL OF RISK OF MISTREATMENT OR SELF-NEGLECT TO THE CLIENT AND THE CLIENT'S IMMEDIATE NEEDS, WHENEVER POSSIBLE.

~~B~~C. The investigation and assessment may be conducted independent of one another or simultaneously, depending on the nature of the allegations.

D. IF UPON INITIAL INVESTIGATION, THE COUNTY DEPARTMENT DETERMINES A DIFFERENT COUNTY HAS JURISDICTION, THE ORIGINATING COUNTY DEPARTMENT SHALL TRANSFER THE CASE IN CAPS. THE COUNTY DEPARTMENT DETERMINED TO HAVE JURISDICTION SHALL UPHOLD THE SCREENING DECISION AND CONDUCT THE INVESTIGATION AND ASSESSMENT, UNLESS:

1. ADDITIONAL OR NEW INFORMATION RELATED TO THE SAFETY OF THE ADULT OR ALLEGED MISTREATMENT OR SELF-NEGLECT INDICATING THE CASE MAY BE CLOSED IS GATHERED BY THE COUNTY DEPARTMENT DETERMINED TO HAVE JURISDICTION.

2. THE BASIS FOR THE DECISION TO CLOSE THE CASE SHALL BE DOCUMENTED IN CAPS.

30.520 INVESTIGATION [Rev. eff. 9/1/14]

A. The county department shall conduct an investigation to determine findings related to allegations of mistreatment~~, exploitation~~ or self-neglect. The investigation shall include, but may not be limited to:

1. Determining the need for protective services. If the client is in clear and ~~imminent~~ IMMEDIATE danger, the county shall intervene immediately by notifying the proper emergency responders~~;~~.

2. DETERMINING IF THE INVESTIGATION SHOULD BE CONDUCTED JOINTLY WITH ANOTHER ENTITY, SUCH AS:

   a. LAW ENFORCEMENT AND/OR THE DISTRICT ATTORNEY;

   b. COMMUNITY CENTERED BOARD;

   c. HEALTH FACILITIES DIVISION;

   d. ATTORNEY GENERAL'S MEDICAID FRAUD UNIT; AND/OR,

   e. THE LONG-TERM CARE OMBUDSMAN.

~~2~~3. Conducting a face-to-face interview with the client, unannounced and in private, whenever possible, AND IF NOT UNANNOUNCED AND/OR IN PRIVATE, THE REASON SHALL BE DOCUMENTED IN CAPS~~;~~.

~~3~~4. Conducting interviews with collateral contacts.

~~4~~5. Interviewing the alleged perpetrator(s), with or without law enforcement, when appropriate and safe, AND IF THE PERPETRATOR IS NOT INTERVIEWED, THE REASON SHALL BE DOCUMENTED IN CAPS.

~~5~~6. Collecting evidence and documenting with photographs or other means, when appropriate, SUCH AS:

a. POLICE REPORTS;

b. ANY AVAILABLE INVESTIGATION REPORT FROM A CURRENTLY OR PREVIOUSLY INVOLVED FACILITY AND THE OCCURRENCE REPORT FROM THE HEALTH FACILITIES DIVISION;

c. MEDICAL AND MENTAL HEALTH RECORDS;

d. BANK RECORDS;

e. CARE PLANS FOR ANY PERSON IN A FACILITY OR RECEIVING OTHER SERVICES THAT REQUIRE A CARE PLAN AND ANY DAILY LOGS OR CHARTS; AND/OR,

f. STAFFING RECORDS AND EMPLOYEE WORK SCHEDULES WHEN INVESTIGATING IN A FACILITY.

~~6~~7. Making a finding regarding the substantiation or unsubstantiation of the allegations~~;~~.

~~7~~8. Determining the identity of, and making a finding related to, the perpetrator(s) of the mistreatment~~ OR exploitation or self-negect;~~.

~~8~~9. Determining whether there are additional mistreatment concerns not reported in the initial allegations and investigating AND DOCUMENTING any NEWLY identified concerns~~;~~. ~~and,~~

~~9~~10. Notifying law enforcement when criminal activity is suspected.

~~B. The county department shall~~

~~1.~~B. THE COUNTY DEPARTMENT SHALL ~~C~~complete ~~and document~~ the investigation ~~in the data system~~ within forty-five (45) calendar days of the receipt of the ~~referral~~REPORT, ENSURING THAT DOCUMENTATION OF THE INVESTIGATION IS OCCURRING IN CAPS THROUGHOUT THE INVESTIGATION PROCESS, AS FOLLOWS: ~~. If the investigation cannot be completed within this time frame, the county department shall document the reason why in the data system.~~

1. ALL INTERVIEWS, CONTACTS, OR ATTEMPTED CONTACTS WITH THE CLIENT, COLLATERALS, ALLEGED PERPETRATORS, AND OTHER CONTACTS DURING THE INVESTIGATION SHALL BE DOCUMENTED WITHIN FOURTEEN (14) CALENDAR DAYS OF RECEIPT OF THE INFORMATION.

~~2. Document the investigation in the data system to minimally include window fields and narrative of the:~~

~~a. Allegations;~~

~~b. Mistreatment category(ies) identified by the reporter and any additional mistreatment, exploitation, or self-neglect identified during the investigation, including a finding for each category;~~

~~b. Worker safety issues, if different from the information in the initial report;~~

~~d. Client interview information;~~

~~e. Alleged perpetrator(s) information, including a finding for each perpetrator, if applicable;~~

~~f. Collateral interview information;~~

~~g. Evidence collected;~~

~~h. Determination of whether the allegation(s) and any additional mistreatment, exploitation or self-neglect identified during the investigation are substantiated, unsubstantiated, or are inconclusive; and,~~

~~i. Date referred to law enforcement or the District Attorney, and a description of law enforcement or District Attorney (DA) involvement, if any~~.

2. ALL EVIDENCE COLLECTED DURING THE INVESTIGATION SHALL BE SCANNED AND ATTACHED TO THE CASE BY THE CONCLUSION OF THE INVESTIGATION.

3. FINDINGS FOR THE ALLEGATIONS AND ALLEGED PERPETRATOR SHALL BE DOCUMENTED NO LATER THAN FORTY-FIVE (45) CALENDAR DAYS FROM RECEIPT OF THE REPORT.

4. IF THE INVESTIGATION CANNOT BE COMPLETED WITHIN THIS TIME FRAME, THE COUNTY DEPARTMENT SHALL DOCUMENT THE REASON WHY.

30.530 ASSESSMENT [Rev. eff. 9/1/14]

A. The county department shall COMPLETE A BASELINE ASSESSMENT OF~~assess~~ the client to determine if there is a need for protective services. If the client is in clear and ~~imminent~~ IMMEDIATE danger, the county shall intervene immediately by notifying the proper authorities or arranging for appropriate emergency responders.

B. The county department shall determine ~~for each indicator a level of impact to~~ the client's RISK AND safety~~, health, and well-being by assessing the client's strengths and needs~~ USING THE ASSESSMENT TOOL IN CAPS. ~~in the following five (5) assessment status areas, as applicable:~~

~~1. Physical status, including the client's ability to perform various activities of daily living;~~

~~2. Environmental status, including the conditions within the client's residence, the availability of food and drinking water, and the functionality of heating, plumbing, and electrical systems;~~

3. Resources and financial status, including the client's income, ability to access income, changes in financial circumstances, unpaid bills, and signs of exploitation;

4. Medical status, including the client's current and previous medical conditions, hospitalizations, prescribed medications, insurance, and hearing, vision or dental needs; and,

5. Mental and behavioral status, including the client's capacity to make decisions; ability to manage money or medication, ability to receive or communicate information; ability to plan and sequence; behaviors that threaten the safety of the client or others; a history of mental health conditions; and, any recent loss.

C. The county department shall assess the client's support system status, including family members, friends, involvement with organizations, and any other natural support.

D. The county department shall:

1C. THE COUNTY DEPARTMENT SHALL Ccomplete and document the assessment in the data systemCAPS within forty-five (45) calendar days of the receipt of the report, AS FOLLOWS: If the assessment cannot be completed within this time frame, the county department shall document the reason why in the data system.

1. ALL IMPACTS AND MITIGATING SERVICES, AND THE NARRATIVE SUMMARY SHALL BE DOCUMENTED AND THE ASSESSMENT MARKED COMPLETE NO LATER THAN FORTY-FIVE (45) CALENDAR DAYS FROM RECEIPT OF THE REPORT.

2. Document the assessment in the data system to minimally include window fields and narrative of:

a. The observations in each of the six assessment status areas, as applicable; and,

b. The level of impact for all status area risk factor(s); and,

c. If a mitigating service is in place to improve safety.

2. IF THE ASSESSMENT CANNOT BE COMPLETED WITHIN THIS TIME FRAME, THE COUNTY DEPARTMENT SHALL DOCUMENT THE REASON WHY.

30.600. CASE PLANNING AND IMPLEMENTATION

30.610. CASE PLAN DEVELOPMENT [Rev. eff. 9/1/14]

A. The county department shall develop a case plan for protective services based upon the findings of the investigation and assessment and in accordance with APS principles.

B. A case plan shall not be developed when the allegations are unsubstantiated and there is no other identified need.

C. The case plan shall be documented in the data system and shall include:

1. Client strengths, including services in place, support systems, resources, and the client's personal abilities;

~~2. Client needs, including the nature of the protective issue and/or needs of the client and why the client is unable to meet his/her own needs without APS intervention;~~

~~3~~1. THE **s**ervice ~~goals~~ NEEDS NECESSARY TO SUCCESSFULLY ACHIEVE SAFETY IMPROVEMENT FOR ANY IDENTIFIED RISK FACTORS, CHARACTERIZED WITH A SIGNIFICANT IMPACT, FOR WHICH THERE IS NO ADEQUATE MITIGATING SERVICE IN PLACE AT THE TIME OF APS INITIAL RESPONSE; ~~at a minimum to include a goal for all unmitigated factors with an SIGNIFICANT impact to the client's safety, including why the goal was identified, why it is the least restrictive intervention, how it will meet the client's needs and desires and reduce risk, the person responsible for implementing the goal, and the implementation date; and,~~

2. THE PERSON RESPONSIBLE FOR ARRANGING EACH IDENTIFIED SERVICE NEED, AND IF OTHER THAN THE COUNTY DEPARTMENT, DOCUMENT THE INDIVIDUAL'S AGREEMENT TO ARRANGE THE SERVICE NEED; AND,

~~4~~3. ~~Client's and/or client's fiduciary's input into the development of the case plan, including the client's and/or the fiduciary's consent to the overall plan and the specific goals as outlined in Section 30.620.~~ THE STATUS OF ALL IDENTIFIED SERVICE NEEDS.

~~D. The county department shall:~~

~~1~~D. THE COUNTY DEPARTMENT SHALL ~~C~~complete and document the case plan ~~in the data system~~ within forty-five (45) calendar days of the receipt of the report. If the case plan cannot be completed within this time frame, the county department shall document the reason why in CAPS. ~~the data syste~~m.

~~2. Document the case plan in the data system to minimally include window fields and narrative of the required elements outlined in Section 30.610, C.~~

E. The county department shall implement services, upon consent of the client, that are available in the community and that the client is eligible to receive at no or reduced cost or is able to pay for privately.

1. The county department shall not be required to provide and/or pay for services that are not available in the community or those that the client is not eligible to receive at no or reduced cost or is able to pay for privately; but,

2. The county department is urged to explore all available options, including private companies, to secure needed services.

F. If services are unavailable through other government programs or local service providers and the APS client is unable to pay for the services, the county shall utilize APS client services funds, within available appropriations, to purchase GOODS AND services for the APS client. ~~APS county services funds shall be utilized:~~

1. THE COUNTY DEPARTMENT SHALL NOT OPEN AN APS CASE ONLY TO PURCHASE A SERVICE FOR A COMMUNITY MEMBER AND SHALL NOT USE APS CLIENT SERVICES FUNDS FOR ANY SERVICE THAT DOES NOT BENEFIT THE APS CLIENT.

~~1~~.2. ~~APS client services funds shall be utilized in emergency situations, to include, but not limited to, emergency shelter, food, or utilities; and/or,~~ CLIENT SERVICES FUNDS MAY BE USED IN THE FOLLOWING SITUATIONS:

a. EMERGENCY SITUATIONS, SUCH AS EMERGENCY SHELTER, FOOD, MEDICINE, OR UTILITIES;

b. WHEN THE PURCHASE(S) RESOLVES THE IMMEDIATE NEED; OR,

~~2~~c. For one-time, temporary, or short-term needs while the APS client is waiting for other service providers or funding sources to be approved and services begun; and/or,

3. GOODS AND SERVICES ACCEPTABLE FOR PURCHASE WITH CLIENT SERVICES FUNDS SHALL BE THE MINIMUM NECESSARY TO RESOLVE THE SAFETY CONCERN.

~~3~~4. ~~To~~ CLIENT SERVICES FUNDS MAY BE USED TO develop a county or regional contract with an agency or professional to provide a specific service for multiple APS clients throughout the contract duration, such as a specialist to conduct in-home capacity evaluations, a registered nurse to do in-home medical evaluations, or a long-term care facility to provide emergency shelter beds.

30.620 PROVISION OF SERVICES [Rev. eff. 9/1/14]

A. THE COUNTY DEPARTMENT SHALL PROVIDE PROTECTIVE SERVICES FOR THE SHORTEST DURATION NECESSARY TO ENSURE THE CLIENT'S SAFETY BY IMPLEMENTING CASE PLAN GOALS AS QUICKLY AS POSSIBLE IN ORDER TO STABILIZE THE CLIENT'S SITUATION AND PREVENT FURTHER MISTREATMENT OR SELF-NEGLECT.

~~A~~B. If the client appears to have capacity to make decisions:~~, the client's consent or refusal to the provision of protective services shall be obtained. and documented in the data system~~.

~~1.~~ ~~Consent or refusal shall be obtained within forty-five (45) calendar days of receipt of the report and documented. in the data system.~~

~~2~~1. ~~A~~ THE COUNTY DEPARTMENT SHALL ENCOURAGE THE CONSENTING client ~~who consents shall be encouraged~~ to sign a release of information that covers general, medical, and/or money management, as appropriate to the client's needs.

~~3~~2. ~~If a~~ THE client MAY refuse~~s~~ protective services, but THE COUNTY DEPARTMENT IS ENCOURAGED TO ATTEMPT TO OBTAIN THE CLIENT'S consent~~s~~ to additional visits or phone calls from the caseworker IF THE SITUATION APPEARS TO REQUIRE FURTHER SERVICES. ~~t~~The caseworker shall document the consent OR REFUSAL TO ADDITIONAL VISITS OR PHONE CALLS.~~to visits or calls in the data system and continue to conduct home visits to assess the client's need for protective services.~~

43. Clients with capacity may refuse any or all services and may revoke ~~consent at any~~ time.

~~5~~3. Caseworkers shall provide clients who refuse services with the county department contact information for future reference.

~~B~~C. If a client is suspected to lack capacity to make decisions, is at risk for harm, and refuses to consent to services, the county department shall document the client's inability to provide consent. ~~in the data system. The county department shall ensure immediate safety and:~~

~~1. Make its best effort to obtain an evaluation of the client's decision making capacity from a qualified professional; and,~~

~~2. Intervene as necessary to provide for the immediate safety and health of the client.~~

~~3. These situations shall be staffed with the supervisor and/or county attorney to:~~

~~a. Determine the client's risk and safety;~~

~~b. Assess the client's ability to consent;~~

~~c. Determine urgency of safety concerns if intervention is not taken;~~

~~d. Review previous interventions; and,~~

~~e. Ensure the intervention is done ethically and is the least restrictive intervention to ensure the client's safety.~~

1. DOCUMENTATION SHALL INCLUDE:

   a. OBSERVATIONS OF CLIENT BEHAVIORS AND ACTIONS;

   b. MEDICAL DOCUMENTATION OF CLIENT'S SUSPECTED INCAPACITY AND SAFETY CONCERNS TO SUPPORT INVOLUNTARY CASE PLANNING; AND/OR,

   c. INVESTIGATIVE EVIDENCE.

2. THE COUNTY DEPARTMENT SHALL ENSURE IMMEDIATE SAFETY AND MAKE ITS BEST EFFORT TO OBTAIN AN EVALUATION OF THE CLIENT'S DECISION MAKING CAPACITY FROM A QUALIFIED PROFESSIONAL.

3. THESE SITUATIONS SHALL BE STAFFED WITH THE SUPERVISOR AND/OR COUNTY ATTORNEY TO:

   a. DETERMINE THE CLIENT'S RISK AND SAFETY;

   b. ASSESS THE CLIENT'S ABILITY TO CONSENT;

   c. DETERMINE URGENCY OF SAFETY CONCERNS IF INTERVENTION IS NOT TAKEN;

   d. REVIEW PREVIOUS INTERVENTIONS; AND,

   e. ENSURE THE INTERVENTION IS DONE ETHICALLY AND IS THE LEAST RESTRICTIVE INTERVENTION TO ENSURE THE CLIENT'S SAFETY.

4. INTERVENE IF APPROPRIATE AND AVAILABLE TO COORDINATE WITH THE RESPONSIBLE AGENCY FOR THE IMMEDIATE SAFETY AND HEALTH OF THE CLIENT, SUCH AS:

   a. GAINING ACCESS TO THE CLIENT BY GETTING ASSISTANCE FROM LAW ENFORCEMENT, FAMILY, OR ANOTHER PERSON THE CLIENT TRUSTS;

   b. EMERGENCY HOSPITALIZATION;

   c. HOME CLEAN UP, WHEN THERE IS A CLEAR BIOHAZARD;

d. MENTAL HEALTH HOLD, PER TITLE 27, ARTICLE 65, C.R.S.;

e. FREEZING BANK ACCOUNTS TO PREVENT FURTHER LOSS OF ASSETS;

f. EMERGENCY PROTECTION ORDER, PER TITLE 13, ARTICLE 14, C.R.S.;

g. AUTHORIZATION OF A MEDICAL PROXY DECISION MAKER, PER TITLE 15, ARTICLE 18.5, C.R.S.;

h. REQUESTING A JUDICIAL REVIEW OF A FIDUCIARY, PER TITLE 15, ARTICLE 10, PART 5, C.R.S., AND TITLE 15, ARTICLE 14, PART 7, C.R.S.;

i. CONTACTING THE SOCIAL SECURITY ADMINISTRATION OR OTHER PENSION ADMINISTRATOR TO SECURE A REPRESENTATIVE PAYEE;

j. PETITIONING THE COURT FOR EMERGENCY GUARDIANSHIP AND/OR SPECIAL CONSERVATORSHIP, PER TITLE 15 ARTICLE 14, PARTS 3 AND 4, C.R.S., OR,

k. ALCOHOL AND DRUG INVOLUNTARY COMMITMENT, PER TITLE 27, ARTICLE 81, PART 112 AND TITLE 27, ARTICLE 82, PART 108.

~~C~~D. If a client lacks capacity and has a fiduciary to make decisions on behalf of the client, the county department shall consult with supervisors, the county director, the county attorney, law enforcement, and/or the district attorney to determine whether the county department should petition the court for a review of the fiduciary's actions if:

1. The fiduciary refuses to allow the provision of protective services, which places the client at-risk for continued mistreatment~~, exploitation~~ or self-neglect; or,

2. There are allegations and evidence of mistreatment ~~or exploitation~~ of the client by the client's fiduciary.

3. The county department shall petition the court under the appropriate statute:

a. Uniform Power of Attorney Act, as outlined in Title 15, Article 14, Part 7, C.R.S.;

b. Guardianship or conservatorship statutes as outlined in Title 15, Article 14, Parts 3 and 4, C.R.S.; and/or,

c. Fiduciary oversight statute, as outlined in Title 15, Article 10, Part 5, C.R.S.

~~D~~E. THE COUNTY DEPARTMENT SHALL MAINTAIN ONGOING CLIENT CONTACT AS LONG AS THE CASE IS OPEN.

1. FOR CLIENTS LIVING IN THE COMMUNITY, A FACE-TO-FACE CLIENT CONTACT SHALL OCCUR AT LEAST ONCE EVERY MONTH, NOT TO EXCEED THIRTY FIVE CALENDAR DAYS (35) FROM THE LAST FACE-TO-FACE CONTACT.

2. FOR CLIENTS LIVING IN A FACILITY, A FACE-TO-FACE CLIENT CONTACT SHALL OCCUR AT LEAST ONCE EVERY MONTH, NOT TO EXCEED THIRTY FIVE CALENDAR DAYS (35) FROM THE LAST FACE-TO-FACE CONTACT.

a. THE COUNTY DEPARTMENT HAS THE OPTION OF SUBSTITUTING A PHONE CALL TO THE DIRECT CARE PROVIDER TO ASCERTAIN THE

CLIENT'S CURRENT STATUS, IN LIEU OF A FACE-TO-FACE VISIT FOR EVERY OTHER REQUIRED MONTHLY FACE-TO-FACE CONTACT.

b. IF IT HAS BEEN REPORTED THAT THE CLIENT HAS BEEN MISTREATED AT THE FACILITY, WHETHER CAUSED BY A STAFF PERSON, VISITOR, OR OTHER RESIDENT, AND THE FACILITY HAS NOT APPROPRIATELY RESOLVED THE CAUSE OF THE MISTREATMENT OR PUT ADEQUATE SAFETY MEASURES IN PLACE, THEN A PHONE CALL TO ASCERTAIN THE CLIENT'S CURRENT STATUS IS NOT APPROPRIATE AND THE REQUIRED MONTHLY CONTACT SHALL BE A FACE-TO-FACE VISIT.

3. DURING THE MONTHLY CONTACT, THE COUNTY DEPARTMENT SHALL:

a. CONTINUE THE INVESTIGATION OF ALLEGATIONS, IF APPLICABLE;

b. CONTINUE ASSESSMENT OF CLIENT'S STRENGTHS AND NEEDS, INCLUDING CHANGES TO THE CLIENT'S STATUS;

c. PURSUE THE CONTINUED SAFETY IMPROVEMENT AND REDUCTION AND/OR MITIGATION OF RISK;

d. MONITOR THE EFFECTIVENESS OF ARRANGED SERVICES TO DETERMINE WHETHER CONTINUED APS INTERVENTION IS NEEDED; AND,

e. DOCUMENT INFORMATION GATHERED DURING THE CONTACT PER THE ABOVE MONTHLY CONTACT REQUIREMENTS AND UPDATE ALL CONTACT RECORDS AS INFORMATION IS OBTAINED AND/OR CHANGES OCCUR FOR THE CLIENT, ALLEGED PERPETRATOR, REPORTING PARTY, AND SUPPORTS WITHIN FOURTEEN (14) CALENDAR DAYS OF THE VISIT.

F. COUNTY DEPARTMENTS MAY COMPLETE MONTHLY VISITS FOR OTHER COUNTY DEPARTMENTS AS A COURTESY, AS FOLLOWS:

1. WHEN A CLIENT TEMPORARILY OR PERMANENTLY RELOCATES TO A LICENSED FACILITY MORE THAN SEVENTY-FIVE (75) MILES OUTSIDE THE COUNTY BOUNDARY AND THE COUNTY DEPARTMENT OF ORIGINAL JURISDICTION MAINTAINS THE CASE, THE COUNTY DEPARTMENT SHALL ENSURE ONGOING PROTECTIVE SERVICES.

2. MONTHLY CONTACTS, REQUIRED BY SECTION 30.620, E, MAY BE CONDUCTED BY THE COUNTY OF ORIGINAL JURISDICTION OR MAY BE CONDUCTED VIA COURTESY VISITS BY THE COUNTY DEPARTMENT IN WHICH THE FACILITY IS LOCATED OR BY ANOTHER COUNTY DEPARTMENT THAT IS VISITING THE FACILITY.

3. NO COUNTY DEPARTMENT SHOULD BE EXPECTED TO PROVIDE MORE THAN THREE COURTESY VISITS PER TWELVE (12) MONTH PERIOD, AT THE REQUEST OF THE COUNTY DEPARTMENT OF ORIGINAL JURISDICTION. COUNTY DEPARTMENTS MAY NEGOTIATE TO PROVIDE MORE THAN THREE COURTESY VISITS.

4. UPON COMPLETION OF EACH COURTESY VISIT, THE COUNTY DEPARTMENT THAT CONDUCTED THE VISIT SHALL DOCUMENT THE MONTHLY CONTACT IN

CAPS, AS REQUIRED IN SECTION 30.620, E WITHIN FOURTEEN (14) CALENDAR DAYS OF THE MONTHLY CONTACT.

5. A COUNTY DEPARTMENT CONDUCTING A COURTESY VISIT SHALL NOT DOCUMENT THE VISIT AS A NEW REPORT OR CASE FOR THE PURPOSE OF DATA COLLECTION.

G. IF THE CLIENT PERMANENTLY RELOCATES TO ANOTHER COUNTY AND THE CLIENT NO LONGER NEEDS PROTECTIVE SERVICES, OR THE CLIENT PERMANENTLY RELOCATES TO ANOTHER STATE, THE COUNTY DEPARTMENT SHALL CLOSE THE CASE, AS OUTLINED IN SECTION 30.660.

H. IF THE CLIENT RELOCATES TO ANOTHER COUNTY AND THE CLIENT CONTINUES TO NEED PROTECTIVE SERVICES, THE COUNTY DEPARTMENT SHALL UPDATE THE CASE, AS FOLLOWS, AND TRANSFER THE CASE TO THE CLIENT'S NEW COUNTY OF RESIDENCE WITHIN FIVE (5) CALENDAR DAYS OF LEARNING THE MOVE IS PERMANENT.

1. UPDATE THE CLIENT, PERPETRATOR, REPORTING PARTY, AND COLLATERAL CONTACT INFORMATION; AND,

2. UPDATE THE INVESTIGATION, ASSESSMENT, CASE PLAN, AND CASE NOTES TO INCLUDE ALL INFORMATION GATHERED TO DATE; AND,

3. CALL THE RECEIVING COUNTY DEPARTMENT SUPERVISOR TO STAFF THE CASE PRIOR TO THE TRANSFER.

I. WHEN A CLIENT RELOCATES TO A NEW COUNTY, THE CASE MAY REMAIN WITH THE FORMER COUNTY DEPARTMENT ONLY WHEN:

1. THE CASE IS WITHIN THIRTY-FIVE (35) CALENDAR DAYS OF RESOLUTION AND THE FORMER COUNTY DEPARTMENT CHOOSES TO RETAIN THE CASE; AND/OR,

2. THE FORMER COUNTY DEPARTMENT HOLDS REPRESENTATIVE PAYEESHIP AND CHOOSES TO RETAIN THE CASE; AND/OR,

3. THE FORMER COUNTY DEPARTMENT HOLDS GUARDIANSHIP OR CONSERVATORSHIP.

a. AS SPECIFIED IN A WRITTEN AGREEMENT, EITHER THE FORMER OR RECEIVING COUNTY DEPARTMENT MAY PROVIDE PROTECTIVE SERVICES.

b. EITHER COUNTY DEPARTMENT MAY, WITH THE AGREEMENT OF THE RECEIVING COUNTY DEPARTMENT, PETITION THE COURT FOR A TRANSFER OF GUARDIANSHIP AND/OR CONSERVATORSHIP TO THE RECEIVING COUNTY DEPARTMENT.

J. COUNTY DEPARTMENTS SHALL WORK COLLABORATIVELY TO PROVIDE PROTECTIVE SERVICES TO CLIENTS, AS NEEDED.

K. THE COUNTY DEPARTMENT SHALL REASSESS THE CLIENT'S NEEDS AND REVIEW THE PROVISION OF PROTECTIVE SERVICES AT LEAST EVERY 180 DAYS AS LONG AS THE CASE REMAINS OPEN, BY:

1. COMPLETING AND DOCUMENTING A NEW ASSESSMENT ON OR BEFORE THE REASSESSMENT DUE DATE;

2. DETERMINING THE APPROPRIATENESS OF CONTINUED PROTECTIVE SERVICES, BASED ON THE NEW ASSESSMENT; AND,

3. UPDATING THE CLIENT SERVICES IN THE CASE PLAN.

30.630 COURT INTERVENTION [Rev. eff. 9/1/14]

A. When the investigation and assessment indicates probable incapacity and there is IMMEDIATE DANGER TO THE CLIENT'S HEALTH, SAFETY, AND WELFARE AND THE CLIENT IS UNABLE AND/OR UNWILLING TO ACCEPT SERVICES, ~~no other alternative to protect the client from mistreatment, exploitation or self-neglect,~~ the county department is urged to seek court intervention to petition the court for an order authorizing ~~the provision of specific protective services and/or for~~ the appointment of aN EMERGENCY guardian and/or SPECIAL conservator IN ORDER TO RESOLVE THE IMMEDIATE SAFETY CONCERN(S).

1. Prior to reaching a decision to petition the court FOR GUARDIANSHIP OR CONSERVATORSHIP, the COUNTY DEPARTMENT SHALL ENSURE THAT THE following factors ARE MET AND HAVE BEEN DOCUMENTED: ~~shall be investigated and documented in the data system~~:

a. No other method of intervention will meet the client's needs; AND,

b. THE COURT INTERVENTION WILL RESOLVE SAFETY CONCERNS; AND,

c. THE GUARDIANSHIP IS NOT BASED SOLELY TO MAKE MEDICAL DECISIONS ON BEHALF OF THE CLIENT AS THE COUNTY DEPARTMENT IS PROHIBITED BY TITLE 15 ARTICLE 18.5, C.R.S. FROM PETITIONING THE COURT SOLELY FOR THIS REASON; AND,

~~b~~d. The degree of incapacity, as supported by medical or psychiatric evidence, and the degree of risk, as supported by investigative evidence, warrants this action; OR,

~~c~~e. The suspected incapacity of the client and the degree of risk, as supported by the investigative evidence, warrants this action and medical or psychiatric evidence of incapacity cannot be obtained without court intervention.

2. The type of court intervention sought shall be the least restrictive intervention required to meet the needs of the client and only for those areas in which the client lacks the capacity or ability to understand the consequences of decisions, as medically or psychiatrically substantiated.

B. In the absence of other responsible parties, such as family or friends, the county department is urged to accept guardianship and/or conservatorship.

1. The county department shall consult with an attorney prior to filing a petition and throughout the process.

2. The county department shall provide all information deemed necessary by legal counsel.

3. A representative of the county department shall be prepared to testify in support of the petition.

4. When a county department is appointed by the court to act as guardian or conservator, a copy of the letter of appointment and all other court documents and reports shall be maintained in CAPS~~ the data system~~ AND THE CLIENT'S CASE RECORD UPDATED TO REFLECT FIDUCIARY INFORMATION.

~~C. The county department shall not petition the court for guardianship solely to make medical decisions. The county department may accept such guardianship, if another agency or person petitions the court and the county department is appointed by the court.~~

~~D~~.C. The county department may choose to accept or reject any appointment of guardianship, based upon county department policy.

~~E~~.D. The county department shall initiate proceedings to withdraw as guardian and/or conservator when:

1. Medical or psychiatric evidence indicates a guardian and/or conservator is no longer necessary;

2. Another appropriate guardian or conservator has been identified; or,

3. The county department is no longer able to fulfill guardianship responsibilities, as appointed.

~~F.~~E. When a person or agency other than the county department is requesting appointment as the guardian and/or conservator of the client, the county department shall assist responsible parties, as needed, in identifying legal counsel or provid~~e~~ING other assistance in initiating the petition(s).

30.640 REPRESENTATIVE PAYEE [Rev. eff. 9/1/14]

A. The county department shall only apply for appointment as a representative payee when no other reliable person or agency is available and willing to seek the appointment and:

1. The reported financial issues pertaining to mistreatment~~, exploitation,~~ and/or self-neglect have been substantiated and determined to present ~~the potential for~~ significant harm to the client's health, safety, or welfare without intervention; and,

2. Other less restrictive intervention options have been assessed and found to be inadequate to protect and assist the client; and,

3. Medical, psychiatric, and/or financial evidence exists to show the client is unable to manage his/her personal finances.

B. The county department shall follow the procedures and guidelines for payees as set forth by the SSA or other organization(s).

C. The county department shall initiate procedures, as outlined by the SSA or other organization(s), to discontinue its services as representative payee when:

1. Medical, psychiatric, and/or financial evidence indicates a payee is no longer necessary;

2. Another appropriate payee has been identified; ~~or,~~

3. The county department is no longer able to fulfill payee responsibilities, as appointed; or,

4. The client dies.

30.645 TRUST ACCOUNTS [Eff. 4/1/13]

A. The county department shall ensure that all guardianships, conservatorships, representative payeeships, and personal needs accounts that are held by the county department, and in which the county department has some financial authority or responsibility, have an established trust account.

B. The established trust account shall bear the name of the county department or the name and the title of the director of the county department as trustee for the client or as otherwise required by the Social Security Administration (SSA).

1. Withdrawals from savings, checking, or investment accounts shall require two signatures, neither of which may be the caseworker or the bookkeeper.

2. Shortages in trust accounts are the responsibility of the county department.

C. The county department shall manage any trust account established pursuant to such department's fiduciary duty as a guardian, conservator, representative payee, or other purpose in accordance with any State and Federal requirements for said accounts.

30.650 PROVISION OF PROTECTIVE SERVICES [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.500 AND 30.620.

~~A. The county department shall maintain ongoing client contact as long as the case is open, to include, at a minimum:~~

~~1. A face-to-face client contact shall occur at least every thirty (30) calendar days.~~

~~a. When the client resides in a supervised in-home or facility setting that reduces the possibility of further mistreatment, exploitation or self-neglect, a face-to-face contact shall occur at least every sixty (60) calendar days b. A face-to-face or telephone contact shall be made with the caretaker or responsible collateral at the facility at least once midway through the sixty (60) day period.~~

~~2. Continued investigation, as needed;~~

~~3. Continued assessment of the client's needs; and,~~

~~4. Implementation of the case plan goal(s) and update of the case plan as goals are completed and/or added.~~

~~B. The county department shall provide protective services for the shortest duration necessary to ensure the client's safety by implementing case plan goals as quickly as possible in order to stabilize the client's situation and prevent further mistreatment, exploitation or self-neglect.~~

~~C. The county department shall document all monthly contacts and other significant case information in the data system within fourteen (14) days of the contact or receipt of the information, to minimally include:~~

~~1. Observations made during required client contact visits and/or collateral contacts;~~

~~2. New linformation learned as a result of ongoing investigation and assessment; and,~~

~~3. Court and/or fiduciary related information.~~

~~D. The county department shall reassess the client's needs and the provision of protective services at least every six months as long as the case remains open, by:~~

~~1. Completing a new assessment and case plan on or before the reassessment due date;~~

~~2. Staffing the case to determine the appropriateness of continuing protective services, based on the new assessment and case plan; and,~~

~~3. Documenting the reassessment within fourteen (14) days of completing the reassessment, to minimally include:~~

~~a. Completing a new the assessment as outlined in Section 30.53040, C, 2;~~

~~b. Completing a new case plan as outlined in Section 30.610710, D, 2; and,~~

~~c. Updates to the data system of any other changes~~ in the case

30.660 CASE CLOSURE [Rev. eff. 9/1/14]

A. Cases not requiring additional protective services shall be closed within thirty-FIVE (3~~0~~5) calendar days of the last ~~phone, mail, or face-to-face contact~~ MONTHLY CONTACT with the client.

1. IF THE CLIENT CANNOT BE LOCATED AND YOU HAVE SENT A LETTER TO THE CLIENT OR ARE REACHING OUT TO OTHERS WHO MIGHT KNOW THE CLIENT'S LOCATION, THE CASE MAY REMAIN OPEN UNTIL THE COUNTY DEPARTMENT EXHAUSTS ALL ATTEMPTS TO LOCATE THE CLIENT.

2. THE COUNTY DEPARTMENT SHALL DOCUMENT ALL ATTEMPTS TO LOCATE THE CLIENT.

B. Cases in which the client is relocated to a long-term care facility may remain open for up to ~~three (3) months~~ THIRTY-FIVE (35) CALENDAR DAYS in order to ENSURE THE PLACEMENT IS APPROPRIATE FOR THE CLIENT'S NEEDS. THE COUNTY DEPARTMENT MAY KEEP THE CASE OPEN PAST THE THIRTY-FIVE (35) DAYS IF THERE IS GOOD CAUSE AND THE DEPARTMENT DOCUMENTS THE REASON IN CAPS. ~~monitor the continuing need for long-term care.~~

C. Cases in which the county department has been appointed as the client's guardian, conservator, and/or representative payee shall remain open for the duration of the court order or for as long as the county remains as the representative payee.

D. A decision to close a case shall be made for any or all of the following reasons:

1. After investigation and assessment, the client does not meet the definition of an at-risk adult.

2. After investigation and assessment, the allegations are determined to be unsubstantiated AND THERE ARE NO OTHER IDENTIFIED NEEDS AS DETERMINED BY THE ASSESSMENT.

3. The investigation and assessment substantiates situations of ~~actual or potential~~ mistreatment~~, exploitation~~ or self-neglect and the client is competent to make decisions and refuses services.

4. If, after repeated and documented efforts, the whereabouts of the client cannot be established OR THE CLIENT REFUSES CONTACT.

5. The client no longer needs protective services.

6. Service goals are completed.

7. Repeated efforts at service delivery have proven to be ineffective and no additional alternatives exist.

8. CRITICAL SERVICES NECESSARY TO IMPROVE SAFETY ARE UNAVAILABLE IN THE COMMUNITY OR TO THE CLIENT.

9. THE CLIENT MOVED OUT OF THE STATE.

10. THE CLIENT HAS BEEN SENTENCED TO INCARCERATION FOR LONGER THAN THIRTY (30) CALENDAR DAYS.

~~8~~11. The client died.

E. The county department shall document the case closure ~~in the data system~~, to minimally include:

1. ~~Completion of a~~ A final assessment, IF APPLICABLE, to determine the safety improvement as a result of APS intervention;

2. Update of all case, CLIENT, PERPETRATOR, REPORTING PARTY, AND COLLATERAL CONTACT INFORMATION ~~windows~~ to reflect the most current data and information; ~~and,~~

3. REASON FOR CASE CLOSURE;

4. WHETHER THERE IS CONTINUED PERPETRATOR INVOLVEMENT; AND,

~~3~~5. ~~Completion of tThe case disposition window to include a~~ A narrative to address the OVERALL OUTCOME OF APS INTERVENTION, TO INCLUDE WHY SAFETY WAS OR WAS NOT INCREASED AND WHY RISK WAS OR WAS NOT DECREASED.

~~a. Reason for case closure;~~

~~b. Ongoing client needs;~~

~~c. Continuing perpetrator involvement, if applicable; and,~~

~~d. Safety outcome;~~

30.700 COUNTY ASSIGNMENT AND COURTESY VISITS

30.710 COUNTY ASSIGNMENT [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.410, 30.510, and 30.620.

~~A. The county department of permanent residence shall receive and respond to reports, except in the following situations:~~

1. When the client does not have an open case and is temporarily located in a county other than his or her permanent county of residence, the county in which the adult is temporarily located shall be the originating county and shall provide services.

    a. When the client returns to his or her permanent county of residence, the case shall be closed as outlined in Section 30.660.

        1) If the client continues to need protective services, the originating county shall make a report to the permanent county of residence within one business day of learning of the move.

        2) The receiving county department shall review and screen the report and shall establish a timeframe for investigation as specified in Section 30.430.

    b. Homeless clients shall be provided services by the originating county until the client is no longer located within the county or is located more than seventy-five (75) miles from the originating county department office, whichever is further.

2. When the client has an open APS case in his or her permanent county of residence, and is temporarily located in a county other than his or her permanent county of residence, the county department of permanent residence shall provide protective services for the client.

    a. The county of permanent residence may close the case, as outlined in section 30.660, if the client's move is permanent.

        1) If the client continues to need protective services, the originating county shall make a report to the permanent county of residence within one business day of learning of the move.

        2) The receiving county department shall review and screen the report and shall establish a timeframe for investigation as specified in Section 30.430.

    b. The county of permanent residence may request courtesy visits by the county of temporary residence, as outlined in Section 30.720, B, if the client's current location is temporary.

B. When a client relocates to a new county, the case may remain with the former county department only when:

1. Opening a case in another county would adversely affect the client's health, safety, or welfare; and/or,

2. The case is within three months of resolution and the former county department chooses to retain the case; and/or,

3. The former county department holds representative payeeship and chooses to retain the case; and/or,

4. The former county department holds guardianship or conservatorship.

    a. As specified in a written agreement, either the former or receiving county department may provide protective services.

b. Either county department may, with the agreement of the receiving county department, petition the court for a transfer of guardianship and/or conservatorship to the receiving county department.

C. County departments shall work collaboratively to provide protective services to clients, as needed.

30.720 COURTESY VISITS [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.620

A. When a client temporarily or permanently relocates to a licensed facility more than seventy-five (75) miles outside the county boundary and the county department of original residence maintains the case, as outlined in Section 30.710, B, the county departments shall ensure ongoing protection services.

B. Bi-monthly face-to-face visits, required by Section 30.650, A, may be conducted by the county of original residence or may be conducted via courtesy visits by the county department in which the facility is located or by another county department that is visiting the facility.

C. No county department shall be required to provide more than three courtesy visits per twelve (12) month period, at the request of the county department of original residence. County departments may negotiate to provide more than three courtesy visits.

D. The county department of original residence shall obtain written confirmation of the schedule of courtesy visits.

E. Upon completion of each courtesy visit, the county department that conducted the visit shall document in the data system the adult's current situation, including recommendations for continuing the existing, or providing additional, services within fourteen (14) calendar days.

F. In months where a face-to-face visit is not required by rule, oversight through telephone contact with appropriate facility staff, such as the administrator, social worker, or nursing staff shall be provided by the county department of original residence.

G. A county department conducting a courtesy visit shall not document the visit as a new report or case for the purpose of data collection.

30.800 COMMUNITY COLLABORATION

30.810 COOPERATIVE AGREEMENTS [Rev. eff. 9/1/14]

A. Per Section 26-3.1-103(2), C.R.S., the county department shall develop cooperative agreements in conjunction with its local:

1. Law enforcement agencies;

2. District Attorney;

3. Long-Term Care Ombudsman; and,

4. Community Centered Board.

B. The focus of such agreements shall be the coordination of investigations and protective services that promotes the protection of at-risk adults and each agreement shall provide that each agency shall maintain the confidentiality of the information exchanged pursuant to joint investigations.

C. The agreement with law enforcement shall include, at a minimum:

1. A process outlining the role of law enforcement for receiving, assessing, referring, and responding to reports received during the county department's non-business hours, if applicable;

2. A procedure regarding sharing of reports of mistreatment~~, exploitation,~~ and self-neglect between the local law enforcement agency(ies) and the county department;

3. Procedures for the provision of assistance from one agency upon the request of the other agency;

4. Procedures to coordinate investigative duties; and,

5. The beginning and ending date of the agreement, the term of which shall not exceed five years.

D. The agreement with the District Attorney shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect between the District Attorney and the county department;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

E. The agreement with the Long-Term Care Ombudsman shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect from one agency to the other;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

F. The agreement with the Community Centered Board shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect from one agency to the other;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

30.820 COLLABORATION [Eff. 8/1/12]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.500 AND 30.810.

~~A. The county department shall collaborate with other government and community agencies, such as but not limited to, mental health centers and Area Agencies on Aging, to coordinate services that promote the protection of at-risk adults.~~

~~B. The county department is urged to develop cooperative agreements with those agencies to help ensure the best outcomes for clients.~~

C. ~~The county department shall coordinate investigations in facilities, which include~~:

~~1. Medical and long-term care facilities, group homes, and alternative care facilities, required to be licensed by the Colorado Department of Public Health and Environment (CDPHE); and,~~

~~2. Any site or home that provides care for less than three persons and are not required to be licensed by CDPHE; but,~~

~~3. Does not apply to an adult's private residence in which 24-hour care is provided only to that adult.~~

D. ~~Investigations in facilities may require multi-agency cooperation and the county department may be asked to monitor or assist with an investigation conducted by another agency, such as:~~

~~1. Law enforcement;~~

~~2. District Attorney's office;~~

~~3. Colorado Attorney General's office;~~

~~4. Colorado Department of Public Health and Environment (CDPHE);~~

~~5. Colorado Department of Human Services:~~

~~a. Alcohol and Drug Abuse Division (ADAD);~~

~~b. Division of Mental Health;~~

~~c. Division of Child Welfare; or,~~

~~d. Division for Developmental Disabilities;~~

~~6. Long-Term Care Ombudsman Program; and/or,~~

~~7. Legal Center for People with Disabilities and Older People.~~

~~E. The county department shall conduct the investigation in a facility when:~~

~~1. The county department is the adult's guardian;~~

~~2. There are significant indicators of financial exploitation;~~

~~3. There is significant physical injury to the resident as a result of mistreatment;~~

~~4. Allegations of sexual assault or sexual abuse are made, and law enforcement is not going to be involved;~~

~~5. Law enforcement indicates abuse occurred and is likely to continue but not enough evidence exists to bring criminal charges; or,~~

~~6. Resident abuse by a person living outside the facility has occurred, and law enforcement is not going to be involved.~~

~~F. APS will usually not investigate reports in facilities involving:~~

~~1. Resident to resident abuse, unless the facility, the CDPHE, and/or the Long-Term Care Ombudsman is unwilling or unable to resolve the issue;~~

~~2. Staff to resident abuse, unless the CDPHE and/or law enforcement are unwilling or unable to resolve the issue;~~

~~3. Occurrences reported by licensed facilities to the CDPHE or law enforcement; or,~~

~~4. Resident's rights, quality of care, administrative policies and procedures, staffing, involuntary discharge, or issues regarding physical surroundings.~~

30.830 ADULT PROTECTION TEAMS [Rev. eff. 9/1/14]

A. The director of each county department with ten (10) or more ~~referrals~~ SCREENED IN REPORTS of at-risk adult mistreatment and/or self-neglect in the prior state fiscal year is required to establish or coordinate an Adult Protection Team.

1. The county department may establish its own Team or may coordinate with another contiguous county department(s) that is required to coordinate a Team.

2. The Team shall meet quarterly, at a minimum.

3. The county department shall determine the level of decision making authority for the Team. The role of the Team may be advisory only.

B. The purpose of the Team shall be to:

1. Review the processes used to report and investigate mistreatment and self-neglect of at-risk adults;

2. Staff particular cases or possible cases with Team members, such as those that:

a. Have proven difficult to resolve and Team members may be able to identify solutions;

b. Are situations where early intervention by other community systems may prevent mistreatment; and/or,

c. Are valuable for educating Team members on APS program processes and requirements.

3. Facilitate interagency cooperation regarding services to at-risk adults including the development of solutions and action steps necessary to reduce risk AND IMPROVE SAFETY; and,

4. Provide community education on the mistreatment and self-neglect of at risk adults. The county department shall be the primary training agency, but may utilize training provided by team members or another designee. The county department shall:

a. Determine the topic to be presented, based upon county department or community need;

b. Use materials developed by the county department, the State Department, national associations, or other professional adult protective services agencies;

c. At a minimum, provide five (5) training activities per fiscal year, in any combination of the following:

1) A live presentation to a community or professional group;

2) Participation in a senior or community forum, such as:

a) Providing an article for a newsletter or local community newspaper; or,

b) Providing brochures or other written materials at a county department or other community event.

3) Sponsorship of a community Elder Abuse Awareness Day or similar event.

C. The director of the county department or the director's designee shall identify and recruit team members consistent with professional groups as specified in Section 26-3.1-102(1)(b), C.R.S., and other relevant community agencies.

D. Each Team member shall be advised of the confidential nature of his/her responsibilities in accordance with Section 26-3.1-102(7), C.R.S., and shall be required to sign a confidentiality agreement annually.

E. The Team shall develop and adopt written By-laws or a Memorandum of Understanding that minimally include the Team's:

1. Purpose;

2. Structure, including:

a. Meeting facilitation. Teams that conduct education to the community as part of the Team meeting shall adjourn to executive session prior to staffing any case or discussing any APS client or community member;

b. Frequency of meetings; and,

c. Composition of the Team.

3. Rules for membership, including:

   a. Member duties;

   b. Process for resignation and causes for termination from the Team.

4. Process for handling potential conflicts of interest.

F. The county department shall enter all Team activities in ~~the data system~~CAPS within fourteen (14) calendar days of the activity.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-10

Rule title

1 CCR 204-10 TITLES AND REGISTRATIONS 1 - eff 08/30/2016

Effective date

08/30/2016

1 CCR 204-10 Rule 37 is repealed.

CYNTHIA H. COFFMAN
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Tracking number: 2016-00238

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Motor Vehicles

on 07/06/2016

1 CCR 204-10

TITLE AND REGISTRATION SECTION

The above-referenced rules were submitted to this office on 07/06/2016 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.

July 19, 2016 11:07:25

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

1 CCR 204-30 DRIVER LICENSE-DRIVER CONTROL 1 - eff 08/30/2016

Effective date

08/30/2016

DEPARTMENT OF REVENUE

EVIDENCE OF LAWFUL PRESENCE

1 CCR 204-30 – Rule 5

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

BASIS: This rule is promulgated under the authority of section 24-76.5-103, C.R.S.

PURPOSE: The following rule is promulgated to provide a list of documents recognized by the federal government to prove lawful presence, and to establish a waiver process to ensure that those persons seeking federal public benefits or state and local public benefits, who prove lawful presence in the United States, receive authorized public benefits.

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1. Definitions

1.1 Applicant – A natural person eighteen years of age or older seeking non-exempt Public Benefits. Reference to Applicant includes actions through the Designated Representative, defined below.

1.2 Benefit Agency – An agency or political subdivision of the State of Colorado that administers, determines eligibility for, or assists persons in applying for Public Benefits.

1.3 Department – Means the Department of Revenue.

1.4 Designated Representative – A natural person submitting a Request for Waiver on behalf of an Applicant.

1.5 Public Benefit – For purposes of this Rule, "Public Benefit" means "federal public benefit" and "state and local benefit" as those terms are defined in 8 U.S.C. secs. 1611 and 1621, respectively.

1.6 Request for Waiver – Means form DR 4678 "Request for Waiver – Restrictions on Public Benefits" completed by an Applicant seeking a determination of lawful presence by the Department after a Benefit Agency has been unable to verify the Applicant's lawful presence.

1.7 Systematic Alien Verification for Entitlements ("SAVE") – A web-based service administered by the U.S Citizenship and Immigration Service to assist federal, state, and local benefit-issuing agencies, institutions, and licensing bureaus in determining the immigration status of benefit applicants.

1.8 Valid Colorado driver license or a valid Colorado identification card – For purposes of section 24-76.5-103(4)(a)(I), C.R.S., means a current Colorado driver license, minor driver license, commercial driver license, restricted driver license, instruction permit, or identification card, but does not include a document issued pursuant to part 5 of article 2 of title 42 that states on the front of the document that it is "NOT VALID FOR FEDERAL IDENTIFICATION, VOTING, OR PUBLIC BENEFIT PURPOSES".

1.9 Waiver – Means a Department decision that an Applicant has proven lawful presence by means other than the document requirements under subsection 2.1 of this Rule.

2. Verification Requirements

2.1 A first time Applicant or an Applicant seeking to reapply for Public Benefits on or after August 1, 2006, must execute the affidavit required in section 24-76.5-103(4)(b) C.R.S., and demonstrate lawful presence by providing:

2.1.1 A document listed in section 24-76.5-103(4)(a) C.R.S. (2014);

2.1.2 In the case of a resident of another state, the driver license or a state-issued identification card from the Applicant's state of residence, if that state requires that the Applicant prove lawful presence prior to issuance of the license or identification card;

2.1.3 A document listed in the Code of Federal Regulations (CFR) as providing proof of lawful presence;

2.1.4 A document listed in Appendices A and B, which appendices are incorporated herein and part of this Rule;

2.1.5 Any document authorized as proof of lawful presence pursuant to the statutes, regulations, or agency guidance governing the Benefit Agency; or

2.1.6 Any document recognized by the Federal government as proof of lawful presence that is not listed or referenced within this Rule.

3. Waiver Process

3.1 An Applicant who has been denied a Public Benefit by a Benefit Agency because the Applicant could not provide a document listed or referenced in this Rule may request that the Department grant the Applicant a Waiver by submitting a Request for Waiver and a copy of the document from the Benefit Agency denying benefits unless unavailable.

3.1.1 The Request for Waiver may be completed and/or submitted by an Applicant or by the Applicant's Designated Representative.

3.1.2 The Request for Waiver must be accompanied by all documents the Applicant wants the Department to consider to prove lawful presence.

3.1.3 The Applicant must submit the Request for Waiver to the Colorado Department of Revenue, Division of Motor Vehicles or any Colorado Department of Revenue, Division of Motor Vehicles Driver License office and send a copy to the Benefit Agency.

3.2 Pursuant to section 24-76.5-103(5)(a), C.R.S., the Department may grant an Applicant's Request for Waiver of the requirement that the Applicant prove lawful presence through the documents referenced in subsection 2.1 of this Rule if the Department determines that the Applicant has proven lawful presence by other means.

3.3 Subsequent to receipt of a Request for Waiver, the Department will make a determination of the lawful presence of the Applicant and will issue a Waiver or a Notice of Denial of Waiver. The Waiver or a Notice of Denial of Waiver will be mailed to the address of the Applicant as shown on the Request for Waiver or as subsequently furnished in writing by the Applicant to the Department.

4. Denial of Request for Waiver

4.1 Reasons for denial of a Request for Waiver include, but are not limited to:

4.1.1 The SAVE verification fails to clear the Applicant; or

4.1.2 The documents presented by the Applicant appear to have been tampered with, altered, or otherwise not genuine; or

4.1.3 The statements and/or documents provided are inconsistent and the Applicant is unable to reasonably explain the inconsistencies; or

4.1.4 The Applicant fails to respond to a request by the Department within 60 days following the date of mailing of such request.

5. Hearing and Final Agency Action

5.1 An Applicant, or his or her Designated Representative, may, within 60 days of the date of notice of a denial for a Request for Waiver, or any Benefit Agency may, within 60 days of the date that the Benefit Agency receives notice of a Waiver, request a hearing on the Department's decision by filing a written request for hearing with the Hearings Division of the Department at 1881 Pierce St. #106, Lakewood, CO 80214.

5.2 All proceedings will conform to the provisions of the State Administrative Procedure Act [section 24-4-101, et seq, C.R.S.] and the provisions of title 42 of Colorado Revised Statutes.

5.3 The only issues at hearing will be whether and when the Applicant has established lawful presence in the United States by a preponderance of the evidence.

5.3.1 The Hearing Officer may consider any credible evidence, whether documents, witnesses, or other evidence offered by any party. For purposes of this rule, "party" means the Applicant, the Department, or any Benefit Agency.

5.3.2 If the Hearing Officer cannot determine the actual date that the Applicant became lawfully present in the United States, the Applicant shall be deemed lawfully present as of the date provided by the statutes, regulations, or agency guidance governing the Benefit Agency, or if none, as of the filing date of the original application denied by the Benefit Agency.

5.4 The Hearing Officer shall issue an Initial Decision within 15 business days of the completion of the hearing. If the Hearing Officer finds that the Applicant has not established lawful presence, then if a Denial of Waiver was previously issued, the Denial of Waiver will be sustained, or if a Waiver was previously granted, the Waiver will be rescinded. If the Hearing Officer finds that the Applicant is lawfully present, then, if a Denial of Waiver was previously issued, the Denial of Waiver will be rescinded and the Department will be directed to issue a Waiver, or if a Waiver was previously issued, the Waiver will be sustained.

5.5 An appeal under this Rule does not toll or otherwise affect any Benefit Agency appeal or other procedure or process unless expressly authorized by the Benefit Agency.

6. General Provisions

6.1 Each Benefit Agency is responsible for verifying that the Applicant is the same individual indicated as the person who received a Waiver.

6.2 Waivers may be cancelled by the Department, if the Department subsequently determines that the Applicant was not or is not lawfully present. Upon cancelling a Waiver, the Department will notify the Applicant and appropriate Benefit Agencies.

6.3 A person whose Waiver has been cancelled by the Department may appeal the Department's decision by requesting a hearing as provided in subsection 5.1 of this Rule within 60 days following the mailing date of the notice cancelling the Waiver.

6.4 Waivers issued by the Department since August 1, 2006, but prior to approval of this Rule, will continue in effect unless expired, or cancelled by the Department

7. Incorporation by Reference

7.1 The materials in this Rule incorporated by reference do not include later amendments to or editions of the materials. The materials incorporated in this Rule are on file and available for inspection by contacting the Driver License Section of the Department of Revenue in person at, 1881 Pierce Street, Room 128, Lakewood, Colorado, 80214, or by telephone at 303-205-5600, and copies of the materials may be examined at any state publication depository library.

APPENDIX A

THE FOLLOWING LIST DOES NOT INCLUDE ALL DOCUMENTS THAT MAY BE ACCEPTED TO ESTABLISH LAWFUL PRESENCE - SEE ALSO, SUBSECTIONS 2.1.3 THRU 2.1.6 OF THIS RULE.

The following documents are acceptable as proof of lawful presence pursuant to AG Order Number 2129-97, Federal Register, Vol. 62, No. 221, November 17, 1997, incorporated herein by reference (the "AG Order").

A. Primary Evidence

One of the following documents - when combined with satisfactory proof of identification – demonstrates that the Applicant is a U.S. citizen or non-citizen national. Identity can be proven by these same documents if they bear a picture of the Applicant:

1. Copy of Applicant's birth certificate from any state, the District of Columbia, or all United States territories;

2. United States Passport, except for "limited" passports, issued for less than five years;

3. Report of Birth Abroad of a United States Citizen, form FS-240;

4. Certificate of Birth issued by a foreign service post (FS-545) or Certification of Report of Birth (DS-1350). These are available from the Department of State;

5. Certification of Naturalization (N-550 or N-570). The N-570 is issued upon loss or damage to the original document or following an individual's name change;

6. Certificate of Citizenship (N-560 or N-561). This document is issued to those persons who derive U. S. citizenship through a parent. The N-561 is issued upon loss or damage of the original document or following an individual's name change;

7. U. S. Citizen Identification Card (I-197), last issued in 1983, or Form I-179, last issued in 1974.

8. Northern Mariana Identification Card. Those born in the Northern Mariana Islands prior to November 3, 1986, were collectively naturalized;

9. Statement provided by a U.S. consular officer certifying that the individual is a U.S. citizen. (This document is provided to an individual born outside the U.S. who derived citizenship through a parent but does not have form FS-240, FS-545 or DS-1350);

10. American Indian Card with classification code "KIC" and a statement on the back (identifying U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).

B. Secondary Evidence

If the Applicant cannot present one of the documents listed above, the following may be relied upon to establish U.S. citizenship or nationality:

1. Religious record recorded in one of the 50 states, the District of Columbia and U.S. territories, within three months after birth, showing that the birth occurred in such jurisdiction, and the date of the birth or the individual's age at the time the record was made;

2. Evidence of civil service employment by the U.S. Government before June 1, 1976;

3. Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth and the names and places of birth of the parents;

4. Census record showing name, U.S. citizenship or a U.S. place of birth or age of Applicant;

5. Adoption Finalization Papers showing the child's name and place of birth in one of the 50 states, Washington D.C., or U.S. territories or, where the adoption is not finalized and the State or other jurisdiction listed above in which the child was born will not release a birth certificate prior to final adoption, a statement from a state-approved adoption agency showing the child's name and place of birth in one of such jurisdictions (NOTE: the source of the information must be an original birth certificate and must be indicated in the statement); or

6. Any other documents that establish a U.S. place of birth or in some way indicates U.S. citizenship.

C. If an Applicant is unable to present any of the above documents, the following options are available:

1. Accept a written declaration, made under penalty of perjury, and possibly subject to later verification of status, from one or more third parties, indicating a reasonable basis for personal knowledge that the Applicant is a U.S. citizen or non-citizen national.

2. Accept the Applicant's written declaration, made under penalty of perjury and possibly subject to later verification of status, that he or she is a U.S. citizen or non-citizen national.

   Note: These options (C 1 and C 2) should be used with caution in appropriate circumstances. For example, before using these options, a provider might require the Applicant to demonstrate why a document evidencing that he or she is a U.S. citizen or non-citizen national does not exist or cannot be readily obtained.

D. Collective Naturalization

If the Applicant cannot present one of the documents listed in A or B above, the following will establish U.S. citizenship for collectively naturalized individuals:

1. Puerto Rico (PR):

   Evidence of birth in PR on or after April 11, 1899, and the Applicant's statement that he or she was residing in the U.S., a U.S. possession, or PR on January 13, 1941; or

   Evidence that the Applicant was a PR citizen and the Applicant's statement that he or she was residing in PR on March 1, 1917; and that he or she did not take an oath of allegiance to Spain.

2. U.S. Virgin Islands:

   Evidence of birth in the U.S. Virgin Islands (USVI) and the Applicant's statement of residence in the U.S., a U.S. possession, or the USVI on February 25, 1927;

   The Applicant's statement indicating residence in the USVI as a Danish citizen on January 17, 1917, and that he or she did not make a declaration to maintain Danish citizenship; or

   Evidence of birth in the USVI and the Applicant's statement indicating residence in the U.S., U.S. Possession or Territory or the Canal Zone on June 28, 1932.

3. Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):

   Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. territory or possession on November 3, 1986 (NMI local time) and the Applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);

   Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975, and the Applicant's statement that he or she did owe allegiance to a foreign state on November 4, 1986 (NMI local time); or

Evidence of continuous domicile in the NMI since before January 1, 1974, and the Applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time).

Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile, and the individual is not a U.S. citizen.

E. Derivative Citizenship

If the Applicant cannot present one of the above documents, you should make a determination of derivative U.S. citizenship in the following situations:

Applicant born abroad to two U.S. citizen parents:

Evidence of U.S. citizenship of the parents and the relationship of the Applicant to the parents, and evidence that at least one parent resided in the U.S. or an outlying possession prior to the Applicant's birth.

Applicant born abroad to a U.S. citizen parent and a U.S. non-citizen national parent:

Evidence that one parent is a U.S. citizen and the other is a U.S. non-citizen national, evidence of the relationship of the Applicant to the U.S. citizen parent, and the evidence that the U.S. citizen parent resided in the U.S., a U.S. possession, American Samoa or Swain's Island for a period of at least one year prior to the Applicant's birth.

Applicant born out of wedlock abroad to a U.S. citizen mother:

Evidence of U.S. citizenship of the mother, evidence of the relationship to the Applicant and, for births on or before December 24, 1952, evidence that the mother resided in the U.S. prior to the Applicant's birth or, for births after December 24, 1952, evidence that the mother had resided, prior to the child's birth, in the U.S. or a U.S. possession for a period of one year.

Applicant born in the Canal Zone or the Republic of Panama:

A birth certificate showing birth in the Canal Zone on or after February 26, 1904, and before October 1, 1979, and evidence that one parent was a U.S. citizen at the time of the Applicant's birth; or

A birth certificate showing birth in the Republic of Panama on or after February 26, 1904, and before October 1, 1979, and evidence that at least one parent was a U.S, citizen and employed by the U,S, government or the Panama Railroad Company or its successor in title.

All other situations where an Applicant claims to have a U.S. citizen parent and an alien parent, or claims to fall within one of the above categories but is unable to present the listed documentation:

If the Applicant is in the U.S., refer him or her to the local U.S. Citizenship and Immigration Services (USCIS) office for determination of U.S. citizenship;

If the Applicant is outside the U.S., refer him or her to the State Department for a U.S. citizenship determination.

F. Adoption of Foreign-Born Child by U.S. Citizen:

If the birth certificate shows a foreign place of birth and the Applicant cannot be determined to be a naturalized citizen under any of the above criteria, obtain other evidence of U.S. citizenship;

Since foreign-born adopted children do not automatically acquire U.S. citizenship by virtue of adoption by U.S. citizens, refer the Applicant to the local USCIS district office for a determination of U.S. citizenship if the Applicant provides no evidence of U.S. citizenship [the law changed several years ago to allow such children to obtain automatic citizenship].

G. U.S. Citizenship by Marriage

A woman acquired U.S. citizenship through marriage to a U.S. citizen before September 22, 1922.

Note: If the husband was an alien at the time of the marriage and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her U.S. citizenship if she was residing in the U.S. at that time and continued to reside in the U.S.

APPENDIX B

THE FOLLOWING LIST DOES NOT INCLUDE ALL DOCUMENTS THAT MAY BE ACCEPTED TO ESTABLISH LAWFUL PRESENCE - SEE ALSO, SUBSECTIONS 2.1.3 THRU 2.1.6. OF THIS RULE.

The documents listed below, if not expired, when combined with satisfactory proof of identity (which will come from the document itself if it bears a photograph of the person to whom it relates), establish that the Applicant is lawfully present for purposes of this Rule. For specific detailed descriptions of the Immigration Documents referred to below see Exhibit A to Attachment 5 of the AG Order.

Alien Lawfully Admitted for Permanent Residence

1. Form I-551 (Alien Registration Receipt Card, commonly called or known as a "green card"); or
2. Unexpired Temporary I-551 stamp in foreign passport or on Form I-94.

Asylee

3. Form I-94 annotated with stamp showing grant of asylum under section 208 of the Immigration and Nationality Act (INA);
4. Form I-688B (Employment Authorization Card) annotated "274a.12(a)(5)";
5. Form I-776 (Employment Authorization Document) annotated "A5";
6. Grant Letter from the Asylum Office or USCIS; or
7. Order of an immigration judge granting asylum.

Refugee

8. Form I-94 annotated with stamp showing admission under Section 207 of the INA;
9. Form I-688B (Employment Authorization Card) annotated "274a.12(a)(3)"; or
10. Form I-766 (Employment Authorization Document) annotated "A3"; or
11. Form I-571 (Refugee Travel Document).

Alien Paroled into the U.S. for a Least One Year

12. Form I-94 with stamp showing admission for at least one year under Section 212(d)(5) of the INA. (Applicant cannot aggregate periods of admission for less than one year to meet the one-year requirement).

Alien Whose Deportation or Removal Was Withheld

13. Form I-688B (Employment Authorization Card) annotated 274a.12(a)(10);

14. Form I-766 (Employment Authorization Document) annotated “A10”; or

15. Order from an immigration judge showing deportation withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of the INA.

Alien Granted Conditional Entry

16. Form I-94 with stamp showing admission under Section 203(a)(7) of the INA;

17. Form I-688B (Employment Authorization Card) annotated “274a.12(a)(3)”; or

18. Form I-766 (Employment Authorization Document) annotated “A3”.

Cuban/Haitian Entrant

19. Form I-551 (Alien Registration Receipt Card, commonly known as a “green card,”) with the code CU6, CU7, or CH6;

20. Unexpired temporary I-551 stamp in foreign passport or on Form I-94 with the code CU6 or CU7;

21. Form I-94 with stamp showing parole as “Cuba/Haitian Entrant” under Section 212(d)5) of the INA.

Alien Who Has Been Battered or Subjected to Extreme Cruelty

See Attachment 5, Exhibit B, Section II, of the AG Order.

The documentation for Violence Against Women Act self-petitioners is the USCIS issued “Notice of Prima Facie Determination“ or “Notice of Approval”.

Editor’s Notes

History

Emer. entire rule eff. 08/01/2006. Emer. sections 2 - 3 Eff. 08/07/2006. Perm. entire rule eff. 08/01/2007

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Tracking number: 2016-00229

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Motor Vehicles

on 07/11/2016

1 CCR 204-30

DRIVER LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 07/25/2016 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.

July 25, 2016 14:51:52

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-16

Rule title

2 CCR 406-16 CHAPTER W-16 - PROCEDURAL RULES 1 - eff 09/01/2016

Effective date

09/01/2016

FILING - 07/27/2016

FINAL REGULATIONS - CHAPTER W-16 - PROCEDURAL RULES

ARTICLE I - MEETINGS

#1601 - Conduct of Meetings

See Article 4 of Title 24, CRS, for rule making and other applicable meeting and hearing requirements

A. Regular Meetings

1. Public Presentation - In addition to normally scheduled opportunities to testify on matters before the Commission, persons or groups wishing to participate in a regular Commission meeting may request to be placed on the agenda by submitting a written request to the Director at least 30 days before the meeting. The public may participate during the meeting at the discretion of the Chairman or president officer.

ARTICLE III – CITIZEN PETITIONS

#1606 - Citizen Petition Requirements

A. Persons desiring to create, modify, or remove a Commission regulation pursuant to 24-4-103(7), C.R.S. must submit a citizen petition proposal for consideration. The petitioner shall have the burden of proof to demonstrate that the amendment should be adopted by the Commission. The petition shall be in writing, shall include the petitioner's name and adequate contact information, and shall contain a clear and concise statement of the basis and purpose behind the requested amendment. Each request shall also include appropriate additional evidence and documentation in support thereof. Petitions that do not meet these minimum requirements will be considered incomplete and will not be addressed by the Commission.

B. Proposed amendments to a chapter that is opened annually based on the Division's regulatory calendar will only be considered when that chapter is open. For amendments to chapters that are not opened annually, the petition will be heard at the public meeting determined most appropriate by the Commission Chair.

C. Any petition that is submitted late or without adequate time to be included in the applicable public rule-making notice will be held by the Division until that chapter reopens or the petition is scheduled to be heard by the Commission Chair.

#1607 - Citizen Petition Public Presentations

A. A citizen petition presentation to the Commission will generally be limited to fifteen (15) minutes or less, unless otherwise determined appropriate by the Commission Chair.

B. Each petitioner is strongly encouraged to present their own petition. If a petitioner is unable to attend or present their petition to the Commission, Division staff will present the petition but will not address questions on behalf of the petitioner.

#1608 - Resubmission of Denied Petitions

A. Citizen petitions that are denied by the Commission may not be re-submitted for further consideration until after at least one full calendar year after Commission action and then only if new and substantial information has been developed and added to the petition. Re-submitted petitions must also comply with the timelines outlined in Commission Regulations #1606(B) and #1606(C).

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Tracking number: 2016-00269

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado Parks and Wildlife (406 Series, Wildlife)

on 07/08/2016

2 CCR 406-16

CHAPTER W-16 - PROCEDURAL RULES

The above-referenced rules were submitted to this office on 07/14/2016 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.

July 19, 2016 09:45:09

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Financial Services

CCR number

3 CCR 703-3

Rule title

3 CCR 703-3 RULES AND REGULATIONS OF THE COLORADO DIVISION OF FINANCIAL SERVICES PERTAINING TO CREDIT UNIONS 1 - eff 09/01/2016

Effective date

09/01/2016

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Division of Financial Services

3 CCR 703-3

RULES AND REGULATIONS OF THE COLORADO DIVISION OF FINANCIAL SERVICES PERTAINING TO CREDIT UNIONS

8.1 Report of Election or Appointment.

Within 20 days after any regular or special election or any regular or interim appointment, the Commissioner shall be provided with a record of the names and addresses of all current members of the board of directors, supervisory committee members or audit committee (as prescribed in the credit union bylaws), credit committee members (and alternates, if any) or the credit officer, and the officers of such bodies. All such notification shall be completed by the credit union updating said information on its Credit Union Profile, housed on the National Credit Union Administration's secure web site. C.R.S. 11-30-108 (1) and (2)

8.2 Audit Committee

The board of directors may appoint an audit committee in lieu of a supervisory committee to carry out all of the duties and responsibilities of the supervisory committee as contained in C.R.S. 11-30-111 and all applicable rules for the supervisory committee of a federally insured credit union with the following conditions:

(a) The bylaws of the credit union must be amended to provide for an audit committee by a majority vote of the board of directors. The bylaw change must be submitted to the Commissioner for approval consistent with C.R.S. 11-30-102. If the board of directors subsequently desires to re-establish a supervisory committee in lieu of an audit committee, the same process must be followed.

(b) The audit committee shall consist of no less than three members. No member of the audit committee shall serve as a member of the credit committee, as the credit manager, as the board chair, or as an employee of the credit union;

(c) If an audit committee member calls for a committee vote as authorized under C.R.S. 11-30-111 (c) to potentially suspend a director of the credit union who simultaneously serves on the audit committee for the proper conduct of the credit union, the subject of the suspension must formally recuse himself or herself and abstain from the vote. All remaining, eligible voting members of the audit committee must then vote unanimously in support of the action for it to take effect.

(d) If the membership of the audit committee consists entirely of the directors of the credit union then the annual audit to comply with C.R.S. 11-30-111(a) must be performed by a certified public accountant licensed to practice in the State of Colorado. This does not prevent the credit union from hiring a certified internal auditor to perform periodic audits however these audits will not be accepted as compliance with the annual audit requirements of C.R.S. 11-30-111(a)

(e) All Audit Committee members must strive to achieve and maintain reasonable independence in fact and appearance while fulfilling their responsibilities under C.R.S 11-30-111. If at any time the Commissioner concludes that audit function independence or effectiveness is impaired to the detriment of the credit union, or that the system of appropriate checks and balances is deficient or impaired, or that the Audit Committee is otherwise not meeting the minimum requirements established in C.R.S 11-30-111, the Commissioner may require any necessary changes deemed needed to correct or satisfactorily address the situation.

C.R.S. 11-30-108 (2)9.2 Compensation of Directors and Committee Members.

Members of the credit committee, supervisory committee, and audit committee shall receive no compensation for the performance of duties for the credit union in such capacities. However, such persons may be reimbursed for reasonable and actual out-of-pocket expenses incurred by them in the normal performance of their duties. Such persons may also be reimbursed for actual wages or salary lost by virtue of the performance of duties for the credit union only if authorized by a majority of the members voting at an annual meeting or meeting specifically called for that purpose.

Subject to the provisions of this section, a credit union may pay compensation to the board of directors for their services to the credit union that is reasonable in accordance with subsection (c) of this section:

(a) “Compensation” includes anything of value that is both given in exchange for services performed and required to be reported to the IRS as income. “Compensation” does not include: reasonable health, accident or similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of duties of the position.

(b) A credit union shall implement and maintain appropriate internal controls to ensure that compensation is reasonable and that such compensation does not negatively impact the financial condition of the credit union and the credit union is adequately capitalized. Such internal controls shall include, without limitation the following:

(1) Prior to initial determination to pay compensation to directors or to increase any such payments, the board of directors shall in good faith create and review all written policies related to compensation and shall review the amount of compensation provided to the directors. The written policy must discuss the precise terms and conditions for a Director to receive or earn compensation, the expected timing of the payments, the applicable IRS reporting requirements, the amounts of the payments and/or methodology used to calculate the amounts, defined term limits to receive compensation for service and a requirement for an annual review and re-validation of the continued reasonableness of the amounts paid.

(2) Review set forth in subsection (1) must also:

(A) Contain written determination that the compensation to be paid to directors is reasonable, including a discussion of the factors considered in making such determination; and

(B) Be included in part of the minutes of the meeting at which matters relating to compensation were deliberated and voted upon by the board.

(c) Compensation is reasonable if it meets all of the following criteria:

(1) It is proportional to the services provided by the director;

(2) It is reasonable considering the financial condition of the credit union; and

(3) It is comparable to compensation paid by comparable organizations of a similar size and operational complexity.

(d) A credit union shall provide written notice to the Commissioner of Financial Services of its intent to adopt a policy and subsequent changes to compensate directors at least sixty days before adopting such policy. The notice must include:

(1) All documentation described in subsection (b) of this Section.

(2) Any information as may be required by the Commissioner;

(3) Any objections or concerns regarding the proposed plan raised by the Commissioner must be satisfactorily resolved prior to the actual implementation.

(e) The Commissioner may, at any time, order the compensation be reduced or eliminated, if it is deemed to cause an unsafe or unsound condition to the credit union. C.R.S. 11-30-109 (3)

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Office of the Attorney General

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Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Financial Services

on 07/08/2016

3 CCR 703-3

RULES AND REGULATIONS OF THE COLORADO DIVISION OF FINANCIAL SERVICES PERTAINING TO CREDIT UNIONS

The above-referenced rules were submitted to this office on 07/12/2016 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.

July 22, 2016 11:22:48

Frederick R. Yarger

Cynthia H. Coffman
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by Frederick R. Yarger
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Permanent Rules Adopted

Department

Department of Human Services

Agency

Income Maintenance (Volume 3)

CCR number

9 CCR 2503-3

Rule title

9 CCR 2503-3 (Reserved for Future Use) 1 - eff 09/01/2016

Effective date

09/01/2016

3.300 COLORADO REFUGEE SERVICES PROGRAM (CRSP)

3.310 PROGRAM SUMMARY

The Colorado Department of Human Services, through the Colorado Refugee Services Program (CRSP), is the single State agency with responsibility for the overall supervision and coordination of this program in Colorado, and for the development and supervision of the annual state plan for Colorado. CRSP operates under the Refugee Act of 1980 and Title IV of the Immigration and Naturalization Act (INA), as amended. Copies of the Immigration and Naturalization Act are available for public inspection by contacting the Colorado State Refugee Coordinator during regular business hours at the Colorado Department of Human Services, Colorado Refugee Services Program, 1120 Lincoln Street, Suite 1007, Denver, Colorado 80203; or at a state publications depository library. No later editions or amendments are incorporated.

CRSP serves eligible populations (see General Definitions in section 3.320) who are residents of Colorado for up to five years after their date of entry into the United States or the date status was granted. These eligible populations are considered qualified aliens and are exempt from the five year bar for public assistance (with exceptions under the category of Unaccompanied Refugee Minors). These populations may access public assistance programs provided by the Colorado Department of Human Services and the Colorado Department of Health Care Policy and Financing, such as, but not limited to: Colorado Works/TANF, SNAP/Food Assistance, and medical programs provided through the Colorado Department of Health Care Policy and Financing.

For Unaccompanied Refugee Minors (URM), CRSP can serve this population through the URM program until the youth turns twenty-one (21) years of age. If needed, a URM who is no longer in the URM program can receive CRSP services for up to five years after receiving status that enables him/her to receive services through the Office of Refugee Resettlement (ORR).

3.320 GENERAL DEFINITIONS

3.321 CRSP ELIGIBLE POPULATIONS-

The following categories of people are eligible for CRSP, CDHS, and HCPF services.

A. A “refugee” is a person who is outside his/her country of nationality (or habitual residence) who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion. A refugee is granted refugee status outside of the United States.

B. An “asylee” is a person who has been granted asylum by the U.S. Citizenship and Immigration Service (USCIS) while residing in the United States. An asylee meets the same definition as a refugee and has been granted asylum status. Individuals admitted to the United States who are classified by USCIS as “applicants for asylum” are not eligible for CRSP benefits unless they are Cuban or Haitian (refer to Sections 3.321 C, and 3.330 D).

C. “Cuban and Haitian Entrants” are:

1. Any individual granted parolee status by the Department of Homeland Security (DHS) as a Cuban/Haitian Entrant (status pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services provided.

2. A national of Cuba or Haiti who was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act (INA), and with respect to whom a final, nonappealable and legally enforceable order of removal, deportation or exclusion has not been entered.

3. A national of Cuba or Haiti who is the subject of removal, deportation or exclusion proceedings under the INA and with respect to whom a final, nonappealable, and legally enforceable order of removal, deportation or exclusion has not been entered.

4. A national of Cuba or Haiti who has an application for asylum pending with Department of Homeland Security, United States Citizenship and Immigration Services (USCIS) or Department of Justice (DOJ)/Executive Office for Immigration Review (EOIR) and with respect to whom a final, nonappealable, and legally enforceable order of removal, deportation or exclusion has not been entered. For documentation requirements, refer to section 3.330, D.

D. "Certain Amerasians from Vietnam" are certain persons from Vietnam who:

1. Are admitted to the United States as immigrants and were born in Vietnam after January 1, 1962 and before January 1, 1976; and,

2. Were fathered by a citizen of the United States.

E. "Victims of Severe Forms of Trafficking" are persons who have been certified as such by the U.S. Department of Health and Human Services (HHS), and are eligible for benefits and services to the same extent as refugees. Victims of trafficking can be adults or minors. Family members who obtain derivative status from the trafficked person are also eligible for both benefits and services.

F. Iraqi and Afghan individuals who have been employed by, or on behalf of, the U.S. military, or on behalf of the U.S. Government, or families of such individuals, who are now in danger; and admitted under a Special Immigrant Visa (SIV). For documentation requirements (refer to section 3.330, G.)

G. Unaccompanied Refugee Minors (URMs) are minors identified overseas who are eligible for resettlement in the United States, but do not have a parent or a relative available who are committed to providing for the minor's long-term care. Upon arrival in the United States, these refugee youth are placed into the URM program and receive refugee foster care services and benefits. Youth who have an immigration status that enables them to become eligible for ORR services (for verification of status for program eligibility, see section 3.330), who enter the United States with or without family but experience a family breakdown or cannot return home, may also be eligible to participate in the URM program if approved by ORR.

H. An I-551 ("green card") holder who held one of the previously identified statuses are eligible to apply for both CDHS and CRSP benefits and services.

3.330 VERIFICATION OF STATUS FOR PROGRAM ELIGIBILITY

Applicants for assistance under the Colorado Refugee Services Program must possess in their name, documentation provided by the United States Citizenship and Naturalization Service (USCIS) under the Immigration and Nationality Act (INA) with one of the following statuses:

A. Admitted as a refugee under Section 207 of the INA; shall present documentation including: RE-1, RE-2, RE-3, RE-4, RE-5 on an I-94 form; an Employment Authorization Document with codes A03 or A04; DHS form I-571; I-730 approval letter of refugee status; or Visa 93 on the I-94 arrival/departure card, may contain the words "Section 207".

B. Granted as an asylee under Section 208 of the INA; may have an I-94 form with Section 208 notation or, as an alternative, the individual may have a letter from the U.S. Department of Justice Executive Office for Immigration Review immigration judge indicating that final asylum has been granted and the date of asylum status. The applicant could also have a written decision from the Board of Immigration Appeals (BIA), under Section 208 of the INA. Documentation could also state AS-1, AS-2, AS-3 on an I-94 form. An Employment Authorization Document with code A05; DHS form I-571; order of an immigration judge granting asylum under Section 208 of the INA; asylum approval letter from USCIS asylum office; I-730 approval letter; or Visa 92 on the I-94 arrival/departure record, which may contain the words "Section 208".

C. Paroled as a refugee or asylee under Section 212(d)(5) of the INA. The applicant shall present documentation such as or including an I-766 Employment Authorization Document with a code A04.

D. Cuban/Haitian Entrants, parolees, or asylum seekers have an I-94 form with a stamp indicating "Cuban/Haitian Entrant" or a notation indicating "parolee," with a notation of 212(d)(5)(a), or stating humanitarian or public interest parole (note: I-94 may be expired), any documents indicating pending exclusion or deportation proceedings; any documents indicating a pending asylum application, including a receipt from an USCIS asylum office indicating filing of Form I-589 application for asylum; Form I-688B Employment Authorization Document coded 274a.12(a)(4) or 274a.12(c)(11) or I-766 Employment Authorization Document with code A04, A10, C8, C10, or C11; or I-551 with an adjustment code of CH6, HA6, or HB6; or Cuban or Haitian passport with a 212(d)(5) stamp dated on or after Oct 10, 1980.

A national of Cuba or Haiti who is the subject of removal, deportation, or exclusion proceedings under INA may present one of the following documents: DHS form I-221; DHS form I-862; DHS form I-220A; DHS form I-122; DHS form I-221S; copy of DHS form I-589 date stamped by EOIR; copy of DHS form I-485 date stamped by EOIR; EOIR-26; I-766 Employment Authorization Document with code C10; other applications for relief that have been date stamped by EOIR; or other document pertaining to an applicant's removal, exclusion or deportation proceedings. If you encounter one of these documents, please contact the Colorado Refugee Services Program at CDHS for additional guidance on eligibility determination as additional verification steps may need to take place.

There may be other possible documents presented by Cuban or Haitian Entrants, parolees, or asylum seekers. If you have questions regarding documents presented by Cuban or Haitian Entrants/parolees, you may call the Colorado Refugee Services office for additional information and guidance on eligibility determination.

E. Certain Amerasians with the following codes: AM-1, AM-2, AM-3, AM-6, AM-7, AM-8 on one of the following documents: Form I-551, temporary I-551 stamp in a Vietnamese or United States passport, I-94 form or any verification from the USCIS or other authoritative government document, such as Vietnamese or United States passports.

F. Adult Victims of a Severe Form of Trafficking will have an original certification letter from the U.S. Department of Health and Human Services certifying the person as a Victim of a Severe Form of Trafficking. Children under eighteen (18) years of age who have been subjected to trafficking do not need to be certified in order to receive benefits. For minors, the Office of Refugee Resettlement (ORR) will issue an ORR eligibility letter stating that the person is a Victim of a Severe Form of Trafficking. Confirmation of the certification letter or eligibility letter may be made by calling the trafficking verification line 1-866-401-5510 and notifying ORR of the benefits for which the individual has applied. Certification and eligibility letters do not expire. Individuals who have received derivative T- status will produce documents with one of the following statuses: T-2, T-3, T-4, T-5, or T-6.

Persons with derivative T-status/visas do not receive and are not required to present a certification or eligibility letter to demonstrate eligibility for benefits and services. For derivative statuses, the date of eligibility for benefits and services is the notice date on the I-797 form, the approval of that person's status, or the date of entry/admission on the person's passport or I-94 arrival record. Additional documentation presented may also include an Employment Authorization Document with a code (A)(16) or (C)(25)

G. Iraqi and Afghan special immigrant visa holders (SIVs), who meet one of the criteria listed below:

1. A holder of an Iraqi or Afghan passport with a Department of Homeland Security visa noting the individual has been approved for admission under one of the Immigrant Visa (IV) categories of SI1, SI2, SI3, SQ1, SQ2, and SQ3, and a Department of Homeland Security admission stamp on the passport or I-94 noting date of entry.

2. A holder of a green card (I-551) showing Iraqi or Afghan nationality, or Iraqi or Afghan passport, showing one of the following immigrant visa categories: SI6, SI7, SI9, SQ6, SQ7, OR SQ9.

H. Unaccompanied Refugee Minors (URMs) who meet the definition above will have one of the following statuses: refugee, asylee, Cuban/Haitian Entrant, victim of trafficking, Amerasian, Iraqi or Afghani special immigrant visa holder, Special Immigrant Juvenile Status (SIJS), U visa holder, or has legal permanent resident status that previously held one of the statuses mentioned.

If the URM has SIJS status, documentation presented will be one of the following: I-797, notice of action indicating status (i.e., evidence of approved I-360, or evidence of approved I-360 and approved I-485); visa indicating SIJS status with SL class of admission; I-1551 indicating SIJS status with SL class of admission.

If the URM has a U-visa, documentation presented will be one of the following: I-797 notice of action indicating U status; a U-visa; or an I-94 arrival/departure record showing admission in U-status. Please note: U-visa holders are not considered "qualified aliens" status for federal public benefits. It does qualify the person to be "lawfully present" for potential state benefits.

I. An I-551 form ("green card", permanent resident card or resident alien card) with class of admission codes AS-6, AS-7, AS-8, RE-6, RE-7, RE-8, RE-9, CH-6, HA6, HB6, GA6, GA7, GA8, ST6, ST7, ST8, ST0, ST9, SI6, SI7, SI9, SQ6, SQ7, SQ9, AM-1, AM-2, AM-3, AM6, AM-7, or AM-8. The unexpired I-551 stamp may be located in a foreign passport.

If not eligible for the assistance of TANF/Colorado Works, individuals with this immigration status may be eligible for Refugee Cash Assistance (RCA) through the Colorado Refugee Services Program if income and program eligibility criteria are met. Persons must be enrolled in one of the refugee resettlement agencies in order to access RCA.

Individuals admitted to the United States who are classified by USCIS as "Applicants for Asylum" are not eligible for CRSP benefits. Once granted asylum, those individuals are eligible. The exception to this rule is Cuban and Haitian individuals applying for asylum; however, they must produce documents as described above.

For additional federal information regarding CRSP eligible populations, statuses, and documentation, see the Office of Refugee Resettlement State Letter # 16-01, dated 10/1/2015, located on the federal government web site at: http://www.acf.hhs.gov/programs/orr/resource/status-and-documentation-requirements-for-the-orr-refugee-resettlement-program#process. No later editions or amendments are incorporated. Copies may be reviewed during normal business hours by contacting the Refugee Services Coordinator in the Office of Economic Security, Colorado Refugee Services Program, 1120 Lincoln Street, Suite 1007, Denver, Colorado 80203. If there is an eligibility question, please contact the Colorado Refugee Services Program for assistance.

3.340 REFUGEE MEDICAL ASSISTANCE (RMA)

3.341 OVERVIEW

Each individual member of a household that applies for medical assistance must first be screened for eligibility under the State Medicaid Program. If the individual is determined ineligible for Medicaid, then a determination of eligibility under the Refugee Medical Assistance (RMA) Program must be made. A "household" is defined as a single adult with no children, a married couple, a single parent with minor children, or a married couple with their minor children.

Any individual of a household who is not eligible for Medicaid shall be considered for Refugee Medical Assistance (RMA). RMA is limited to the time period of eight months after receiving a status that is eligible for CRSP services and benefits (refer to section 3.330 for verification of status for program eligibility).

Persons applying for Refugee Medical Assistance will use the State prescribed application for Medicaid. Applicants will first be screened for State Medicaid programs in accordance with the Colorado Department of Health Care Policy and Financing's Medical Assistance Manual (10 CCR 2505-10).

In accordance with federal law, in providing Refugee Medical Assistance to refugees, Colorado will provide at least the same services in the same manner and to the same extent as under the state's Medicaid program.

3.342 Initial Refugee Medical Assistance Determination, Eligibility, and Definitions

Refugees residing in the U.S. fewer than eight months after arrival into the United States, as well as asylees, Cuban/Haitian Entrants/parolees, certain Amerasisans, victims of severe forms of trafficking, and Iraqi and Afghani special immigrant visa holders who are within eight months of being granted status who lose their eligibility for Medicaid because of earnings from employment, will be transferred to RMA without an eligibility determination and the two hundred percent (200%) of poverty rule shall not be applied. The increased earnings from employment shall

not affect the refugee's continued medical assistance (RMA) eligibility while within the person's eight months of the RMA eligibility period.-

A. RMA shall continue until the individual eligible for refugee services reaches the end of his or her eight (8) month eligibility period.

B. Initial RMA eligibility determination (where the applicant was not previously eligible for Medicaid) is based on two hundred percent (200%) of the federal poverty level.

1. In determining eligibility for and receipt of RMA, the following are not considered: in-kind services and shelter provided to an applicant by a sponsor or local resettlement agency. Payments, such as refugee cash assistance, matching grant, or reception and placement, received from the refugee resettlement agency are exempt from RMA income determinations.

2. Determination of RMA eligibility will be based on an applicant's income on the date of application.

3. Denial or termination of Refugee Cash Assistance does not cause denial or termination of RMA benefits.

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Tracking number: 2016-00225

Opinion of the Attorney General rendered in connection with the rules adopted by the

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9 CCR 2503-3

(Reserved for Future Use)

The above-referenced rules were submitted to this office on 07/11/2016 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.

July 22, 2016 11:23:32

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Income Maintenance (Volume 3)

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9 CCR 2503-9

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9 CCR 2503-9 COLORADO CHILD CARE ASSISTANCE PROGRAM 1 - eff 09/01/2016

Effective date

09/01/2016

(9 CCR 2503-9)

3.900 COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP)

3.903 DEFINITIONS

“Assets” include but are not limited to the following:

A. Liquid resources such as cash on hand, money in checking or savings accounts, saving certificates, stocks or bonds, lump sum payments as specified in the section titled "nonrecurring lump sum payments".

B. Non-liquid resources such as any tangible property including, but not limited to, licensed and unlicensed automobiles and motorcycles, utility trailer, seasonal or recreational vehicles (such as any camper, motor home, boat, snowmobile, water skidoo, or airplane) and real property (such as buildings, land, and vacation homes)…

“Base reimbursement rate” means the regular daily reimbursement rate paid by the county to the child care provider. This does not include the increase of rates of reimbursement for high-quality early childhood programs. Base reimbursement rates cannot include when a county rolls in their absences, holidays, registration fees, activity fees, and/or transportation fees in addition to their regular daily reimbursement rate.

“Job search” means the low-income child care eligible activity for a minimum of thirteen (13) weeks of child in a twelve (12) month period. The twelve (12) month period begins with the first actual week of job search.

“State established age bands” means the breakdown of child age ranges used when determining child care provider base reimbursement rates…

3.905 ARRANGEMENT FOR CHILD CARE SERVICES

B. Parental Fees

2. All adult caretaker(s) and teen parents are required to pay the fee as determined by the formula listed below, except in the following cases:

f. The household is eligible for a reduced parent fee based on the quality level of the child care provider

14. For a household utilizing a child care provider in the top three levels of the state department’s quality rating system, the parent fee shall be reduced by twenty percent (20%) of the regularly calculated parent fee. For households utilizing multiple child care providers, only one child care provider is required to be in the top three quality levels for the reduced parent fee to apply.

3.910 PROVIDER RATES

F. The state department shall establish licensed child care provider base payment rates for each county every other year. In addition to establishing licensed child care provider base payment rates the state department will establish tiered reimbursement rates based on quality levels for licensed child care providers that enroll children participating in CCCAP.

1. Counties may choose to opt out of the state established child care provider rates and shall complete the following to ensure payment rates are sufficient to ensure equal access:

   a. Identify and explain what facts the county used to determine equal access using one or more of the following methods:

      1) Payment rates are set at the seventy-fifth (75^{th}) percentile or higher of the most recent market rate survey

      2) Using tiered rates/differential rates to increase access for targeted needs

      3) Rates based on data on the cost to the child care provider of providing care meeting certain standards

      4) Data on the size of the difference (in terms of dollars) between the payment rates and the 75th percentile in the most recent market rate survey, if rates are below the 75th percentile

      5) Data on the proportion of children receiving subsidy being served by high quality child care providers

      6) Data on where children are being served showing access to the full range of child care providers

      7) Feedback from parents, including parent survey or parent complaints

      8) Other method of ensuring equal access (subject to state approval)

   b. Consult with the following entities:

      1) Local early childhood council

      2) Local resource and referral agency

      3) Child care child care providers in the county who serve or want to serve children receiving CCCAP

c. Notify the state department of the decision to opt out of state established licensed child care provider base rate and/or tiered reimbursement rate through the use of the county plan approval process

d. The county may set payment rates for qualified exempt child care providers based on local need.

2. Payment rates shall be defined utilizing the state established, system supported age bands.

3. Rate types are selected by child care provider type (licensed home, licensed center, and qualified exempt child care providers). The state department has established rate type definitions to be used by all counties and deviation from the rate definitions shall not be permitted.

3.913 COUNTY RESPONSIBILITIES

CCC. Counties shall reduce parent fees by twenty percent (20%) of the regularly calculated parent fee when a household utilizes a quality child care provider rated in the top three levels of the state department's quality rating system. For households utilizing multiple child care providers, only one child care provider is required to be in the top three quality levels for the reduced parent fee to apply.

DDD. With regard to services to students enrolled in grades 1 through 12, no funds may be used for services provided during the regular school day, for any services for which the students received academic credit toward graduation, or for any instructional services, which supplant or duplicate the academic program of any public or private school, except in the following circumstances:

1. When a child is temporarily prohibited from attending his/her regular classes due to a suspension or expulsion; or,

2. When a child is temporarily out of school due to scheduled breaks; or,

3. When a child is temporarily out of school due to unexpected school closures.

EEE. The county shall reimburse licensed child care providers based on the state established base payment and tiered reimbursement rates unless they have followed the county opt out process outlined in section 3.910 and it has been approved by the state department.

FFF. The county-established licensed child care provider reimbursement rates shall include a system of tiered reimbursement based on quality levels for licensed child care providers that enroll children participating in CCCAP.

3.919 ELIGIBILITY FOR LOW INCOME PROGRAM FAMILIES CHILD CARE

E. Low-Income Eligibility Guidelines

3. Income Verification at Application

d. Adult caretakers or teen parents shall self-declare that their liquid and non-liquid assets do not exceed one million dollars. If assets exceed one million dollars the household is ineligible for CCCAP…

I. Eligible Activities

3. Job Search Criteria

a. Job search child care is available to eligible adult caretakers or teen parents for no fewer than thirteen (13) weeks of child care in a twelve (12) month period beginning with the first authorized week of job search activity. Any week in which at least one (1) day is utilized for child care is considered one (1) week used toward the thirteen (13) week time limit…

e. Subject to available appropriations, an adult caretaker or teen parent who is not employed at the time of application is eligible for CCCAP for thirteen (13) weeks of job search within a twelve (12) month period…

3.921 RE-DETERMINATION

A. A re-determination of eligibility shall be conducted every twelve (12) months. The State prescribed eligibility re-determination form shall be mailed to households at least forty-five (45) calendar days prior to the re-determination due date. Adult caretaker(s) or teen parent(s) shall complete and return to Child Care staff by the re-determination due date. Adult caretaker(s) or teen parent(s) who do not return eligibility re-determination forms and all required verification shall not be eligible for child care subsidies…

4. Adult caretakers or teen parents shall self-declare that their liquid and non-liquid assets do not exceed one million dollars. If assets exceed one million dollars the household is ineligible for CCCAP.

CYNTHIA H. COFFMAN
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9 CCR 2503-9

COLORADO CHILD CARE ASSISTANCE PROGRAM

The above-referenced rules were submitted to this office on 07/13/2016 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.

July 22, 2016 11:23:43

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Income Maintenance (Volume 3)

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3.900 COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP)

3.903 DEFINITIONS

“Assets” include but are not limited to the following:

A. Liquid resources such as cash on hand, money in checking or savings accounts, saving certificates, stocks or bonds, lump sum payments as specified in the section titled "nonrecurring lump sum payments".

B. Non-liquid resources such as any tangible property including, but not limited to, licensed and unlicensed automobiles and motorcycles, utility trailer, seasonal or recreational vehicles (such as any camper, motor home, boat, snowmobile, water skidoo, or airplane) and real property (such as buildings, land, and vacation homes)…

“Base reimbursement rate” means the regular daily reimbursement rate paid by the county to the child care provider. This does not include the increase of rates of reimbursement for high-quality early childhood programs. Base reimbursement rates cannot include when a county rolls in their absences, holidays, registration fees, activity fees, and/or transportation fees in addition to their regular daily reimbursement rate.

“Job search” means the low-income child care eligible activity for a minimum of thirteen (13) weeks of child in a twelve (12) month period. The twelve (12) month period begins with the first actual week of job search.

“State established age bands” means the breakdown of child age ranges used when determining child care provider base reimbursement rates…

3.905 ARRANGEMENT FOR CHILD CARE SERVICES

B. Parental Fees

2. All adult caretaker(s) and teen parents are required to pay the fee as determined by the formula listed below, except in the following cases:

f. The household is eligible for a reduced parent fee based on the quality level of the child care provider

14. For a household utilizing a child care provider in the top three levels of the state department’s quality rating system, the parent fee shall be reduced by twenty percent (20%) of the regularly calculated parent fee. For households utilizing multiple child care providers, only one child care provider is required to be in the top three quality levels for the reduced parent fee to apply.

3.910 PROVIDER RATES

F. The state department shall establish licensed child care provider base payment rates for each county every other year. In addition to establishing licensed child care provider base payment rates the state department will establish tiered reimbursement rates based on quality levels for licensed child care providers that enroll children participating in CCCAP.

1. Counties may choose to opt out of the state established child care provider rates and shall complete the following to ensure payment rates are sufficient to ensure equal access:

   a. Identify and explain what facts the county used to determine equal access using one or more of the following methods:

      1) Payment rates are set at the seventy-fifth (75^{th}) percentile or higher of the most recent market rate survey

      2) Using tiered rates/differential rates to increase access for targeted needs

      3) Rates based on data on the cost to the child care provider of providing care meeting certain standards

      4) Data on the size of the difference (in terms of dollars) between the payment rates and the 75th percentile in the most recent market rate survey, if rates are below the 75th percentile

      5) Data on the proportion of children receiving subsidy being served by high quality child care providers

      6) Data on where children are being served showing access to the full range of child care providers

      7) Feedback from parents, including parent survey or parent complaints

      8) Other method of ensuring equal access (subject to state approval)

   b. Consult with the following entities:

      1) Local early childhood council

      2) Local resource and referral agency

      3) Child care child care providers in the county who serve or want to serve children receiving CCCAP

c. Notify the state department of the decision to opt out of state established licensed child care provider base rate and/or tiered reimbursement rate through the use of the county plan approval process

d. The county may set payment rates for qualified exempt child care providers based on local need.

2. Payment rates shall be defined utilizing the state established, system supported age bands.

3. Rate types are selected by child care provider type (licensed home, licensed center, and qualified exempt child care providers). The state department has established rate type definitions to be used by all counties and deviation from the rate definitions shall not be permitted.

3.913 COUNTY RESPONSIBILITIES

CCC. Counties shall reduce parent fees by twenty percent (20%) of the regularly calculated parent fee when a household utilizes a quality child care provider rated in the top three levels of the state department's quality rating system. For households utilizing multiple child care providers, only one child care provider is required to be in the top three quality levels for the reduced parent fee to apply.

DDD. With regard to services to students enrolled in grades 1 through 12, no funds may be used for services provided during the regular school day, for any services for which the students received academic credit toward graduation, or for any instructional services, which supplant or duplicate the academic program of any public or private school, except in the following circumstances:

1. When a child is temporarily prohibited from attending his/her regular classes due to a suspension or expulsion; or,

2. When a child is temporarily out of school due to scheduled breaks; or,

3. When a child is temporarily out of school due to unexpected school closures.

EEE. The county shall reimburse licensed child care providers based on the state established base payment and tiered reimbursement rates unless they have followed the county opt out process outlined in section 3.910 and it has been approved by the state department.

FFF. The county-established licensed child care provider reimbursement rates shall include a system of tiered reimbursement based on quality levels for licensed child care providers that enroll children participating in CCCAP.

3.919 ELIGIBILITY FOR LOW INCOME PROGRAM FAMILIES CHILD CARE

E. Low-Income Eligibility Guidelines

3. Income Verification at Application

d. Adult caretakers or teen parents shall self-declare that their liquid and non-liquid assets do not exceed one million dollars. If assets exceed one million dollars the household is ineligible for CCCAP…

I. Eligible Activities

3. Job Search Criteria

a. Job search child care is available to eligible adult caretakers or teen parents for no fewer than thirteen (13) weeks of child care in a twelve (12) month period beginning with the first authorized week of job search activity. Any week in which at least one (1) day is utilized for child care is considered one (1) week used toward the thirteen (13) week time limit…

e. Subject to available appropriations, an adult caretaker or teen parent who is not employed at the time of application is eligible for CCCAP for thirteen (13) weeks of job search within a twelve (12) month period…

3.921 RE-DETERMINATION

A. A re-determination of eligibility shall be conducted every twelve (12) months. The State prescribed eligibility re-determination form shall be mailed to households at least forty-five (45) calendar days prior to the re-determination due date. Adult caretaker(s) or teen parent(s) shall complete and return to Child Care staff by the re-determination due date. Adult caretaker(s) or teen parent(s) who do not return eligibility re-determination forms and all required verification shall not be eligible for child care subsidies…

4. Adult caretakers or teen parents shall self-declare that their liquid and non-liquid assets do not exceed one million dollars. If assets exceed one million dollars the household is ineligible for CCCAP.

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Tracking number: 2016-00223

Opinion of the Attorney General rendered in connection with the rules adopted by the

Income Maintenance (Volume 3)

on 07/08/2016

9 CCR 2503-9

COLORADO CHILD CARE ASSISTANCE PROGRAM

The above-referenced rules were submitted to this office on 07/13/2016 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.

July 22, 2016 11:23:13

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
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 8.000

Rule title

10 CCR 2505-10 8.000 MEDICAL ASSISTANCE - SECTION 8.000 1 - eff 08/30/2016

Effective date

08/30/2016

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Program Integrity Rule Concerning the Definition of Medical Necessity, Section 8.076.1.8; and EPSDT Rule Concerning the Definition of Medical Necessity, Section 8.280.

Rule Number: MSB 15-12-18-A

Division / Contact / Phone: Health Programs Benefits & Operations Division / Amanda Forsythe / 303-866-6459

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 15-12-18-A, Revision to the Medical Assistance Program Integrity Rule Concerning the Definition of Medical Necessity, Section 8.076.1.8; and EPSDT Rule Concerning the Definition of Medical Necessity, Section 8.280.

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) 8.076.1.8 and 8.280, 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). <Select One>

PUBLICATION INSTRUCTIONS*

Replace current text at 8.076.1.8 with the proposed text starting at 8.076.1.8 through the end of 8.076.1.8.1.

Replace current text at 8.280 with the proposed text starting at 8.280 through the end of the unnumbered paragraph 6, Medical Necessity.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Replace the current text at 8.280.4.E with the proposed text starting at 8.280.4.E through the end of 8.280.4.E.2

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Program Integrity Rule Concerning the Definition of Medical Necessity, Section 8.076.1.8; and EPSDT Rule Concerning the Definition of Medical Necessity, Section 8.280.

Rule Number: MSB 15-12-18-A

Division / Contact / Phone: Health Programs Benefits & Operations Division / Amanda Forsythe / 303-866-6459

STATEMENT OF BASIS AND PURPOSE

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).

Section 8.076.1.8. currently defines "medical necessity" for the purposes of the Department's Program Integrity section. The Department proposes revisions to this section of rule in order to create a uniform definition of "medical necessity" to be used across all applicable Medical Assistance program rules. By consistently referencing the Section 8.076.1.8 definition, the Department aims to increase transparency and reduce unnecessary confusion as to the meaning of "medical necessity" as it applies to a particular program or benefit.

Proposed revisions to Section 8.076.1.8:

-- Adds "condition" to list previously limited to "illness, injury, or disability".

-- Adds provision excluding an experimental or investigational good or service from definition of medically necessary.

-- Changes "generally accepted standards of medical practice" to "generally accepted professional standards for health care." This revision aligns the language with that used in federal Medicaid regulations, relevant case law, and many other states' medical necessity doefinitions.

-- Clarifies that a good or service may not be provided "primarily" for the convenience of the client, caretaker, or provider.

-- Replaces requirement that a good or service be "cost effective" with requirement that a good or service not be "more costly than other equally effective treatment options".

-- Adds reference to Section 8.280 for EPSDT-specific medical necessity criteria.

Proposed revisions to Section 8.280:

-- Strikes Section 8.280.1 definition of “medical necessity” in its entirety, because it is almost identical to the proposed language for Section 8.076.1.8.

-- Strikes Section 8.280.4.E in its entirety, because it is comprised almost entirely of language found in the proposed language for Section 8.076.1.8.

-- Replaces Section 8.280.4.E.1 with a brief explanation that, under EPSDT all §1905(a) services are covered benefits when medically necessary as defined at Section 8.076.1.8.

Initial Review **05/13/2016** Final Adoption **07/08/2016**

Proposed Effective Date **08/30/2016** Emergency Adoption

DOCUMENT #04

DO NOT PUBLISH THIS PAGE

-- Replaces Section 8.280.4.E.2 with EPSDT-specific “medical necessity” criteria concerning the coverage of program goods or services that will—or are reasonably expected to—assist clients in achieving or maintaining maximum functional capacity in performing ADLs.

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:

Federal authority for the Rule, if any:

42 CFR 440.230(d)

State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2015);

Initial Review **05/13/2016** Final Adoption **07/08/2016**

Proposed Effective Date **08/30/2016** Emergency Adoption

DOCUMENT #04

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Program Integrity Rule Concerning the Definition of Medical Necessity, Section 8.076.1.8; and EPSDT Rule Concerning the Definition of Medical Necessity, Section 8.280.

Rule Number: MSB 15-12-18-A

Division / Contact / Phone: Health Programs Benefits & Operations Division / Amanda Forsythe / 303-866-6459

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 proposed rule provides clearer definition language that will benefit clients, providers, and stakeholders. The Department does not anticipate any costs of the proposed rule creating a single uniform definition of medical necessity to be used throughout its program rules.

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 may slightly reduce the need for the Department to answer client and provider questions as to the definition of medical necessity applicable to a given program or benefit. It may also slightly reduce the number of claims submitted and/or denied due to confusion regarding medical necessity criteria. Likewise, the increased clarity and transparency provided by the proposed rule may result in fewer and/or more efficient client appeals.

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 does not anticipate any implementation- or enforcement-related costs to the Department or any other agency as a result of this proposed rule. Likewise, the Department does not anticipate that this proposed rule will have any effect on state revenues.

Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The probable benefits of the proposed rule include a reduction in unnecessary provider and client confusion regarding the many varying definitions of medical necessity currently scattered throughout the Department's rules. Consistent use of a single uniform definition will increase the efficiency of processes such as PARs and appeals.

The probable costs of inaction are continued confusion as to how medical necessity is defined for one program benefit as compared to another. This would result in continued inefficiencies and a lack of transparency as to the coverage determination process.

Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly or less intrusive methods for achieving the purpose of the proposed rule revision.

DO NOT PUBLISH THIS PAGE

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 considered maintaining a separate definition of medical necessity for EPSDT, given the specific federal criteria of that program. This was ultimately rejected in favor of constructing a uniform definition at 8.076 with a citation to the EPSDT Section 8.280, which contains clarifications and criteria specific to EPSDT medical necessity determinations.

8.076 PROGRAM INTEGRITY [Eff. 12/30/2008]

8.076.1 DEFINITIONS

8. Medical necessity means that a Medical Assistance program good or service:

   a. Will, or is reasonably expected to prevent, diagnose, cure, correct, reduce, or ameliorate the pain and suffering, or the physical, mental, cognitive, or developmental effects of an illness, condition, injury, or disability. This may include a course of treatment that includes mere observation or no treatment at all.

   b. Is provided in accordance with generally accepted professional standards for health care in the United States;

   c. Is clinically appropriate in terms of type, frequency, extent, site, and duration;

   d. Is not primarily for the economic benefit of the provider or primarily for the convenience of the client, caretaker, or provider;

   e. Is delivered in the most appropriate setting(s) required by the client's condition;

   f. Is not experimental or investigational; and

   g. Is not more costly than other equally effective treatment options.

8.1 For EPSDT-specific criteria, see 10 C.C.R. 2505-10, Section 8.280.4.E.

8.280 EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT

8.280.1 DEFINITIONS

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) means the child health component of Medicaid. The EPSDT program requires coverage of periodic and interperiodic screens, vision, dental and hearing care, diagnostic services needed to confirm the existence of a physical or mental illness or condition, and all medical assistance services that are recognized under Section 1905 of the Social Security Act, even if not offered under the state plan pursuant to federal laws applicable to the program (including 1905(a), 42 U.S.C. §§1396a(a)(42), 1396d(a)(4)(B) and 1396d(r)).

EPSDT Case Management means an activity that assists Medicaid clients in getting and/or coordinating services based on individual need.

EPSDT Outreach means methods to inform recipients or potential recipients, such as those found to be presumptively eligible, to enter into care.

EPSDT Outreach and Case Management Entity means an entity that has contracted with the Department to provide the activities specified in 8.280.3 below.

Personal Care Services means assistance with non-skilled activities of daily living in order to meet the client's physical, maintenance and supportive needs. This assistance may take the form of hands-on assistance (actually performing a task for the person), or prompting or cueing the client to complete the task.

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Tracking number: 2016-00330

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 07/08/2016

10 CCR 2505-10 8.000

MEDICAL ASSISTANCE - SECTION 8.000

The above-referenced rules were submitted to this office on 07/08/2016 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.

July 20, 2016 11:33:47

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Food Assistance Program (Volume 4B)

CCR number

10 CCR 2506-1

Rule title

10 CCR 2506-1 RULE MANUAL VOLUME 4B, FOOD ASSISTANCE 1 - eff 09/01/2016

Effective date

09/01/2016

[10 CCR 2506-1]

4.609 TRANSITIONAL FOOD ASSISTANCE

4.609.1 GENERAL ELIGIBILITY GUIDELINES [Eff. 2/1/16]

A. Effective January 1, 2017, households that receive Food Assistance and Colorado Works basic cash assistance that become ineligible for continued receipt of Colorado Works basic cash assistance as a result of changes in household income are eligible to receive Transitional Food Assistance (TFA), as provided for within this section. Colorado works diversion payments are not considered basic cash assistance. Colorado works basic cash assistance is defined in Section 3.601 of the Code of Colorado Regulations (9 CCR 2503-6).

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Tracking number: 2016-00247

Opinion of the Attorney General rendered in connection with the rules adopted by the

Food Assistance Program (Volume 4B)

on 07/08/2016

10 CCR 2506-1

RULE MANUAL VOLUME 4B, FOOD ASSISTANCE

The above-referenced rules were submitted to this office on 07/11/2016 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.

July 22, 2016 11:23:55

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Emergency Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-26

Rule title

1 CCR 301-26 OPERATION OF SCHOOL TRANSPORTATION VEHICLES 1 - eff 07/07/2016

Effective date

07/07/2016

COLORADO
Department of Education
School Finance and Operations Division

DEPARTMENT OF EDUCATION
Colorado State Board of Education

COLORADO RULES FOR THE OPERATION, MAINTENANCE AND INSPECTION OF SCHOOL TRANSPORTATION VEHICLES

1 CCR 301-26

4204-R-1.00 Statement of Basis and Purpose

1.01 Colorado law provides for the State Board of Education to adopt and enforce regulations governing the safe operation of school buses used for the transportation of students pursuant to Sections 22-51-108 and 42-4-1904, C.R.S.

1.02 The purpose of these rules is to adopt and enforce regulations governing the reasonable and adequate standards of safety for the operation, maintenance and inspection of school transportation vehicles that promote the welfare of the students and afford reasonable protection to the public. These rules are designed to align with federal standards, reflect current industry practices, and incorporate recommendations from school district and service provider transportation professionals.

It is necessary to adopt emergency rules in order to provide updated rules prior to the start of the 2016-2017 school year.

1.03 The Commissioner, or designee, may provide an exemption to the Rules for the Operation, Maintenance and Inspection of School Transportation Vehicles to the extent the Commissioner finds an exemption to be appropriate.

1.04 These rules shall become effective July 30, 2016 for all student transportation.

4204-R-2.00 Applicability of Rules

2.01 These rules and regulations apply to the operation, maintenance and inspection of all public school transportation vehicles (School Bus, Multifunction Bus, Motor Coach Bus and Small Vehicle as defined in 1 CCR 301-25-R-5.00) transporting students to and from school, from school to school, and/or to and from school related events in vehicles owned, leased or rented by the district or under agreement with the district.

2.02 These rules are not intended to include:

2.02(a) Private motor vehicles used exclusively to carry members of the owner's household; or

2.02(b) Transportation arrangements not authorized by the district including but not limited to; sharing of actual gasoline expense or participation in a car pool; or

2.02(c) The operations of vehicles in bona fide emergency situations consistent with policies of the local board of education; or

2.02(d) Student transportation under public transportation programs subject to the Code of Federal Regulations 49 CFR 390 to 399.

2.03 These rules shall not preclude a school district or service provider from establishing a more rigid standard or policy when deemed necessary by the local board of education or service provider.

4204-R-3.00 Non-Compliance

3.01 CDE will perform periodic School Transportation Advisory Reviews (STAR) of school districts and service providers to evaluate and assist with compliance of these rules.

3.01(a) CDE will provide school districts and service providers written notification of the STAR findings.

3.01(b) Upon receipt of the written notification of STAR findings, school districts or service providers shall respond in writing to outline corrective actions if necessary.

3.02 CDE shall revoke or suspend the certificate for a school transportation annual inspector, school transportation annual inspector hands-on tester or inspection site under the following circumstances:

3.02(a) A school transportation annual inspector, school transportation annual inspector hands-on tester or inspection site does not meet the requirements outlined in these rules.

3.02(b) School transportation annual inspections or hands-on tests have not been properly conducted.

4204-R-4.00 School District and Service Provider Employment Responsibilities

4.01 School districts and service providers shall outline job responsibilities and develop job qualification standards for each school transportation vehicle operator and school transportation paraprofessionals, consistent with federal and state regulations. A copy of these requirements shall be provided to each school transportation vehicle operator and paraprofessional upon employment.

4.02 School districts and service providers shall maintain separate files for each school transportation vehicle operator, school transportation paraprofessional, and school transportation annual inspector with written documentation evidencing all listed requirements indicated in Rule 5.00, Rule 6.00 and Rule 7.00, as applicable. Training documentation shall include the trainer name, date of the training, description of the training, duration of each topic covered and the signature of all attendees.

4.02(a) If a school transportation vehicle operator, school transportation paraprofessional, or school transportation annual inspector works for more than one school district, each district shall maintain a file with documentation in accordance with this rule.

4.03 School districts and service providers shall ensure all employees required to possess a commercial driver's license (CDL) shall be in a US DOT approved substance abuse testing

program.

4.04 School districts and service providers shall not permit a school transportation vehicle operator to transport students, while the operator's ability or alertness is so impaired, through fatigue, illness or any other cause, as to make it unsafe for the operator to transport students.

4.05 School districts and service providers shall have written emergency procedures and/or contingency plans to be followed in the event of a traffic accident, vehicle breakdown, unexpected school closing, unforeseen route change or relocation of a student stop in an emergency.

4.06 School district and service providers shall ensure that documentation outlining transportation related services and requirements, including required use of Child Safety Restraint Systems and medical and behavioral information as it relates to student transportation, is available to applicable school transportation vehicle operators and paraprofessionals prior to providing transportation services.

4204-R-5.00 School Transportation Vehicle Operator Requirements

5.01 School transportation vehicle route operators (transporting students to and from school or from school to school) driving a School Bus with the capacity of 16 or greater passengers (counting the driver) and school transportation vehicle operators, other than route operators, driving vehicles with the capacity of 16 or greater passengers (counting the driver), including a School Bus, Multifunction Bus and Motor Coach Bus, shall meet or exceed the following requirements:

5.01(a) The operator shall possess a valid commercial driver's license (CDL) with the proper class and endorsements for size and type of vehicle(s) to be driven and the associated Medical Examination Report pursuant to 49 CFR 391.43.

5.01(b) The operator shall be a minimum of 18 years of age.

5.01(c) The district or service provider shall obtain a motor vehicle record of each operator prior to transporting students and annually thereafter.

5.01(d) The operator shall be given and/or have access to the CDE School Bus/Multifunction Bus/Motor Coach Bus Operator Guide prior to transporting students.

5.01(e) The operator shall receive a minimum of six hours of in-service training annually which may include required training in 1 CCR 301-26-R-5.00. A portion of this annual in-service requirement may occur during the school year.

5.01(f) The operator shall successfully pass a CDE School Bus/Multifunction Bus/Motor Coach Bus Operator written test for the current school year prior to transporting students and annually thereafter.

5.01(g) The operator shall successfully pass a driving performance test including a pre-trip inspection prior to transporting students and annually thereafter. This test shall be conducted in a vehicle, which is similar in type and size to the vehicle the applicant is

assigned to operate. Districts have the option to re-test at their discretion.

5.01(h) The operator shall receive pre-service training on the type of vehicle(s) to be driven, the type of duties they may be required to perform and in student confidentiality requirements prior to transporting students.

5.01(i) The operator shall have written documentation evidencing that they have received first aid training, including cardiopulmonary resuscitation and universal precautions within 90 calendar days after initial employment. If the operator holds a current first aid, cardiopulmonary resuscitation certificate it will meet the requirements of this section. Operators shall receive first aid training and/or re-certification every two (2) years thereafter.

5.01(j) The operator shall receive training regarding the proper use and maintenance of Child Safety Restraint Systems (CSRS) and proper wheelchair securement, when the operator is engaged in transportation involving these systems and devices prior to transporting students.

5.02 School transportation vehicle route operators (transporting students to and from school or from school to school) driving vehicles with the capacity of 15 or fewer passengers (counting the driver), including Type A Multifunction Bus and Small Vehicle, shall meet or exceed the following requirements:

5.02(a) The operator shall possess a valid driver's license.

5.02(b) The operator shall be a minimum of 18 years of age.

5.02(c) The operator shall have a current physical examination (not to exceed two years) consistent with the requirements of 49 CFR 391.43.

5.02(d) The district or service provider shall obtain a motor vehicle record of each operator prior to transporting students and annually thereafter.

5.02(e) The operator shall be given and/or have access to the CDE Type A Multifunction Bus /Small Vehicle Route Driver Guide prior to transporting students.

5.02(f) The operator shall receive a minimum of six hours of in-service training annually which may include required training in 1 CCR 301-26-R-5.00. A portion of this annual in-service requirement may occur during the school year.

5.02(g) The operator shall successfully pass a CDE Type A Multifunction Bus/Small Vehicle Route Operator written test for the current school year prior to transporting students and annually thereafter.

5.02(h) The operator shall successfully pass a driving performance test including a pre-trip inspection prior to transporting students and annually thereafter. This test shall be conducted in a vehicle, which is similar in type and size to the vehicle the applicant is assigned to operate. Districts have the option to re-test at their discretion.

5.02(i) The operator shall receive pre-service training on the type of vehicle(s) to be driven, the type of duties they may be required to perform and in student confidentiality requirements prior to transporting students.

5.02(j) The operator shall have written documentation evidencing that they have received first aid training, including cardiopulmonary resuscitation and universal precautions within 90 calendar days after initial employment. If the operator holds a current first aid, cardiopulmonary resuscitation certificate it will meet the requirements of this section. Operators shall receive first aid training and/or re-certification every two (2) years thereafter.

5.02(k) The operator shall receive training regarding the proper use and maintenance of Child Safety Restraint Systems (CSRS) and proper wheelchair securement, when the operator is engaged in transportation involving these systems and devices prior to transporting students.

5.03 School transportation vehicle operators, other than route operators, driving vehicles with the capacity of 15 or fewer passengers (counting the driver), including Type A Multifunction Bus and Small Vehicle, shall meet or exceed the following requirements:

5.03(a) The operator shall possess a valid driver's license.

5.03(b) The operator shall be a minimum of 18 years of age.

5.03(c) The district or service provider shall obtain a motor vehicle record of each operator prior to transporting students and annually thereafter.

5.03(d) The operator shall be given and/or have access to the CDE Type A Multifunction Bus /Small Vehicle Operator Guide prior to transporting students.

5.03(e) The operator shall successfully pass a Type A CDE Multifunction Bus/Small Vehicle Operator written test for the current school year prior to transporting students and annually thereafter.

5.03(f) The operator shall annually complete the CDE Multifunction/Small Vehicle Operators Medical Information Form (STU-17). Any yes annotations shall require a doctor's release.

5.03(g)The operator shall receive pre-service training on the type of vehicle(s) to be driven, the type of duties they may be required to perform and in student confidentiality requirements prior to transporting students.

5.03(h) The operator shall be given and/or have access to first aid information, including cardiopulmonary resuscitation and universal precautions.

5.03(i) The operator shall successfully pass a driving performance test including a pre-trip inspection prior to transporting students. This test shall be conducted in a vehicle,

which is similar in type and size to the vehicle the applicant is assigned to operate. Districts have the option to re-test in subsequent years at their discretion.

5.03(j) Prior to driving a school transportation vehicle pursuant to 1 CCR 301-26-R-12.11, operators shall receive training on towing a trailer.

5.04 School transportation paraprofessional is a person assigned to assist a school transportation vehicle operator control behavior of students in the bus and/or ensure the safety of students getting on and off the school transportation vehicle.

5.04(a) The school transportation paraprofessional shall receive pre-service training for the type of duties they may be required to perform prior to assisting with transporting students.

5.05 School transportation vehicle operators and school transportation paraprofessionals are required to be able to perform all essential functions including emergency evacuations when transporting students as determined by the school district or service provider job qualification standards.

5.05(a) The employing school district or service provider has the authority to require at any time a medical evaluation of a school transportation vehicle operator or school transportation paraprofessional for any condition that could impair the employee's ability to operate a vehicle safely, assist student(s) as required by their position, and/or perform other required job duties, and may take appropriate action on the outcome of such evaluation.

5.05(b) School transportation vehicle operators and school transportation paraprofessionals that have medical conditions which result in temporary loss of performance abilities shall provide return to work documentation from their physician, and any other requirements per district policy to the employing school district/service provide prior to returning to their assigned duties.

4204-R-6.00 School Transportation Annual Inspector Requirements

6.01 School transportation annual inspector is a person qualified to perform annual inspections on a school transportation vehicle to confirm the vehicle complies with CDE regulations.

6.02 School transportation annual inspectors shall meet or exceed the following requirements:

6.02(a) The school transportation annual inspector shall be in possession of a valid driver's license with the proper class and endorsements for the size and type of vehicle(s) to be inspected.

6.02(b) The school transportation annual inspector shall provide a Brake Inspector Qualification Certificate meeting the requirements of 49 CFR 396.25 to the school district or service provider.

6.02(c) The school transportation annual inspector shall have at least two years verifiable experience in the maintenance of light, medium or heavy duty vehicles.

6.02(d) The school transportation annual inspector shall successfully pass the CDE initial hands-on performance test.

6.02(d)(1) A certified school transportation annual inspector hands-on tester must proctor the hands-on performance test.

6.02(e) The school transportation annual inspector shall successfully pass the CDE annual inspector qualification written test initially, and every three years thereafter pass the CDE annual inspector recertification written test.

6.02(e)(1) A representative of the district or service provider, other than a school transportation annual inspector candidate, shall grade the written test.

6.03 A school district or service provider with an Inspection Site Certificate shall submit a CDE Application for CDE Annual Inspector Qualification or Recertification Form (STU-20) to CDE verifying that the above requirements have been satisfied. CDE will issue an Annual Inspector Certificate.

6.04 If any of the above requirements become invalid, the annual inspector certificate is invalid until the requirement(s) is made valid.

6.05 If a school transportation annual inspector has an expired certificate, the certificate can be recertified as follows:

6.05(a) If the certificate has been expired less than six months, then the CDE Annual Inspector Recertification Written Test is required.

6.05(b) If the certificate has been expired between six and 12 months, then the CDE Annual Inspector Qualification Written Test is required.

6.05(c) If the certificate has been expired for more than one year, then both the CDE Annual Inspector Qualification Written Test and the CDE hands-on performance test are required.

4204-R-7.00 Annual Inspector Hands-On Tester

7.01 School transportation annual inspector hands-on tester is a person qualified to proctor hands-on tests to annual inspector candidates.

7.02 School transportation annual inspector hands-on testers shall meet or exceed the following requirements:

7.02(a) The school transportation annual inspector hands-on tester shall have maintained a CDE Annual Inspector certificate for a minimum of two years.

7.02(b) The school transportation annual inspector hands-on tester shall have satisfactorily completed a four hour CDE school transportation annual inspector hands-on tester training.

7.02 (c) The school transportation annual inspector hands-on testers shall have completed a four hour brake training in the last three years or have maintained an ASE School Bus or Medium/Heavy Duty Truck or Transit Bus Brake Certification.

7.02(d) The school transportation annual inspector hands-on tester candidate shall submit a CDE Application for Certification or Recertification of CDE Annual Inspector Hands-On Tester Form (STU-30) verifying that the above criteria have been satisfied. CDE will issue an Annual Inspector Hands-On Tester Certificate.

7.02(e) The school transportation annual inspector hands-on tester shall conduct at least two hands-on tests every three years or attend a CDE school transportation annual inspector hands-on recertification training to recertify as a school transportation annual inspector hands-on tester.

7.03 If any of the above requirements become invalid, the hands-on tester certificate is invalid until the requirement(s) is made valid.

4204-R-8.00 Pre-trip/Post-trip Vehicle Inspections

8.01 Each school transportation vehicle shall have a daily pre-trip and post-trip inspection performed and documented by the school transportation vehicle operator or a district or service provider authorized transportation employee. A daily pre-trip inspection shall be completed prior to a vehicle being placed in service. A daily post-trip inspection shall be completed at the end of daily operation of each vehicle.

8.02 The pre-trip and post-trip inspection requirements for school transportation vehicles, other than small vehicles, shall include at a minimum all items listed on the CDE School Transportation Vehicle (School Bus/Multifunction Bus/Motor Coach Bus) – Pre-Trip and Post Trip Requirements Form (STU-9).

8.03 The pre-trip and post-trip inspection requirements for school transportation small vehicles shall include at a minimum all items listed on the CDE School Transportation Vehicle (Small Vehicle) – Pre-Trip and Post Trip Requirements Form (STU-8).

8.04 School districts and service providers shall have a procedure in place to verify that students are not left on an unattended school transportation vehicle.

4204-R-9.00 Inspection Site Certification

9.01 A CDE Inspection Site Certificate is required at each facility/location where annual inspections for school transportation vehicles are performed.

9.02 The inspection site shall meet or exceed the following criteria to acquire and maintain an inspection site certificate.

9.02(a) The inspection site shall be large enough to accommodate the vehicle, equipment and tools necessary to perform the inspection.

9.02(b) The inspection site shall have a floor surface or pad adequate to safely support the maximum weight of the largest vehicle to be inspected.

9.02(c) The inspection site shall have adequate lighting and ventilation.

9.02(d) The inspection site or inspector shall, at the time of inspection, have the equipment and tools necessary to properly complete the annual inspection.

9.02(e) The inspection site or inspector shall have tools designed and calibrated to take accurate readings of appropriate measurements, such as brakes and tires.

9.03 The district or service provider shall submit a request for an inspection site certificate on the CDE Application for Inspecting Site Certification Form (STU-22) that the above criteria have been satisfied.

9.04 The district or service provider shall post the CDE Inspection Site Certificate at the inspection site.

4204-R-10.00 Annual Inspection

10.01 School districts and service providers shall ensure all school transportation vehicles and trailers pursuant to 1 CCR 301-26-R-12.11 have a CDE annual inspection conducted by a CDE certified annual inspector.

10.01(a) Recently purchased school transportation vehicles shall successfully pass a CDE annual inspection prior to transporting students.

10.02 Annual inspection results shall be documented on the CDE Affidavit of Annual Inspection for School Transportation Vehicles Form (STU-25).

10.02(a) A copy of the current Affidavit is maintained inside the vehicle and a copy is placed in the vehicle file.

10.03 All annual inspection criteria of school transportation vehicles must meet or exceed manufacturer's specifications. The annual inspection shall be documented and shall include at a minimum all fields listed on the CDE Annual Inspection and Preventive Maintenance Requirements Form (STU-26).

10.04 All annual inspection criteria of trailers must meet or exceed manufacturer's specifications and shall include at a minimum all fields listed on the CDE Trailer Annual Inspection and Preventive Maintenance Requirements Form (STU-27).

10.05 During the annual inspection, all four wheels shall be pulled for full inspection of the foundation brake system. The three exceptions are:

10.05(a) School transportation vehicles with less than 4,000 miles since the previous annual inspection shall have two wheels (one front and one rear) pulled different than those pulled for the previous inspection.

10.05(b) School transportation vehicles equipped with a retarder meeting the specifications outlined in 1 CCR 301-25-R-33.00, shall have two wheels (one front and one rear) pulled which are different than those pulled for the previous inspection.

10.05(c) Trailers pursuant to 1 CCR 301-26-R-12.11 shall have 50 percent of the wheels pulled different than those pulled for the previous inspection.

4204-R-11.00 Maintenance and Repair

11.01 School districts and service providers must ensure all school transportation vehicles are systematically inspected, maintained and repaired to ensure that school transportation vehicles are in safe and proper operating condition.

11.02 School districts and service providers shall have a system to document preventative maintenance, reported defects and repairs made to school transportation vehicles.

11.03 School districts and service providers shall maintain separate files for each school transportation vehicle with documentation of all annual inspections, all preventative maintenance and all reported damage, defects or deficiencies and the corresponding repair and maintenance performed.

11.04 Any identified damage, defect or deficiency of a school transportation vehicle must be reported to the school district or service provider which:

11.04(a) Could affect the safety of operation of the school transportation vehicle, or

11.04(b) Could result in a mechanical breakdown of the school transportation vehicle, or

11.04(c) Results in noncompliance with Colorado Minimum Standards Governing School Transportation Vehicles (1 CCR 301-25) and/or manufacturer's specifications.

11.05 Documentation for reported defects must include all of the following:

11.05(a) The name of the school district or service provider.

11.05(b) Date and time the report was submitted.

11.05(c) All damage, defects or deficiencies of the school transportation vehicle.

11.05(d) The name of the individual who prepared the report.

11.06 Following a reported damage, defect or deficiency of a school transportation vehicle, school districts and service providers or a representative agent must repair the reported damage, defects or deficiencies, or document that no repair is necessary, ensuring that the vehicle is in safe and proper operating condition prior to transporting students.

11.07 School districts and service providers shall not transport students in a school transportation vehicle which is not in safe and proper operating condition. A school transportation vehicle shall be designated as "out-of-service" by a school district or service provider, a school transportation annual inspector or the CDE School Transportation Unit.

11.07(a) Exemption - Any school transportation vehicle discovered to be in an unsafe condition while being operated on the highway, roadway or private road may be continued in operation only to the nearest place where repairs can safely be affected. Such operation shall be conducted only if it is less hazardous to the public than to permit the vehicle to remain on the highway, roadway or private road.

11.08 Following a school transportation vehicle being placed "out-of-service", a school district, service provider or a representative agent must make required repairs, ensuring that the vehicle is in safe and proper operating condition prior to transporting students. In the event of being placed "out-of-service" during an annual inspection, the school transportation vehicle must successfully pass a CDE annual inspection prior to transporting students.

11.09 The preventative maintenance inspection on air drum brake systems shall include, at a minimum, that the brake rod travel has been measured and documented. The applied pressure method shall be used.

11.09(a) The inspection-interval shall not exceed 4,000 miles for buses equipped with a manual slack adjuster air brake system.

11.09(b) The inspection-interval shall not exceed 6,000 miles for buses equipped with an automatic slack adjuster air brake system.

11.10 The preventive maintenance inspection interval on air disc brake systems shall not exceed 6,000 miles and shall include, at a minimum; inspection and documentation of:

11.10(a) Inspect the pad thickness by checking the mechanical wear indicators.

11.10(b) Inspect the visible part of the rotors for cracks, excessive wear, damage, etc.

11.10(c) Inspect running clearance. If the caliper has no movement or appears to move greater than the distances indicated by the manufacturer, then a full wheel removal inspection will be necessary.

11.11 The preventive maintenance inspection interval for hydraulic brake systems shall not exceed 6,000 miles and shall include, at a minimum, inspection and documentation of:

11.11(a) Proper parking brake operation.

11.11(b) Proper brake fluid level and clarity.

11.11(c) Adequate pedal reserve.

11.11(d) Proper hydraulic/vacuum assist operation.

11.11(e) Visual inspection for brake fluid leakage.

11.12 If brake adjustment or repair is needed, the work shall be completed by or supervised by a DOT or equivalent qualified brake inspector meeting the requirements of 49 CFR 396.25.

4204-R-12.00 Operation of a School Transportation Vehicle

12.01 A school transportation vehicle shall not be operated in a manner which is unsafe or likely to cause an accident or damage of the vehicle.

12.02 A school transportation vehicle shall not be placed in motion on a roadway, highway or private road with the passenger entry door/service door open.

12.03 A school transportation vehicle's headlights or daytime running headlights shall be activated while the vehicle is in operation.

12.04 A school transportation vehicle shall not be fueled while students are on board, except in instances when unloading the students would present a greater hazard or peril to their safety.

12.05 Use of tobacco products as defined in Section 18-13-121(5), C.R.S., use or possession of illegal controlled substances, use or possession of alcohol and use or possession of marijuana or cannabinoid product, except as otherwise allowed by law, aboard any school transportation vehicle shall be prohibited at all times**.**

12.06 A school transportation vehicle operator shall not consume food unless the vehicle is stopped at a safe location with the park/emergency brake set.

12.07 When a school transportation vehicle is equipped with a roof mounted strobe lamp, the use of the strobe lamp is permitted only when the vehicle presents a hazard to other motorists, such as loading or unloading students in inclement weather or to enhance visibility of the vehicle when barriers inhibit such visibility.

12.08 A school transportation vehicle operator may use the strobe, in addition to the four-way hazard lamps, to warn other motorists that the vehicle is not in motion or is being operated at a speed of twenty-five miles per hour or less.

12.09 The school transportation vehicle operator shall use extreme caution when backing. Before backing on a roadway, highway or private property, the horn or audible warning device shall be sounded and four-way hazard lamps actuated or there shall be a person outside the vehicle giving direction.

12.09(a) Backing a school transportation vehicle when students are outside of the vehicle at a student stop is prohibited.

12.10 School transportation vehicles including Type A, B, C and D School Bus, Multifunction Bus and Motor Coach Bus shall not be operated with a trailer or other vehicle attached while students are being transported.

12.11 School transportation small vehicles, with the capacity of 15 or fewer passengers (counting the driver), may tow trailers while students are being transported to the extent that trailering is a necessary component of a district sponsored program**.**

4204-R-13.00 Authorized Passengers

13.01 Only district personnel, students enrolled in a district, law enforcement officials or individuals that have received prior authorization from the school district or service provider may be passengers on any school transportation vehicle.

13.02 The number of passengers transported on any school transportation vehicle shall not exceed the maximum seating capacity of the vehicle. Small vehicle capacity shall not exceed the number of safety belts as designed by the vehicle manufacturer.

13.03 Passengers shall not be permitted to stand in any school transportation vehicle while the vehicle is in motion. This does not preclude authorized persons (such as school transportation paraprofessionals) from completing their duties as required.

13.04 School districts and service providers shall consider the size of the passengers when determining the number of passengers that can safely occupy a school transportation vehicle seat.

4204-R-14.00 Safety Restraints

14.01 A school transportation vehicle operator shall have the safety belt fastened, worn correctly and properly adjusted prior to the school transportation vehicle being placed in motion.

14.02 All passengers in a school transportation vehicle under 10,000 lbs. GVWR shall have their safety belts fastened, worn correctly and properly adjusted prior to the school transportation vehicle being placed in motion.

4204-R-15.00 Transportation of Miscellaneous Items

15.01 A school transportation vehicle operator shall make a reasonable and prudent determination that all carry-on items are properly handled in order to minimize the danger to all others.

15.02 All baggage, articles, equipment or medical supplies not held by individual passengers shall be secured in a manner which assures unrestricted access to all exits by occupants, does not restrict the driver's ability to operate the bus and protects all occupants against injury resulting from falling or displacement of any baggage, article or equipment. Oxygen cylinders secured to a wheelchair shall be considered to be in compliance with this subsection, provided they do not impede access to any exit.

15.03 All chemicals and cleaning supplies carried on a school transportation vehicle must meet the following precautions:

15.03(a) Container is non-breakable.

15.03(b) Container is labeled with contents.

15.03(c) Pressurized aerosols are prohibited.

15.03(d) Container is secured in a bracket, or in a closed compartment in the driver's area or a compartment on the exterior of the bus.

15.03(e) Containers and quantities of products are kept to a reasonable size.

15.04 Interior-decorations shall not be located within the driver's area (which includes the space in front of the front barriers including the step-well, dash, walls and ceiling, the windshield, the entry door, the driver's side window, and all windows in front of the front barrier), the first two passenger windows on both sides of the vehicle and all windows on the rear of the vehicle. Other decorations within the passenger compartment shall not:

15.04(a) Cover any required lettering.

15.04(b) Impede the aisle or any emergency exit.

15.04(c) Hang from the walls and/or ceiling.

4204-R-16.00 Maximum Driving Time for School Transportation Vehicle Operators

16.01 The school transportation vehicle operator, including small vehicle operators, shall not drive nor shall the school district or service provider permit or require an operator to drive:

16.01(a) In excess of 10 hours or after being on-duty 14 hours until completing 10 hours off-duty. This would include on-duty time for all employers. Ten hours off-duty may be consecutive or accumulated in two or more periods of off-duty time with one period having a minimum of 6 consecutive hours off-duty.

16.01(b) After being on-duty for more than 70 hours in any seven consecutive days.

16.02 The school district or service provider may comply with part 395 of the Federal Motor Carrier Safety Regulations (FMCSR) in place of this section.

16.03 Definitions:

16.03(a) Adverse driving conditions - In case of emergency, an operator may complete the trip without being in violation if such trip reasonably could have been completed absent the emergency.

16.03(b) Day - Means any 24-consecutive hour period beginning at the time designated by the

school district or service provider.

16.03(c) On-duty time - Includes all time worked for any and all employers, including all driving and non-driving duties.

16.03(d) Off-duty time - School transportation vehicle operators may consider waiting time at special events, meal stops and school related events as off-duty if the following criteria are met: (Compensated waiting time does not necessitate on-duty time.)

16.03(d)(1) The operator shall be relieved of all duty and responsibility for the care and custody of the vehicle, its accessories and students, and

16.03(d)(2) The operator shall be at liberty to pursue activities of his/her choice including leaving the premises on which the bus is located.

16.04 All school transportation vehicle operators shall document that they are in compliance with this section, hours of service.

16.04(a) An operator's daily log, or equivalent, shall be completed for the trip in the operator's own handwriting, when the trip requires a scheduled or unscheduled overnight stay away from the work reporting location.

4204-R-17.00 Route Planning – Student Loading and Discharge

17.01 School transportation small vehicles, Type A Multifunction Buses with 15 or fewer passenger capacity (counting the driver) and School Buses (Types A, B, C, and D) may be used to transport students to and from school. Multifunction Buses Type B, C and D and Motor Coach Buses shall not be used to transport students to and from school.

17.02 The location of student stops shall consider factors including:

17.02(a) Ages of the students.

17.02(b) Visibility.

17.02(c) Lateral clearance.

17.02(d) Student access.

17.02(e) Control of other motorists.

17.02(e)(1) Student stops for Type A Multifunction Buses with 15 or fewer passenger capacity (counting the driver) and school transportation small vehicles should be located off of the roadway whenever possible.

17.03 School transportation vehicle operators shall stop at least 10 feet away from students at each designated stop. The school transportation vehicle operator shall apply the parking brake and

shift the vehicle into neutral or park prior to opening the service door of a bus or passenger door(s) of a small vehicle.

17.04 The school transportation vehicle operator shall stop as far to the right of the roadway, highway or private road as possible before discharging or loading passengers, allowing sufficient area to the right and front of the vehicle but close enough to the right to prevent traffic from passing on the right so students may clear the vehicle safely while in sight of the operator.

17.04(a) Exception: The school transportation vehicle operator may block the lane of traffic when passengers being received or discharged are required to cross the roadway.

17.05 Student stops shall not be located on the side of any major thoroughfare whenever access to the destination of the passenger is possible by the use of a road or street which is adjacent to the major thoroughfare.

17.06 If students are required to cross a roadway, highway or private road on which a student stop is being performed, they are prohibited from crossing a roadway, highway or private road constructed or designed to permit three or more separate lanes of vehicular traffic in either direction or with a median separating multiple lanes of traffic. This does not include crossing the roadway, highway or private road with the assistance of a traffic controls signal or with the assistance of a crossing guard.

17.07 Four-way hazard lamps shall be used on private property such as parking lots.

17.08 Alternating flashing red warning signal lamps shall not be activated within 50 feet of an intersection if the intersection is controlled by a traffic control signal.

17.09 Routes shall be planned as to:

17.09(a) Eliminate, when practical, railroad crossings.

17.09(b) Have stops be a minimum of 200 feet apart since alternating flashing amber warning signal lamps must be activated a minimum of 200 feet in advance of the stop.

17.09(b)(1) Exception: Student stops located in areas where wildlife may create a high risk of threat to students' safety while they are waiting and/or walking to a student stop, may designate student stops less than 200 feet apart upon detailed written approval by the school district board of education and/or their designee. A copy of the written approval shall be kept in the school transportation office and route operators shall be given written notice of the exception and have it indicated on route sheets.

17.10 Pursuant to Section 42-4-1903(2), C.R.S., school transportation vehicle operators are not required to actuate the alternating flashing red warning signal lamps on a school bus when the student stop is at a location where the local traffic regulatory authority has by prior written designation declared such actuation unnecessary and when discharging or loading passengers who require the assistance of a lift device and no passenger is required to cross the roadway. Further, Type A Multifunction Buses with 15 or fewer passenger capacity (counting the driver)

and school transportation small vehicles do not have the functionality to control traffic. In these instances, the school transportation vehicle operator shall stop as far to the right off the roadway as possible to reduce obstruction to traffic, activate the four-way hazard warning lamps a minimum of 200 feet prior to the student stop, continue to display the four-way hazard warning lamps until the process of discharging or loading passengers has been completed, and deactivate the four-way hazard lamps before resuming motion. Students are prohibited from crossing any lanes of traffic to access the student stop or after disembarking.

17.11 School transportation vehicle operators shall not relocate a student stop without approval of the school district or service provider.

17.12 School transportation vehicle operators of School Buses, Multifunction Buses and Motor Coach Buses, whether transporting students or not, shall apply the following procedures during the process of approaching, stopping and crossing railroad tracks:

17.12(a) Activate the four-way hazard lamps not less than 200 feet from the railroad crossing to alert other motorists of the pending stop for the crossing.

17.12(b) Stop the bus within 50 feet but not less than 15 feet from the nearest rail.

17.12(c) When stopped, the bus should be as far to the right of the roadway as possible and should not form two lanes of traffic unless the highway is marked for four or more lanes of traffic.

17.12(d) Use a prearranged signal to alert students to the need for quiet aboard the bus when approaching railroad tracks. Turn off all noise making equipment (fans, heater, radio, etc.)

17.13 After quietness aboard the stopped bus has been achieved, bus operators shall open the service door and operator window. The bus operator shall listen and look in both directions along the track(s) for any approaching train(s) and for signals indicating the approach of a train.

17.13(a) If the tracks are clear, the bus operator shall close the service door and may then proceed in a gear low enough to permit crossing the tracks without having to manually shift gears. The bus operator shall cancel the four-way hazard lamps after the bus has cleared the tracks.

17.13(b) When two or more tracks are to be crossed, the bus operator shall not stop a second time unless the bus is completely clear of the first crossing and has at least 15 feet clearance in front and at least 15 feet clearance to the rear.

17.13(c) Before crossing the tracks, the bus operator shall verify that there is enough space after the tracks for the bus plus 15 feet if it is necessary to stop after crossing the tracks.

17.14 School transportation vehicle operators of School Buses, Multifunction Buses and Motor Coach Buses are not required to stop at crossings controlled by a red, amber, green traffic control signal when it is in the green position or when the crossing is controlled by a police officer or human flag person.

4204-R-18.00 Emergency Evacuation Drills

18.01 Emergency evacuation drills shall be conducted with students by all school transportation vehicle operators and school transportation paraprofessionals at least twice during each school year, following the procedures in the Colorado Department of Education School Bus/Multifunction Bus/Motor Coach Bus Operator Guide.

18.01(a) One drill shall be conducted in the fall and the second drill conducted in the spring.

18.01(b) Substitute and Multifunction operators of 16 or greater capacity (counting the driver) vehicles shall be trained how to conduct the emergency evacuation drills.

18.02 Students on school related events shall receive emergency evacuation instruction prior to departure.

18.03 School district and service providers shall maintain records documenting that the required evacuation drills were conducted and/or evacuation instruction was given.

COLORADO
Department of Education
School Finance and Operations Division

MEMO

TO: Colorado State Board of Education Members
FROM: Jennifer Okes, School Finance Director
RE: Rulemaking Hearing
DATE: July 7, 2016

Attached please find information to support the action items regarding the requests for Emergency Rulemaking for the Rules for the Operation of School Transportation Vehicles (1 CCR 301-26) and the Rules for the Annual Inspection and Preventative Maintenance of School Transportation Vehicles (1 CCR 301-29).

The rulemaking authority for both set of these rules is pursuant to Sections 22-52-108 and 42-4-1904, C.R.S. The proposal is to conduct emergency rulemaking, consistent with action taken at the June State Board of Education rulemaking hearing. At that time, the State Board voted to repeal these two separate rules and reenact a single, consolidated set of rules. Due to a technicality, the rulemaking process was not completed and must be started over. As such, the normal rulemaking process would not be completed until well into the 2016-2017 school year. It is advisable that there is a single set of rules in place throughout the school year in order to avoid confusion.

The purpose of the proposed rules is to:
- Streamline and consolidate rules
- Reduce regulatory burdens for school districts
- Clarify the rules where appropriate

A vote from board members is requested at the July Board meeting:
- To approve the proposed changes to the Rules for the Operation of School Transportation Vehicles (1 CCR 301-26) through the emergency rulemaking process, and
- To approve the proposed changes to the Rules for the Annual Inspection and Preventative Maintenance of School Transportation Vehicles (1 CCR 301-29) through the emergency rulemaking process.

CYNTHIA H. COFFMAN
Attorney General

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Chief Deputy Attorney General

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Office of the Attorney General

Tracking number: 2016-00335

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado State Board of Education

on 07/07/2016

1 CCR 301-26

COLORADO RULES FOR THE OPERATION, MAINTENANCE AND INSPECTION OF SCHOOL TRANSPORTATION VEHICLES

The above-referenced rules were submitted to this office on 07/08/2016 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.

July 19, 2016 09:45:44

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Emergency Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-29

Rule title

1 CCR 301-29 RULES FOR THE ANNUAL INSPECTION AND PREVENTATIVE MAINTENANCE OF SCHOOL TRANSPORTATION VEHICLES 1 - eff 07/07/2016

Effective date

07/07/2016

COLORADO
Department of Education
School Finance and Operations Division

DEPARTMENT OF EDUCATION
Colorado State Board of Education

COLORADO RULES FOR THE OPERATION, MAINTENANCE AND INSPECTION OF SCHOOL TRANSPORTATION VEHICLES

1 CCR 301-26

4204-R-1.00 Statement of Basis and Purpose

1.01 Colorado law provides for the State Board of Education to adopt and enforce regulations governing the safe operation of school buses used for the transportation of students pursuant to Sections 22-51-108 and 42-4-1904, C.R.S.

1.02 The purpose of these rules is to adopt and enforce regulations governing the reasonable and adequate standards of safety for the operation, maintenance and inspection of school transportation vehicles that promote the welfare of the students and afford reasonable protection to the public. These rules are designed to align with federal standards, reflect current industry practices, and incorporate recommendations from school district and service provider transportation professionals.

It is necessary to adopt emergency rules in order to provide updated rules prior to the start of the 2016-2017 school year.

1.03 The Commissioner, or designee, may provide an exemption to the Rules for the Operation, Maintenance and Inspection of School Transportation Vehicles to the extent the Commissioner finds an exemption to be appropriate.

1.04 These rules shall become effective July 30, 2016 for all student transportation.

4204-R-2.00 Applicability of Rules

2.01 These rules and regulations apply to the operation, maintenance and inspection of all public school transportation vehicles (School Bus, Multifunction Bus, Motor Coach Bus and Small Vehicle as defined in 1 CCR 301-25-R-5.00) transporting students to and from school, from school to school, and/or to and from school related events in vehicles owned, leased or rented by the district or under agreement with the district.

2.02 These rules are not intended to include:

2.02(a) Private motor vehicles used exclusively to carry members of the owner's household; or

2.02(b) Transportation arrangements not authorized by the district including but not limited to; sharing of actual gasoline expense or participation in a car pool; or

2.02(c) The operations of vehicles in bona fide emergency situations consistent with policies of the local board of education; or

2.02(d) Student transportation under public transportation programs subject to the Code of Federal Regulations 49 CFR 390 to 399.

2.03 These rules shall not preclude a school district or service provider from establishing a more rigid standard or policy when deemed necessary by the local board of education or service provider.

4204-R-3.00 Non-Compliance

3.01 CDE will perform periodic School Transportation Advisory Reviews (STAR) of school districts and service providers to evaluate and assist with compliance of these rules.

3.01(a) CDE will provide school districts and service providers written notification of the STAR findings.

3.01(b) Upon receipt of the written notification of STAR findings, school districts or service providers shall respond in writing to outline corrective actions if necessary.

3.02 CDE shall revoke or suspend the certificate for a school transportation annual inspector, school transportation annual inspector hands-on tester or inspection site under the following circumstances:

3.02(a) A school transportation annual inspector, school transportation annual inspector hands-on tester or inspection site does not meet the requirements outlined in these rules.

3.02(b) School transportation annual inspections or hands-on tests have not been properly conducted.

4204-R-4.00 School District and Service Provider Employment Responsibilities

4.01 School districts and service providers shall outline job responsibilities and develop job qualification standards for each school transportation vehicle operator and school transportation paraprofessionals, consistent with federal and state regulations. A copy of these requirements shall be provided to each school transportation vehicle operator and paraprofessional upon employment.

4.02 School districts and service providers shall maintain separate files for each school transportation vehicle operator, school transportation paraprofessional, and school transportation annual inspector with written documentation evidencing all listed requirements indicated in Rule 5.00, Rule 6.00 and Rule 7.00, as applicable. Training documentation shall include the trainer name, date of the training, description of the training, duration of each topic covered and the signature of all attendees.

4.02(a) If a school transportation vehicle operator, school transportation paraprofessional, or school transportation annual inspector works for more than one school district, each district shall maintain a file with documentation in accordance with this rule.

4.03 School districts and service providers shall ensure all employees required to possess a commercial driver's license (CDL) shall be in a US DOT approved substance abuse testing

program.

4.04 School districts and service providers shall not permit a school transportation vehicle operator to transport students, while the operator's ability or alertness is so impaired, through fatigue, illness or any other cause, as to make it unsafe for the operator to transport students.

4.05 School districts and service providers shall have written emergency procedures and/or contingency plans to be followed in the event of a traffic accident, vehicle breakdown, unexpected school closing, unforeseen route change or relocation of a student stop in an emergency.

4.06 School district and service providers shall ensure that documentation outlining transportation related services and requirements, including required use of Child Safety Restraint Systems and medical and behavioral information as it relates to student transportation, is available to applicable school transportation vehicle operators and paraprofessionals prior to providing transportation services.

4204-R-5.00 School Transportation Vehicle Operator Requirements

5.01 School transportation vehicle route operators (transporting students to and from school or from school to school) driving a School Bus with the capacity of 16 or greater passengers (counting the driver) and school transportation vehicle operators, other than route operators, driving vehicles with the capacity of 16 or greater passengers (counting the driver), including a School Bus, Multifunction Bus and Motor Coach Bus, shall meet or exceed the following requirements:

5.01(a) The operator shall possess a valid commercial driver's license (CDL) with the proper class and endorsements for size and type of vehicle(s) to be driven and the associated Medical Examination Report pursuant to 49 CFR 391.43.

5.01(b) The operator shall be a minimum of 18 years of age.

5.01(c) The district or service provider shall obtain a motor vehicle record of each operator prior to transporting students and annually thereafter.

5.01(d) The operator shall be given and/or have access to the CDE School Bus/Multifunction Bus/Motor Coach Bus Operator Guide prior to transporting students.

5.01(e) The operator shall receive a minimum of six hours of in-service training annually which may include required training in 1 CCR 301-26-R-5.00. A portion of this annual in-service requirement may occur during the school year.

5.01(f) The operator shall successfully pass a CDE School Bus/Multifunction Bus/Motor Coach Bus Operator written test for the current school year prior to transporting students and annually thereafter.

5.01(g) The operator shall successfully pass a driving performance test including a pre-trip inspection prior to transporting students and annually thereafter. This test shall be conducted in a vehicle, which is similar in type and size to the vehicle the applicant is

assigned to operate. Districts have the option to re-test at their discretion.

5.01(h) The operator shall receive pre-service training on the type of vehicle(s) to be driven, the type of duties they may be required to perform and in student confidentiality requirements prior to transporting students.

5.01(i) The operator shall have written documentation evidencing that they have received first aid training, including cardiopulmonary resuscitation and universal precautions within 90 calendar days after initial employment. If the operator holds a current first aid, cardiopulmonary resuscitation certificate it will meet the requirements of this section. Operators shall receive first aid training and/or re-certification every two (2) years thereafter.

5.01(j) The operator shall receive training regarding the proper use and maintenance of Child Safety Restraint Systems (CSRS) and proper wheelchair securement, when the operator is engaged in transportation involving these systems and devices prior to transporting students.

5.02 School transportation vehicle route operators (transporting students to and from school or from school to school) driving vehicles with the capacity of 15 or fewer passengers (counting the driver), including Type A Multifunction Bus and Small Vehicle, shall meet or exceed the following requirements:

5.02(a) The operator shall possess a valid driver's license.

5.02(b) The operator shall be a minimum of 18 years of age.

5.02(c) The operator shall have a current physical examination (not to exceed two years) consistent with the requirements of 49 CFR 391.43.

5.02(d) The district or service provider shall obtain a motor vehicle record of each operator prior to transporting students and annually thereafter.

5.02(e) The operator shall be given and/or have access to the CDE Type A Multifunction Bus /Small Vehicle Route Driver Guide prior to transporting students.

5.02(f) The operator shall receive a minimum of six hours of in-service training annually which may include required training in 1 CCR 301-26-R-5.00. A portion of this annual in-service requirement may occur during the school year.

5.02(g) The operator shall successfully pass a CDE Type A Multifunction Bus/Small Vehicle Route Operator written test for the current school year prior to transporting students and annually thereafter.

5.02(h) The operator shall successfully pass a driving performance test including a pre-trip inspection prior to transporting students and annually thereafter. This test shall be conducted in a vehicle, which is similar in type and size to the vehicle the applicant is assigned to operate. Districts have the option to re-test at their discretion.

5.02(i) The operator shall receive pre-service training on the type of vehicle(s) to be driven, the type of duties they may be required to perform and in student confidentiality requirements prior to transporting students.

5.02(j) The operator shall have written documentation evidencing that they have received first aid training, including cardiopulmonary resuscitation and universal precautions within 90 calendar days after initial employment. If the operator holds a current first aid, cardiopulmonary resuscitation certificate it will meet the requirements of this section. Operators shall receive first aid training and/or re-certification every two (2) years thereafter.

5.02(k) The operator shall receive training regarding the proper use and maintenance of Child Safety Restraint Systems (CSRS) and proper wheelchair securement, when the operator is engaged in transportation involving these systems and devices prior to transporting students.

5.03 School transportation vehicle operators, other than route operators, driving vehicles with the capacity of 15 or fewer passengers (counting the driver), including Type A Multifunction Bus and Small Vehicle, shall meet or exceed the following requirements:

5.03(a) The operator shall possess a valid driver's license.

5.03(b) The operator shall be a minimum of 18 years of age.

5.03(c) The district or service provider shall obtain a motor vehicle record of each operator prior to transporting students and annually thereafter.

5.03(d) The operator shall be given and/or have access to the CDE Type A Multifunction Bus /Small Vehicle Operator Guide prior to transporting students.

5.03(e) The operator shall successfully pass a Type A CDE Multifunction Bus/Small Vehicle Operator written test for the current school year prior to transporting students and annually thereafter.

5.03(f) The operator shall annually complete the CDE Multifunction/Small Vehicle Operators Medical Information Form (STU-17). Any yes annotations shall require a doctor's release.

5.03(g)The operator shall receive pre-service training on the type of vehicle(s) to be driven, the type of duties they may be required to perform and in student confidentiality requirements prior to transporting students.

5.03(h) The operator shall be given and/or have access to first aid information, including cardiopulmonary resuscitation and universal precautions.

5.03(i) The operator shall successfully pass a driving performance test including a pre-trip inspection prior to transporting students. This test shall be conducted in a vehicle,

which is similar in type and size to the vehicle the applicant is assigned to operate. Districts have the option to re-test in subsequent years at their discretion.

5.03(j) Prior to driving a school transportation vehicle pursuant to 1 CCR 301-26-R-12.11, operators shall receive training on towing a trailer.

5.04 School transportation paraprofessional is a person assigned to assist a school transportation vehicle operator control behavior of students in the bus and/or ensure the safety of students getting on and off the school transportation vehicle.

5.04(a) The school transportation paraprofessional shall receive pre-service training for the type of duties they may be required to perform prior to assisting with transporting students.

5.05 School transportation vehicle operators and school transportation paraprofessionals are required to be able to perform all essential functions including emergency evacuations when transporting students as determined by the school district or service provider job qualification standards.

5.05(a) The employing school district or service provider has the authority to require at any time a medical evaluation of a school transportation vehicle operator or school transportation paraprofessional for any condition that could impair the employee's ability to operate a vehicle safely, assist student(s) as required by their position, and/or perform other required job duties, and may take appropriate action on the outcome of such evaluation.

5.05(b) School transportation vehicle operators and school transportation paraprofessionals that have medical conditions which result in temporary loss of performance abilities shall provide return to work documentation from their physician, and any other requirements per district policy to the employing school district/service provide prior to returning to their assigned duties.

4204-R-6.00 School Transportation Annual Inspector Requirements

6.01 School transportation annual inspector is a person qualified to perform annual inspections on a school transportation vehicle to confirm the vehicle complies with CDE regulations.

6.02 School transportation annual inspectors shall meet or exceed the following requirements:

6.02(a) The school transportation annual inspector shall be in possession of a valid driver's license with the proper class and endorsements for the size and type of vehicle(s) to be inspected.

6.02(b) The school transportation annual inspector shall provide a Brake Inspector Qualification Certificate meeting the requirements of 49 CFR 396.25 to the school district or service provider.

6.02(c) The school transportation annual inspector shall have at least two years verifiable experience in the maintenance of light, medium or heavy duty vehicles.

6.02(d) The school transportation annual inspector shall successfully pass the CDE initial hands-on performance test.

6.02(d)(1) A certified school transportation annual inspector hands-on tester must proctor the hands-on performance test.

6.02(e) The school transportation annual inspector shall successfully pass the CDE annual inspector qualification written test initially, and every three years thereafter pass the CDE annual inspector recertification written test.

6.02(e)(1) A representative of the district or service provider, other than a school transportation annual inspector candidate, shall grade the written test.

6.03 A school district or service provider with an Inspection Site Certificate shall submit a CDE Application for CDE Annual Inspector Qualification or Recertification Form (STU-20) to CDE verifying that the above requirements have been satisfied. CDE will issue an Annual Inspector Certificate.

6.04 If any of the above requirements become invalid, the annual inspector certificate is invalid until the requirement(s) is made valid.

6.05 If a school transportation annual inspector has an expired certificate, the certificate can be recertified as follows:

6.05(a) If the certificate has been expired less than six months, then the CDE Annual Inspector Recertification Written Test is required.

6.05(b) If the certificate has been expired between six and 12 months, then the CDE Annual Inspector Qualification Written Test is required.

6.05(c) If the certificate has been expired for more than one year, then both the CDE Annual Inspector Qualification Written Test and the CDE hands-on performance test are required.

4204-R-7.00 Annual Inspector Hands-On Tester

7.01 School transportation annual inspector hands-on tester is a person qualified to proctor hands-on tests to annual inspector candidates.

7.02 School transportation annual inspector hands-on testers shall meet or exceed the following requirements:

7.02(a) The school transportation annual inspector hands-on tester shall have maintained a CDE Annual Inspector certificate for a minimum of two years.

7.02(b) The school transportation annual inspector hands-on tester shall have satisfactorily completed a four hour CDE school transportation annual inspector hands-on tester training.

7.02 (c) The school transportation annual inspector hands-on testers shall have completed a four hour brake training in the last three years or have maintained an ASE School Bus or Medium/Heavy Duty Truck or Transit Bus Brake Certification.

7.02(d) The school transportation annual inspector hands-on tester candidate shall submit a CDE Application for Certification or Recertification of CDE Annual Inspector Hands-On Tester Form (STU-30) verifying that the above criteria have been satisfied. CDE will issue an Annual Inspector Hands-On Tester Certificate.

7.02(e) The school transportation annual inspector hands-on tester shall conduct at least two hands-on tests every three years or attend a CDE school transportation annual inspector hands-on recertification training to recertify as a school transportation annual inspector hands-on tester.

7.03 If any of the above requirements become invalid, the hands-on tester certificate is invalid until the requirement(s) is made valid.

4204-R-8.00 Pre-trip/Post-trip Vehicle Inspections

8.01 Each school transportation vehicle shall have a daily pre-trip and post-trip inspection performed and documented by the school transportation vehicle operator or a district or service provider authorized transportation employee. A daily pre-trip inspection shall be completed prior to a vehicle being placed in service. A daily post-trip inspection shall be completed at the end of daily operation of each vehicle.

8.02 The pre-trip and post-trip inspection requirements for school transportation vehicles, other than small vehicles, shall include at a minimum all items listed on the CDE School Transportation Vehicle (School Bus/Multifunction Bus/Motor Coach Bus) – Pre-Trip and Post Trip Requirements Form (STU-9).

8.03 The pre-trip and post-trip inspection requirements for school transportation small vehicles shall include at a minimum all items listed on the CDE School Transportation Vehicle (Small Vehicle) – Pre-Trip and Post Trip Requirements Form (STU-8).

8.04 School districts and service providers shall have a procedure in place to verify that students are not left on an unattended school transportation vehicle.

4204-R-9.00 Inspection Site Certification

9.01 A CDE Inspection Site Certificate is required at each facility/location where annual inspections for school transportation vehicles are performed.

9.02 The inspection site shall meet or exceed the following criteria to acquire and maintain an inspection site certificate.

9.02(a) The inspection site shall be large enough to accommodate the vehicle, equipment and tools necessary to perform the inspection.

9.02(b) The inspection site shall have a floor surface or pad adequate to safely support the maximum weight of the largest vehicle to be inspected.

9.02(c) The inspection site shall have adequate lighting and ventilation.

9.02(d) The inspection site or inspector shall, at the time of inspection, have the equipment and tools necessary to properly complete the annual inspection.

9.02(e) The inspection site or inspector shall have tools designed and calibrated to take accurate readings of appropriate measurements, such as brakes and tires.

9.03 The district or service provider shall submit a request for an inspection site certificate on the CDE Application for Inspecting Site Certification Form (STU-22) that the above criteria have been satisfied.

9.04 The district or service provider shall post the CDE Inspection Site Certificate at the inspection site.

4204-R-10.00 Annual Inspection

10.01 School districts and service providers shall ensure all school transportation vehicles and trailers pursuant to 1 CCR 301-26-R-12.11 have a CDE annual inspection conducted by a CDE certified annual inspector.

10.01(a) Recently purchased school transportation vehicles shall successfully pass a CDE annual inspection prior to transporting students.

10.02 Annual inspection results shall be documented on the CDE Affidavit of Annual Inspection for School Transportation Vehicles Form (STU-25).

10.02(a) A copy of the current Affidavit is maintained inside the vehicle and a copy is placed in the vehicle file.

10.03 All annual inspection criteria of school transportation vehicles must meet or exceed manufacturer's specifications. The annual inspection shall be documented and shall include at a minimum all fields listed on the CDE Annual Inspection and Preventive Maintenance Requirements Form (STU-26).

10.04 All annual inspection criteria of trailers must meet or exceed manufacturer's specifications and shall include at a minimum all fields listed on the CDE Trailer Annual Inspection and Preventive Maintenance Requirements Form (STU-27).

10.05 During the annual inspection, all four wheels shall be pulled for full inspection of the foundation brake system. The three exceptions are:

10.05(a) School transportation vehicles with less than 4,000 miles since the previous annual inspection shall have two wheels (one front and one rear) pulled different than those pulled for the previous inspection.

10.05(b) School transportation vehicles equipped with a retarder meeting the specifications outlined in 1 CCR 301-25-R-33.00, shall have two wheels (one front and one rear) pulled which are different than those pulled for the previous inspection.

10.05(c) Trailers pursuant to 1 CCR 301-26-R-12.11 shall have 50 percent of the wheels pulled different than those pulled for the previous inspection.

4204-R-11.00 Maintenance and Repair

11.01 School districts and service providers must ensure all school transportation vehicles are systematically inspected, maintained and repaired to ensure that school transportation vehicles are in safe and proper operating condition.

11.02 School districts and service providers shall have a system to document preventative maintenance, reported defects and repairs made to school transportation vehicles.

11.03 School districts and service providers shall maintain separate files for each school transportation vehicle with documentation of all annual inspections, all preventative maintenance and all reported damage, defects or deficiencies and the corresponding repair and maintenance performed.

11.04 Any identified damage, defect or deficiency of a school transportation vehicle must be reported to the school district or service provider which:

11.04(a) Could affect the safety of operation of the school transportation vehicle, or

11.04(b) Could result in a mechanical breakdown of the school transportation vehicle, or

11.04(c) Results in noncompliance with Colorado Minimum Standards Governing School Transportation Vehicles (1 CCR 301-25) and/or manufacturer's specifications.

11.05 Documentation for reported defects must include all of the following:

11.05(a) The name of the school district or service provider.

11.05(b) Date and time the report was submitted.

11.05(c) All damage, defects or deficiencies of the school transportation vehicle.

11.05(d) The name of the individual who prepared the report.

11.06 Following a reported damage, defect or deficiency of a school transportation vehicle, school districts and service providers or a representative agent must repair the reported damage, defects or deficiencies, or document that no repair is necessary, ensuring that the vehicle is in safe and proper operating condition prior to transporting students.

11.07 School districts and service providers shall not transport students in a school transportation vehicle which is not in safe and proper operating condition. A school transportation vehicle shall be designated as "out-of-service" by a school district or service provider, a school transportation annual inspector or the CDE School Transportation Unit.

11.07(a) Exemption - Any school transportation vehicle discovered to be in an unsafe condition while being operated on the highway, roadway or private road may be continued in operation only to the nearest place where repairs can safely be affected. Such operation shall be conducted only if it is less hazardous to the public than to permit the vehicle to remain on the highway, roadway or private road.

11.08 Following a school transportation vehicle being placed "out-of-service", a school district, service provider or a representative agent must make required repairs, ensuring that the vehicle is in safe and proper operating condition prior to transporting students. In the event of being placed "out-of-service" during an annual inspection, the school transportation vehicle must successfully pass a CDE annual inspection prior to transporting students.

11.09 The preventative maintenance inspection on air drum brake systems shall include, at a minimum, that the brake rod travel has been measured and documented. The applied pressure method shall be used.

11.09(a) The inspection-interval shall not exceed 4,000 miles for buses equipped with a manual slack adjuster air brake system.

11.09(b) The inspection-interval shall not exceed 6,000 miles for buses equipped with an automatic slack adjuster air brake system.

11.10 The preventive maintenance inspection interval on air disc brake systems shall not exceed 6,000 miles and shall include, at a minimum; inspection and documentation of:

11.10(a) Inspect the pad thickness by checking the mechanical wear indicators.

11.10(b) Inspect the visible part of the rotors for cracks, excessive wear, damage, etc.

11.10(c) Inspect running clearance. If the caliper has no movement or appears to move greater than the distances indicated by the manufacturer, then a full wheel removal inspection will be necessary.

11.11 The preventive maintenance inspection interval for hydraulic brake systems shall not exceed 6,000 miles and shall include, at a minimum, inspection and documentation of:

11.11(a) Proper parking brake operation.

11.11(b) Proper brake fluid level and clarity.

11.11(c) Adequate pedal reserve.

11.11(d) Proper hydraulic/vacuum assist operation.

11.11(e) Visual inspection for brake fluid leakage.

11.12 If brake adjustment or repair is needed, the work shall be completed by or supervised by a DOT or equivalent qualified brake inspector meeting the requirements of 49 CFR 396.25.

4204-R-12.00 Operation of a School Transportation Vehicle

12.01 A school transportation vehicle shall not be operated in a manner which is unsafe or likely to cause an accident or damage of the vehicle.

12.02 A school transportation vehicle shall not be placed in motion on a roadway, highway or private road with the passenger entry door/service door open.

12.03 A school transportation vehicle's headlights or daytime running headlights shall be activated while the vehicle is in operation.

12.04 A school transportation vehicle shall not be fueled while students are on board, except in instances when unloading the students would present a greater hazard or peril to their safety.

12.05 Use of tobacco products as defined in Section 18-13-121(5), C.R.S., use or possession of illegal controlled substances, use or possession of alcohol and use or possession of marijuana or cannabinoid product, except as otherwise allowed by law, aboard any school transportation vehicle shall be prohibited at all times**.**

12.06 A school transportation vehicle operator shall not consume food unless the vehicle is stopped at a safe location with the park/emergency brake set.

12.07 When a school transportation vehicle is equipped with a roof mounted strobe lamp, the use of the strobe lamp is permitted only when the vehicle presents a hazard to other motorists, such as loading or unloading students in inclement weather or to enhance visibility of the vehicle when barriers inhibit such visibility.

12.08 A school transportation vehicle operator may use the strobe, in addition to the four-way hazard lamps, to warn other motorists that the vehicle is not in motion or is being operated at a speed of twenty-five miles per hour or less.

12.09 The school transportation vehicle operator shall use extreme caution when backing. Before backing on a roadway, highway or private property, the horn or audible warning device shall be sounded and four-way hazard lamps actuated or there shall be a person outside the vehicle giving direction.

12.09(a) Backing a school transportation vehicle when students are outside of the vehicle at a student stop is prohibited.

12.10 School transportation vehicles including Type A, B, C and D School Bus, Multifunction Bus and Motor Coach Bus shall not be operated with a trailer or other vehicle attached while students are being transported.

12.11 School transportation small vehicles, with the capacity of 15 or fewer passengers (counting the driver), may tow trailers while students are being transported to the extent that trailering is a necessary component of a district sponsored program**.**

4204-R-13.00 Authorized Passengers

13.01 Only district personnel, students enrolled in a district, law enforcement officials or individuals that have received prior authorization from the school district or service provider may be passengers on any school transportation vehicle.

13.02 The number of passengers transported on any school transportation vehicle shall not exceed the maximum seating capacity of the vehicle. Small vehicle capacity shall not exceed the number of safety belts as designed by the vehicle manufacturer.

13.03 Passengers shall not be permitted to stand in any school transportation vehicle while the vehicle is in motion. This does not preclude authorized persons (such as school transportation paraprofessionals) from completing their duties as required.

13.04 School districts and service providers shall consider the size of the passengers when determining the number of passengers that can safely occupy a school transportation vehicle seat.

4204-R-14.00 Safety Restraints

14.01 A school transportation vehicle operator shall have the safety belt fastened, worn correctly and properly adjusted prior to the school transportation vehicle being placed in motion.

14.02 All passengers in a school transportation vehicle under 10,000 lbs. GVWR shall have their safety belts fastened, worn correctly and properly adjusted prior to the school transportation vehicle being placed in motion.

4204-R-15.00 Transportation of Miscellaneous Items

15.01 A school transportation vehicle operator shall make a reasonable and prudent determination that all carry-on items are properly handled in order to minimize the danger to all others.

15.02 All baggage, articles, equipment or medical supplies not held by individual passengers shall be secured in a manner which assures unrestricted access to all exits by occupants, does not restrict the driver's ability to operate the bus and protects all occupants against injury resulting from falling or displacement of any baggage, article or equipment. Oxygen cylinders secured to a wheelchair shall be considered to be in compliance with this subsection, provided they do not impede access to any exit.

15.03 All chemicals and cleaning supplies carried on a school transportation vehicle must meet the following precautions:

15.03(a) Container is non-breakable.

15.03(b) Container is labeled with contents.

15.03(c) Pressurized aerosols are prohibited.

15.03(d) Container is secured in a bracket, or in a closed compartment in the driver's area or a compartment on the exterior of the bus.

15.03(e) Containers and quantities of products are kept to a reasonable size.

15.04 Interior-decorations shall not be located within the driver's area (which includes the space in front of the front barriers including the step-well, dash, walls and ceiling, the windshield, the entry door, the driver's side window, and all windows in front of the front barrier), the first two passenger windows on both sides of the vehicle and all windows on the rear of the vehicle. Other decorations within the passenger compartment shall not:

15.04(a) Cover any required lettering.

15.04(b) Impede the aisle or any emergency exit.

15.04(c) Hang from the walls and/or ceiling.

4204-R-16.00 Maximum Driving Time for School Transportation Vehicle Operators

16.01 The school transportation vehicle operator, including small vehicle operators, shall not drive nor shall the school district or service provider permit or require an operator to drive:

16.01(a) In excess of 10 hours or after being on-duty 14 hours until completing 10 hours off-duty. This would include on-duty time for all employers. Ten hours off-duty may be consecutive or accumulated in two or more periods of off-duty time with one period having a minimum of 6 consecutive hours off-duty.

16.01(b) After being on-duty for more than 70 hours in any seven consecutive days.

16.02 The school district or service provider may comply with part 395 of the Federal Motor Carrier Safety Regulations (FMCSR) in place of this section.

16.03 Definitions:

16.03(a) Adverse driving conditions - In case of emergency, an operator may complete the trip without being in violation if such trip reasonably could have been completed absent the emergency.

16.03(b) Day - Means any 24-consecutive hour period beginning at the time designated by the

school district or service provider.

16.03(c) On-duty time - Includes all time worked for any and all employers, including all driving and non-driving duties.

16.03(d) Off-duty time - School transportation vehicle operators may consider waiting time at special events, meal stops and school related events as off-duty if the following criteria are met: (Compensated waiting time does not necessitate on-duty time.)

16.03(d)(1) The operator shall be relieved of all duty and responsibility for the care and custody of the vehicle, its accessories and students, and

16.03(d)(2) The operator shall be at liberty to pursue activities of his/her choice including leaving the premises on which the bus is located.

16.04 All school transportation vehicle operators shall document that they are in compliance with this section, hours of service.

16.04(a) An operator's daily log, or equivalent, shall be completed for the trip in the operator's own handwriting, when the trip requires a scheduled or unscheduled overnight stay away from the work reporting location.

4204-R-17.00 Route Planning – Student Loading and Discharge

17.01 School transportation small vehicles, Type A Multifunction Buses with 15 or fewer passenger capacity (counting the driver) and School Buses (Types A, B, C, and D) may be used to transport students to and from school. Multifunction Buses Type B, C and D and Motor Coach Buses shall not be used to transport students to and from school.

17.02 The location of student stops shall consider factors including:

17.02(a) Ages of the students.

17.02(b) Visibility.

17.02(c) Lateral clearance.

17.02(d) Student access.

17.02(e) Control of other motorists.

17.02(e)(1) Student stops for Type A Multifunction Buses with 15 or fewer passenger capacity (counting the driver) and school transportation small vehicles should be located off of the roadway whenever possible.

17.03 School transportation vehicle operators shall stop at least 10 feet away from students at each designated stop. The school transportation vehicle operator shall apply the parking brake and

shift the vehicle into neutral or park prior to opening the service door of a bus or passenger door(s) of a small vehicle.

17.04 The school transportation vehicle operator shall stop as far to the right of the roadway, highway or private road as possible before discharging or loading passengers, allowing sufficient area to the right and front of the vehicle but close enough to the right to prevent traffic from passing on the right so students may clear the vehicle safely while in sight of the operator.

17.04(a) Exception: The school transportation vehicle operator may block the lane of traffic when passengers being received or discharged are required to cross the roadway.

17.05 Student stops shall not be located on the side of any major thoroughfare whenever access to the destination of the passenger is possible by the use of a road or street which is adjacent to the major thoroughfare.

17.06 If students are required to cross a roadway, highway or private road on which a student stop is being performed, they are prohibited from crossing a roadway, highway or private road constructed or designed to permit three or more separate lanes of vehicular traffic in either direction or with a median separating multiple lanes of traffic. This does not include crossing the roadway, highway or private road with the assistance of a traffic controls signal or with the assistance of a crossing guard.

17.07 Four-way hazard lamps shall be used on private property such as parking lots.

17.08 Alternating flashing red warning signal lamps shall not be activated within 50 feet of an intersection if the intersection is controlled by a traffic control signal.

17.09 Routes shall be planned as to:

17.09(a) Eliminate, when practical, railroad crossings.

17.09(b) Have stops be a minimum of 200 feet apart since alternating flashing amber warning signal lamps must be activated a minimum of 200 feet in advance of the stop.

17.09(b)(1) Exception: Student stops located in areas where wildlife may create a high risk of threat to students' safety while they are waiting and/or walking to a student stop, may designate student stops less than 200 feet apart upon detailed written approval by the school district board of education and/or their designee. A copy of the written approval shall be kept in the school transportation office and route operators shall be given written notice of the exception and have it indicated on route sheets.

17.10 Pursuant to Section 42-4-1903(2), C.R.S., school transportation vehicle operators are not required to actuate the alternating flashing red warning signal lamps on a school bus when the student stop is at a location where the local traffic regulatory authority has by prior written designation declared such actuation unnecessary and when discharging or loading passengers who require the assistance of a lift device and no passenger is required to cross the roadway. Further, Type A Multifunction Buses with 15 or fewer passenger capacity (counting the driver)

and school transportation small vehicles do not have the functionality to control traffic. In these instances, the school transportation vehicle operator shall stop as far to the right off the roadway as possible to reduce obstruction to traffic, activate the four-way hazard warning lamps a minimum of 200 feet prior to the student stop, continue to display the four-way hazard warning lamps until the process of discharging or loading passengers has been completed, and deactivate the four-way hazard lamps before resuming motion. Students are prohibited from crossing any lanes of traffic to access the student stop or after disembarking.

17.11 School transportation vehicle operators shall not relocate a student stop without approval of the school district or service provider.

17.12 School transportation vehicle operators of School Buses, Multifunction Buses and Motor Coach Buses, whether transporting students or not, shall apply the following procedures during the process of approaching, stopping and crossing railroad tracks:

17.12(a) Activate the four-way hazard lamps not less than 200 feet from the railroad crossing to alert other motorists of the pending stop for the crossing.

17.12(b) Stop the bus within 50 feet but not less than 15 feet from the nearest rail.

17.12(c) When stopped, the bus should be as far to the right of the roadway as possible and should not form two lanes of traffic unless the highway is marked for four or more lanes of traffic.

17.12(d) Use a prearranged signal to alert students to the need for quiet aboard the bus when approaching railroad tracks. Turn off all noise making equipment (fans, heater, radio, etc.)

17.13 After quietness aboard the stopped bus has been achieved, bus operators shall open the service door and operator window. The bus operator shall listen and look in both directions along the track(s) for any approaching train(s) and for signals indicating the approach of a train.

17.13(a) If the tracks are clear, the bus operator shall close the service door and may then proceed in a gear low enough to permit crossing the tracks without having to manually shift gears. The bus operator shall cancel the four-way hazard lamps after the bus has cleared the tracks.

17.13(b) When two or more tracks are to be crossed, the bus operator shall not stop a second time unless the bus is completely clear of the first crossing and has at least 15 feet clearance in front and at least 15 feet clearance to the rear.

17.13(c) Before crossing the tracks, the bus operator shall verify that there is enough space after the tracks for the bus plus 15 feet if it is necessary to stop after crossing the tracks.

17.14 School transportation vehicle operators of School Buses, Multifunction Buses and Motor Coach Buses are not required to stop at crossings controlled by a red, amber, green traffic control signal when it is in the green position or when the crossing is controlled by a police officer or human flag person.

4204-R-18.00 Emergency Evacuation Drills

18.01 Emergency evacuation drills shall be conducted with students by all school transportation vehicle operators and school transportation paraprofessionals at least twice during each school year, following the procedures in the Colorado Department of Education School Bus/Multifunction Bus/Motor Coach Bus Operator Guide.

18.01(a) One drill shall be conducted in the fall and the second drill conducted in the spring.

18.01(b) Substitute and Multifunction operators of 16 or greater capacity (counting the driver) vehicles shall be trained how to conduct the emergency evacuation drills.

18.02 Students on school related events shall receive emergency evacuation instruction prior to departure.

18.03 School district and service providers shall maintain records documenting that the required evacuation drills were conducted and/or evacuation instruction was given.

COLORADO
Department of Education
School Finance and Operations Division

MEMO

TO: Colorado State Board of Education Members
FROM: Jennifer Okes, School Finance Director
RE: Rulemaking Hearing
DATE: July 7, 2016

Attached please find information to support the action items regarding the requests for Emergency Rulemaking for the Rules for the Operation of School Transportation Vehicles (1 CCR 301-26) and the Rules for the Annual Inspection and Preventative Maintenance of School Transportation Vehicles (1 CCR 301-29).

The rulemaking authority for both set of these rules is pursuant to Sections 22-52-108 and 42-4-1904, C.R.S. The proposal is to conduct emergency rulemaking, consistent with action taken at the June State Board of Education rulemaking hearing. At that time, the State Board voted to repeal these two separate rules and reenact a single, consolidated set of rules. Due to a technicality, the rulemaking process was not completed and must be started over. As such, the normal rulemaking process would not be completed until well into the 2016-2017 school year. It is advisable that there is a single set of rules in place throughout the school year in order to avoid confusion.

The purpose of the proposed rules is to:
- Streamline and consolidate rules
- Reduce regulatory burdens for school districts
- Clarify the rules where appropriate

A vote from board members is requested at the July Board meeting:
- To approve the proposed changes to the Rules for the Operation of School Transportation Vehicles (1 CCR 301-26) through the emergency rulemaking process, and
- To approve the proposed changes to the Rules for the Annual Inspection and Preventative Maintenance of School Transportation Vehicles (1 CCR 301-29) through the emergency rulemaking process.

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Office of the Attorney General

Tracking number: 2016-00333

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado State Board of Education

on 07/07/2016

1 CCR 301-29

RULES FOR THE ANNUAL INSPECTION AND PREVENTATIVE MAINTENANCE OF SCHOOL TRANSPORTATION VEHICLES (Recodified as 1 CCR 301-26)

The above-referenced rules were submitted to this office on 07/08/2016 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.

July 19, 2016 09:45:33

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 07/29/2016

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

NOTICE OF RULEMAKING HEARING

Regarding proposed revisions to:

COLORADO'S STATE IMPLEMENTATION PLAN AND ASSOCIATED REGULATIONS

SUBJECT:
The Air Quality Control Commission will hold a rulemaking hearing to consider a proposed element to Colorado's State Implementation Plan (SIP) and revisions to associated regulations. There are four segments to this rulemaking hearing which will be addressed by the Commission individually:

Moderate Ozone Nonattainment Area SIP Element: proposed SIP Element for the Denver Metro and North Front Range Moderate Ozone Nonattainment Area.

Air Quality Standards, Designations and Emission Budgets: proposed revisions that incorporate new emission budgets for the Denver Metro and North Front Range Ozone Nonattainment Area, and other clarifying revisions.

Regulation Number 7: proposed revisions associated with the moderate ozone nonattainment classification and separate revisions to address EPA concerns with previous SIP rule language submittals. The proposed revisions 1) incorporate State-only requirements for combustion device auto-igniters into the SIP; 2) establish condensate storage tank audio, visual and olfactory inspection requirements; 3) establish Reasonably Available Control Technology (RACT) requirements for both printing operations and general industrial cleaning solvent use; 4) provide for the implementation of RACT for major sources of VOC and NOx; 5) establish RACT for combustion sources; and 6) adjust the applicability of Regulation Number 7 accordingly. The proposed revisions also address EPA's concerns with previous SIP submittals that 1) establish monitoring, recordkeeping and reporting requirements for glycol natural gas dehydrators and natural gas processing plants; 2) remove references to EPA approval of emission factors; and 3) renumber, revise or revert to previously approved SIP language in other provisions. Finally, the proposed revisions make other typographical, grammatical and formatting changes.

Regulation Number 11: proposed revisions associated with the moderate ozone nonattainment classification that remove State-only references in Part A, making the Automobile Inspection and Readjustment (AIR) program currently operating in those portions of Larimer and Weld county that are part of the Denver Metro and North Front Range ozone nonattainment area a federally enforceable requirement of Colorado's SIP.

All required documents for this hearing can be found on the Commission website at: https://www.colorado.gov/pacific/cdphe/aqcc or on the Commission FTP site at: ftp:ft.dphe.state.co.us/apc/aqcc

HEARING SCHEDULE:

DATE: October 20 & 21, 2016
TIME: 9:00 AM
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, Sabin Conference Room
Denver, CO 80246

PUBLIC COMMENT:

The Commission encourages all interested persons to provide their views either orally at the hearing or in writing prior to or at the hearing. The Commission encourages that written comments be submitted by **October 7, 2016** so that Commissioners have the opportunity to review the information prior to the hearing.

Information should be printed and include: your name, address, phone number, email address, and the name of the group that you may be representing (if applicable).

Written submissions should 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

Electronic submissions should be emailed to: cdphe.aqcc-comments@state.co.us

Public testimony will be taken on October 20 & 21, 2016. An approximate time for public comment will be posted in the meeting agenda.

PARTY STATUS:

Any person may obtain party status for the purpose of this hearing by complying with the requirements of the Commission's Procedural Rules. A petition for party status must be filed by electronic mail with the Office of the Air Quality Control Commission no later than close of business on **August 19, 2016.** The petition must: *1) identify the applicant; 2) provide the name, address, telephone and facsimile numbers, and email address of the applicants representative; and 3) briefly summarize what, if any, policy, factual, and legal issues the applicant has with the proposal(s) as of the time of filing the application.* Electronically mailed copies must also be received, by this same date, by the Division staff person and the Assistant Attorneys General representing the Division and the Commission as identified.

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Air Quality Standards: Sean Hackett
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Regulation Number 7: Leah Martland
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Regulation Number 11: Doug Decker
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Attorney for the Division
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Requests received beyond the stated deadline shall only be considered upon a written motion for good cause shown. The Commission reserves the right to deny party status to anyone that does not comply with the Commission's Procedural Rules.

ALTERNATE PROPOSAL:
The submittal of an alternate proposal must be accompanied by an electronic copy of the alternate proposed rule and all other associated documents as required by the Commission's Procedural Rules, and must be filed by electronic mail with the Office of the Commission by **close of business September 9, 2016**. Alternate proposals must also be filed by electronic mail with the Division staff person and with each of the Assistant Attorneys General.

STATUS CONFERENCE:
A status conference will be held **August 26, 2016 at 1:00 p.m.,** at the Department of Public Health and Environment, Sabin/Cleere Conference Room to ascertain and discuss the issues involved, and to ensure that parties are making all necessary efforts to discuss and resolve such issues prior to the submission of prehearing statements. Attendance at this status conference is mandatory for anyone who has requested party status.

PREHEARING CONFERENCE/PREHEARING STATEMENTS:

Attendance at the prehearing conference is mandatory for all parties to this hearing. A prehearing conference will be held **September 16, 2016 at 11:30 a.m.** at the Department of Public Health and Environment, Sabin/Cleere Conference Room. All parties must submit by electronic mail a prehearing statement to the Commission Office by close of business **September 9, 2016.** In addition, any exhibits to the prehearing statements or alternate proposals must be submitted in a separate electronic transmission to the Commission Office by close of business **September 9, 2016.** Electronically mailed copies of these documents must be delivered by that date to all persons who have been granted party status and to the Division point of contact and each of the Assistant Attorneys General identified above by close of business **September 9, 2016**. Rebuttals to the prehearing statement, and any exhibits thereto, may be submitted to the Commission Office and all other parties by close of business **September 23, 2016**.

EXCEPTIONS TO FILE DOCUMENTS BY ELECTRONIC MAIL:

The Commission's Procedural Rules provide for an exception to file documents by electronic mail. Any person may petition the Commission to file documents in paper copy format if they are unable for any reason to comply with the requirements of the Commission's Procedural Rules. If granted an exception to electronic filing pursuant to the provisions of Subsection III.I.3. of the Commissions Procedural Rules, the applicant for party status shall file an original and fifteen copies in the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246., and shall also deliver copies to each party, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings by electronic mail or as otherwise provided by the exception granted under Subsection III.I.3.

STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:

The rulemaking hearing will be conducted in accordance with Sections 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended, the Commission's Procedural Rules, and as otherwise stated in this notice. This list of statutory authority is not intended as an exhaustive list of the Commission's statutory authority to act in this matter.

Moderate Ozone Nonattainment Area SIP Element: C.R.S. § 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. Section 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.

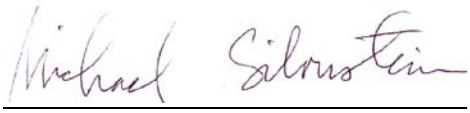
Air Quality Standards, Designations and Emission Budgets: The authority to establish emissions budgets and to establish criteria for transportation conformity determinations is included in the general authority to adopt a SIP set out in Section 25-7-105(1), C.R.S.

Regulation Number 7: The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), C.R.S. § 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. Section 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. Section 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. Section 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.

Regulation Number 11: The Commission has the duty and authority to adopt the revisions. 40 C.F.R. § 51.350(4) provides that "Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area." Further, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., C.R.S. § 25-7-105(1)(a), 25-7-301, and 25-7-302 direct 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. Section 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.

Dated this 29th day of July 2016 at Denver, Colorado

Colorado Air Quality Control Commission



Michael Silverstein, Administrator

Calendar of Hearings

Hearing Date/Time	Agency	Location
09/28/2016 01:00 PM	Division of Public School Capital Construction Assistance	201 East Colfax
09/28/2016 01:00 PM	Division of Public School Capital Construction Assistance	201 E Colfax Ave Denver C) 80203
09/08/2016 08:30 AM	Colorado Parks and Wildlife (405 Series, Parks)	Ruth Humphreys Brown Theatre, 120 South Main Street, Creede, CO 81130
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09/08/2016 08:30 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Ruth Humphreys Brown Theatre, 120 South Main Street, Creede, CO 81130
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09/12/2016 01:00 PM	Transportation Commission and Office of Transportation Safety	CO Department of Transportation, Auditorium, 4201 E. Arkansas Ave., Denver, CO 80222
09/01/2016 01:00 PM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
09/01/2016 01:00 PM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
09/16/2016 09:00 AM	Division of Professions and Occupations - State Physical Therapy Board	1560 Broadway, Conference Room 1250 A; Denver, CO 80202
10/20/2016 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
10/20/2016 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
10/20/2016 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
10/20/2016 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
09/21/2016 10:00 AM	Health Facilities and Emergency Medical Services Division (1011, 1015 Series)	Sabin-Cleere Conference Room, Colorado Department of Public Health and Environment, Bldg. A, 4300 Cherry Creek Drive, South, Denver, CO. 80246
09/09/2016 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	11th floor Conference Room, 303 E 17th Ave, Denver, CO, 80203
09/09/2016 10:00 AM	Adult Protective Services	522 Lincoln Avenue, Steamboat Springs, CO